

# RULE MAKING ACTIVITIES

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

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

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

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## Office of Children and Family Services

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

#### Permanency, Safety and Well-Being of Children in Foster Care

**I.D. No.** CFS-37-06-00009-P

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

**Proposed action:** Addition of section 426.10; amendment of sections 421.4, 421.6, 421.17, 423.2, 426.4, 428.1, 428.2, 428.3, 428.4, 428.5, 428.6, 428.7, 428.8, 428.9, 428.10, 430.8, 430.9, 430.11, 430.12, 431.9, 432.2, 441.21, 441.22, 443.2, 476.2, 507.2; and repeal of sections 430.1-430.7, 430.13 and 441.20 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 383-c, 384 and 409-e; and Family Court Act, art. 10-A and section 1017

**Subject:** Amendment of regulations governing procedures related to permanency outcomes for children in foster care, as required by L. 2005, ch. 3.

**Purpose:** To implement the enhanced procedures set forth in L. of 2005, ch. 3 intended to produce more timely and effective judicial and administrative reviews, thus improving permanency outcomes for children in foster care and those placed directly in the custody of a relative or other suitable person.

**Substance of proposed rule (Full text is posted at the following State website: [www.ocfs.state.ny.us](http://www.ocfs.state.ny.us)):** Section 421 (Adoption Services)

The amendments conform the requirements for periodic court reviews, permanent neglect proceedings and conditional surrenders with amendments enacted by Chapter 3 of the Laws of 2005 (Permanency Bill).

Section 426.10 (Title IV-E Foster Care and Adoption Assistance)

Adds a new section to meet Title IV-E State Plan requirements regarding the specific goal for the maximum number of children who remain in foster care for more than 24 months.

Sections 423.2 (Definitions), 430.9 (Appropriate Provision of Mandated Preventive Services), 430.11 (Appropriateness of Placement), 431.9 (Termination of Parental Rights by Local Social Services Agency), 432.2 (Child Protective Service: Responsibilities and Organization), 441.21 (Casework Contacts), 441.22 (Health and Medical Services), 443.2 (Authorized Agency Operating Requirements), 476.2 (Terms and Conditions) and 507.2 (Special Assessments, Examinations and Tests Required for Children in Foster Care)

These sections are amended to reflect the change of the permanency goal from “independent living” to “another planned living arrangement with a permanency resource”, as enacted by Chapter 3 of the Laws of 2005.

Part 428 (Standards for Uniform Case Records)

The amendments conform the requirements for periodic family assessments and service plans, plan amendments, service plan reviews and permanency hearing reports with Chapter 3 of the Laws of 2005. It adds such requirements for children placed by a court in the direct custody of a relative or other suitable person. It adds a case consultation requirement with certain required parties in order to meet the review requirements prior to the development of the permanency hearing report and the permanency hearing required by Chapter 3 of the Laws of 2005. It also conforms the requirements for seeking and obtaining information about absent and non-respondent parents and other relatives in accordance with the new Chapter Law.

Part 430 (Additional Limitations on Reimbursement Utilization Review for Foster Care and Preventive Services)

18 NYCRR 430.1 through 430.7 and 430.13 are repealed to reflect the repeal of sections 153-d and 398-b of the Social Services Law by Chapter 83 of the Laws of 2002. 18 NYCRR 430.8 is amended to reflect the uniform case recording standards set forth in 18 NYCRR Part 428. 18 NYCRR 430.12 is amended to add further definition to the service plan review process, including making the administrative service plan review unnecessary when a permanency hearing meets the federal requirements for an administrative or judicial review. In addition the permanency planning goal of “independent living” is changed to “another planned living arrangement with a permanency resource” in accordance with Chapter 3 of the Laws of 2005.

Section 431.9 (Termination of Parental Rights by a Local Social Services Agency)

The amendment makes minor conforming changes to reflect Chapter 3 of the Laws of 2005, so that considerations related to a determination to terminate parental rights are made in relation to the permanency hearing schedule.

Section 441.20 (Family Court Review of the Status of Children in Foster Care)

This section is repealed as it has been made obsolete by Chapter 3 of the Laws of 2005.

Technical amendments are made to sections 423.2 and 426.4 to make corrections to cross-references necessitated by the repeal of other sections.

**Text of proposed rule and any required statements and analyses may be obtained from:** Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793, e-mail: info@ocfs.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:

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

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

Section 1017 of the Family Court Act (FCA), as amended by Chapter 3 of the Laws of 2005, authorizes the collection of certain information on non-respondent parents and relatives of children when the court determines that such children must be removed from their homes. Furthermore, such section authorizes the placement of the child with a non-respondent parent, relative or other suitable person.

Article 10-A of the FCA establishes uniform procedures for permanency hearings for all children who are placed in foster care either voluntarily or as abused or neglected children, or are directly placed with a relative or other suitable person pursuant to Article 10 of the FCA and all foster children who are completely freed for adoption.

Section 383-c of the SSL establishes the criteria for the surrender of custody and guardianship of a child in foster care to an authorized agency.

Section 384 of the SSL establishes the criteria for the surrender of custody and guardianship of a child not in foster care to an authorized agency.

Section 409-e of the SSL establishes the requirements for the completion, updating and review of assessments and services plans for all children who are in foster care and who are at risk of placement into foster care.

#### 2. Legislative objectives:

Chapter 3 of the Laws of 2005 provides children placed out of their homes with more timely and effective judicial and administrative reviews in order to promote permanency, safety and well-being. To effectuate this purpose, Chapter 3 grants the courts continuing jurisdiction over children in foster care placements under Article 10 of the Family Court Act, children who have been voluntarily placed in foster care, and children who have been completely freed for adoption; improves permanency outcomes for children in foster care; and provides for comprehensive reform of the provisions of law which govern the permanency hearing processes for children placed in the foster care or placed directly with a relative or other suitable person under Article 10 of the FCA. Chapter 3 of the Laws of 2005 further addresses the issue of conditional surrenders for adoption and any associated agreement that has been made for ongoing contact and communication between the adopted child and the birth parent and/or sibling or half sibling of the adopted child. This legislation also establishes standards for enforcement of the terms of conditional surrenders both prior and subsequent to the adoption of the child based on the best interests of the child.

Additionally, the regulations reflect the repeal of sections 153-d and 398-b of the SSL by Chapter 83 of the Laws of 2002 which, previous to repeal, had authorized OCFS to sanction social services districts if they did not meet certain requirements, including those relating to timely filing of certain court review petitions that have been eliminated by Chapter 3 of the Laws of 2005. The repeal of 18 NYCRR 430.1 through 430.7 and 430.13 are necessary to reflect these statutory changes.

#### 3. Needs and benefits:

The regulations implementing Chapter 3 of the Laws of 2005 provide for a more frequent series of administrative reviews and service plan development activities involving all parties with a stake in the outcome. The regulations support permanency planning through enhancing the service plan review process and the collection of comprehensive and timely information for the development of the permanency hearing report. The regulations also set out the critical areas of review necessary to advance the child's permanency plan. In accordance with the legislation, these regulations provide a specific means for meeting documentation requirements with regard to a child's out-of-home placement or for any child considered for foster care. The regulations implement the change of the permanency goal from "independent living" to "discharge to another planned living arrangement with a permanency resource". The regulations support the need to locate an absent parent and other relatives of a child in out-of-home

placement, in order to consider each of those persons as a resource for the child. The regulations also provide that any person designated by the child's birth parent to be the child's adoptive parent in a conditional surrender to be a certified or approved foster parent or an approved adoptive parent, in support of a child's need for a safe, permanent home.

#### 4. Costs:

The implementation of these regulations and the underlying statutory provisions have both state and local costs associated with them. Local costs are partially offset by expected improvements in case processing, avoidance of federal sanctions and more rapid achievement of permanency for children in care and the associated savings attached to a shorter length of stay.

State activities related to the implementation of the statute and regulations will result in the delay of the final release of CONNECTIONS due to the redesign of current aspects of Build 18 (Case Management) and to incorporate the regulatory changes into the design of Build 19 (Financial Management).

There are anticipated costs as well as savings for local social service districts and voluntary authorized agencies as a result of implementation of the statutory provisions underlying these regulations. Initial implementation, as with any major policy and practice change, will require additional staff time to learn the new process and, with these regulations, to complete the statutorily required permanency hearing report and conduct case consultations prior to the development of permanency hearing reports in a more formal manner than is currently required. These staff costs will be offset, in part, by: the elimination of the requirements for administrative service plan reviews whenever the family court permanency hearing meets the federal requirement for such review to be held at least every six months; the elimination of the requirement for case consultations prior to service plan reviews; the elimination of filing of petitions with family court in most child welfare related matters, and elimination of the personal service of notice of hearings. Due to date certain calendaring of permanency hearings, it is anticipated that there will be a reduction in court adjournments resulting from the legislation underlying the regulations. This will reduce the time staff must spend in family court. Staff costs will be further offset when development work is completed so that the permanency hearing report is pre-filled and generated electronically, customized for the child's age and permanency planning goal.

Additional savings to local districts include anticipated reduced lengths of foster care stays for some children as a result of permanency hearings held more frequently than is now the case. There is also the potential to avoid foster care placements at the time of emergency removals by requiring hearings in all cases. The implementation of these regulations and the underlying statutory provisions will also eliminate lapsed authority for foster care placements, as the court retains continuing jurisdiction until the child is discharged, and will promote more timely reasonable efforts determinations by the court, thereby reducing the compliance items for which the State, and therefore the local districts, may be sanctioned in the secondary federal Title IV-E review scheduled in New York State for August 2006 and subsequent Title IV-E reviews.

#### 5. Local government mandates:

The primary mandates are on local social services districts and voluntary authorized agencies to prepare for permanency hearings by conducting a case consultation with case members and other participants. Although case consultation is currently required, these regulations impose a formal structure and process. This case consultation is in addition to the service plan review that districts and agencies already conduct with such persons. In addition, they must prepare permanency hearing reports on the prescribed statutory schedule, increasing documentation requirements upon local social services districts. However, the requirement for preparation, filing and serving of petitions for most child welfare related court hearings no longer exists, thus offsetting such increased documentation requirements. The requirements established by the regulations are in keeping with the intent of Chapter 3 - that children served by the child welfare system are in settings where they are as safe as possible, and that such children reside in permanent homes as soon as reasonably can be accomplished.

#### 6. Paperwork:

Chapter 3 of the Laws of 2005 requires the completion of a permanency hearing report for filing with the court and sharing with other persons involved in the case for all children in foster care, with the exception of non-completely freed juvenile delinquents and persons in need of supervision, and all children directly placed in the custody of a relative or other suitable person pursuant to Article 10 of the FCA. This is a new requirement for child welfare staff who serve children impacted by Chapter 3.

OCFS, in collaboration with OCA, the Administration for Children Services in New York City and a representative sample of local social services districts developed templates for use Statewide to meet the permanency hearing report requirement and to alleviate the need for local social services districts to design and create their own reports. Additionally, the requirements for Uniform Case Record documentation in accordance with section 409-e of the SSL have increased when a child is removed from his or her home. It is anticipated that there will be implementation costs associated with these regulations. The impact will be dependent on the individual district's or agency's current circumstances and capacity. This impact will be mitigated by the introduction of an automated permanency hearing report in 2007. In addition, this increase is partially offset by the first reassessment being due one month later than had previously been required.

7. Duplication:

The regulations do not duplicate other State requirements.

8. Alternatives:

There are no alternatives to these regulations as they are governed by the statutory requirements of Chapter 3 of the Laws of 2005.

9. Federal standards:

This legislation facilitates permanency planning for such children and assists New York State to comply with federal standards set forth in the federal Adoption and Safe Families Act of 1996 (ASFA) and other eligibility requirements under Title IV-E of the Social Security Act. Each time a permanency hearing is delayed, a child potentially stays needlessly longer in foster care. If the permanency hearing is not timely, pursuant to federal Title IV-E standards, the local social services district is at jeopardy of losing federal Title IV-E funding for foster care for the child, until an appropriate court finding of reasonable efforts to enable a child to return home safely, if the goal is reunification, or that reasonable efforts were made to finalize the child's permanency plan is made. Chapter 3 improves permanency by granting the Family Court continuing jurisdiction over the child during foster care placement. By providing the Court with continuing jurisdiction, legal authority of the local social services district over the child placement does not lapse until completion of the child's permanency hearing or further direction of the court. Prior to enactment of Chapter 3 a lapse in legal authority could occur resulting in ineligibility for reimbursement under Title IV-E of the Social Security Act for foster care for the child. It is expected that continuing jurisdiction should reduce by months the time a child might spend in foster care.

10. Compliance schedule:

Compliance with the regulations must begin immediately upon filing. December 21, 2005 is the effective date of the relevant sections of Chapter 3 of the Laws of 2005.

**Regulatory Flexibility Analysis**

1. Effect of Rule:

Social services districts will be affected by the regulation. There are 58 social services districts. The St. Regis Mohawk Tribe is authorized as a social services district to provide child welfare services pursuant to its State/Tribal Agreement with OCFS. Voluntary authorized agencies also will be affected by the proposed regulation. There are approximately 250 of such agencies.

2. Compliance Requirements:

The regulations would impose requirements on local social services districts and voluntary authorized agencies in relation to the preparation for permanency hearings by conducting a case consultation with case members and other participants. Although case consultation is currently required, these regulations impose a formal structure and process. This case consultation is in addition to the service plan review they already conduct with such persons. In addition, the districts and agencies must prepare permanency hearing reports on the prescribed statutory schedule, increasing documentation requirements upon local social services districts and the voluntary authorized agencies with which they contract. The requirements established by the regulations are consistent with the requirements and intent of Chapter 3 of the Laws of 2005 - that children served by the child welfare system are in settings where they are as safe as possible, and that such children reside in permanent homes as soon as reasonably can be accomplished.

Additionally, the regulations reflect the repeal of sections 153-d and 398-b of the SSL by Chapter 83 of the Laws of 2002 which, previous to repeal, had authorized OCFS to sanction social services districts if they did not meet certain requirements, including those relating to timely filing of certain court review petitions that have been eliminated by Chapter 3 of the Laws of 2005. The repeal of 18 NYCRR 430.1 through 430.7 and 430.13 are necessary to reflect these statutory changes.

3. Professional Requirements:

It is expected that there will be implementation costs associated with Chapter 3 and the regulations. The impact will be dependent upon the district's or agency's current circumstances and staffing. Current training programs will be enhanced to emphasize the casework support addressed by the regulations, meaning appropriate staff must be trained.

4. Compliance Costs:

The implementation of these regulations and the underlying statutory provisions have both state and local costs associated with them. Local costs are partially offset by expected improvements in case processing, avoidance of federal sanctions and more rapid achievement of permanency for children in care and the associated savings attached to a shorter length of stay.

State activities related to the implementation of the statute and regulations will result in the delay of the final release of CONNECTIONS due to the redesign of current aspects of Build 18 (Case Management) and to incorporate the regulatory changes into the design of Build 19 (Financial Management).

There are anticipated costs as well as savings for local social service districts and voluntary authorized agencies as a result of implementation of the statutory provisions underlying these regulations. Initial implementation, as with any major policy and practice change, will require additional staff time to learn the new process and, with these regulations, to complete the statutorily required permanency hearing report and conduct case consultations prior to the development of permanency hearing reports in a more formal manner than is currently required. These staff costs will be offset, in part, by: the elimination of the requirements for administrative service plan reviews whenever the family court permanency hearing meets the federal requirement for such review to be held at least every six months; the elimination of the requirement for case consultations prior to service plan reviews; the elimination of filing of petitions with family court in most child welfare related matters, and elimination of the personal service of notice of hearings. Due to date certain calendaring of permanency hearings, it is anticipated that there will be a reduction in court adjournments resulting from the legislation underlying the regulations. This will reduce the time staff must spend in family court. Staff costs will be further offset when development work is completed so that the permanency hearing report is pre-filled and generated electronically, customized for the child's age and permanency planning goal.

Additional savings to local districts include anticipated reduced lengths of foster care stays for some children as a result of permanency hearings held more frequently than is now the case. There is also the potential to avoid foster care placements at the time of emergency removals by requiring hearings in all cases. The implementation of these regulations and the underlying statutory provisions will also eliminate lapsed authority for foster care placements, as the court retains continuing jurisdiction until the child is discharged, and will promote more timely reasonable efforts determinations by the court, thereby reducing the compliance items for which the State, and therefore the local districts, may be sanctioned in the secondary federal Title IV-E review scheduled in New York State for August 2006 and subsequent Title IV-E reviews.

5. Economic and Technological Feasibility:

Chapter 3 of the Laws of 2005 requires the completion of a permanency hearing report for filing with the court and sharing with other persons involved in the case for all children in foster care, with the exception of non-completely freed juvenile delinquents and persons in need of supervision, and all children directly placed in the custody of a relative or other suitable person pursuant to Article 10 of the Family Court Act (FCA). This is a new requirement for child welfare staff who serve children impacted by Chapter 3. The regulation will not impose any additional economic or technological burdens on social services districts or child welfare services providers. Districts and agencies will not need additional computers beyond those already provided by the State. The economic impact of implementation will vary.

6. Minimizing Adverse Impact:

The Office of Children and Family Services (OCFS), in collaboration with the Office of Court Administration (OCA), the Administration for Children Services in New York City and a representative sample of local social services districts developed templates for use Statewide to meet the permanency hearing report requirement and to alleviate the need for local social services districts to design and create their own reports. However, requirements for preparation, filing and serving of petitions for most child welfare related court hearings no longer exists, thus offsetting such increased documentation requirements. Furthermore, the impact will be mitigated by the introduction of an automated permanency hearing report in

2007. Additionally, the requirements for Uniform Case Record documentation in accordance with section 409-e of the Social Services Law (SSL) were expanded by Chapter 3 of the Laws of 2005 when a child is removed from his or her home. This expansion is partially offset by the first reassessment being due one month later than had previously been required. Finally, OCFS has submitted a Title IV-E State Plan amendment to the federal government, so that a permanency hearing can take the place of the administrative service plan review meeting with a third party reviewer to meet the federal requirement that the case be reviewed by an administrative or judicial review with an independent reviewer, as long as the permanency hearing is held and completed within six months of the previous service plan review.

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

OCFS actively sought and obtained the input of local social services districts in designing the permanency hearing reports and in defining the requirements for family assessments and services plans, service plan reviews and case consultations to prepare for the permanency hearings.

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

##### 1. Effect on Rural Areas:

The regulations will affect the 44 social services districts that are in rural areas. The St. Regis Mohawk Tribe is authorized as a social services district to provide child welfare services pursuant to its State/Tribal Agreement with OCFS. Those voluntary authorized agencies in rural areas contracting with social services districts to provide foster care and adoption services also will be affected by the regulations. Currently, there are approximately 100 such agencies.

##### 2. Compliance Requirements:

The regulations would impose requirements on local social services districts and voluntary authorized agencies in relation to the preparation for permanency hearings by conducting a case consultation with case members and other participants. Although case consultation is currently required, these regulations impose a formal structure and process. This case consultation is in addition to the service plan review they already conduct with such persons. In addition, the districts and agencies must prepare permanency hearing reports on the prescribed statutory schedule, increasing documentation requirements upon local social services districts and the voluntary authorized agencies with which they contract. The requirements established by the regulations are consistent with the requirements and the intent of Chapter 3 of the Laws of 2005 - that children served by the child welfare system are in settings where they are as safe as possible, and that such children reside in permanent homes as soon as reasonably can be accomplished.

Additionally, the regulations reflect the repeal of sections 153-d and 398-b of the SSL by Chapter 83 of the Laws of 2002 which, previous to repeal, had authorized OCFS to sanction social services districts if they did not meet certain requirements, including those relating to timely filing of certain court review petitions that have been eliminated by Chapter 3 of the Laws of 2005. The repeal of 18 NYCRR 430.1 through 430.7 and 430.13 are necessary to reflect these statutory changes.

##### 3. Professional Services:

It is expected that there will be implementation costs associated with Chapter 3 and the regulations. The impact will be dependent upon the district's or agency's current circumstances and staffing. Current training programs will be enhanced to emphasize the casework support addressed by the regulations, meaning appropriate staff must be trained.

##### 4. Compliance Costs:

The implementation of these regulations and the underlying statutory provisions have both state and local costs associated with them. Local costs are partially offset by expected improvements in case processing, avoidance of federal sanctions and more rapid achievement of permanency for children in care and the associated savings attached to a shorter length of stay.

State activities related to the implementation of the statute and regulations will result in the delay of the final release of CONNECTIONS due to the redesign of current aspects of Build 18 (Case Management) and to incorporate the regulatory changes into the design of Build 19 (Financial Management).

There are anticipated costs as well as savings for local social service districts and voluntary authorized agencies as a result of implementation of

the statutory provisions underlying these regulations. Initial implementation, as with any major policy and practice change, will require additional staff time to learn the new process and, with these regulations, to complete the statutorily required permanency hearing report and conduct case consultations prior to the development of permanency hearing reports in a more formal manner than is currently required. These staff costs will be offset, in part, by: the elimination of the requirements for administrative service plan reviews whenever the family court permanency hearing meets the federal requirement for such review to be held at least every six months; the elimination of the requirement for case consultations prior to service plan reviews; the elimination of filing of petitions with family court in most child welfare related matters, and elimination of the personal service of notice of hearings. Due to date certain calendaring of permanency hearings, it is anticipated that there will be a reduction in court adjournments resulting from the legislation underlying the regulations. This will reduce the time staff must spend in family court. Staff costs will be further offset when development work is completed so that the permanency hearing report is pre-filled and generated electronically, customized for the child's age and permanency planning goal.

Additional savings to local districts include anticipated reduced lengths of foster care stays for some children as a result of permanency hearings held more frequently than is now the case. There is also the potential to avoid foster care placements at the time of emergency removals by requiring hearings in all cases. The implementation of these regulations and the underlying statutory provisions will also eliminate lapsed authority for foster care placements, as the court retains continuing jurisdiction until the child is discharged, and will promote more timely reasonable efforts determinations by the court, thereby reducing the compliance items for which the State, and therefore the local districts, may be sanctioned in the secondary federal Title IV-E review scheduled in New York State for August 2006 and subsequent Title IV-E reviews.

##### 5. Minimizing Adverse Impact:

The Office of Children and Family Services (OCFS), in collaboration with the Office of Court Administration (OCA), the Administration for Children Services in New York City and a representative sample of local social services districts developed templates for use Statewide to meet the permanency hearing report requirement and to alleviate the need for local social services districts to design and create their own reports. However, requirements for preparation, filing and serving of petitions for most child welfare related court hearings no longer exists, thus offsetting such increased documentation requirements. Furthermore, the impact will be mitigated by the introduction of an automated permanency hearing report in 2007. Additionally, the requirements for Uniform Case Record documentation in accordance with section 409-e of the Social Services Law (SSL) were expanded by Chapter 3 of the Laws of 2005 when a child is removed from his or her home. This expansion is partially offset by the first reassessment being due one month later than had previously been required. Finally, OCFS has submitted a Title IV-E State Plan amendment to the federal government, so that a permanency hearing can take the place of the administrative service plan review meeting with a third party reviewer to meet the federal requirement that the case be reviewed by an administrative or judicial review with an independent reviewer, as long as the permanency hearing is held and completed within six months of the previous service plan review.

##### 6. Small Business Participation:

OCFS actively sought and obtained the input of local social services districts in designing the permanency hearing reports and in defining the requirements for family assessments and services plans, service plan reviews and case consultations to prepare for the permanency hearings.

#### **Job Impact Statement**

The regulations address various functions of social services districts, the St. Regis Mohawk Tribe and voluntary authorized agencies in relation to achieving permanency for children in foster care. It is anticipated that these functions will be assumed by the current staff of such agencies and that the regulations will not have a substantial impact on jobs or employment opportunities in either public or private child welfare agencies. A full job statement has not been prepared for the regulations that are implementing Chapter 3 of the Laws of 2005. The regulations would not result in the loss of any jobs.

## Department of Correctional Services

### EMERGENCY RULE MAKING

#### Packages and Articles Sent or Brought to Institutions

**I.D. No.** COR-37-06-00010-E

**Filing No.** 1045

**Filing date:** Aug. 29, 2006

**Effective date:** Aug. 29, 2006

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

**Action taken:** Repeal of Part 724 and addition of new Part 724 to Title 7 NYCRR.

**Statutory authority:** Correction Law, section 112

**Finding of necessity for emergency rule:** Preservation of public safety.

**Specific reasons underlying the finding of necessity:** I determined that it is necessary for the preservation of public safety 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 Secretary of State.

This amendment is adopted as an emergency measure because time is of the essence. Packages have represented a window through which inmates and their external sources have attempted to transmit contraband items such as drugs, money and articles which can be used as or converted to weapons. Because of technological advances, seemingly innocuous consumer items may conceal sinister capabilities, and advances in packaging have sometimes aided in disguising and concealing dangerous products. When such items are successfully smuggled into a correctional facility, they become an instant threat to the safety and security of staff, inmates, visitors, volunteers and the public at large.

Accordingly, the Department has concluded that it must have the capability of making immediate changes to the list of items allowed to be received via packages. For this reason, the listing, previously presented at section 724.4 of this regulation, has been removed. The listing, which has always been printed as part of the Department's internal directive #4911, "Packages and Articles Sent or Brought to Institutions," will henceforth be viewable on the Department's website and, as before, posted in facilities and available to inmates at facility libraries. The department will be able, thereby, to quickly revise the list whenever it becomes evident that an item presents a security risk. Likewise, public access to the up-to-date list will help to minimize the likelihood that someone might purchase and send to an inmate an article that would not be allowed.

Concurrently, the remainder of Part 724 is amended to reflect procedures designed to enhance security, guard against abuse of package privileges and prevent importation of contraband into correctional facilities.

In view of the potential harm to public safety which may arise from abuse of inmate package privileges, I have concluded that this rule should be implemented on an emergency basis.

**Subject:** Packages and articles sent or brought to institutions.

**Purpose:** To update procedures consistent with security needs.

**Substance of emergency rule:** PACKAGES AND ARTICLES SENT OR BROUGHT TO INSTITUTIONS

This Part formerly consisted of four sections, 724.1 through 724.4. It now consists of five sections with the addition of a new section 724.2 on applicability, identifying which inmates and facilities may receive packages in accordance with this Part.

Section 724.3, "Policy" (formerly 724.2), has been greatly expanded. New material is summarized as follows:

Subdivision (a).

- Paragraph (3) restricts received articles to those which will be for the inmate's personal use and will not cause the inmate to exceed in-cell limits;

- Paragraph (4) defines the value of an article as the actual purchase price, excluding tax, shipping or handling costs;

- Paragraphs (5) and (6) clarify procedures for disposition of previously received package items which subsequently become disallowed;

- Paragraph (7) specifies that the department is not responsible for articles damaged in shipping or received in spoiled condition;

- Paragraph (8) provides for a record of return-to-sender transactions.

Subdivision (b).

- Paragraphs (1) through (4) specify search procedures, including a procedure for handling items of religious significance;

- Paragraphs (5) and (6) define contraband and articles not permitted and include procedures for disposition;

- Paragraph (7) prohibits alteration of items once received;

- Paragraph (8) provides for review and disposition of items withheld by staff because of non-conformance with specifications.

Subdivision (d).

- Paragraph (1) adds procedures for disposition of packages not having return addresses;

- Paragraph (2) expands procedures for sending a package out of a facility at an inmate's request.

Subdivision (e) – limits receipt of art and handicraft supplies.

Subdivision (f) – explains procedures for handling packages brought by visitors.

Subdivision (g).

- Paragraph (2) requires that a received article valued at over \$20 must be accompanied by a receipt or bill;

- Paragraph (4) establishes special watch procedures to guard against importation of contraband in packages addressed to inmates who have been identified with contraband or drug-related misbehavior;

Subdivision (h).

- Paragraph (2) specifies that an inmate who orders a package while under a "loss of package" disciplinary disposition must pay to have it returned to sender.

Subdivision (i) provides for disposition of packages received for inmates in SHU.

Subdivision (j) provides for processing and forwarding or disposition of packages received for inmates who have been transferred or are temporarily away from a facility.

Section 724.4, "Local permits" (formerly 724.3), has not changed except for the following addition at paragraph (5): "If a permit is revoked, the article will be confiscated and disposed of at the inmate's expense in accordance with the departmental directive on inmate personal property limits."

Section 724.5, "Listing of approved items" (formerly 724.4, "Allowable Items") is completely changed. The department will no longer list items in this regulation because of the necessity of making changes as security needs require and on an expeditious basis. The new section is printed here in its entirety.

§ 724.5 Listing of approved items.

(a) The department shall promulgate a detailed listing of items approved for receipt by inmates through facility package rooms. This listing shall be appended to the departmental directive #4911, "Packages and Articles Sent or Brought to Institutions," made available to inmates in all facility libraries, posted in all facility package rooms and visiting rooms, and posted on the department's website at [www.docs.state.ny.us/directives/4911.pdf](http://www.docs.state.ny.us/directives/4911.pdf)

(b) This listing only identifies items which may be received through the package room and sets forth the conditions and restrictions for receipt of those items; this listing is not a comprehensive list of all items that an inmate may be authorized to possess.

(c) This list will be periodically updated and amended, consistent with the needs of the department.

**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 November 26, 2006.

**Text of emergency rule and any required statements and analyses may be obtained from:** Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: [AJAnnucci@docs.state.ny.us](mailto:AJAnnucci@docs.state.ny.us)

#### Regulatory Impact Statement

Statutory Authority:

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

Legislative Objective:

By vesting the commissioner with this rule making authority, the legislature intended the commissioner to determine if inmates may receive packages from family members and other outside sources and, if allowed, to implement procedures to ensure that the privilege is not abused.

**Needs and Benefits:**

Inmates have long enjoyed the privileges of receiving packages from family and visitors and of ordering consumer goods from a list of approved articles. Packages, however, have represented a window through which inmates and their external sources have attempted to obtain contraband items such as drugs, money and articles which can be used or converted to weapons. Needless to say, when such items are successfully smuggled in, they become an instant threat to the safety and security of staff, inmates, visitors, volunteers and the public at large.

The Department has preserved these privileges despite the increasing sophistication of those who would attempt to smuggle contraband via packages. Because of technological advances, seemingly innocuous consumer items may conceal sinister capabilities, and advances in packaging have sometimes aided in disguising and concealing dangerous products.

Accordingly, the Department has concluded that it must have the capability of making immediate changes to the list of items allowed to be received via packages. For this reason, the listing, which has always been presented at section 724.4, has been removed and is being published in more rapidly changeable venues, including posting at the Department's website. The department will be able, thereby, to quickly alter the list whenever it becomes evident that an item presents a security risk. Likewise, public access to the up-to-date list will help to minimize the likelihood that someone might purchase and send to an inmate an article that would not be allowed.

The remaining text has been thoroughly overhauled to ensure that package privileges are maintained for most inmates and that all related procedures serve the department's security interests. These detailed policies and procedures are currently implemented at department facilities and are posted and available to inmates.

Significant changes from the repealed text include: addition of a section on applicability, clarifying which inmates and facilities may receive packages in accordance with this Part; restriction of received articles to those which will be for the inmate's personal use and will not cause the inmate to exceed in-cell limits; clarification of procedures for disposition of disallowed items; enhanced package-related record keeping; clarification of package and item search procedures; definitions of contraband and articles not permitted; a procedure for review of items withheld by staff because of non-conformance with specifications; procedures for sending packages out of a facility; procedures for handling packages brought with visitors; special watch procedures to guard against importation of contraband; procedures for handling packages for inmates in special housing units and for inmates who have been transferred or are temporarily away from a facility.

**Costs:**

- a. To State government: None.
  - b. To local governments: None. The proposed amendment does not apply to local governments.
  - c. Costs to private regulated parties: None. The proposed amendment does not apply to private regulated parties.
  - d. Costs to the regulating agency for implementation and continued administration of the rule:
    - (i) Initial expenses: None.
    - (ii) Annual cost: None.
- Paperwork:**
- a. New reporting or application forms: None.
  - b. Additions to existing reporting or application forms: None.
  - c. New or addition recordkeeping that will be required of the regulated party to comply with the rule or prove compliance with the rule: None.

**Local Government Mandates:**

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

**Duplication:**

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

**Alternatives:**

The department has considered eliminating package privileges or severely restricting the number and circumstances under which packages may be received by inmates. It has concluded that such privileges represent a significant connection between inmates and their families and friends and, as such, have rehabilitative and quality-of-life value. As explained under "Needs and Benefits," the chosen course of action intends to main-

tain package privileges for most inmates while strengthening the procedures designed to ensure that these privileges are not abused and do not compromise security.

No other alternatives have been proposed or considered.

**Federal Standards:**

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

**Compliance Schedule:**

The Department of Correctional Services is in compliance with this proposed rule.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

**Job Impact Statement**

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

## NOTICE OF ADOPTION

### Presumptive Release Program for Non-Violent Inmates

**I.D. No.** COR-26-06-00009-A

**Filing No.** 1044

**Filing date:** Aug. 29, 2006

**Effective date:** Sept. 13, 2006

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

**Action taken:** Addition of Chapter XXII to Title 7 NYCRR.

**Statutory authority:** Correction Law, sections 112 and 806

**Subject:** Presumptive Release Program for non-violent inmates.

**Purpose:** To implement Correction Law, section 806.

**Text or summary was published** in the notice of proposed rule making, I.D. No. COR-26-06-00009-P, Issue of June 28, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: AJAnnucci@docs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

### Removal from Temporary Release

**I.D. No.** COR-26-06-00010-A

**Filing No.** 1046

**Filing date:** Aug. 29, 2006

**Effective date:** Sept. 13, 2006

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

**Action taken:** Amendment of section 1904.2 of Title 7 NYCRR.

**Statutory authority:** Correction Law, section 112

**Subject:** Removal from temporary release.

**Purpose:** To require an inmate's appearance at a temporary release committee hearing after a disciplinary hearing has been sustained.

**Text or summary was published** in the notice of proposed rule making, I.D. No. COR-26-06-00010-P, Issue of June 28, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Anthony J. Annucci, Deputy Commissioner and Counsel,

Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: AJAnnucci@docs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## State Board of Elections

### NOTICE OF ADOPTION

**Statewide Voter Registration List**

**I.D. No.** SBE-25-06-00020-A

**Filing No.** 1039

**Filing date:** Aug. 28, 2006

**Effective date:** Sept. 13, 2006

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

**Action taken:** Addition of Part 6217 to Title 9 NYCRR.

**Statutory authority:** Election Law, sections 3-102, 5-614; and L. 2005, ch. 24

**Subject:** Statewide voter registration list.

**Purpose:** To govern the creation, maintenance and use of the official statewide voter registration list.

**Substance of final rule:** These rules govern the operation of the statewide voter registration list to be known as NYSVoter. NYSVoter includes both NYSVoter I and II. NYSVoter I covers the development and the initial data collection phase. NYSVoter II covers the complete networked phase of the list. These regulations include procedures and requirements for list security, user administration, and report/information queries.

Establishing the statewide voter registration list is a requirement of the federal Help America Vote Act (HAVA) and state election law. The statewide voter registration database regulations include the following:

1. Purpose: NYSVoter will serve as the single, interactive, statewide voter registration list for storing and managing the official list of registered voters throughout New York State. The County Boards of Elections have sole responsibility for adding changing, cancelling or removing voter registration records from the statewide voter registration list. The list shall be maintained and administered by the State Board.

2. Initial Creation of the List: The statewide voter registration list shall be created by combining the existing voter registration lists maintained by each local board of elections into a single integrated list. The information required to be sent to the State Board to appear on the list shall be determined by the State Board Commissioners. Once all data from the counties has been received, the State Board shall run a check for duplicate voter registration records within the integrated statewide voter registration list. After all duplicate registration issues have been resolved, the State Board shall assign a unique identifier to every voter on NYSVoter.

3. Review of Each County's Voter Registration System: Prior to sending data to the statewide list, any proposed county voter registration system must be approved by the State Board to ensure it meets the technical specifications to interface with the official statewide voter registration list and to determine if it conforms to all of the requirements of the state law and of these regulations.

4. Voter Registration Information Entry: County election officials shall enter all voter registration information and the corresponding data elements to be included in the statewide voter registration list. County Boards have the responsibility for adding, changing, canceling or removing voter registration records in NYSVoter.

5. Voter Registration Processing: The County Board is responsible for processing each application and determining whether the application is complete and whether the applicant meets constitutional and statutory requirements. All voter registration activity must be done by a bipartisan team of workers, to assure fairness and uniformity in the process.

6. Voter Identification Verification: The County Board shall utilize the information provided on the application and shall attempt to verify such information with the information provided by the New York State Department of Motor Vehicles, or the United State Social Security Administration and any other lawfully available information source. If a voter's

identity is not verified before election day, the voter will be asked to provide identification before they vote for the first time.

7. Processing Voters That Move Between Counties: NYSVoter shall verify that a voter has moved between counties based upon a match of an applicant's name, date of birth and other pertinent data.

8. Identification of Possible Duplicate Voter Registrations: NYSVoter shall perform a check to identify existing records for all registration application transactions or as needed by the County Board. NYSVoter shall notify the "to county" and "from county" if a voter is a potential duplicate registration between the counties. The notification shall include pertinent information regarding the voter.

9. Voter Registration Status: Each voter maintained in NYSVoter will be assigned a Voter Registration Status by the County Board which will determine the voter's eligibility to vote. The Voter Registration Status will be updated after an application is processed and an application disposition has been assigned.

10. Voter Registration List Changes and List Maintenance: Procedures to ensure that the name of each registered voter appears in the statewide voter registration list; only names of persons who are not registered or who are not eligible to vote are removed from the list; and, the prior registrations of duplicate names are removed from the list. The State Board, shall establish minimum standards for statewide voter registration list maintenance activities and schedules for such activities.

11. Voter Registration List Security and List Administration: The State Board will be responsible for providing tools necessary for county boards to authorize local users to NYSVoter functions, verify that local users identified in transaction headers are authorized for that purpose, and for insuring that a message was not altered in transmission.

12. Reports and Information Queries: County Board operators will have the ability to: query all records in the database; conduct searches of voter records; generate queries and reports; sort voter registration data by county, election district, jurisdiction, birth date, and other information.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 6217.4, 6217.5, 6217.7 and 6217.8.

**Text of rule and any required statements and analyses may be obtained from:** Patricia L. Murray, Deputy Counsel, Board of Elections, 40 Steuben St., Albany, NY 12207-2109, (518) 474-6367, e-mail: pmurray@elections.state.ny.us

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

The changes made to these regulations made the requirements easier to understand by reorganizing provisions and using clarifying language. This resulted in no substantive changes nor in changes to the requirements. The impacts on rural areas, jobs, small businesses, costs, etc. and regulated entities did not change. Therefore, there is no need to produce new impact statements.

**Assessment of Public Comment**

We received comments from two organizations. Both requested clarification of language and some reorganization of sections to make very clear what the regulations required. There were two suggested changes that could not be made because the change is beyond our statutory authority to effect.

## Department of Environmental Conservation

### NOTICE OF ADOPTION

**Marine Fishing Regulations**

**I.D. No.** ENV-20-06-00001-A

**Filing No.** 1043

**Filing date:** Aug. 29, 2006

**Effective date:** Sept. 13, 2006

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

**Action taken:** Amendment of section 40.1 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 11-0303, 13-0105, 13-0340-b, 13-0340-e and 13-0340-g

**Subject:** Marine fishing regulations.

**Purpose:** To control the recreational and commercial harvest and possession of marine fish species (summer flounder, scup, and monkfish).

**Text or summary was published** in the notice of emergency rule making, I.D. No. ENV-20-06-00001-E, Issue of May 17, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Stephen W. Heins, Department of Environmental Conservation, 205 N. Belle Meade Rd., Suite 1, East Setauket, NY 11733-3400, (631) 444-0435, e-mail: swheins@gw.dec.state.ny.us

**Additional matter required by statute:** Pursuant to the requirements of article 8 of the Environmental Conservation Law, a negative declaration is on file with the department.

**Assessment of Public Comment**

The agency received no public comment.

## Department of Health

### EMERGENCY RULE MAKING

#### Neonatal Herpes Reporting and Laboratory Specimen Submission

**I.D. No.** HLT-37-06-00007-E

**Filing No.** 1041

**Filing date:** Aug. 28, 2006

**Effective date:** Aug. 28, 2006

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

**Action taken:** Amendment of sections 2.1 and 2.5 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 225(4), (5)(a), (g), (h) and (i), 206(1)(d) and (e)

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

**Specific reasons underlying the finding of necessity:** Neonatal herpes is a serious disease that can cause permanent neurological impairments to an infant and neonatal death. Most cases of neonatal herpes are acquired from perinatal transmission from an infected mother, with additional cases acquired by exposure in utero or postnatal exposure to persons with herpes in the community.

Unlike most serious communicable diseases, neonatal herpes is not reportable in New York State. Little data exists to accurately estimate the incidence of the disease, but national data suggest that there are approximately 80 neonates infected each year in New York State. Approximately the same number of cases are estimated to occur in New York State exclusive of New York City, and in New York City.

Current diagnostic and therapeutic advances enable the disease to be detected in infected neonates. Without timely antiviral therapy, 80% of the infected neonates will die and one to two-thirds of the survivors will have lasting neurodevelopment impairment.

The new reporting requirements will enable the NYSDOH to have more comprehensive and complete information on neonatal herpes cases. Given the ability to detect and treat cases if identified in a timely fashion, it is imperative to better estimate the incidence of neonatal herpes infection. This information will also enable the NYSDOH to systematically monitor outbreaks of neonatal herpes and prevent further transmission. Data can also be used to identify gaps in knowledge by clinicians and the public about maternal and other routes of transmission of herpes to the neonate, as well as the detection and treatment of cases of neonatal herpes, and provide necessary education.

By adopting this rule, neonatal herpes will be added to the list of communicable diseases. Immediate adoption of this rule is necessary for accurate identification and monitoring of neonatal herpes and for preservation of the public health and general welfare.

**Subject:** Neonatal herpes infection reporting and laboratory specimen submission.

**Purpose:** To make neonatal herpes a reportable disease which will assist in the diagnosis, prevention and effective management and call public attention to this disease.

**Text of emergency rule:** Subdivision (a) of Section 2.1 is amended to read as follows:

Section 2.1. Communicable diseases designated: cases, suspected cases and certain carriers to be reported to the State Department of Health.

(a) When used in the Public Health Law and in this Chapter, the term infectious, contagious or communicable disease, shall be held to include the following diseases and any other disease which the commissioner, in the reasonable exercise of his or her medical judgment, determines to be communicable, rapidly emergent or a significant threat to public health, provided that the disease which is added to this list solely by the commissioner's authority shall remain on the list only if confirmed by the Public Health Council at its next scheduled meeting:

- Amebiasis
- Anthrax
- Arboviral infection
- Babesiosis
- Botulism
- Brucellosis
- Campylobacteriosis
- Chancroid
- Chlamydia trachomatis infection
- Cholera
- Cryptosporidiosis
- Cyclosporiasis
- Diphtheria
- E. coli 0157:H7 infections
- Ehrlichiosis
- Encephalitis
- Giardiasis
- Glanders
- Gonococcal infection
- Group A Streptococcal invasive disease
- Group B Streptococcal invasive disease
- Hantavirus disease
- Hemolytic uremic syndrome
- Hemophilus influenzae (invasive disease)
- Hepatitis (A; B; C)
- Herpes infection in infants aged 60 days or younger (neonatal)
- Hospital-associated infections (as defined in section 2.2 of this Part)
- Influenza (laboratory-confirmed)
- Legionellosis
- Listeriosis
- Lyme disease
- Lymphogranuloma venereum
- Malaria
- Measles
- Melioidosis
- Meningitis
  - Aseptic
  - Hemophilus
  - Meningococcal
  - Other (specify type)
- Meningococemia
- Monkeypox
- Mumps
- Pertussis (whooping cough)
- Plague
- Poliomyelitis
- Psittacosis
- Q Fever
- Rabies
- Rocky Mountain spotted fever
- Rubella
- Congenital rubella syndrome
- Salmonellosis
- Severe Acute Respiratory Syndrome (SARS)
- Shigellosis
- Smallpox
- Staphylococcal enterotoxin B poisoning
- Streptococcus pneumoniae invasive disease
- Syphilis, specify stage
- Tetanus

- Toxic Shock Syndrome
- Trichinosis
- Tuberculosis, current disease (specify site)
- Tularemia
- Typhoid
- Vaccinia disease: (as defined in Section 2.2 of this Part)
- Viral hemorrhagic fever
- Yersiniosis

\* \* \*

Section 2.5 is amended to read as follows:

2.5 Physician to submit specimens for laboratory examination in cases or suspected cases of certain communicable diseases. A physician in attendance on a person affected with or suspected of being affected with any of the diseases mentioned in this section shall submit to an approved laboratory, or to the laboratory of the State Department of Health, for examination of such specimens as may be designated by the State Commissioner of Health, together with data concerning the history and clinical manifestations pertinent to the examination:

- Anthrax
- Babesiosis
- Botulism
- Brucellosis
- Campylobacteriosis
- Chlamydia trachomatis infection
- Cholera
- Congenital rubella syndrome
- Conjunctivitis, purulent, of the newborn (28 days of age or less)
- Cryptosporidiosis
- Cyclosporiasis
- Diphtheria
- E. coli 0157:H7 infections
- Ehrlichiosis
- Giardiasis
- Glanders
- Gonococcal infection
- Group A Streptococcal invasive disease
- Group B Streptococcal invasive disease
- Hantavirus disease
- Hemophilus influenzae (invasive disease)
- Hemolytic uremic syndrome
- Herpes infection in infants aged 60 days or younger (neonatal)*
- Legionellosis
- Listeriosis
- Malaria
- Melioidosis
- Meningitis
  - Hemophilus
  - Meningococcal
- Meningococemia
- Monkeypox
- Plague
- Poliomyelitis
- Q Fever
- Rabies
- Rocky Mountain spotted fever
- Salmonellosis
- Severe Acute Respiratory Syndrome (SARS)
- Shigellosis
- Smallpox
- Staphylococcal enterotoxin B poisoning
- Streptococcus pneumoniae invasive
- Syphilis
- Tuberculosis
- Tularemia
- Typhoid
- Viral hemorrhagic fever
- Yellow Fever
- Yersiniosis

**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 November 25, 2006.

**Text of emergency rule and any required statements and analyses may be obtained from:** William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415,

Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

**Regulatory Impact Statement**

Statutory Authority:

Sections 225(4) and 225(5)(a), (g), (h), and (i) of the Public Health Law (“PHL”) authorize the Public Health Council to establish and amend State Sanitary Code provisions relating to designation of communicable diseases dangerous to public health, designation of diseases for which specimens shall be submitted for laboratory examination, and the nature of information required to be furnished by physicians in each case of communicable disease. PHL Section 206(1)(d) authorizes the commissioner to “investigate the causes of disease, epidemics, the sources of mortality, and the effect of localities, employments and other conditions, upon the public health.” PHL Section 206(1)(e) permits the commissioner to “obtain, collect and preserve such information relating to marriage, birth, mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state.” PHL Article 21 requires local boards of health and health officers to guard against the introduction of such communicable diseases as are designated in the sanitary code by the exercise of proper and vigilant medical inspection.

Legislative Objectives:

This regulation meets the legislative objective of protecting the public health by adding neonatal herpes to reportable disease requirements, thereby permitting enhanced monitoring of disease, prompt identification of cases and unusual or dramatic increases in disease reporting that might indicate an outbreak, and the ability to implement measures, if necessary, to prevent further transmission.

Needs and Benefits:

Neonatal herpes, defined as herpes infection in infants aged 60 days or less, is a serious disease associated with neurological devastation of the infant and neonatal death. Neonatal herpes can result from infection with either herpes simplex virus (HSV) type 1 (HSV-1) or HSV type 2 (HSV-2). The disease can be localized to skin, eye and mouth (SEM disease), involve the central nervous system (CNS), or manifest as disseminated infection involving multiple organs. Most infants with CNS or disseminated disease have neurological sequelae, and the mortality rate in the absence of therapy is very high (80%) for these babies.

There are three ways that neonatal herpes infection can occur: (1) congenital (in utero) from an infected mother to the fetus; (2) perinatal from an infected mother to the neonate at delivery; or (3) following delivery (postnatal acquisition).

Congenital infection:

Intrauterine infection represents approximately 5% of cases of neonatal herpes infection. It can result from an ascending infection from the cervix or vulva or as a consequence of transplacental transmission. The risk of herpes transmission to the neonate is greatest, approximately 50 percent, if the pregnant women develops a primary infection in the third trimester.

Perinatal infection:

Neonatal infection with HSV most often occurs during delivery. In 85% of cases, HSV infection is transmitted to the neonate during labor when the baby comes into direct contact with infected maternal secretions in the birth canal. The risk of neonatal herpes is increased if the woman has obvious lesions at delivery. Delivery by Caesarean section appears to decrease the risk of HSV transmission in the presence of an active lesion.

Post-partum infection:

Postnatal acquisition of HSV accounts for approximately 10% of all cases of neonatal herpes and occurs as a consequence of the baby coming into contact with an environmental source of herpes, such as a family member or caregiver with orolabial herpes or lesions at other sites (e.g. breast, herpetic whitlow).

Based on national estimates, neonatal herpes is one of the most common of all congenital and perinatal infections in the United States, infecting approximately 1/1,500 to 1/3,200 live births each year. Based on these estimates, it can be estimated that of the 133,532 births in New York State in 2003, exclusive of New York City, there could have been approximately 40 neonatal herpes cases. Another 40 cases could be estimated to have occurred among the 119,469 births in New York City.

Diagnostic tests and therapies exist to properly identify and treat infected mothers and detect early cases of neonatal herpes. Type-specific serologic tests for herpes are commercially available and amplification tests such as polymerase chain reaction (PCR) have increased the sensitivity of diagnostic testing. Antiviral therapy can be used to reduce viral shedding of an infected pregnant woman and to treat an infected neonate.

Cesarean delivery of infants born to mothers presenting with genital lesions can also reduce the likelihood of perinatal transmission.

Making neonatal herpes a reportable disease will assist in the diagnosis, prevention and effective management of neonatal herpes and call public attention to this disease. Multi-center studies of neonatal herpes show that delays in instituting appropriate therapies persist. Clinicians need to be educated to include neonatal herpes in the differential diagnosis for a febrile neonate, and recognize clinical signs. Educating expecting parents with known genital herpes about risks to the newborn can also promote early intervention. New York State reporting of neonatal herpes is needed to:

- Accurately measure the incidence of this disease by transmission category;
- Increase awareness of the disease by providers and the public;
- Investigate cases of neonatal herpes to systematically assess and address gaps in provider knowledge of prevention and treatment strategies;
- Identify outbreaks of postnatally-acquired neonatal herpes in a timely fashion, identify the source, and intervene to prevent subsequent infection.

Neonatal herpes is currently a reportable condition in seven states (Connecticut, Florida, Louisiana, Massachusetts, Nebraska, South Dakota and Washington). The New York City Department of Health and Mental Hygiene recently amended the New York City Health Code to require reporting of neonatal herpes.

Costs:

Costs to Regulated Parties:

The costs associated with implementing the reporting of this disease are minimal as reporting processes and forms already exist. Hospitals, practitioners and clinical laboratories are accustomed to reporting communicable disease to public health authorities.

In the event of post-partum cases of neonatal herpes, it is imperative to the public health that suspect cases be reported immediately and investigated thoroughly to curtail additional exposure and potential morbidity and mortality.

Costs to Local and State Governments:

The staff who will be involved in reporting and tracking neonatal herpes at the State and local health departments are the same as those currently involved with other communicable diseases listed in 10 NYCRR Section 2.1 and existing disease reporting processes will be used. Therefore, minimal incremental cost is expected. The time expended by a local health department to report a neonatal herpes case is estimated to be low to receive the report, obtain any missing information, and enter the report into the surveillance data system.

The additional cost to local or state governments associated with investigating and implementing control strategies to curtail the spread of neonatal herpes, particularly post-partum cases of neonatal herpes, could become significant depending upon the extent of any outbreak. Suspect cases are to be reported to the local health department, who should immediately notify the Regional Epidemiologist or the New York State Department of Health (NYSDOH) after-hours duty officer.

By monitoring and preventing the spread of neonatal herpes, savings may include reducing costs associated with public health control activities, morbidity, treatment and premature death.

Costs to the Department of Health:

The NYSDOH already collects communicable disease reports from local health departments, checks the reports for accuracy and transmits them to the federal Centers for Disease Control and Prevention. The addition of neonatal herpes to the list of communicable diseases should lead to slight to moderate additional costs, mostly related to investigating cases. Existing staff should be able to handle the incremental increase in workload.

Paperwork:

The existing general communicable disease reporting form (DOH-389) will be revised. This form is familiar to and is already used by regulated parties.

Local Government Mandates:

Under Part 2 of the State Sanitary Code (10 NYCRR Part 2), the city, county or district health officer receiving reports of neonatal herpes will be required to immediately forward such reports to the State Health Commissioner.

Duplication:

There is no duplication of this initiative in existing State or federal law.

Alternatives:

No other alternatives are available. Reporting of cases of neonatal herpes is of critical importance to public health. There is an urgent need to conduct surveillance, identify cases in a timely manner, and reduce the potential for further exposure to contacts.

Federal Standards:

Currently there are no federal standards requiring the reporting of neonatal herpes.

Compliance Schedule:

Reporting of neonatal herpes is currently mandated, pursuant to the authority vested in the Commissioner of Health by 10 NYCRR Section 2.1(a). This mandate will be extended upon emergency adoption of this regulation by the Public Health Council, and filing of a Notice of Emergency Adoption of this regulation with the Secretary of State and made permanent by publication of a Notice of Adoption of this regulation in the *New York State Register*.

#### **Regulatory Flexibility Analysis**

Effect on Small Business and Local Government:

This proposed rule will apply to physicians, hospitals, nursing homes, diagnostic and treatment centers and clinical laboratories. There are approximately 65,000 licensed and registered physicians in New York State; it is not known how many of them practice in small businesses. Three hospitals, 100 nursing homes, 237 diagnostic and treatment centers, and 1,000 clinical laboratories employ less than 100 persons and qualify as small businesses.

Implementation will require reporting of neonatal herpes in all 57 counties of the State outside of New York City. New York City has already passed regulations making neonatal herpes a reportable disease.

Compliance Requirements:

Existing reporting forms will be revised. Clinical laboratories that are small businesses will utilize the revised NYSDOH electronic reporting format.

Professional Services:

No additional professional staff will be needed to complete the required forms manually and mail to the county health department.

Compliance Costs:

No initial capital costs of compliance are anticipated. The reporting of neonatal herpes should have a negligible to modest effect on the estimated cost of disease reporting. The cost of complying with required reporting includes staff time to complete the necessary forms and mail to the respective local health department. The cost of reporting neonatal herpes by laboratories should be modest given the estimated small number of cases.

Minimizing Adverse Impact:

There are no alternatives to the reporting or laboratory testing requirements. Adverse impacts have been minimized since revised forms and reporting staff will be utilized by regulated parties. Electronic reporting will save time and expense. The approaches suggested in the State Administrative Procedure Act Section 202-b(1) were rejected as inconsistent with the purpose of the regulation.

Feasibility Assessment:

The NYSDOH estimates minimal increases in workload and costs associated with the requirement to report neonatal herpes.

Small Business and Local Government Participation:

Local governments have been consulted in the process through ongoing communication on this issue with local health departments and the New York State Association of County Health Officers (NYSACHO).

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

Effect on Rural Areas:

The proposed rule will apply statewide. It is assumed that the distribution of neonatal herpes will be less in rural counties than in more urban or metropolitan areas similar to the population distribution.

Compliance Requirements:

Compliance requirements are the same in rural areas as those in all other areas of the state. Existing reporting forms will be revised. Clinical laboratories will use the revised NYSDOH electronic reporting format.

Professional Services:

No additional professional staff should need to be hired to complete the required forms and mail to the county health department. Rural providers are expected to use existing staff to comply with the requirements of this regulation.

Compliance Costs:

No initial capital costs of compliance are anticipated. See cost statement in Regulatory Impact Statement for additional information.

Minimizing Adverse Impact:

There are no alternatives to the reporting requirements. Adverse impacts have been minimized since familiar forms and existing staff will be

utilized by regulated parties. The approaches suggested in State Administrative Procedure Act Section 202-b(2) were rejected as inconsistent with the purpose of the regulation.

**Rural Area Input:**

The New York State Association of County Health Officers (NYSACHO), including representatives of rural counties, has been informed about this change and has voiced no objections.

**Job Impact Statement**

This regulation adds neonatal herpes to the list of diseases that clinical laboratories, clinicians, and hospitals must report to public health authorities and for which clinicians must submit laboratory specimens. The staff who are involved in reporting neonatal herpes at the local and State health departments are the same as those currently involved with reporting, monitoring and investigating other communicable diseases. Implementation should not significantly increase the demands on existing staff nor increase the need to hire additional staff for laboratories, hospitals, and providers. The NYSDOH has determined that this regulatory change will not have a substantial adverse impact on jobs and employment.

**NOTICE OF ADOPTION**

**Language Assistance and Patient Rights**

**I.D. No.** HLT-20-06-00004-A

**Filing No.** 1040

**Filing date:** Aug. 28, 2006

**Effective date:** Sept. 13, 2006

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

**Action taken:** Amendment of sections 405.7 and 751.9 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2803

**Subject:** Language assistance and patient rights.

**Purpose:** To strengthen communications provisions for persons who do not speak English or do not speak it well; and addition of two rights to the Patient’s Bill of Rights to be consistent with the Public Health Law.

**Text of final rule:** Paragraph (7) of subdivision (a) is repealed in its entirety and a new paragraph (7) of Section 405.7 is added to read as follows:

*(7) the hospital shall develop a Language Assistance Program to ensure meaningful access to the hospital’s services and reasonable accommodation for all patients who require language assistance. Program requirements shall include:*

*(i) the designation of a Language Assistance Coordinator who shall report to the hospital;*

*administration and who shall provide oversight for the provision of language assistance services;*

*(ii) policies and procedures that assure timely identification and ongoing access for patients in need of language assistance services;*

*(iii) the development of materials that will be made available for patients and potential patients that summarize the process and method to access free language assistance services;*

*(iv) ongoing education and training for administrative, clinical and other employees with direct patient care contact regarding the importance of culturally and linguistically competent service delivery and how to access the hospital’s language assistance services on behalf of patients;*

*(v) signage, as designated by the Department of Health, regarding the availability of free language assistance services in public entry locations and other public locations;*

*(vi) identification of language of preference and language needs of each patient upon initial visit to the hospital;*

*(vii) documentation in the medical record of the patient’s language of preference, language needs, and the acceptance or refusal of language assistance services;*

*(viii) a provision that family members, friends, or non-hospital personnel may not act as interpreters, unless:*

*(a) the patient agrees to their use;*

*(b) free interpreter services have been offered by the hospital and refused; and*

*(c) issues of age, competency, confidentiality, or conflicts of interest are taken into account. Any individual acting as an interpreter should be 16 years of age or older; individuals younger than 16 years of age should only be used in emergent circumstances and their use documented in the medical record.*

*(ix) management of a resource of skilled interpreters and persons skilled in communicating with vision and/or hearing impaired individuals;*

*(a) interpreters and persons skilled in communicating with vision and/or hearing impaired individuals shall be available to patients in the inpatient and outpatient setting within 20 minutes and to patients in the emergency service within 10 minutes of a request to the hospital administration by the patient, the patient’s family or representative or the provider of medical care. The Commissioner of Health may approve time limited alternatives to the provisions of this subparagraph regarding interpreters and persons skilled in communicating with vision and/or hearing impaired individuals for patients of rural hospitals; which:*

*(1) demonstrate that they have taken and are continuing to take all reasonable steps to fulfill these requirements but are not able to fulfill such requirements immediately for reasons beyond the hospital’s control; and*

*(2) have developed and implemented effective interim plans addressing the communications needs of individuals in the hospital service area.*

*(x) an annual needs assessment utilizing demographic information available from the United State Bureau of the Census, hospital administrative data, school system data, or other sources, that will identify limited English speaking groups comprising more than one percent of the total hospital service area population. Translations/transcriptions of significant hospital forms and instructions shall be regularly available for the languages identified by the needs assessment; and*

*(xi) reasonable accommodation for a family member or patient’s representative to be present to assist with the communication assistance needs for patients with mental and developmental disabilities.*

New paragraphs (18) and (19) are added to subdivision (c) of Section 405.7 to read as follows:

*(18) Authorize those family members and other adults who will be given priority to visit consistent with your ability to receive visitors.*

*(19) Make known your wishes in regard to anatomical gifts. You may document your wishes in your health care proxy or on a donor card, available from the hospital.*

Subdivisions (n) and (o) are amended and new subdivisions (p) and (q) are added to Section 751.9 to read as follows:

*(n) approve or refuse the release or disclosure of the contents of his/her medical record to any health-care practitioner and/or health care facility except as required by law or third-party payment contract; [and]*

*(o) access his/her medical record pursuant to the provisions of section 18 of the Public Health Law, and Subpart 50-3 of this Title[.];*

*(p) authorize those family members and other adults who will be given priority to visit consistent with your ability to receive visitors; and*

*(q) make known your wishes in regard to anatomical gifts. You may document your wishes in your health care proxy or on a donor card, available from the center.*

**Final rule as compared with last published rule:** Nonsubstantial changes were made in section 405.7(a)(7)(viii)(c), (ix), (ix)(a), (x).

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

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

Although the regulation has been changed since it was published in the State Register on May 17, 2006, the changes do not necessitate any changes to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

**Assessment of Public Comment**

The Department received 16 letters with comments during the official comment period. They came primarily from associations and individuals involved with issues concerning immigrants, access to health care, translation services, legal assistance and health and hospitals. One comment with approximately 198 signatures came from a senior citizens center.

In general, the comments supported the proposed regulatory changes and many strongly supported the proposal. While there was overwhelming support, there were suggested changes recommended. They are as follows:

**Comment:**

In subparagraph (ix) of paragraph (7) “and/or” should be changed to “and”. Communication services should be offered to limited English proficient individuals as well as to those who are vision and/or hearing impaired. Skilled language interpreters and persons skilled in communicating with hearing and vision impaired individuals are not interchangeable.

## Response:

Several of the letters received contained this comment. The Department agrees and the change has been made.

## Comment:

Subparagraph (viii) of paragraph (7) specifies that in the event the family members, friends, or non-hospital personnel are younger than 16 years of age, issues of competency, confidentiality or conflicts of interest are taken into account. Several comments suggested that these considerations should be made whenever interpreter services are provided by family, friends, or non-hospital personnel of any age.

## Response:

The Department agrees that this standard was the intent in the proposed regulation and this change has been made.

## Comment:

Sixteen year olds should not miss school to serve as interpreters for their families.

## Response:

While the Department agrees that a 16 year old should not miss school to serve as an interpreter, it has no way to regulate the action of a parent in this situation. The age limit was discussed as part of the deliberations. The consensus reached was age 16.

## Comment:

The proposed regulations should permit public inspection of the entire hospital language assistance plan, rather than access to a summary only.

## Response:

This concept was discussed as part of the deliberations on the regulation. While some members of the review group continued to seek this public disclosure, the consensus of the group was to maintain the requirement as written. No change to the regulation will be made.

## Comment:

The proposed regulations should include better monitoring requirements to ensure full compliance with these important provisions.

## Response:

Compliance with the regulations will be monitored by Department of Health staff in response to complaints or through focused surveillance. This approach is consistent with ensuring compliance with all other parts of the State Hospital Code.

## Comment:

One comment asked for clarification of acceptable interpretation services. A concern is the lack of any explicit mention in the proposed regulation of interpretation services other than those provided by in person, face to face interpreters. Multiple modalities for providing language services and not just in person, face to face interpreters is needed.

## Response:

The Department agrees that, based on current technology, there are many ways to successfully provide interpreter services beyond in person, face to face interpretation. As part of this regulation, we acknowledge that these other forms may be used by hospitals and we will clarify this in subsequent guidance to the hospitals.

## Comment:

Concerns were raised about the annual needs assessment provisions. It was noted that no single source of demographic information is consistently reliable for projecting changes in language services needs across the geographic neighborhoods applicable to New York City hospitals. Flexibility is the key. No critical indicator accurately correlates the language spoken by persons within a given community with the critical issue of whether or not significant numbers of those persons are also limited in proficiency in speaking English. It was further noted that it is not clear what a total "hospital service area" includes. Is that the hospital's primary service area only (which could cause undercounting) or the hospital's secondary service area? Flexibility in any community language profile and needs assessment is essential. The best barometer of a new emergent language need for Limited English Proficient (LEP) purposes is the relevant hospital's administrative data in conjunction with other data such as census information.

## Response:

In the regulation, the Department acknowledges that no single means of demographic information is always reliable. For this reason, the regulation allows hospitals to choose those information sources that work best for them. This approach will be covered in subsequent letters and training sessions for hospitals. No change to the regulation is needed.

## Comment:

The proposal will require each hospital Language Assistance Program to include "signage, as designated by the Department of Health, regarding the availability of free language assistance services in public entry loca-

tions and other public locations." Substantial monies have already been expended to implement LEP signage programs. It would be an undue burden to have to replace such signage with new signs as designated by the Department of Health.

## Response:

The Department, in carrying out its regulatory oversight, will allow hospitals to create and/or use their existing signage in lieu of a Department of Health sign so long as it includes relevant information about the availability of free interpreter services. No change to the regulation is needed.

## Comment:

It was suggested that the phrase limited English proficiency interpreters be changed to language interpreter as a more accurate description of the interpreter.

## Response:

The Department will remove references to limited English proficiency interpreters and will use the term interpreter as is in the original language of the regulation.

## Comment:

One comment noted that the term reasonable accommodation is derived from Civil Rights Disability Law, most often being used with reference to employment issues under the federal Americans with Disabilities Act. Persons with limited English proficiency are not, for that reason, disabled and language assistance measures are not being provided to deal with an individual's disability. It was suggested that all references to reasonable accommodation be removed. The proposal could say the hospital shall develop a language assistance program to ensure meaningful access to the hospital's services for all patients who require language assistance.

## Response:

The Department would view reasonable accommodation as a comparable standard to the term meaningful access. The regulation will not be changed.

## Comment:

It would be useful to specify the scope of this regulation.

## Response:

The Language Assistance provisions of this regulation amend Section 405.7 of Title 10 (Health) of the New York Codes Rules and Regulations (10 NYCRR). They are contained in Part 405 and pertain to general hospitals.

## Comment:

It will be difficult for hospitals in rural locations or with limited access to interpreters skilled in communicating with hearing and vision impaired individuals to provide language assistance services within 20 minutes of a request for such services for inpatient and outpatient settings and 10 minutes of a request for such services for the Emergency Department setting. The time-limited alternatives to the provisions for rural hospitals language should be removed. This is to enable hospitals with significant challenges beyond to their immediate control to develop suitable alternative plans to meet the need.

## Response:

Telephonic and/or video conferencing technology allows all hospitals to comply with time limitations. With this technology there should not be a need for time limited alternatives, but the Department would be willing to discuss other alternatives brought to our attention. No regulatory change is needed.

## Comment:

What specific accommodations must be made for individuals who come from groups of less than 1% of our population?

## Response:

While the regulation specifies what additional requirements are imposed for populations greater than 1%, groups of less than 1% are covered by the general requirements.

## Comment:

The cost of translation and reprinting of a significant number of forms will place a burden on all New York Hospitals. The standardization of materials and the ability to access the materials free of charge would greatly enhance compliance and most importantly meaningful access for individuals in need of language assistance. The State should assist hospitals in funding for any documented additional costs incurred in assuring compliance.

## Response:

The Department agrees with the comment. It is our intent to work with hospital associations to secure translation of significant forms and make them available to hospitals. No regulatory change is made.

## Higher Education Services Corporation

### EMERGENCY RULE MAKING

#### New York State District Attorney Loan Forgiveness Program

**I.D. No.** ESC-37-06-00001-E

**Filing No.** 1035

**Filing date:** Aug. 23, 2006

**Effective date:** Aug. 23, 2006

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

**Action taken:** Addition of section 2201.9 to Title 8 NYCRR.

**Statutory authority:** This emergency rule is being adopted pursuant to authority granted by Chapter 50 of the Laws of 2005 and a Memorandum of Agreement entered into between the New York State Higher Education Services Corporation and the New York State Division of Criminal Justice Services dated March 2, 2006 and the authority granted to the New York State Higher Education Services Corporation in sections 653 and 655 of the Education Law.

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

**Specific reasons underlying the finding of necessity:** This emergency rule is necessary because compliance with the requirements of the regular rule making process will adversely impact award recipients by delaying awards.

**Subject:** New York State District Attorney Loan Forgiveness Program.

**Purpose:** To implement the program.

**Text of emergency rule:** New section 2201.9 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.9 *New York State District Attorney Loan Forgiveness Program*

(a) *Eligibility.* An applicant shall be a legal resident of New York State for at least one year; a U.S. citizen or eligible non-citizen; an eligible attorney; and have eligible student loan expenses.

(b) *Definitions.*

(1) "Eligible Attorney" shall mean a District Attorney or Assistant District Attorney, admitted to practice law in New York State, who has been employed in a District Attorney's office in New York State full-time during the year of qualified service immediately preceding application.

(2) "Full-time" shall mean thirty-five hours per week.

(3) "Year of qualified service" shall mean each of the fourth through ninth years (365 calendar days per year) of full-time employment in a District Attorney's Office in New York State as an eligible attorney. For purposes of this section, all periods of time during which an admitted attorney was employed as a District Attorney or Assistant District Attorney and all periods of time during which the attorney was a law school graduate who, while awaiting admission to the New York State bar, was employed by a prosecuting or criminal defense agency shall be combined.

(4) "Eligible student loan expenses" shall mean the total cumulative loan balance, at the time of application, required to be paid by the Eligible Attorney for student loans, including any interest, covering the cost of attendance at his or her undergraduate institution(s) and/or law school(s). Student loan expenses shall include New York State student loans, federal government loans, and loans made by commercial entities subject to governmental examination. Student loan expenses shall not include: Parent PLUS loans; loans cancelled under any program; private loans given by family or personal acquaintances; or student loan debt paid by credit card. Student loan expenses shall be reduced by any grants, loan forgiveness, public service scholarships or other reductions to student loan expenses that a student has received or shall receive, including, but not limited to law school loan forgiveness and public service scholarships.

(c) *Administration.* In addition to the requirements of § 661 of the Education Law, applicants for this Program shall:

(1) File applications annually on forms prescribed by the Corporation;

(2) Postmark or electronically transmit applications to the Corporation on or before October 1st of each year, provided that this deadline may be extended at the discretion of the Corporation;

(3) Apply at the end of each year of qualified service, beginning no earlier than the end of the fourth year of qualified service and concluding no later than the end of the ninth year of qualified service; and

(4) Provide an attestation on the Program application as to full-time qualified service for the prior year.

(d) *Duration and award amounts.*

(1) Award disbursements under this program are available for up to a maximum of six years of qualified service, provided program funding is available.

(2) At the end of each year of qualified service, qualified applicants may receive awards for student loan expenses in the amount of three thousand four hundred dollars (\$3,400).

(3) The maximum lifetime amount of awards for student loan expenses shall not exceed the qualified applicant's student loan expense documented on his or her first Program application or twenty thousand, four hundred dollars (\$20,400), whichever is less.

(4) The Corporation may offset any award given if the recipient is in default on a student loan guaranteed by the Corporation.

(e) *Priority of award.* In any year for which there are more qualified applicants than funds available, the Corporation shall notify the President Pro Tem and Majority Leader of the New York State Senate and indicate that the Corporation shall be using the following method of award distribution:

(1) Qualified applicants who received an award for forgiveness of student loan expenses for the preceding year of qualified service shall receive first priority. If funding is insufficient to make awards to this group, recipients will be chosen by random selection.

(2) Distribution of any remaining funds to remaining qualified applicants shall be done by random selection.

(f) *Disqualification.* A qualified applicant shall be disqualified from receiving an award for forgiveness of student loan expenses if:

(1) The applicant owes a service obligation for any State or Federal program;

(2) The applicant is in default on a federally guaranteed student loan, unless the loan is guaranteed by the Corporation;

(3) The applicant has loans for which documentation is not available;

(4) The applicant has loans without a promissory note; or

(5) The applicant's loans are paid in full.

**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 November 20, 2006.

**Text of emergency rule and any required statements and analyses may be obtained from:** Cheryl B. Fisher, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 473-1581, e-mail: Cfisher@hesc.com

#### **Regulatory Impact Statement**

Statutory authority:

The New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate regulations and administer the New York State District Attorney Loan Forgiveness Program is codified within Article 14 of the Education Law. In addition, Chapter 50 of the Laws of 2005 and a Memorandum of Agreement entered into between HESC and the New York State Division of Criminal Justice Services ("DCJS"), dated March 2, 2006, provides HESC with the authority to promulgate this regulation.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the board of trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by the corporation; and administrative functions in support of state student aid programs. Also, consistent with Educa-

tion Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

**Legislative objectives:**

The District Attorney Loan Forgiveness Program (the "Program") has been established pursuant to two Memoranda of Understanding between the Governor and the Legislature of the State of New York, as well as, Chapter 50 of the Laws of 2005, in order to provide loan forgiveness for qualified attorneys who have dedicated themselves to public service in District Attorney's offices throughout New York State. The New York State Legislature established the Program to encourage experienced district attorneys to remain in service.

The Governor of the State of New York and the President Pro Tem and Majority Leader of the Senate entered into a Memorandum of Understanding dated June, 2005 and amended on January 25, 2006 providing for the creation of the Program with funding through the Legal Services Assistance Fund. Additionally, the Governor, the President Pro Tem and Majority Leader of the Senate and the Speaker of the Assembly entered into an agreement dated September 2005 and amended on January 25, 2006. Both agreements authorize DCJS to enter into an agreement with HESC for the administration of the program.

In a Memorandum of Agreement, dated March 2, 2006, HESC and DCJS agreed that HESC would administer the Program and will promulgate rules and regulations.

**Needs and benefits:**

A statewide survey done of District Attorney's offices in 2002, by the New York State District Attorney's Association, revealed that experienced and skilled district attorneys were leaving their careers in public service for more lucrative employment due to high student loan debt. As a result, the Legislature established the Program to address this need and entice experienced district attorneys to remain in employment. This Program offers qualified applicants \$3,400.00 for each year of qualified service up to a cumulative amount of \$20,400.00, or documented student loan expense, whichever is less.

**Costs:**

- i. There are no application fees, processing fees, or other costs to the applicants of this Program.
- ii. It is anticipated that there will be no costs to HESC or other state agencies for the implementation of, or continuing compliance with, this rule except for programmatic administration costs. There will be no cost to local governments for the implementation of, or continuing compliance with, this rule.
- iii. The cost of this Program to the State in the first year, FY 2005-06, shall not exceed \$4.8 million. Costs to the State shall not exceed available New York State budget appropriations for the Program.

**Paperwork:**

This proposal will require Program applicants to submit an annual application and supporting documentation to establish their eligibility for this Program. No additional paperwork will be required.

**Local government mandates:**

No program, service, duty, or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

**Duplication:**

No relevant rules or other legal requirements duplicating, overlapping, or conflicting with this rule were identified.

**Alternatives:**

This Program was developed and advocated for by the New York State District Attorney's Association, based upon the results of their survey of District Attorney's offices. In consideration of data supplied by this group, this rule has been constructed to most effectively target the issue at hand. No other alternatives were considered.

**Federal standards:**

This proposal does not exceed any minimum standards of the Federal Government.

**Compliance schedule:**

The agency will comply with this rule immediately upon its adoption.

**Regulatory Flexibility Analysis**

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Emergency

Adoption seeking to add a new section 2201.9 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. This agency finds that this rule will not impose reporting, record-keeping or compliance requirements on small businesses or local governments. This proposal implements a student loan forgiveness program for post-secondary education, funded by New York State and administered by a State agency.

**Rural Area Flexibility Analysis**

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Emergency Adoption seeking to add a new section 2201.9 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. This agency finds that this rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposal implements a student loan forgiveness program for post-secondary education, funded by New York State and administered by a state agency.

**Job Impact Statement**

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Emergency Adoption seeking to add a new section 2201.9 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it could only have a positive impact or no impact on jobs and employment opportunities. The proposal implements a student loan forgiveness program for post-secondary education, funded by New York State and administered by a State agency.

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## Department of Labor

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

**Safety and Health Standards and General Rules**

**I.D. No.** LAB-37-06-00006-P

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

**Proposed action:** This is a consensus rule making to amend Parts 4, 8, 12, 14, 21, 23, 36, 39, 41, 43, 47, 50, 54, 700, 702 and 703 and Appendix C-2 of Title 12 NYCRR.

**Statutory authority:** Labor Law, sections 21, 25, 27-a, 27, 29, 200, 202, 202-c, 202-d, 204, 241-a, 241-b, 255, 263, 299, 462, 470, 471, 472, 473, 474, 474-a, 867, art. 16; General Business Law, sections 482, 483, 484; Arts and Cultural Affairs Law, section 37.09; General Obligations Law, art. 18; Public Officer Law, section 87, 94; and State Administrative Procedures Act, section 204

**Subject:** Safety and health standards and general rules.

**Purpose:** To correct typographical errors and outdated information included in the current rules.

**Text of proposed rule:**

Part 4  
CONSTRUCTION, INSTALLATION, INSPECTION AND MAINTENANCE OF HIGH PRESSURE BOILERS; CONSTRUCTION OF UNFIRED PRESSURE VESSELS

(Statutory authority: Labor Law, § 27-a, [28] 27, 29, 200, 204)

§ 4-1.5 Construction of provisions.

All provisions of this Part (rule) are intended to be construed and applied with sections [28] 27, 200 and 204 of the Labor Law. No provision is intended to apply to any matter or thing to which the provision by its nature can have no reasonable application.

§ 4-4.0 [Annual] Biennial Inspections.

The inspection of boilers required by section 204 of the Labor Law shall be governed by the following schedule:

Exceptions: Cast iron boilers shall be inspected externally at least [annually] *biennially*. Steel boilers shall be inspected at least [annually] *biennially*. When the type of construction of the boiler permits, such inspection shall be an internal inspection at least every three years for steam boilers and an internal inspection at least once every five years for hot water boilers, in addition to the [annual] *biennial* external inspection. A grace period beyond the period specified above may be permitted between inspections[,] at the discretion of the commissioner.

§ 4-11.7 Automatic — proved pilot.

If an automatic type oil-fired boiler is equipped with a proved pilot, regardless of the firing rate, such pilot shall be proved within 15 seconds. The burner shall be so designed and installed that the main oil valve shall open only after the pilot is proved and either such pilot shall automatically shut off within 60 seconds after the main oil valve opens or the pilot sensing device shall be automatically [de energized] *de-energized*. On any burner equipped with a proved pilot, regardless of firing rate, the main flame trial-for-ignition period shall not exceed 60 seconds and the main flame shall be continually supervised while the burner is firing. The electrical circuit to the main fuel valve shall be automatically de-energized within four seconds after flame failure and the de-energized valve shall close automatically within the next five seconds. The burner may make one attempt to relight automatically during this flame failure reaction time before the valve closes.

§ 4-12.5 Automatic — maximum firing rate over three to seven gallons per hour.

The main flame trial-for-ignition period shall not exceed 30 seconds and the main flame shall be continually supervised while the burner is firing. The electrical circuit to the main fuel valve shall be automatically de-energized within four seconds after flame failure and the de-energized valve shall automatically close within the next five seconds. As an alternative, if intermittent ignition is employed or the ignition system is [re energized] *re-energized* in not more than 0.8 second after flame failure, the main oil valve shall close automatically within 30 seconds after flame failure. The burner may make one attempt to relight automatically during this 30-second flame failure reaction time before the valve closes.

§ 4-12.6 Automatic — maximum firing rate over seven to 20 gallons per hour.

The main flame trial-for-ignition period shall not exceed 15 seconds and the main flame shall be continually supervised while the burner is firing. The electrical circuit to the main fuel valve shall be automatically de-energized within four seconds after flame failure and the de-energized valve shall automatically close within the next five seconds. As an alternative, if intermittent ignition is employed or the ignition system is [re energized] *re-energized* in not more than 0.8 second after flame failure, the main oil valve shall close automatically within 15 seconds. The burner may make one attempt to relight automatically during this 15-second flame failure reaction time before the valve closes.

§ 4-12.7 Automatic — maximum firing rate over 20 gallons per hour.

The burner shall be equipped with a proved pilot and the pilot trial-for-ignition period shall not exceed 15 seconds. The burner shall be so designed and installed that the main oil valve shall open only after the pilot is proven and either such pilot shall automatically shut off within 60 seconds after the main oil valve opens or the pilot sensing device shall be automatically [de energized] *de-energized*. The main flame trial-for-ignition period shall not exceed 60 seconds and the main flame shall be continually supervised while the burner is firing. The electrical circuit to the main fuel

valve shall be automatically de-energized within four seconds after flame failure and the de-energized valve shall close automatically within the next five seconds.

§ 4-12.8 Automatic — proved pilot.

If an automatic type oil-fired boiler is equipped with a proved pilot, regardless of the firing rate such pilot shall be proved within 15 seconds. The burner shall be so designed and installed that the main oil valve shall open only after the pilot is proved and either such pilot shall automatically shut off within 60 seconds after the main oil valve opens or the pilot sensing device shall be automatically [de energized] *de-energized*. On any burner equipped with a proved pilot, regardless of firing rate the main flame trial-for-ignition shall not exceed 60 seconds and the main flame shall be continually supervised while the burner is firing. The electrical circuit to the main fuel valve shall be automatically de-energized within four seconds after flame failure and the de-energized valve shall close automatically within the next [fire] *five* seconds.

PART 8

CONSTRUCTION, GUARDING, EQUIPMENT, MAINTENANCE AND OPERATION OF ELEVATORS, DUMBWAITERS, ESCALATORS, HOISTS AND HOISTWAYS IN FACTORIES AND MERCANTILE ESTABLISHMENTS

(Statutory authority: Labor Law §§ 27-a, [28] 27, 200, 241-a, 255, 263, [270 (subd. 6)], 316)

PART 12

CONTROL OF AIR CONTAMINANTS

(Statutory authority: Labor Law §§ [27-a,] [28,] 27, 29, 200, 299)

§ 12-1.6(b)

Note: The discharge of effluents from sources of air contamination to the outer air shall be made in accordance [with article 12-a of the Public Health Law] with *article 19, titles 1, 3, 5 and 7 and article 71 title 21* of the Environmental Conservation Law and with any rule or regulations promulgated thereunder.

§ 12-1.9(b)

Preparation for entering a confined space. Prior to entering any confined space, *the* following steps shall be taken to insure the safety of the person entering:

§ 12-3.1 General

TABLE 1 – Threshold Limit Values (L.M.T.) (in alphabetical order)

[Dichloroethyl] <i>Dichloroethyl</i> ether - skin	...	15	90
Ethyl Chloride	.....	[1,0000] 1,000	2,600

PART 14

CONSTRUCTION, INSTALLATION, INSPECTION AND MAINTENANCE OF HIGH PRESSURE BOILERS; CONSTRUCTION OF UN-FIRED PRESSURE VESSELS

(Statutory authority: Labor Law §§ 27, 204)

§ 14-1.1 Definitions.

(mm)(7)(i) a design pressure of [30] 300 psi;

§ 14-1.2 Inspection frequency.

No high pressure boiler shall be operated until an internal and external inspection has been made by the commissioner or an insurance company. There shall be regular inspections of every boiler subject to the provisions of the Part made at intervals no less frequent than the following:

	Internal	External
Low Pressure Steam Boiler	3 years	[1 year] 2 years
Low Pressure Hot Water Boilers	5 years	[1 year] 2 years
High Pressure Steam Boilers	1 year	1 year <sup>2</sup>
High Pressure Hot Water Boilers	3 years <sup>1,111</sup>	1 year <sup>2</sup>

§ 14-1.19 Unfired pressure vessels.

(a) All unfired vessels purchase and installed on or after the first date of the final promulgation of this section shall be constructed and stamped in accordance with section VIII, [division 1] of the ASME Code and registered with the National Board of Boiler and Pressure Vessel Inspectors.

§ 14-9 POWER BOILERS: NEW INSTALLATIONS [TUBES]

§ 14-9.3 Required openings.

(b) An elliptical manhole opening shall be not less than 11 by 15 inches, or 10 by 16 inches in size. A circular manhole opening shall be not less than 15 inches in diameter. A [handhole] *manhole* opening in a boiler drum or shell shall be not less than 15 inches in diameter. A handhole opening in a boiler drum or shell shall be not less than two and three-fourths by three and one-half inches, but it is recommended that, where possible, larger sizes be used.

§ 14-9.29 Blowoff pipe and fittings.

(a)(1) On all boilers, except electric steam boilers having a normal water content not exceeding 100 gallons, and those used for traction and/or portable purposes, when the allowable working pressure exceeds 100 psi, each bottom blowoff pipe shall have two slow-opening valves, or one quick-opening valve or cock at the boiler nozzle followed by a slow-opening valve. All valves shall comply with section [14-9.25] 14-9.29 (b)(4) and (5) of this Subpart.

§ 14-9.22 Fittings.

Table P-15

**MAXIMUM ALLOWABLE WORKING PRESSURE (MAWP) FOR THE USE OF ANSI B16.5-1981 STEEL PIPEFLANGES AND FLANGED FITTINGS AND ANSI B16.34-1981 STEEL VALVES, FLANGED AND BUTT WELDING END (STANDARD CLASS)**

Maximum Allowable Working Pressure (MAWP), psiq, Except as Noted  
*Steam service at Saturation Boiler Feed & Blowoff Line*

ANSI B16.5-1981 & B16.34-1981	Temperature	Service
	[Notes (1)(4)]	[Notes (1), (2), (4)]
150	205	170
300	605	490
400	785	640
600	1135	935
900	1635	1430
1500	2675	2455
2500	3206 psi [Note (3)]	3206 psi [Note (3)]

§ 14-10.22 Feed piping.

(d) All boilers shall have a waterfeed system which will permit [of] the boilers being fed while they are under pressure.

§ 14-11.8 Water gage, water level.

Each miniature boiler for operation with a definite water level shall be equipped with a glass water gage for determining the water level. The lowest permissible water level shall be a point one-third of the height of the shell, except where the boiler is equipped with internal furnace, when it shall be not less than [one third] *one-third* of the length of the tubes above the top of the furnace. In the case of small steam generating units operated on the closed system where there is insufficient space for the usual glass water gage, water level indicators of the glass bulls-eye type may be used.

PART 21

**PROTECTION OF PERSONS EMPLOYED AT WINDOW CLEANING — STRUCTURAL REQUIREMENTS, EQUIPMENT AND PROCEDURES**

(Statutory authority: Labor Law §§ 27-a, [28] 27, 200, 202)

PART 23

**PROTECTION IN CONSTRUCTION, DEMOLITION AND EXCAVATION OPERATIONS**

(Statutory authority: Labor Law §§ 27-a, [28] 27, 29)

§ 23-11.1 General Requirements.

(a) Application of subpart.

Note: The detonation of explosives near pipes conveying combustible gas is subject to the provisions of [Section 322-a of] the General Business Law §§ 760 *et seq.*

PART 36

**STATE STANDARD BUILDING CODE FOR PLACES OF PUBLIC ASSEMBLY**

(Statutory authority: Labor Law §§ 27-a, [28] 27, 200, 470, 471, 472, 473, 474, 474-a)

PART 39

**POSSESSION, HANDLING, STORAGE AND TRANSPORTATION OF EXPLOSIVES**

(Statutory authority: Labor Law §§ 21, 27-a, [28] 27, 29, 462, art. 16; General Business Law § 483)

§ 39.2 Definitions.

(s) Storage magazine. [(6)] (5) Type 5. Facilities for storage of blasting agents.

§ 39.5 Certificates of competence required.

(f) Examining board. (1) The commissioner shall appoint an examining board which shall consist of at least three members. At least one member of such board shall be a blaster who holds a valid certificate of competence and at least one other member of such board shall be a representative of explosive manufacturers. The members of such board shall serve at the pleasure of the commissioner and their duties shall [including] *include* the following:

§ 39.6 General provisions for the storage and handling of explosives.

(e) Smoking and open [fames] *flames*.

§ 39.8 Construction and maintenance of magazines.

(g)(1) Locks. Except for vehicular storage magazines, each door of a type 5 storage magazine shall be equipped with two mortise locks; or with two padlocks fastened in separate hasps and staples; or with a combination of mortise lock and a padlock; or with a mortise lock that requires two keys to open; or with a three-point lock. Padlocks shall have case-hardened shackles [at] *of* at least five tumblers and shall be protected with caps constructed of at least No. 15 gage steel to prevent any sawing or levering action on the locks or hasps.

PART 41

**AERIAL PERFORMERS**

(Statutory authority: Labor Law §§ 27-a, [28] 27, 29, 200, [202-a] *Arts and Cultural Affairs Law § 37.09*)

§ 41.1 Application and construction.

(a) This Part applies to all public performances and exhibitions to which section [202-a of the Labor Law] *37.09 of the Arts and Cultural Affairs Law* may apply.

(b) No provision of the Part is to be construed in derogation of the provisions of section [202-a of the Labor Law] *37.09 of the Arts and Cultural Affairs Law*.

§ 41.2 Definitions.

(f) Performance means a public performance or exhibition described in section [202-a of the Labor Law] 37.09 of the Arts and Cultural Affairs Law.

§ 41.3 Safety Supervisors.

(a) Control of performances. Every act in every performance shall be supervised and controlled by a safety supervisor as to all matters with which this Part and section [202-a of the Labor Law] 37.09 of the Arts and Cultural Affairs Law are concerned. Acts not so supervised and controlled are prohibited.

(d) Duties of safety supervisor. Every safety supervisor shall:

(1) familiarize himself with the provisions of section [202-a of the Labor Law] 37.09 of the Arts and Cultural Affairs Law and the provisions of this Part;

PART 43

COIN-OPERATED MACHINES

(Statutory authority: Labor Law §§ 21, 25, 27, 27-a, 29, 202-d)

§ 43.5 General Safety Requirements.

(a) Every machine shall be so constructed, maintained, used and operated as to provide reasonable and adequate protection to the lives, health and safety of employees and of all persons lawfully using it.

PART 47

TRANSPARENT GLASS DOORS IN MERCANTILE ESTABLISHMENTS AND IN PUBLIC AND COMMERCIAL BUILDINGS AND STRUCTURES

(Statutory authority: Labor Law §§ 27-a,[28] 27, 29, 241-b)

PART 50

LASERS

(Statutory authority: Labor Law §§ 27, 27-a, 29, 200; General Business Law §§ 482, 483, 484)

§ 50.15(b) Designation of lasers.

Exceptions: (1) If such labeling of individual lasers [in] is impractical because of laser size or location, such lasers shall be appropriately labeled in an alternative manner.

§ 50.18 Associated hazards.

(b) Ultra-violet radiation. Ultra-violet radiation levels in excess of 0.5 microwatt/cm<sup>2</sup> for seven hours or 0.1 microwatt/cm<sup>2</sup> for continuous exposure shall be avoided. Because quartz transmits ultra-violet radiation efficiently, particular care shall be taken to protect individuals from such radiation when quartz tubes are used in the [sales] laser system.

PART 54

SAFETY IN SKIING

(Statutory authority: Labor Law §§ 21(11), 202-c, 867(i); General Obligations Law, art. 18)

§ 54.6 Signs and [destinations] designations.

PART 700

PUBLIC ACCESS TO RECORDS OF THE DEPARTMENT OF LABOR

(Statutory authority: Public Officer Law § 87)

§ 700.2 Designation of records access officer.

(a) The [Industrial] Commissioner of Labor is responsible for insuring compliance with this Part, and designates the following person as records access officer:

[Deputy Industrial Commissioner of Legal Affairs] Counsel

Department of Labor

[2 World Trade Center] Building 12, State Campus

[New York, N.Y. 10047] Albany, N.Y. 12240

Telephone: [(212) 488-6297] (518) 457-4380

§ 700.4 Unemployment insurance and employment service records.

Section 537 of the Labor Law prohibits disclosure of information acquired from employers and employees in the course of administration of the Unemployment Insurance Law. Such information is for the exclusive use and information of the [Industrial] Commissioner of Labor in the discharge of his duties under the Unemployment Insurance Law, and is not open to public access. Unemployment insurance and employment service records, therefore, are not subject to the provisions of the Freedom of Information Law.

§ 700.9 Denial of access to records.

(b) The denial of access to records shall be in writing, stating the reason therefor and advising the requestor of the right to appeal to the [Industrial] Commissioner of Labor, Department of Labor, [2 World Trade Center, New York, N.Y. 10047] Building 12, State Campus, Albany, N.Y. 12240.

(d) Any person denied access to records may appeal within 30 days of a denial. Such appeals shall be decided by the [Industrial] Commissioner of Labor or his designee.

(f) The [Industrial] Commissioner of Labor or his designee shall transmit to the Committee on Public Access to Records, Department of State, Albany, N.Y., copies of all appeals upon receipt thereof. The appellant and the Committee on Public Access to Records shall be informed of the determination of the appeal in writing within seven business days of receipt of an appeal.

§ 700.11 Public Notice.

A notice setting forth the title, name, business address and business telephone number of the records access officer, and the right of any person denied access to a record to appeal such denial to the [Industrial] Commissioner of Labor at [2 World Trade Center, New York, N.Y. 10047] Building 12, State Campus, Albany, N.Y. 12240, shall be posted at conspicuous locations in Department of Labor offices.

PART 702

DECLARATORY RULINGS

(Statutory authority: State Administrative Procedures Act § 204)

§ 702.2 Form of petitions.

(a) Petitions for declaratory rulings shall be in writing, signed by the petitioner or its attorney and addressed by certified mail, return receipt requested, to the [Deputy Commissioner of Labor for Legal Affairs] Counsel, Department of Labor, [Two World Trade Center, New York, N.Y. 10047] Building 12, State Campus, Albany, N.Y. 12240.

§ 702.4 Binding Effect.

Declaratory rulings, issued in response to a petition complying with the terms of this Part, shall be binding upon the department unless altered or set aside by a court or prospectively changed by the department. No opinion, letter or advice shall be deemed a declaratory ruling unless it contains a statement that it is a declaratory ruling and is issued by the [Deputy Commissioner of Labor for Legal Affairs] Counsel.

PART 703

PERSONAL PRIVACY PROTECTION

(Statutory authority: Labor Law § 21[11]; Public Officers Law § 94[2])

§ 703.2 Designation of records access officer.

(a) The [Deputy Commissioner of Labor for Administration] Counsel, is designated privacy compliance officer and is responsible for ensuring that the department complies fully with the provisions of article 6-A of the Public Officers Law, the Personal Privacy Protection Law, and this Part.

(b) The address and telephone number of the privacy compliance officer is: [Deputy Commissioner of Labor for Administration] *Counsel*, Department of Labor, Building 12, State [Office Building] Campus, Albany, [NY] N.Y. 12240, (518) 457-[2270] 4380.

(d) (3) *making a record available for inspection in a form comprehensible to the data subject and permitting the data subject to copy the record or deny access to the record in whole or in part and explain in writing the reasons therefor; and*

(4) *upon request, certifying that a copy of a record is a true copy, that the department does not have possession of the records sought, that the department cannot locate the record sought after having made a diligent search or that the information sought cannot be retrieved by use of the description thereof, or by use of the name or other identifier of the data subject without extraordinary search methods being employed by the department.*

§ 703.3 Responsibilities of Deputy Commissioner of Labor for Legal Affairs.

REPEALED.

§ 703.5 Location and hours.

(a) Records shall be made available at the main office[s] of the department, which [are] *is* located at:

[Two World Trade Center

New York, N.Y. 10047]

Building 12, State Campus

Albany, [NY] N.Y. 12240

§ 703.8 Appeal.

(a) Any person denied access to a record or denied a request to amend or correct a record or personal information may, within 30 business days of such appeal, appeal in writing to the Commissioner of Labor, [Two World Trade Center, New York, N.Y. 10047] *Building 12, State Campus, Albany, NY 12240*. The appeal shall contain a copy of the ruling appealed from.

#### APPENDIX [C-2] C

#### CRITERIA RELATING TO USE OF FINANCIAL TESTS AND PAR- ENT COMPANY GUARANTEES FOR PROVIDING REASONABLE ASSURANCE OF FUNDS FOR DECOMMISSIONING

**Text of proposed rule and any required statements and analyses may be obtained from:** Diane Wallace Wehner, Legal Assistant, Department of Labor, Counsel's Office, State Campus, Bldg. 12, Albany, NY 12240, (518) 457-4380, e-mail: [diane.wehner@labor.state.ny.us](mailto:diane.wehner@labor.state.ny.us)

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

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

#### Consensus Rule Making Determination

This amendment is necessary to make technical changes and is non-controversial. The amendments are for typographical errors and to correct outdated information included in the current rules.

#### Job Impact Statement

As the proposed action does not affect jobs and employment opportunities but simply corrects typographical errors and outdated information, a job impact statement is not submitted.

## Department of Motor Vehicles

### NOTICE OF ADOPTION

#### Restoration of Commercial Driver's Licenses

**I.D. No.** MTV-27-06-00010-A

**Filing No.** 1037

**Filing date:** Aug. 25, 2006

**Effective date:** Sept. 13, 2006

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

**Action taken:** Amendment of Part 136 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 510(6)(a) and 1193(2)(c)(1)

**Subject:** Restoration of commercial driver's licenses.

**Purpose:** To provide for automatic restoration of CDL licenses in certain circumstances.

**Text or summary was published** in the notice of proposed rule making, I.D. No. MTV-27-06-00010-P, Issue of July 5, 2006.

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

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

**Assessment of Public Comment**

The agency received no public comment.

## Niagara Falls Water Board

### NOTICE OF ADOPTION

#### Powers of the Director and Appeal Process

**I.D. No.** NFW-24-06-00007-A

**Filing No.** 1036

**Filing date:** Aug. 25, 2006

**Effective date:** Sept. 13, 2006

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

**Action taken:** Amendment of section 1960.9 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, section 1230-f

**Subject:** Powers of the director and appeal process.

**Purpose:** This proposed change will clarify the definition of "water board".

**Text or summary was published** in the notice of proposed rule making, I.D. No. NFW-24-06-00007-P, Issue of June 14, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Gerald Grose, Niagara Falls Water Board, 515 Buffalo Ave., Niagara Falls, NY 14304, (716) 283-9770, e-mail: [ggrose@nfwb.org](mailto:ggrose@nfwb.org)

**Assessment of Public Comment**

The agency received no public comment.

## Public Service Commission

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

#### Transfer of Ownership of Stock between Corning Natural Gas Corporation and C&T Enterprises

**I.D. No.** PSC-37-06-00004-EP

**Filing date:** Aug. 24, 2006

**Effective date:** Aug. 24, 2006

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

**Action taken:** The commission, on Aug. 23, 2006, adopted an order approving on an emergency basis modifications to a prior order approving Corning Natural Gas Corporation (Corning) and C&T Enterprises' (C&T) request to transfer ownership of the stock of Corning to C&T and other related approvals.

**Statutory authority:** Public Service Law, sections 5, 65, 66, 69, 70 and 110

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

**Specific reasons underlying the finding of necessity:** Immediate adoption is necessary to ensure that the merger can be consummated before Corning Gas runs out of cash necessary for the provision of safe and reliable electric service. Without the financial resources that will be provided by C&T, Corning Gas might be unable to purchase sufficient gas supplies and service interruptions could occur. Accordingly, compliance with the advance notice and comment requirements of SAPA section 202(1) would be contrary to the public interest and immediate approval is necessary for the preservation of the general welfare under SAPA section 202(6).

**Subject:** Request to transfer ownership of stock and other related approvals.

**Purpose:** To approve the transfer.

**Substance of emergency/proposed rule:** The Commission approved on an emergency basis modifications to a prior order approving Corning Natural Gas Corporation (Corning) and C&T Enterprises' (C&T) request to transfer ownership of the stock of Corning to C&T and other related approvals, subject to the terms and conditions set forth in the order.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of proposed rule making. The rule will expire November 21, 2006.

**Text of rule may be obtained from:** Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

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

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

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

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

(06-G-0569SA2)

### NOTICE OF ADOPTION

#### Electric Rates and Service by New York State Electric & Gas Corporation

**I.D. No.** PCS-09-06-00006-A

**Filing date:** Aug. 23, 2006

**Effective date:** Aug. 23, 2006

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

**Action taken:** The commission, on Aug. 23, 2006, adopted an order approving New York State Electric & Gas Corporation's request to make various changes in the rates, charges, rules and regulations contained in its schedules for electric service—Nos. 120 and 121.

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

**Subject:** Electric rates and service.

**Purpose:** To approve New York State Electric & Gas Corporation's request for the continuation of the commodity options program and the provision of a surcredit on customers' bills for pass back of some of the asset sale gain account.

**Substance of final rule:** The Commission adopted an order approving New York State Electric & Gas Corporation's request for the continuation of the commodity options program with modifications and to establish tariff provisions for a surcredit on customers' bills to return a portion of the company's Asset Sale Gain Account, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

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

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

(05-E-1222SA1)

### NOTICE OF ADOPTION

#### Major Rate Case by New York State Electric & Gas Corporation

**I.D. No.** PCS-09-06-00008-A

**Filing date:** Aug. 23, 2006

**Effective date:** Aug. 23, 2006

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

**Action taken:** The commission, on Aug. 23, 2006, adopted an order concerning New York State Electric & Gas Corporation's request to make various changes in the rates, charges, rules and regulations contained in its schedules for electric service—Nos. 119, 120 and 121.

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

**Subject:** Major rate case.

**Purpose:** To increase its delivery rates and the reduction of the non-bypassable charge through the acceleration of the benefits from expiring non-utility generation contracts.

**Substance of final rule:** The Commission adopted an order concerning New York State Electric & Gas Corporation's (NYSEG) request to increase its delivery rates and for the reduction in the non-bypassable charge through acceleration of the benefits from expiring non-utility generations contracts and directed NYSEG to file, on not less than one days notice, such tariff revisions necessary to effectuate the changes, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

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

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

(05-E-1222SA2)

## NOTICE OF ADOPTION

**Charge for Gas Re-Inspection by Consolidated Edison Company of New York, Inc.****I.D. No.** PSC-11-06-00012-A**Filing date:** Aug. 28, 2006**Effective date:** Aug. 28, 2006

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

**Action taken:** The commission, on Aug. 23, 2006, adopted an order rejecting Consolidated Edison Company of New York, Inc.'s request to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 9.

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

**Subject:** Charge for gas re-inspection.

**Purpose:** To reject \$109 gas re-inspection charge in its gas tariff.

**Substance of final rule:** The Commission adopted an order rejecting Consolidated Edison Company of New York, Inc.'s request for a gas reinspection charge and directed the company to refund any amounts already collected, with interest, within 60 days, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(06-G-0231SA1)

## NOTICE OF ADOPTION

**Revision of Meter Maintenance Fee by National Fuel Gas Distribution Corporation****I.D. No.** PSC-16-06-00013-A**Filing date:** Aug. 25, 2006**Effective date:** Aug. 25, 2006

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

**Action taken:** The commission, on Aug. 23, 2006, adopted an order rejecting National Fuel Gas Distribution Corporation's request to make various changes in the rates, charges, rules and regulations in its schedule for gas service—P.S.C. No. 8.

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

**Subject:** Revise facility maintenance fee for production facilities.

**Purpose:** To reject National Fuel Gas Distribution Corporation's request to revise its meter maintenance fee.

**Substance of final rule:** The Commission adopted an order rejecting National Fuel Gas Distribution Corporation's request to revise its meter maintenance fee and that the company's metering for local gas producers be considered in the context with the Commission's Order Relating to Electric and Gas Metering Services, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(04-G-1047SA6)

## NOTICE OF ADOPTION

**Transfer of Certain Bill Inserter Equipment by Niagara Mohawk Power Corporation d/b/a National Grid and Pitney Bowes Management Services, Inc.****I.D. No.** PSC-19-06-00013-A**Filing date:** Aug. 28, 2006**Effective date:** Aug. 28, 2006

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

**Action taken:** The commission, on July 19, 2006, adopted an order approving a joint petition filed by Niagara Mohawk Power Corporation d/b/a (National Grid) and Pitney Bowes Management Services, Inc. (PBMS) for authority to transfer certain bill inserter equipment to PBMS.

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

**Subject:** Transfer of certain bill inserter equipment by National Grid.

**Purpose:** To approve the transfer from National Grid to Pitney Bowes Management Services, Inc.

**Substance of final rule:** The Commission adopted an order approving a joint petition filed by Niagara Mohawk Power Corporation d/b/a (National Grid) and Pitney Bowes Management Services, Inc. (PBMS) for authority to transfer certain bill inserter equipment to PBMS, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(06-M-0444SA1)

## NOTICE OF ADOPTION

**Uniform System of Accounts-Request for Accounting Authorization****I.D. No.** PSC-23-06-00004-A**Filing date:** Aug. 25, 2006**Effective date:** Aug. 25, 2006

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

**Action taken:** The commission, on Aug. 23, 2006, adopted an order approving Corning Natural Gas Corporation's request for deferral accounting treatment of recovery costs remaining after the sale of its appliance business as well as the costs of preparing and filing the May 17 petition.

**Statutory authority:** Public Service Law, section 66-9

**Subject:** Uniform system of accounts—request for accounting authorization.

**Purpose:** To allow the company deferred accounting treatment for expenses beyond the end of the year in which it occurred.

**Substance of final rule:** The Commission adopted an order approving coming Natural Gas Corporation's request for deferral accounting treatment of recovery costs remaining after the sale of its appliance business as well as the costs of preparing and filing the May 17 Petition, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(06-G-0600SA1)

## NOTICE OF ADOPTION

**Certificate of Merger between Delhi Net, Inc., d/b/a Delhi Long Distance and Delhi Wireless Inc. with DTC Cable Inc.****I.D. No.** PSC-23-06-00005-A**Filing date:** Aug. 24, 2006**Effective date:** Aug. 24, 2006

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

**Action taken:** The commission, on Aug. 23, 2006, adopted an order approving the filing of a certificate of merger of Delhi Net Inc., Delhi Wireless Inc., and Delhi Cellular Inc. with and into DTC Cable Inc. with the Department of State.

**Statutory authority:** Public Service Law, section 108

**Subject:** Certificate of merger of Delhi Net Inc., Delhi Wireless Inc., and Delhi Cellular Inc. with and into DTC Cable Inc. with the Department of State.

**Purpose:** To approve a certificate of merger.

**Substance of final rule:** The Commission adopted an order approving the filing of a certificate of merger of Delhi Net Inc., Delhi Wireless Inc., and Delhi Cellular Inc. with and into DTC Cable Inc. with the Department of State, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(06-C-0417SA1)

## NOTICE OF ADOPTION

**Transfer of Property by Rochester Gas and Electric Corporation****I.D. No.** PSC-24-06-00015-A**Filing date:** Aug. 28, 2006**Effective date:** Aug. 28, 2006

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

**Action taken:** The commission, on Aug. 23, 2006, adopted an order approving Rochester Gas and Electric Corporation's request to sell its street lighting facilities situated within the Village of Hilton, Monroe County, New York to the Village of Hilton.

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

**Subject:** Transfer of property.

**Purpose:** To transfer ownership of its street lighting facilities within the Village of Hilton to the Village of Hilton.

**Substance of final rule:** The Commission adopted an order approving Rochester Gas and Electric Corporation's request to sell its street lighting facilities situated within the Village of Hilton, Monroe County, New York to the Village of Hilton.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(06-E-0542SA1)

## NOTICE OF ADOPTION

**Daylight Saving Time****I.D. No.** PSC-25-06-00016-A**Filing date:** Aug. 23, 2006**Effective date:** Aug. 23, 2006

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

**Action taken:** The commission, on Aug. 23, 2006, adopted an order approving Central Hudson Gas & Electric Corporation's request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 15 to become effective Sept. 1, 2006.

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

**Subject:** Daylight saving time.

**Purpose:** To make modifications to its time-of-use period to conform to the daylight saving time calendar dates which will be revised beginning March 2007.

**Substance of final rule:** The Commission adopted an order approving Central Hudson Gas & Electric Corporation's request to modify Service Classification No. 6—Residential Time-of-Use Service to conform to the Daylight Savings Time calendar dates which will be revised beginning March 2007.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(06-E-0645SA1)

## NOTICE OF ADOPTION

**Gas Supply Charge by Central Hudson Gas & Electric Corporation****I.D. No.** PSC-25-06-00018-A**Filing date:** Aug. 23, 2006**Effective date:** Aug. 23, 2006

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

**Action taken:** The commission, on Aug. 23, 2006, adopted an order approving Central Hudson Gas & Electric Corporation's request to make various changes in the rates, charges, rules and regulation in its schedule for gas service—P.S.C. No. 12 to become effective Aug. 30, 2006.

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

**Subject:** Gas supply charge.

**Purpose:** To revise the application of the gas supply charge so that monthly factors are prorated based on the number of days each factor is in effect during a customer's billing period.

**Substance of final rule:** The Commission adopted an order approving Central Hudson Gas & Electric Corporation's request to revise the application of the Gas Supply Charge such that the monthly factors are prorated based on the number of days each factor is in effect during a customer's billing period.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(06-G-0655SA1)

## NOTICE OF ADOPTION

**Water Rates and Charges by Crystal Water Supply Company, Inc.****I.D. No.** PSC-26-06-00008-A**Filing date:** Aug. 23, 2006**Effective date:** Aug. 23, 2006

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

**Action taken:** The commission, on Aug. 23, 2006, adopted an order approving Crystal Water Supply Company, Inc.'s request to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 1—Water, to become effective Oct. 1, 2006.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-b(1), 89-c(1) and (10)

**Subject:** Water rates and charges.

**Purpose:** To change Crystal Water Supply Company, Inc.'s metered rate to a flat rate.

**Substance of final rule:** The Commission adopted an order approving Crystal Water Supply Company's request to convert its tariff schedule, P.S.C. No. 1—Water to electronic format and to change the company's metered rate to a flat rate.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-W-0653SA1)

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

**Interconnection Agreement between Citizens Telecommunications Company of New York, Inc. and Time Warner Telecom—NY, L.P.****I.D. No.** PSC-37-06-00012-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Citizens Telecommunications Company of New York, Inc. and Time Warner Telecom—NY, L.P. for approval of a mutual traffic exchange agreement executed on July 19, 2006.

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

**Subject:** Interconnection of the networks between Citizens Telecommunications Company of New York, Inc. and Time Warner Telecom—NY, L.P. for local exchange service and exchange access.

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

**Substance of proposed rule:** Citizens Telecommunications Company of New York, Inc. and Time Warner Telecom-NY, L.P. have reached a negotiated agreement whereby Citizens Telecommunications Company of New York, Inc. and Time Warner Telecom-NY, L.P. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

**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:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-C-1013SA1)

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

**Interconnection Agreement between Citizens Telecommunications Company of New York, Inc. and Time Warner Telecom—NY, L.P.****I.D. No.** PSC-37-06-00013-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Citizens Telecommunications Company of New York, Inc. and Time Warner Telecom—NY, L.P. for approval of an interconnection agreement executed on June 6, 2005.

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

**Subject:** Interconnection of the networks between Citizens Telecommunications Company of New York, Inc. and Time Warner Telecom—NY, L.P. for local exchange service and exchange access.

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

**Substance of proposed rule:** Citizens Telecommunications Company of New York, Inc. and Time Warner Telecom-NY, L.P. have reached a negotiated agreement whereby Citizens Telecommunications Company of New York, Inc. and Time Warner Telecom-NY, L.P. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 6, 2007, 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:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-C-1026SA1)

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

**Interconnection Agreement between Ogden Telephone Company and Time Warner Telecom—NY, L.P.****I.D. No.** PSC-37-06-00014-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Ogden Telephone Company and Time Warner Telecom—NY, L.P. for approval of an interconnection agreement executed on June 6, 2005.

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

**Subject:** Interconnection of the networks between Ogden Telephone Company and Time Warner Telecom—NY, L.P. for local exchange service and exchange access.

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

**Substance of proposed rule:** Ogden Telephone Company and Time Warner Telecom-NY, L.P. have reached a negotiated agreement whereby Ogden Telephone Company and Time Warner Telecom—NY, L.P. will

interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 6, 2007, 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:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-C-1027SA1)

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

**Procedures for Estimation of Customer Bills by Rochester Gas and Electric Corporation**

**I.D. No.** PSC-37-06-00015-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, reject or modify a proposal of Rochester Gas and Electric Corporation to revise the procedures the utility uses for estimating electricity usage for the purpose of billing customers when actual meter readings of customer usage are not available.

**Statutory authority:** Public Service Law, sections 5(1)(b); 65(1); 66(1), (3), (5) and (12)

**Subject:** Procedures for estimation of customer bills.

**Purpose:** To consider estimation procedures used for rendering of bills to utility customers.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, reject or modify a proposal of Rochester Gas and Electric Corporation to revise certain procedures used for rendering bills to utility customers. The proposed procedures would be used to estimate a customer's electricity usage during a billing period when an actual meter reading of usage is not available. If approved, the proposed procedures would replace existing procedures for estimating customer usage for billing purposes.

**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:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-0765SA8)

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

**Submetering of Electricity by Bay City Metering Company, Inc.**

**I.D. No.** PSC-37-06-00016-P

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

**Proposed action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Bay City Metering Company, Inc., on behalf of 301 East 69th Tenants Corporation, to submeter electricity at 301 E. 69th St., New York, NY.

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

**Subject:** Petition for the submetering of electricity.

**Purpose:** To submeter electricity at 301 E. 69th St., New York, NY.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Bay City Metering Company, Inc., on behalf of 301 East 69th Street Tenants Corporation, to submeter electricity at 301 E. 69th St., New York, NY.

**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:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-E-1015SA1)

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

**Procedures for Estimation of Customer Bills by Rochester Gas and Electric Corporation**

**I.D. No.** PSC-37-06-00017-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, reject or modify a proposal of Rochester Gas and Electric Corporation to revise the procedures the utility uses for estimating gas usage for the purpose of billing customers when actual meter readings of customer usage are not available.

**Statutory authority:** Public Service Law, sections 5(1)(b); 65(1); 66(1), (3), (5), (12)

**Subject:** Procedures for estimation of customer bills.

**Purpose:** To consider estimation procedures used for rendering of bills to utility customers.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, reject or modify a proposal of Rochester Gas and Electric Corporation to revise certain procedures used for rendering bills to utility customers. The proposed procedures would be used to estimate a customer's gas usage during a billing period when an actual meter reading of usage is not available. If approved, the proposed procedures would replace existing procedures for estimating customer usage for billing purposes.

**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:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-G-0766SA8)

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

**Postretirement Benefits Other Than Pensions by United Water New Rochelle**

**I.D. No.** PSC-37-06-00018-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, reject or modify in whole or in part, United Water New Rochelle's (UWNR) amortization of \$124,957 in postretirement benefits other than pensions (OPEB) costs described as an initial transition obligation (ITO).

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(3) and 89-c(4)

**Subject:** UWNR's amortization of \$124,957 in OPEB costs described as an ITO.

**Purpose:** To amortize \$124,957 in OPEB costs described as ITO.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, reject, or modify in whole or in part, United Water New Rochelle's (UWNR) amortization of \$124,957 in Postretirement Benefits Other Than Pensions (OPEB) costs described as an initial transition obligation (ITO).

**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:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-W-1221SA2)

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## Racing and Wagering Board

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**NOTICE OF ADOPTION**

**Horsemen's Contract Requirements for Track Licensure and/or Assignment of Race Dates**

**I.D. No.** RWB-23-06-00007-A

**Filing No.** 1048

**Filing date:** Aug. 29, 2006

**Effective date:** Sept. 13, 2006

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

**Action taken:** Addition of sections 4003.13 and 4101.8 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 207, 210, 241 and 307(5)(a) and (b)

**Subject:** Horsemen's contract requirement for track licensure and/or assignment of race dates.

**Purpose:** To enable the board to preserve the continuity of pari-mutuel racing, while generating reasonable revenue for the support of government. The proposed rule enumerates specific Board authority to require the existence of an agreement governing the terms and conditions of racing in relation to the granting of a pari-mutuel track license and/or the assignment of race dates in a given year. A provision of the proposed rule provides that the Board may for good cause due to factors beyond the control of the

parties excuse the absence of the otherwise required agreement. This discretion is intended to preclude unreasonable positions of both parties.

**Text or summary was published** in the notice of proposed rule making, I.D. No. RWB-23-06-00007-P, Issue of June 7, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: [info@racing.state.ny.us](mailto:info@racing.state.ny.us)

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Claiming of Race Horses**

**I.D. No.** RWB-23-06-00008-A

**Filing No.** 1050

**Filing date:** Aug. 29, 2006

**Effective date:** Sept. 13, 2006

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

**Action taken:** Amendment of Part 4038 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1), 207, 208 and 902

**Subject:** Claiming of race horses.

**Purpose:** To remove restrictions to claiming imposed by the current rule and substitute obsolete language with language reflecting present day practice. The current rule has been in effect for more than 30 years and needs to be updated to simplify the claiming process for new owners as well as for existing owners. Also, language is necessary to address circumstances when claims should be voidable.

**Text or summary was published** in the notice of proposed rule making, I.D. No. RWB-23-06-00008-P Issue of June 7, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: [info@racing.state.ny.us](mailto:info@racing.state.ny.us)

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Regulatory Exemption of Registration, Licensing and Reporting Requirements for Raffles**

**I.D. No.** RWB-24-06-00004-A

**Filing No.** 1049

**Filing date:** Aug. 29, 2006

**Effective date:** Sept. 13, 2006

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

**Action taken:** Amendment of sections 5601.1, 5602.1 and 5624.1 of Title 9 NYCRR.

**Statutory authority:** General Municipal Law, sections 188-a and 190-a

**Subject:** Regulatory exemption of registration, licensing and reporting requirements for raffles conducted by certain charities.

**Purpose:** To amend the board's games of chance rules and regulations to conform with amendments to the General Municipal Law that were enacted under L. 2004, ch. 678 and L. 2005, ch. 400. These statutory amendments exempted charitable organizations from registration, licensing and reporting requirements for organizations that intend to conduct raffles where net proceeds are less than \$5,000 per drawing or \$20,000 in a calendar year. Such organizations may avoid the registration process by deeming themselves an authorized organization, and are relieved of any licensing or financial reporting requirements.

**Text or summary was published** in the notice of proposed rule making, I.D. No. RWB-24-06-00004-P, Issue of June 14, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: [info@racing.state.ny.us](mailto:info@racing.state.ny.us)

**Assessment of Public Comment**

The agency received no public comment.

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## Department of State

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### EMERGENCY RULE MAKING

**Statewide Wireless Network****I.D. No.** DOS-37-06-00008-E**Filing No.** 1042**Filing date:** Aug. 28, 2006**Effective date:** Aug. 28, 2006

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

**Action taken:** Amendment of sections 1201.2(d) and 1204.1; addition of section 1204.3(f)(4) and (h)(3); renumbering of section 1204.3(i) to section 1204.3(l); and addition of section 1204.3(i), (j) and (k) to Title 19 NYCRR.

**Statutory authority:** Executive Law, section 381

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

**Specific reasons underlying the finding of necessity:** This rule is adopted as an emergency measure to preserve the public safety and general welfare and because time is of the essence. This rule clarifies an existing rule, which provides that the State is accountable for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the "Uniform Code") with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority, by expressly providing that the State will be responsible for administration and enforcement of the Uniform Code with respect to facilities to be included in the Statewide Wireless Network to be established and implemented by the Office for Technology. Adoption of this rule on an emergency basis preserves the public safety and general welfare by clarifying the responsibility for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network, and thereby permitting the immediate commencement of the review and permitting process incidental to the construction and implementation of the Statewide Wireless Network.

**Subject:** Accountability for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code with respect to facilities to be included in the Statewide Wireless Network.

**Purpose:** To clarify that the State will be responsible for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code with respect to facilities to be included in the Statewide Wireless Network.

**Text of emergency rule:** Subdivision (d) of section 1201.2 of Title 19 NYCRR is amended to read as follows:

(d) (1) The State shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority.

(2) Without limiting the generality of the provisions of paragraph (1) of this subdivision, the State shall be accountable for administration and enforcement of the Uniform Code with respect to all statewide wireless network facilities (as that term is defined in subdivision (j) of section 1204.3 of Part 1204 of this Title) and all activities related thereto undertaken by the Office for Technology; provided, however, that nothing in this paragraph shall be construed as subjecting to the provisions of the Uniform Code any statewide wireless network facility that would not otherwise be subject to the provisions of the Uniform Code.

(3) In the case of a statewide wireless network facility (as that term is defined in subdivision (j) of section 1204.3 of Part 1204 of this Title) which is constructed or installed on or in a statewide wireless network supporting building (as that term is defined in subdivision (k) of section 1204.3 of Part 1204 of this Title):

(i) the State shall be accountable for administration and enforcement of the Uniform Code with respect to such statewide wireless network

facility and all activities related thereto undertaken by the Office for Technology, but the State shall not be accountable for administration and enforcement of the Uniform Code with respect to such statewide wireless network supporting building;

(ii) the governmental entity that would have been accountable for administration and enforcement of the Uniform Code with respect to such statewide wireless network supporting building if such statewide wireless network facility had not been constructed or installed thereon or therein shall remain accountable for administration and enforcement of the Uniform Code with respect to such statewide wireless network supporting building, but such governmental entity shall not be responsible for administration and enforcement of the Uniform Code with respect to such statewide wireless network facility; and

(iii) the State and such governmental entity shall consult with each other and fully cooperate with each other in connection with the performance of their respective administrative and enforcement obligations, and in particular, but not by way of limitation, the State shall make all records in its possession pertaining to such statewide wireless network facility available to such governmental entity upon request by such governmental entity, and such governmental entity shall make all records in its possession pertaining to such statewide wireless network supporting building available to the State upon request by the State. Nothing in this paragraph shall require the State to make available any record which, if disclosed, would jeopardize the capacity of the State, the Office for Technology, or any other State agency (as that term is defined in subdivision (h) of section 1204.3 of Part 1204 of this Part) to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures, or if access to such record could otherwise be denied under section 87 of the Public Officers Law.

Section 1204.1 Title 19 NYCRR is amended to read as follows:

Section 1204.1 Introduction. Section 381 of the Executive Law directs the Secretary of State to promulgate rules and regulations prescribing minimum standards for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (Uniform Code). Section 1201.2(d) of this Title provides that the State shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises, and equipment in the custody of, or activities related thereto undertaken by, a State agency and with respect to all statewide wireless network facilities and all activities related thereto undertaken by the Office for Technology. This Part establishes procedures for the administration and enforcement of the Uniform Code by state agencies. Buildings and structures exempted from the Uniform Code by other preclusive statutes or regulations are not subject to the requirements of this Part.

New paragraph (4) of subdivision (f) of section 1204.3 of Title 19 NYCRR is added to read as follows:

(4) Notwithstanding any other provision of this subdivision to the contrary and without regard to the criteria mentioned in paragraph (3) of this subdivision, for the purposes of this Part the Office for Technology shall be considered to have custody and effective control of all statewide wireless network facilities; provided, however, that nothing in this subdivision shall be construed as subjecting to the provisions of the Code any statewide wireless network facility that would not otherwise be subject to the provisions of the Code; and provided further that for the purposes of this Part, the Office for Technology shall not be considered to have custody or effective control of any statewide wireless network supporting building merely by reason of the construction or installation of any statewide wireless network facility thereon or therein.

New paragraph (3) of subdivision (h) of section 1204.3 of Title 19 of the NYCRR is added to read as follows:

(3) Without limiting the generality of paragraphs (1) and (2) of this subdivision, for the purposes of this Part and for the purposes of Part 1201 of this Title, the term "State agency" shall include the Office for Technology.

Subdivision (i) of section 1204.3 of Title 19 NYCRR is renumbered subdivision (l) and new subdivisions (i), (j), and (k) are added to read as follows:

(i) Statewide wireless network. An integrated statewide communications system intended to link state and local first responders to each other and to allow state and local first responders to communicate reliably during emergency situations, as contemplated by section 402(1)(a) of the State Technology Law. The term "statewide wireless network" shall include such communications system as originally developed and constructed and as thereafter extended, improved, upgraded, or otherwise modified from time to time.

(j) *Statewide wireless network facility.* Any tower, antenna, or equipment which is used or intended to be used in the operation of the statewide wireless network, and any building or structure which is constructed specifically for the purpose of supporting or containing any such tower, antenna, or equipment.

(k) *Statewide wireless network supporting building.* A building or structure which is not a statewide wireless network facility (i.e., which was not constructed specifically for the purpose of supporting or containing a tower, antenna, or equipment which is used or intended to be used in the operation of the statewide wireless network), but which has a statewide wireless network facility constructed or installed thereon or therein. For example, if a tower, antenna, and equipment used or intended to be used in the operation of the statewide wireless network, and a building or structure which will contain such equipment or support such tower, are constructed on the top of an existing office building, then:

(1) such office building would be a statewide wireless network supporting building;

(2) such office building would not be a statewide wireless network facility; and

(3) the tower, antenna, equipment, and building or structure constructed on the top of such office building would be a statewide wireless network facility.

**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 November 25, 2006.

**Text of emergency rule and any required statements and analyses may be obtained from:** Joseph Ball, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740, e-mail: jball@dos.state.ny.us

#### **Regulatory Impact Statement**

##### 1. STATUTORY AUTHORITY.

The statutory authority for this rule is section Executive Law section 381(1), which provides that the Secretary of State shall promulgate rules and regulations prescribing minimum standards for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the "Uniform Code"), and Executive Law section 381(2), which provides that every local government shall administer and enforce the Uniform Code "(e)xcept as may be provided in regulations of the secretary . . . ."

##### 2. LEGISLATIVE OBJECTIVES.

"In general, section 381 of the Executive Law directs that the State's cities, towns and villages administer and enforce the New York State Uniform Fire Prevention and Building Code (Uniform Code). However, the statute contemplates the need for alternative procedures for certain classes of buildings based upon their design, construction, ownership, occupancy or use, and authorizes the Secretary of State to establish those procedures. . . ." 19 NYCRR section 1201.1.

Rules and regulations previously adopted by the Secretary of State pursuant to Executive Law section 381(2) provide that the State shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority.

The rule now being adopted by the Secretary of State clarifies that the State will be accountable for administration and enforcement of the Uniform Code with respect to facilities in the Statewide Wireless Network to be constructed and implemented by the Office for Technology.

##### 3. NEEDS AND BENEFITS.

The existing policy of this State, as reflected in the existing rules and regulations, is that the State shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority. This rule will clarify that this policy shall apply to facilities in the Statewide Wireless Network to be constructed and implemented by the Office for Technology.

This rule will also address the situation that will arise when a governmental agency other than the State (a local government, in most cases) is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure, and a Statewide Wireless Network facility is to be constructed or installed in or on such building or structure. This rule will provide that in such a case: (1) the local government will continue to have responsibility for administration and enforcement of the Uniform Code with respect to the building or structure; (2) the State will be responsible for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network facility to be

constructed on installed in or on the building or structure; and (3) the local government and the State must consult and cooperate with each other with respect to their respective administrative and enforcement responsibilities, and must make their records available to each other on request. The rule would provide that the State would not be required to make available any record which, if disclosed, would jeopardize the capacity of the State, the Office for Technology, or any other State agency to guarantee the security of its information technology assets, such as assets encompassing both electronic information systems and infrastructures, or if access to such record could otherwise be denied under section 87 of the Public Officers Law.

It is appropriate that the State have the responsibility for administration and enforcement of the Uniform Code with respect to the facilities that will be part of the Statewide Wireless Network. This will simplify and streamline the permitting process for all Statewide Wireless Network facilities to be constructed throughout the State. However, it may not be clear that the Office for Technology is a "department, bureau, commission, board or authority," as that phrase is currently used in 19 NYCRR section 1201.2(d), and it may not be clear that all facilities in the Statewide Wireless Network will be in the "custody" of the Office for Technology, as that term is currently used in 19 NYCRR section 1201.2(d). Since Statewide Wireless Network facilities will be constructed in numerous communities throughout the State, it is appropriate to provide those communities, as well as the Office for Technology, with a clear indication of the responsibility for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network facilities.

Adoption of this rule on an emergency basis preserves the public safety and general welfare by providing an immediately effective clarification of the responsibility for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network facilities. This will permit the immediate commencement of the review and permitting activities incidental to construction of the Statewide Wireless Network.

##### 4. COSTS.

a. Cost to regulated parties for the implementation of and continuing compliance with this rule: This rule imposes no obligation on any private party.

b. Costs to the Department of State: The Department of State anticipates that it will incur no costs as a result of this rule.

c. Costs to other State agencies: This rule will clarify that the State will be responsible for administration and enforcement of the Uniform Code with respect to Statewide Wireless Network facilities. The Department of State anticipates that the Office of General Services ("OGS") will be the construction-permitting agency for Statewide Wireless Network facilities. The Department of State views this aspect of this rule more as a clarification of existing rules and regulations, rather than the creation of a new obligation that OGS would not otherwise have.

The Office for Technology will be required to comply with the Uniform Code in constructing any Statewide Wireless Network facility that is subject to the Uniform Code. However, this obligation exists under existing law and regulation, and not by reason of this rule.

d. Cost to local governments: This rule will require local governments having the responsibility for administration and enforcement of the Uniform Code with respect to buildings and structures to consult and cooperate with the State, and to make their records available to the State, when a Statewide Wireless Network facility is constructed or installed in or on any such building or structure. However, the Department of State anticipates that existing staff in the code enforcement offices of the affected local governments will be able to provide the required consultation and cooperation, and the Department of State anticipates that this part of this rule will impose little or no new costs on local governments.

##### 5. PAPERWORK.

This rule will clarify that the State, rather than local governments, will be responsible for administration and enforcement of the Uniform Code with respect to Statewide Wireless Network facilities. The Department of State anticipates that the amount of paperwork that will be required if the State is responsible for administration and enforcement of the Uniform Code will be no greater than the paperwork that would be required if local governments were given that responsibility.

##### 6. LOCAL GOVERNMENT MANDATES.

As stated in subparagraph 6(d) (Costs to local governments) of this Regulatory Impact Statement, this rule will require local governments having the responsibility for administration and enforcement of the Uniform Code with respect to buildings and structures to consult and cooperate with the State, and to make their records available to the State, when a Statewide Wireless Network facility is constructed or installed in or on any such building or structure. However, the Department of State anticipates

that existing staff in the code enforcement offices of the affected local governments will be able to provide the required consultation and cooperation.

#### 7. DUPLICATION.

The Department of State is not aware of any relevant rule or other legal requirement of the State or Federal government which duplicates, overlaps or conflicts with this rule.

#### 8. ALTERNATIVES.

Making local governments, and not the State, responsible for administration and enforcement of the Uniform Code with respect to Statewide Wireless Network facilities was considered but rejected for the reasons set forth in the Regulatory Impact Statement. The Department of State has not considered any other alternative to this rule.

#### 9. FEDERAL STANDARDS.

The Department of State is not aware of any instance in which this rule exceeds any minimum standards of the federal government for the same or similar subject areas.

#### 10. COMPLIANCE SCHEDULE.

This rule can be complied with immediately. The Office of General Services has the ability to act as the construction-permitting agency, and should be able to begin the required permitting process with little or no delay.

### **Regulatory Flexibility Analysis**

#### 1. EFFECT OF RULE.

This rule does not apply directly to any business. However, to the extent that any business becomes involved in the Uniform Code permitting process incidental to construction of any Statewide Wireless Network facility, such business will be indirectly affected by this rule, since this rule will provide that the State will be responsible for such permitting.

This rule will affect local governments in municipalities in which Statewide Wireless Network facilities are to be constructed, since this rule will clarify that the State, and not the local government, will be responsible for administration and enforcement of the Uniform Code with respect to such Statewide Wireless Network facilities.

This rule will provide that when a local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and a Statewide Wireless Network facility is constructed or installed in or on such building or structure: (1) the local government will retain the responsibility for administration and enforcement of the Uniform Code with respect to the building or structure, (2) the State will have responsibility for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network facility constructed on installed in or on such building or structure, and (3) the local government and the State will be required to consult and cooperate with each other in connection with the performance of their respective administrative and enforcement obligations, and to make records available to each other upon request. (The rule would provide that the State would not be required to make available any record which, if disclosed, would jeopardize the capacity of the State, the Office for Technology, or any other State agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures, or if access to such record could otherwise be denied under section 87 of the Public Officers Law.)

#### 2. COMPLIANCE REQUIREMENTS.

Any business involved in the construction of any Statewide Wireless Network facility will be required to comply with the Uniform Code (to the extent that the Uniform Code applies to such facility). However, that requirement exists under current law, not by reason of this rule. This rule will clarify that the State will be responsible for administration and enforcement of the Uniform Code with respect to such facility; this rule will not impose any new compliance requirement on any business.

This rule will clarify that the State, and not local governments, will be responsible for administration and enforcement of the Uniform Code with respect to Statewide Wireless Network facilities. This part of the rule imposes no compliance requirements on local governments.

This rule will provide that a local government that is responsible for administration and enforcement of the Uniform Code with respect to a building or structure shall retain such responsibility even if a Statewide Wireless Network facility is constructed or installed in or on such building or structure. This part of the rule imposes no new compliance requirements on local governments.

This rule will require a local government to consult and cooperate with the State, and to make its records available to the State, when the local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and a Statewide

Wireless Network facility is constructed or installed in or on such building or structure.

#### 3. PROFESSIONAL SERVICES.

This rule imposes no new compliance requirements on businesses. Therefore this rule creates no new reporting, recordkeeping, or other requirements for business which would require professional services.

A local government will be required to consult and cooperate with the State, and to make its records available to the State, when (1) the local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and (2) a Statewide Wireless Network facility is constructed or installed in or on such building or structure. The Department of State anticipates that existing staff in the code enforcement office of the local government will be able to provide the necessary consultation and cooperation. Therefore, except for such professional services as may be provided by existing staff, the Department of State anticipates that local governments will not require professional services to comply with this rule.

#### 4. COMPLIANCE COSTS.

This rule imposes no new compliance requirements on businesses. Therefore this rule creates no new compliance costs for businesses.

This rule requires a local government to consult and cooperate with the State, and to make records available to the State, when (1) the local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and (2) a Statewide Wireless Network facility is constructed or installed in or on such building or structure. The Department of State anticipates that existing staff in the code enforcement office of the local government will be able to provide the necessary consultation and cooperation. Therefore, the Department of State anticipates that local governments will incur little or no additional costs in complying with this consultation and cooperation requirement.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

The Department of State anticipates that the Office of General Services will serve as the construction-permitting agency in connection with the State's obligation to administer and enforce the Uniform Code with respect to Statewide Wireless Network facilities. The Department of State believes that the permitting process incidental to the construction of a Statewide Wireless Network will be facilitated and simplified if that process is centralized in a single State agency. Therefore, to the extent that any small business becomes involved in the permitting process, this rule should enhance the economic and technological feasibility of compliance with the permitting requirements by such business.

The Department of State anticipates that existing staff in the code enforcement offices of local governments will be able to provide the consultation and cooperation that this rule will require when (1) the local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and (2) a Statewide Wireless Network facility is constructed or installed in or on such building or structure. The Department of State anticipates that it will be economically and technologically feasible for local governments to comply with this rule.

#### 6. MINIMIZING ADVERSE IMPACT.

This rule imposes no new obligation on businesses of any size. Accordingly, this rule makes no special provisions for small businesses.

#### 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

The Department of State has solicited comments from the Office for Technology and the Office of General Services. The Department of State will continue to solicit comments from those agencies.

The Department of State will contact local code enforcement officials to inform them of this rule.

### **Rural Area Flexibility Analysis**

#### 1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule clarifies that the State will be responsible for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the "Uniform Code") with respect to facilities to be included in the Statewide Wireless Network to be established by the Office for Technology. This rule will apply uniformly throughout the State, including all rural areas of the State.

#### 2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

This rule creates no new reporting, recordkeeping, or compliance requirement for any business. In particular, this rule creates no new reporting, recordkeeping, or compliance requirement for businesses located in rural areas.

Local governments that are responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure will be required to consult and cooperate with the State, and to make its records available to the State, when a Statewide Wireless Network facility is constructed in or on such building or structure. This requirement will apply to all local governments, including local governments located in rural areas.

### 3. COSTS.

The Department of State anticipates that this rule will impose no new cost on any business. In particular, the Department of State anticipates that this rule will impose no new cost on businesses located in rural areas.

The Department of State anticipates that local governments, including local governments located in rural areas, will be able to use existing staff in their code enforcement offices to fulfill the consulting and cooperation requirements described in Section 2 (Reporting, recordkeeping and other compliance requirements) of this Rural Area Flexibility Analysis. Therefore, the Department of State anticipates that local governments, including local governments located in rural areas, will incur little or no additional costs in complying with this rule.

### 4. MINIMIZING ADVERSE IMPACT.

For the reasons discussed in Section 3 (Costs) of this Rural Area Flexibility Analysis, the Department of State anticipates that this rule will have little or no adverse impact on any business or local government. In particular, the Department of State anticipates that this rule will have little or no adverse impact on businesses or local governments located in rural areas. Accordingly, this rule makes no special provisions for regulated parties located in rural areas.

### 5. RURAL AREA PARTICIPATION.

The Department of State will contact local code enforcement officials, including local code enforcement officials located in rural areas, to inform them of this rule.

#### **Job Impact Statement**

The Department of State has determined that this rule will not have a substantial adverse impact on jobs or employment opportunities.

This rule amends the existing regulation that provides that the State shall be accountable for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the "Uniform Code") with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority, and adds definitions of new terms. The purpose of this rule is to clarify that the State shall have responsibility for administration and enforcement of the Uniform Code with respect to facilities to be included in the statewide wireless network to be established by the Office for Technology.

This rule will simply clarify the responsibility for administration and enforcement of the Uniform Code with respect to the statewide wireless network. It is anticipated that rule will have no substantial adverse impact on jobs or employment opportunities related to the construction of the statewide wireless network. Rather, by providing that all review and permitting responsibilities will be vested in a single permitting agency, this rule should streamline the construction process, which may have a beneficial impact on jobs and employment opportunities related to the construction of the statewide wireless network.

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## State University of New York

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### EMERGENCY RULE MAKING

#### State Basic Financial Assistance for Operating Expenses of Community Colleges

**I.D. No.** SUN-37-06-00019-E

**Filing No.** 1055

**Filing date:** Aug. 29, 2006

**Effective date:** Aug. 29, 2006

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

**Action taken:** Amendment of section 602.8(c) of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 355(1)(c) and 6304(1)(b); and L. 2006, ch. 53

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

**Specific reasons underlying the finding of necessity:** The State University of New York finds that immediate adoption of amendments to the Code of Standards and Procedure for the Administration and Operation of Community Colleges (the Code) is necessary for the preservation of the general welfare and that compliance with the requirements of subdivision 1 section 202 of the State Administrative Procedure Act would be contrary to the public interest. The 2006-2007 Education, Labor and Social Services Budget Bill (the Budget) requires amendments to the existing funding formula for State financial assistance for operating expenses of community colleges of the State and City Universities of New York. The funding formula is to be developed jointly with the City University of New York, subject to the approval of the Director of the Budget. Although negotiations between the State University, City University and the Division of the Budget were concluded in April 2006, the State University Trustees were unable to take the necessary action to invoke the rule making process until June 27, 2006. Amendments to the Code on an emergency basis for the 2006-2007 college fiscal year are necessary to:

1. provide timely State operating assistance to public community colleges of the State and City Universities of New York;
2. obtain the necessary revenue to maintain essential staffing levels, program quality, and accessibility.

Compliance with the provision of subdivision (1) of section 202(6) of the State Administrative Procedure Act would be contrary to the public interest. The requirements of subdivision (1) of section 202(6) of SAPA would not allow implementation of the State financial assistance provided in the Budget Bill in time for the 2006-2007 college fiscal year.

**Subject:** State basic financial assistance for operating expenses of community colleges under the program of State University of New York and City University of New York.

**Purpose:** To modify existing limitations formula for basic State Financial assistance for operating expenses of community colleges of the State University and City University of New York in order to conform to the provisions of the Education Law and the 2006-2007 Budget Bill.

**Text of emergency rule:** 602.8(c) Basic State financial assistance.

(1) Full opportunity colleges. The basic State financial assistance for community colleges, implementing approved full opportunity programs, shall be the lowest of the following:

- (i) two-fifths (40%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;
- (ii) two-fifths (40%) of the net operating costs of the college, or campus of a multiple campus college; or
- (iii) for the current college fiscal year the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2350] \$2525; and

(b) up to one-half (50%) of rental costs for physical space.

(2) Non-full opportunity colleges. The basic State financial assistance for community colleges not implementing approved full opportunity programs shall be the lowest of the following:

(i) one-third (33%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) one-third (33%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the college fiscal year current, the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$1959] \$2,105; and

(b) up to one-half (50%) of rental cost for physical space.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, a community college or a new campus of a multiple campus community college in the process of formation shall be eligible for basic State financial assistance in the amount of one-third of the net operating budget or one-third of the net operating costs, whichever is the lesser, for those colleges not implementing an approved full opportunity program plan, or two-fifths of the net operating budget or two-fifths of the net operating costs, whichever is the lesser, for those colleges implementing an approved full opportunity program, during the organization year and the first two fiscal years in which students are enrolled.

**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 November 26, 2006.

**Text of emergency rule and any required statements and analyses may be obtained from:** Dona S. Bulluck, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: dona.bulluck@suny.edu

**Regulatory Impact Statement**

This is a technical amendment to implement the provisions of the 2006-2007 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York.

**Regulatory Flexibility Analysis**

This is a technical amendment to implement the provisions of the 2005-2006 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York. It will have no impact on small businesses and local governments.

**Rural Area Flexibility Analysis**

This is a technical amendment to implement the provisions of the 2005-2006 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York. This rule making will have no impact on rural areas or the recordkeeping or other compliance requirements on public or private entities in rural areas.

**Job Impact Statement**

No job impact statement is submitted with this notice because the adoption of this rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This rule making governs the financing of community colleges operating under the program of the State University and will not have any adverse impact on the number of jobs or employment opportunities in the state.

**NOTICE OF ADOPTION**

**Traffic and Parking Regulations at SUNY College of Technology at Delhi**

**I.D. No.** SUN-21-06-00001-A

**Filing No.** 1047

**Filing date:** Aug. 29, 2006

**Effective date:** Sept. 13, 2006

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

**Action taken:** Amendment of sections 574.1 and 574.5 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 360(1)

**Subject:** Amendments to the traffic and parking regulations at the State University of New York College of Technology at Delhi.

**Purpose:** To increase the allowable amount of parking fines and to bring the traffic and parking regulations into conformity with L. 2005, ch. 699, by authorizing the exemption of veterans attending the State University of New York College of Technology at Delhi from parking and registration fees.

**Text or summary was published** in the notice of proposed rule making, I.D. No. SUN-21-06-00001-P, Issue of May 24, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Marti Anne Ellermann, Senior Counsel, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: Marti.Ellermann@SUNY.edu

**Assessment of Public Comment**

The agency received no public comment.

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

**Traffic and Parking Regulations of the State University College at Old Westbury**

**I.D. No.** SUN-37-06-00002-P

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

**Proposed action:** Amendment of section 581.1 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 360(1)

**Subject:** Proposed amendments to the traffic and parking regulations of the State University College at Old Westbury.

**Purpose:** To bring the traffic and parking regulations into conformity with L. 2005, ch. 699, by authorizing the exemption of veterans attending the State University College at Old Westbury from parking and registration fees.

**Text of proposed rule:** Section 581.1 is amended by adding a new subdivision (c) to read as follows:

(c) *Veterans.* Any veteran, as defined in section 360 of the New York State Education Law, in attendance as a student at the State University College at Old Westbury shall be exempt from registration and parking fees upon submission by the veteran of a written request for exemption together with written certification by the veteran that such veteran was honorably discharged or released under honorable circumstances from such service.

**Text of proposed rule and any required statements and analyses may be obtained from:** Joel Pierre-Louis, Associate Counsel, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: JoelPierre-Louis@suny.edu

**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: Education Law § 360(1) authorizes the State University Trustees to make rules and regulations relating to parking, vehicular and pedestrian traffic and safety on the State-operated campuses of the State University of New York.

2. Legislative objectives: The present measure will bring the parking and traffic regulations applicable to the State University College at Old Westbury into compliance with Chapter 699 of the Laws of 2005 by authorizing SUNY/Old Westbury to exempt veterans attending the College from applicable parking and registration fees and also will increase allowable fines for violation of parking regulations.

3. Needs and benefits: New York State Education Law was amended to authorize exemption of veterans from State University parking and registration fees. This amendment is needed to conform the SUNY/Old Westbury parking and traffic regulations to the change in law. Additionally, parking fine thresholds applicable to violation of campus parking regulations have not been changed for a number of years. In the meantime, many municipalities have increased parking fines for violation of local parking ordinances, particularly for violation of handicapped parking rules. The increase proposed here will allow SUNY/Old Westbury to have their fines increased to levels comparable to local municipal rules, thus strengthening incentives to avoid violation of campus parking rules.

4. Costs: Veterans enrolled at State-operated campuses of the State University will have exemptions from parking and registration fees and thus incur savings. Parking violators will experience higher fines.

5. Local government mandates: None.

6. Paperwork: Veterans will have to submit a written request for exemption and certify that they were honorably discharged.

7. Duplication: None.

8. Alternatives: There are no viable alternatives.

9. Federal standards: There are no related Federal standards.

10. Compliance schedule: SUNY/Old Westbury will notify those affected as soon as the rule is effective. Compliance should be immediate.

**Regulatory Flexibility Analysis**

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments. The proposal addresses internal parking and traffic regulations on the campus of the State University College at Old Westbury.

**Rural Area Flexibility Analysis**

No rural area flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas. The proposal addresses internal

parking and traffic regulations on the campus of the State University College at Old Westbury.

**Job Impact Statement**

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses internal parking and traffic regulations on the campus of the State University College at Old Westbury.

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

**Traffic and Parking Regulations of the State University of New York College of Agriculture and Technology at Cobleskill**

**I.D. No.** SUN-37-06-00003-P

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

**Proposed action:** Amendment of Part 573 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 360(1)

**Subject:** Proposed amendments to the traffic and parking regulations of the State University of New York College of Agriculture and Technology at Cobleskill.

**Purpose:** To increase the allowable amount for parking fines; name previously unnamed roads; change configuration of roadways to help traffic flow and congestion; and bring the traffic and parking regulations into conformity with L. 2005, ch. 699, by authorizing the exemption of veterans from parking and registration fees attending the State University of New York College of Agriculture and Technology at Cobleskill.

**Substance of proposed rule (Full text is not posted on a State website):**

The operation of a motor vehicle on the property of the State University of New York College of Agriculture and Technology at Cobleskill is covered under Section 360 of the Education Law which authorizes the State University to adopt and make applicable to its campuses any and all provisions of the Vehicle and Traffic Law. The regulations have been developed and are enforced to provide for the safety and convenience of students, faculty, employees and visitors upon the State University of New York College of Agriculture and Technology at Cobleskill campus. The proposed rule making makes certain technical changes and amends existing regulations in regard to fines, fees and roadway traffic.

**Text of proposed rule and any required statements and analyses may be obtained from:**

Wendy Kowalczyk, Associate Counsel, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: WendyKowalczyk@SUNY.edu

**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: Education Law § 360(1) authorizes the State University Trustees to make rules and regulations relating to parking, vehicular and pedestrian traffic and safety on the State-operated campuses of the State University of New York.

2. Legislative objectives: The present measure will bring the parking and traffic regulations applicable to the State University of New York College of Agriculture and Technology at Cobleskill into compliance with Chapter 699 of the Laws of 2005 by authorizing SUNY/Cobleskill to exempt veterans attending the College from applicable parking and registration fees. It also makes certain technical changes and amends existing regulations in regard to fines, fees and roadway traffic. It adds additional STOP and YIELD sign intersections; redesignates certain locations to conform with current street and building names; reduces an existing speed limit; increases the time limit to pay parking fines from five to ten days; provides for referral to the NYS Commissioner of Motor Vehicles in cases where a driver has 3 or more unanswered parking complaints in an 18 month period; and adds additional designated parking areas for students, faculty and staff.

3. Needs and benefits: New York State Education Law was amended to authorize exemption of veterans from State University parking and registration fees. This amendment is needed to conform the SUNY/Cobleskill parking and traffic regulations to the change in law. Additionally, parking fine thresholds applicable to violation of campus parking regulations have not been changed for a number of years. In the meantime, many municipalities have increased parking fines for violation of local parking ordinances, particularly for violation of handicapped parking rules. The increase pro-

posed here will allow SUNY/Cobleskill to have their fines increased to levels comparable to local municipal rules, thus strengthening incentives to avoid violation of campus parking rules.

4. Costs: Veterans enrolled at State-operated campuses of the State University will have exemptions from parking and registration fees and thus incur savings. Parking violators will experience higher fines.

5. Local government mandates: None.

6. Paperwork: Veterans will have to submit a written request for exemption and certify that they were honorably discharged.

7. Duplication: None.

8. Alternatives: There are no viable alternatives.

9. Federal standards: There are no related Federal standards.

10. Compliance schedule: SUNY/Cobleskill will notify those affected as soon as the rule is effective. Compliance should be immediate.

**Regulatory Flexibility Analysis**

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College of Agriculture and Technology at Cobleskill.

**Rural Area Flexibility Analysis**

No rural area flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College of Agriculture and Technology at Cobleskill.

**Job Impact Statement**

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College of Agriculture and Technology at Cobleskill.

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## Office for Technology

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

**State Agency Internet Posting of Application Forms**

**I.D. No.** OFT-37-06-00005-P

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

**Proposed action:** Addition of Part 552 to Title 9 NYCRR.

**Statutory authority:** Executive Law, section 164-d; State Technology Law, section 103

**Subject:** State agency internet posting of application forms.

**Purpose:** To establish a process for State agencies to use in prioritizing application forms to be made available on the internet and in establishing the timing for posting such forms on the internet.

**Text of proposed rule:** A new Part 552 is added to read as follows:

**PART 552**

**STATE AGENCY INTERNET POSTING OF APPLICATION FORMS**

*Section 552.1 Purpose, Intent, and Applicability.*

*Section 164-d of the Executive Law provides that the state and every state agency, department, bureau, board, authority, office, commission, or any other instrumentality of the state shall make those various application forms developed and distributed by such agency or instrumentality for public use that are readily convertible to Internet form and that are intended to be commonly used by the general public available on the Internet. Section 164-d requires the New York State Office for Technology (OFT), in consultation with the Governor's Office of Regulatory Reform (GORR), to promulgate rules and regulations to implement the statute. The purpose of this Part is to establish a process for the entities that are subject to section 164-d to use in prioritizing the application forms to be made*

available on the Internet and establishing the timing for making such application forms available on the Internet.

**Section 552.2 Definitions.**

For the purposes of this Part, the terms below have the following meanings:

(a) "Applicant" means a person who makes a formal request to a state agency for an approval, authorization, certification, consent, decision, determination, license, order, permit, registration, or other administrative action.

(b) "Application forms" means those documents provided by a state agency for completion by an applicant to such state agency.

(c) "General public" means all persons and not limited or restricted to a particular class of persons.

(d) "Internet" means the Internet as defined by subdivision 3 of section 202 of the State Technology Law.

(e) "State agency" means every state agency, department, bureau, board, authority, office, commission, or any other instrumentality of the state.

(f) "State agency website" means state agency website as defined by subdivision 7 of section 202 of the State Technology Law.

**Section 552.3 Inventory of and Prioritization Process for Application Forms.**

(a) Within one hundred eighty (180) days from the effective date of this regulation each state agency shall: (i) review and inventory its existing application forms that are intended to be commonly used by the general public; (ii) determine which of these application forms, if any, have already been made available to the general public on the Internet and which have not; and (iii) establish a priority list for making available to the general public on the Internet those application forms that have not previously been made so available.

(b) With respect to those application forms that the inventory shows have not been made available to the general public on the Internet, each state agency shall prioritize the order and estimated timeframe in which such application forms will be made available on the Internet. In establishing a priority list for making application forms available on the Internet, the state agency may consider, among other things: (i) the annual demand for a particular application form among the general public; (ii) the intended scope of the distribution of a particular application form; and (iii) whether a particular application form is readily convertible to Internet form. In assessing whether an application form is "readily convertible to Internet form," the state agency may consider, among other things, the characteristics of an application form, including, but not limited to, graphic content, security features, and other technical issues, including the need to comply with laws, policies, and procedures in regard to the accessibility of Internet information and applications, that may make conversion to Internet form more difficult.

(c) The inventory prepared by the state agency pursuant to subdivision (a)(i) of this section and the priority list established by the state agency pursuant to subdivision (a)(iii) of this section shall be posted on a state agency website. The state agency website on which the inventory and priority list are posted shall include a conspicuous and direct link to the inventory and the priority list. The inventory and the priority list shall also be filed with GORR in a format prescribed by GORR.

(d) The state agency's inventory and priority list shall be updated when any new or redesigned application form that is intended to be commonly used by the general public is developed and distributed by the state agency. Such updated inventory and priority list shall be posted on a state agency website and filed with GORR, in the format prescribed by GORR.

(e) In developing a new application form or updating an existing application form that is intended to be commonly used by the general public, a state agency shall, whenever practicable and reasonable, do so in a manner that facilitates making such application form available on the Internet at the time it is initially made available to the general public. If the state agency is unable to make a newly developed or updated application form available on the Internet at the time it is initially made available to the general public, the state agency shall, as provided in subdivision (d) of this section, add such new or updated application form to the state agency's inventory and priority list.

**Section 552.4 Posting Process.**

(a) Upon completion of the inventory and priority list required by subdivision (a) of Section 552.3 above, a state agency shall, consistent with the priority list and as expeditiously as possible, begin the process of posting application forms on a state agency website. The state agency website on which the application forms are posted shall include a conspicuous and direct link to the application forms. The direct link to the applica-

tion forms may be combined with the link to the inventory and the priority list required by subdivision (c) of section 552.3.

(b) In posting application forms on the Internet, state agencies shall comply with laws, policies and procedures in regard to the accessibility of Internet information and applications.

**Section 552.5 Miscellaneous Provisions.**

(a) OFT, in consultation with GORR, is responsible for administering this Part. OFT and GORR may request and shall receive such assistance and information from state agencies as may be necessary or convenient to properly administer this Part.

(b) Nothing in section 164-d of the Executive Law or this Part shall require that a state agency accept or process application forms submitted through the Internet, or post application forms including user-specific data on the Internet.

**Text of proposed rule and any required statements and analyses may be obtained from:** Thomas Smith, Office for Technology, State Capitol ESP, P.O. Box 2062, Albany, NY 12220-0062, (518) 473-5115, e-mail: thomas.smith@oft.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: Section 164-d of the Executive Law requires the Office for Technology (OFT), in consultation with the Governor's Office of Regulatory Reform (GORR), to promulgate rules and regulations to implement the provisions of this section of the Executive Law. Additionally, Section 103 (11) of the State Technology Law authorizes OFT to adopt rules and regulations necessary or convenient to the performance of OFT's functions, powers and duties.

2. Legislative objectives: Section 164-d of the Executive Law was enacted to allow citizens to access certain state application forms on the Internet. To this end, section 164-d requires state agencies to make available on the Internet those application forms that are: (i) intended to be commonly used by the general public; and (ii) readily convertible to the Internet format. This section also provides that OFT, in consultation with GORE, shall promulgate regulations to implement the provisions of section 164-d. Section 164-d requires that such regulations shall at least provide for the prioritization and timing for making application forms available on the Internet. This proposed regulation achieves this Legislative objective by setting forth processes for state agencies to use in inventorying existing application forms and in prioritizing the order and timing in which application forms that are intended to be commonly used by the general public, and that are readily convertible to the Internet format, will be made available on the Internet.

3. Needs and benefits: The purpose of this proposed regulation is to establish processes pursuant to which state agencies will: (i) review and inventory existing state agency application forms intended to be commonly used by the general public; (ii) determine which of those application forms are already available to the general public on the Internet; and (iii) establish a publicly accessible priority list of the order and estimated timeframes in which application forms that are not currently available on the Internet, and which are readily convertible to Internet form, will be made available on the Internet. Such processes are necessary to achieve the stated objective of providing the general public access to commonly used state agency application forms on the Internet. The processes established also provide state agencies with adequate time in which to review and inventory their existing application forms that are intended to be commonly used by the general public, and with a structure for prioritizing the order and timeframe in which any such application forms that have not previously been made available on the Internet will be posted on the Internet. This structure includes certain factors that a state agency may take into consideration in establishing its priority list of application forms to be made available on the Internet. Furthermore, this proposed regulation recognizes that, where practicable and reasonable, state agencies shall develop new application forms that are intended to be commonly used by the general public, or update existing application forms, in a manner that facilitates making such forms available on the Internet. The proposed regulation also recognizes the need for state agencies to comply with existing laws, policies, and procedures regarding the accessibility of information and applications that are posted on the Internet by state agencies. As a consequence of the operation of the proposed regulation, those application forms that are readily convertible to Internet form and are intended to be commonly used by the general public will be made available on the Internet in a timely and orderly fashion.

4. **Costs:** This proposed regulation imposes no costs on citizens or businesses seeking to access commonly used state agency application forms on the Internet. Also, the implementation of this proposed regulation should pose nominal costs for state agencies that are now statutorily required to make commonly used application forms available on the Internet. In consultations with GORR and other state agencies, and from a review of information in OFT's Annual e-Commerce Reports, many state agencies are already making the State's most commonly used application forms available on the Internet. In so doing, state agencies are already mandated by state policies to comply with certain accessibility standards and practices to ensure that state agency web-based Internet information and applications are accessible to persons with disabilities. Additionally, most state agencies currently maintain Internet websites on which such application forms can be posted. The proposed regulation permits those state agencies that do not maintain a website to use another state agency's website for such purposes, therefore, negating the need to create an agency-specific website with its related costs. Furthermore, the proposed regulation does not require the immediate posting of all application forms that fall within the scope of section 164-d, but instead allows state agencies 180 days from the effective date of the regulation to inventory existing application forms and then establish the order and estimated timeframe for making available on the Internet only those application forms that are readily convertible to the Internet format and are intended to be commonly used by the general public. Finally, the Law and proposed regulation specifically provide that state agencies are not required to accept or process application forms submitted through the Internet, which, if required, could prove more costly to implement.

5. **Local government mandates:** The proposed regulation imposes no program, service, duty or responsibility upon any local government entity, since the provisions of section 164-d only apply to state agencies.

6. **Paperwork:** The proposed regulation requires a state agency to post on a state agency website its inventory of existing application forms and the priority list it establishes for the order and timing of making such forms available on the Internet. A state agency must also file its inventory and priority list with GORR in a format prescribed by GORR. Any updated inventory and priority list must also be posted on a state agency website and filed with GORR. In this fashion, a state agency's inventory and priority list will be made publicly available, thus informing citizens of those application forms intended to be commonly used by the general public that are already available on the Internet and of the timeframes in which other application forms that are readily convertible to Internet format are expected to be made so available. Filing the initial and updated inventory and priority lists with GORR will: (1) enable OFT, in consultation with GORR, to assess compliance with the statutory requirement that certain application forms be made available via the Internet; (2) support the continuing development of the State's Online Permit Assistance and Licensing (OPAL) initiative, which provides a single portal for an individual to obtain information about and apply for permits and other approvals required to start or expand a business; and (3) enhance the access to government services (Government Without Walls) through electronic media.

7. **Duplication:** There are no state or federal government rules or legal requirements that duplicate, overlap or conflict with this proposed regulation.

8. **Alternatives:** There were no significant alternatives to this proposed rulemaking to be considered by OFT, since section 164-d mandates that OFT, in consultation with GORR, promulgate rules and regulations to implement its provisions.

9. **Federal standards:** There are no federal government standards that address the posting of state agency application forms on the Internet. Therefore, this proposed regulation does not exceed any minimum standards imposed by the federal government.

10. **Compliance schedule:** The proposed regulation provides that each state agency will have 180 days from the effective date of the regulation to review and inventory its existing application forms, to determine which of those application forms, if any, have already been made available to the general public on the Internet, and to establish a priority list for making available on the Internet those application forms that are readily convertible to Internet format and are intended to be commonly used by the general public which have not yet been made available on the Internet. Once a state agency has completed its inventory and priority list, the proposed regulation requires that the state agency shall, consistent with the priority list and as expeditiously as possible, begin the process of posting application forms on a state agency website.

#### **Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis (RFA) is not attached because this proposed rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This finding is based upon the fact that this proposed rule implements a law that requires state agencies, and not businesses or local governments, to make certain application forms available to the general public on the Internet. This proposed rule imposes no economic impact or other requirements on small businesses, local governments or any members of the general public who access these application forms through the Internet.

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

A Rural Area Flexibility Analysis (RAFA) is not attached because this proposed rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This finding is based upon the fact that this proposed rule implements a law that requires state agencies, and not public or private entities in rural areas, to make certain application forms available to the general public on the Internet. This proposed rule does not adversely impact or impose requirements on any other entities or on any members of the general public who access these application forms through the Internet.

#### **Job Impact Statement**

A Job Impact Statement (JIS) is not attached because this proposed rule will not have a substantial adverse impact on jobs and employment opportunities as apparent from the rule's nature and purpose. This finding is based upon the fact that this proposed rule implements a law that requires state agencies to make certain application forms available to the general public on the Internet. Making such application forms available on the Internet should facilitate and expedite transactions with state agencies, thus improving the general public's ability to do business with the state. Consequently, this proposed rule should have a positive impact on jobs and employment opportunities in the state.

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## Office of Temporary and Disability Assistance

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

#### **Congregate Care Level 3 Enhanced Residential Care**

**I.D. No.** TDA-37-06-00011-P

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

**Proposed action:** Amendment of section 352.8(b)(4), (i), (ii), (5), (c)(1)(ii) and (d) and addition of section 352.8(b)(4)(iii) to Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 131(1), 131-o and 209

**Subject:** Congregate care level 3 enhanced residential care.

**Purpose:** To authorize the provision of an allowance for temporary assistance recipients residing on congregate care level 3 facilities.

**Text of proposed rule:** Section 352.8(b)(4) is amended to read as follows:

(4) An allowance for each recipient receiving *care in a Level [I or] 1, Level [II care in a] 2 or Level 3* certified congregate care facility [at the rate]. *The allowance is based on the rates* provided for care and maintenance under the Supplemental Security Income program for SSI beneficiaries residing in the same facility, less the amount of any personal needs allowance included in the SSI rate. The facilities included are:

(i) Level [I] 1. Family-type homes certified by the [department] *Office of Children and Family Services* and family care homes certified by the [Department of Mental Hygiene] *Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities*.

(ii) Level [II] 2. [Adult care facilities certified by the department including adult homes, residences for adults and enriched housing programs residential substance abuse treatment programs certified by the Division of Substance Abuse Services and community residences certified by the Department of Mental Hygiene, other than intermediate care facilities or respite care facilities. Community residences certified by the De-

partment of Mental Hygiene must include supervised community residences and supportive community residences certified by the Office of Mental Retardation and Developmental Disabilities; halfway houses, supervised living facilities, supportive living facilities and residential care centers for adults certified by the Office of Mental Health; and community residential facilities certified by the Division of Alcoholism and Alcohol Abuse. Residential substance abuse treatment programs certified by the Division of Substance Abuse Services must be included as Level II facilities effective January 1, 1985, except in the City of New York, where the effective date is July 1, 1984.] *Residences for adults certified by the Department of Health; programs providing intensive residential rehabilitation services, community residential services or supportive living services certified by the Office of Alcoholism and Substance Abuse Services; supportive community residences, supervised community residences and individualized residential alternatives certified by the Office of Mental Retardation and Developmental Disabilities; and apartment treatment, congregate treatment and congregate support facilities certified by the Office of Mental Health. For purposes of this subparagraph, congregate care Level 2 facilities do not include intermediate care facilities or respite care facilities.*

Section 352.8(b)(4)(iii) is added to read as follows:

(iii) *Level 3. Adult homes and enriched housing programs certified by the Department of Health and schools for the mentally retarded certified by the Office of Mental Retardation and Developmental Disabilities.*

Section 352.8(b)(5) is amended to read as follows:

(5) An additional allowance for each [PA] *temporary assistance* applicant/recipient who meets the requirements of section [349.4(c)] *349.4 or section 369.4 (c)* of this Title concerning temporary absences from the home and who is receiving Level [I or] *I*, Level [II] *2 or Level 3* care in a certified congregate care facility listed in paragraph (4) of this subdivision at the [rate] *rates* provided for care and maintenance under the Supplemental Security Income program for SSI beneficiaries residing in the same facility, less the amount of any personal needs allowance included in the SSI rate.

Section 352.8(c)(1)(ii) is amended to read as follows:

(ii) *Congregate care Level [I and] 1, Level [II] 2 and Level 3* [congregate care facilities] at the amount included in the SSI payment level as the personal needs allowance for SSI recipients residing in the particular facility. For recipients of [public] *temporary* assistance who are required to participate in appropriate residential rehabilitation programs pursuant to section 351.2(i) and section 370.2(c)(8)(ii) of this Title, such allowances must be made as restricted payments to the residential programs and must be conditional payments. If a [public] *temporary* assistance recipient required to participate in an appropriate residential rehabilitation program pursuant to section 351.2(i) and section 370.2(c)(8)(ii) of this Title leaves the program prior to completion of the program, any accumulated personal needs allowance which is held by the program on behalf of the recipient must be considered to be an overpayment and must be returned by the program to the social services district which provided the personal needs allowance. The question of whether the recipient has left the program prior to completion will be determined solely by using the guidelines and rules of the program.

Section 352.8(d) is amended to read as follows:

(d) If necessary to retain Level [I or] *I*, Level [II] *2 or Level 3* care in a certified congregate care facility listed in paragraph [(b)(3)] *(b)(4)* of this section for a recipient expected to be in a medical facility for no more than 30 days, the social services district must authorize an allowance sufficient to retain such care. Such allowance must not be paid for more than 30 days.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 N. Pearl St. 16C, Albany, NY 12243-0001, (518) 474-9779, e-mail: Jeanine.Behuniak@otda.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:

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

concerning the public assistance programs and the food stamp program were transferred by Chapter 436 to OTDA.

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

Section 131(1) of the SSL requires social services districts, insofar as funds are available, to provide adequately for those unable to maintain themselves, in accordance with the provisions of the SSL.

Section 45 of Part C of Chapter 58 of the Laws of 2005 amended Section 131-o(1) of the SSL to provide that each individual receiving enhanced residential care and who is receiving additional state benefits while receiving such care is entitled to a monthly personal allowance to be paid out of such benefits.

Section 46 of Part C of Chapter 58 of the Laws of 2005 amended Sections 209(2)(e) and (f) of the SSL to set forth the amount of additional State payments to be paid to individuals receiving enhanced residential care.

Sections 47 and 48 of Part C of Chapter 58 of the Laws of 2005 amended sections 209(3)(d) and (e) of the SSL to reclassify adult homes and enriched housing programs certified by the Department of Health from congregate care level 2 to level 3.

Section 1 of Chapter 25 of the Laws of 2005 amended Section 79 of Part C of Chapter 58 of the Laws of 2005 by making the entitlement to a monthly personal allowance, the amount of additional State payments, and the reclassification of adult homes and enriched housing programs, as set forth above, effective January 1, 2006, instead of April 1, 2005.

##### 2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that the Office establish rules, regulations and policies so that, subject to the availability of funds, adequate provision can be made for those persons unable to provide for themselves and that, whenever possible, such persons be restored to a condition of self-support and self-care.

##### 3. Needs and Benefits:

Effective January 1, 2006, adult homes and enriched housing programs certified by the Department of Health were reclassified from congregate care level 2 to level 3 in accordance with Sections 47 and 48 of Part C of Chapter 58 of the Laws of 2005. These proposed regulations implement the reclassification. Currently, there is no regulatory authority to provide a temporary assistance allowance to pay the cost of care for temporary assistance recipients residing in congregate care level 3 facilities.

The proposed addition of section 352.8(b)(4)(iii) will authorize the payment of a temporary assistance allowance to meet the cost of care for any temporary assistance recipient residing in a congregate care level 3 facility. It is estimated that the reclassification of adult homes and enriched housing programs certified by the Department of Health to congregate care level 3 will affect approximately 350 temporary assistance recipients who currently live in adult homes classified as congregate care level 2.

The proposed amendments to section 352.8(c)(1)(ii) also implement Section 45 of Part C of Chapter 58 of the Laws of 2005 to provide temporary assistance recipients who reside in congregate care level 3 facilities with a monthly allowance for personal needs for clothing and incidentals. Currently, section 352.8(c)(1)(ii) provides for a personal needs allowance for temporary assistance recipients residing in congregate care level 1 and level 2 facilities, but not for congregate care level 3 facilities. Providing a personal needs allowance to temporary assistance recipients in congregate care level 3 facilities is essential to permit those recipients to purchase necessary incidentals and clothing. The inability of temporary assistance recipients to purchase incidentals and clothing may jeopardize their health and safety.

The proposed amendments to section 352.8(b)(5) are necessary to provide an additional allowance to temporary assistance recipients who are temporarily absent from their homes and residing in congregate care level 3 facilities. Section 349.4 defines temporary absence. Currently, section 352.8(b)(5) requires the payment of an additional allowance to persons temporarily absent from their homes who are residing in a congregate care level 1 and 2 facilities, which includes adult homes and enriched housing programs certified by the Department of Health. Since level 2 adult homes and enriched housing programs have been reclassified as level 3 facilities, the additional allowance paid on behalf of the residents of such facilities would be discontinued without regulatory authority to provide the allowance, which may jeopardize the housing of the adult residing in a level 3 facility. This additional allowance should be extended to all temporary

assistance recipients, especially since there are now many families who receive Safety Net Assistance.

The proposed amendments to section 352.8(d) are necessary to require local social services districts to provide an allowance to retain congregate care level 3 care for temporary assistance recipients who are in a medical facility for no more than 30 days. Currently, section 352.8(d) requires this allowance to be paid on behalf of residents of congregate care level 2 adult homes and enriched housing programs certified by the Department of Health. Since level 2 adult homes and enriched housing programs have been reclassified to level 3 facilities, the allowance to retain care would be discontinued without new regulatory authority, which may jeopardize the temporary assistance recipient's opportunity to return to the level 3 facility. A benefit of this proposed regulation is that congregate care facilities will continue to receive allowances for residents receiving temporary assistance while they are temporarily absent from their facilities for needed medical care, ensuring that the facilities are able to retain space for the individuals.

The proposed changes to section 352.8(b)(4) and 352.8(c)(1)(ii) make technical changes to obsolete references or terminology.

#### 4. Costs:

The proposed fiscal impact is determined by multiplying the number of recipients who would be eligible for the allowance (approximately 210 recipients downstate and approximately 140 recipients upstate) by the difference in the proposed benefit level and the current benefit level, multiplied by the corresponding number of months of the calendar year that fall in each State fiscal year. As such, the cost for State fiscal year 2005-2006 is anticipated to be \$100,800; for State fiscal year 2006-2007, \$514,500; and for State fiscal year 2007-2008, \$848,400. Of these amounts, both the State and local share are one half.

#### 5. Local Government Mandates:

The implementation of Sections 45 through 48 of Part C of Chapter 58 of the Laws of 2005 imposed some additional requirements such as the need to rebudget the shelter allowance and the personal needs allowance of temporary assistance recipients residing in congregate care facilities that were reclassified from level 2 to level 3. Also, affected individuals had to be notified of the changes in their benefits. It was anticipated that the majority of the increased workload would take place during the initial changeover of the classifications.

To assist local districts with this initial transition from congregate care level 2 to level 3, OTDA used data provided by the Department of Health to identify all temporary assistance recipients who were residing in congregate care level 2 adult homes and enriched housing facilities. OTDA implemented a mass rebudget computer project that automatically made the appropriate budget changes and provided appropriate notice of the budget changes to temporary assistance recipients who were now residing in congregate care level 3 facilities. A list of individuals who could not be automatically rebudgeted was compiled and given to local district staff via an exception list. The local districts were required to review any cases on the exception list, make appropriate budget changes and provide appropriate notice to the temporary assistance recipients. The use of the computerized mass budget project drastically reduced the amount of time local district staff had to spend rebudgeting this population's benefits and providing notices of the change.

Thus the implementation of sections 45 through 48 of Part C of Chapter 58 of the Laws of 2005 has imposed minimal additional requirements on local departments of social services, and since the initial phase has been completed, there is expected to be no additional workload requirements imposed on the local social services districts by the proposed regulations.

#### 6. Paperwork:

The proposed amendments will not require the development of new forms or impose any new reporting requirements.

#### 7. Duplication:

The proposed amendments do not duplicate, overlap or conflict with any existing State or federal laws or regulations.

#### 8. Alternatives:

The only alternative considered was not to make the proposed changes. This alternative was rejected since the proposed amendments implement sections 45 through 48 of Part C of Chapter 58 of the Laws of 2005 concerning the payment of personal allowances to recipients of enhanced residential care.

#### 9. Federal Standards:

There are no federal standards concerning the payment of allowances to persons receiving enhanced residential care.

#### 10. Compliance Schedule:

Social services districts will be in compliance with the proposed amendments upon their adoption.

### **Regulatory Flexibility Analysis**

#### 1. Effect of Rule:

The proposed amendments will have no effect on small businesses but will have an effect on the 58 social services districts in the State.

#### 2. Compliance Requirements:

The implementation of Chapter 58 of the Laws of 2005 imposed some additional requirements such as the need to rebudget the shelter allowance and the personal needs allowance of temporary assistance recipients residing in congregate care facilities that were reclassified from level 2 to level 3. Also, affected individuals had to be notified of the changes in their benefits. It was anticipated that the majority of the increased workload would take place during the initial changeover of the classifications.

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Thus the implementation of Chapter 58 of the Laws of 2005 has imposed minimal additional requirements on local departments of social services, and since the initial phase has been completed, there is expected to be no additional workload requirements imposed on the local social services districts by the proposed regulations.

#### 3. Professional Services:

Local governments will not need any professional services in order to comply with the proposed amendments.

#### 4. Compliance Costs:

The proposed amendments will not impose any new compliance costs on local governments nor will the proposed amendments require local governments to incur any initial capital costs.

#### 5. Economic and Technological Feasibility:

All local governments have the economic and technological ability to comply with the proposed amendments.

#### 6. Minimizing Adverse Impact:

The proposed amendments will not have an adverse impact on local governments.

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

Several social services districts have been informed of the proposed amendments and they have expressed no objections to them.

### **Rural Area Flexibility Analysis**

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

The proposed amendments will have an effect on the 44 social services districts in rural areas of the State.

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

The proposed amendments will not impose any new reporting or recordkeeping requirements on social services districts in rural areas nor will the proposed amendments require social services districts in rural areas to obtain any professional services in order to implement the amendments.

The implementation of Chapter 58 of the Laws of 2005 imposed some additional requirements such as the need to rebudget the shelter allowance and the personal needs allowance of temporary assistance recipients residing in congregate care facilities that were reclassified from level 2 to level 3. Also, affected individuals had to be notified of the changes in their benefits. It was anticipated that the majority of the increased workload would take place during the initial changeover of the classifications.

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Thus the implementation of Chapter 58 of the Laws of 2005 has imposed minimal additional requirements on local departments of social services, and since the initial phase has been completed, there is expected to be no additional workload requirements imposed on the local social services districts by the proposed regulations.

3. Costs:

The proposed amendments will not require social services districts in rural areas to incur any initial capital costs nor incur any annual costs in order to comply with the amendments.

4. Minimizing adverse impact:

The proposed amendments will not impose any adverse impact on social services districts in rural areas.

5. Rural area participation:

Several social services districts in rural areas have been informed of the proposed amendments and they have not expressed any objections to them.

***Job Impact Statement***

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