

# 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; or EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

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## Department of Agriculture and Markets

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### NOTICE OF ADOPTION

#### Captive Cervids

**I.D. No.** AAM-41-06-00025-A

**Filing No.** 170

**Filing date:** Feb. 9, 2007

**Effective date:** Feb. 28, 2007

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

**Action taken:** Repeal of section 62.8 and addition of Part 68 to Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 18(6), 72 and 74

**Subject:** Captive cervids.

**Purpose:** To prevent the introduction and spread of chronic wasting disease into and within the State.

**Substance of final rule:** Section 62.8 of 1 NYCRR is repealed.

Section 68.1 of 1 NYCRR sets forth definitions for “CWD susceptible cervid,” “CWD exposed cervid,” “CWD positive cervid,” “CWD negative cervid,” “CWD suspect cervid,” “CWD infected zone,” “captive,” “CWD Certified Herd Program,” “Cervid,” “Chronic Wasting Disease,” “Commingling,” “Department,” “Enrollment Date,” “Herd,” “Herd Inventory,” “CWD Herd Plan,” “CWD Herd Status,” “CWD positive herd,” “CWD

Suspect herd,” “Special purpose herd,” “CWD Exposed herd,” “CWD certified herd,” “Official identification,” “CWD Monitored herd,” “Owner,” “Premises,” “CWD Premises plan,” “Quarantine,” “State animal health official,” “Status date,” “Official test,” “USDA/APHIS”, and “Certificate of Veterinary Inspection (CVI)”.

Section 68.2 of 1 NYCRR establishes general health requirements for captive cervids including requirements relating to mandatory reporting, the movement of captive cervids, enforcement, facilities, fencing, herd integrity, sample collection and premises location.

Section 68.3 of 1 NYCRR establishes special provisions for captive cervids susceptible to chronic wasting disease including requirements relating to importation, enrollment in the CWD Herd Certification program, Monitored herd program, licenses and permits issued by the Department of Environmental Conservation, fencing, premises inspection and record-keeping.

Section 68.4 of 1 NYCRR establishes requirements for the CWD Certified Herd program including requirements for captive susceptible cervid operations engaged in breeding and/or the sale or removal of live cervids from the premises for any purposes, the establishment of a CWD herd status, sampling and testing, animal identification, annual physical herd inventory and additions to CWD Certified Herd program herds.

Section 68.5 of 1 NYCRR establishes requirements for CWD Monitored Herds including requirements for special purpose herds consisting of one or more susceptible cervids, sampling and testing, additions to CWD monitored herds, animal identification and permitted movement to an approved CWD slaughter facility.

Section 68.6 of 1 NYCRR establishes requirements for approved susceptible cervid slaughter facilities, including requirements for holding pens, sample retention and holding facilities, susceptible cervid offal disposal plans and inspection.

Section 68.7 of 1 NYCRR establishes requirements for the importation of captive susceptible cervids for immediate slaughter including requirements for source herds, permits, direct movement, samples, waste and slaughter.

Section 68.8 of 1 NYCRR establishes requirements for the management of CWD positive, exposed or suspect herds including premises quarantine, establishment of a herd plan, depopulation, cleaning and disinfection, future land use restrictions, restocking constraints and timeframes, fencing requirements, risk analysis, official herd quarantines, elimination of high-risk cervids within the herd, special fencing requirements and the disposal of carcasses.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in 68.3(g).

**Text of rule and any required statements and analyses may be obtained from:** Dr. John Huntley, DVM, State Veterinarian, Director, Division of Animal Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-3502

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

The nonsubstantive change that was made does not necessitate revisions to the previously published regulatory impact statement, regulatory flexibility analysis for small businesses and local governments, the rural area flexibility analysis or the job impact statement.

#### Assessment of Public Comment

**Public Comment:** Comment was received expressing support of the regulations and the chronic wasting disease program it establishes.

**Agency Response:** The Department agrees with this comment.

Public Comment: Comment was received questioning whether section 68.1(h) of the regulation applies to all permits issued by the Department of Environmental Conservation under Environmental Conservation Law (ECL) § 1105.15.

Agency Response: Section 68.1(h) of the regulation applies to all permits issued under ECL § 1105.15.

Public Comment: Comment was received concerning the length of time between the emergency adoption of the regulations and the opportunity to submit public comment.

Agency Response: The Department published a notice of proposed rule making, notice of hearing and opportunity to submit comments in the State Register after the approval required to do so was received. In the interim it discussed the proposed regulations with representatives of the State's captive cervid industry and with officials of the New York State Department of Environmental Conservation, which also has promulgated regulations concerning chronic wasting disease.

Public Comment: Comment was received questioning the notice of public hearing that was given to those affected by the regulation.

Agency Response: The Department mailed notice of public hearing to the captive cervid farmers known to it and published a notice of proposed rule making in the State Register.

Public Comment: Comment was received indicating that some regulated parties do not understand the regulations and that there are no uniform methods and rules.

Agency Response: The Department has endeavored to draft the regulations using language that clearly sets forth the requirements that regulated parties are required to meet. The Department's Division of Animal Industry will continue to work with captive cervid farmers to help them understand and comply with the regulations. Farms are visited on an annual basis and the regulations that apply to each farm are explained to the deer owner. The regulations have been drafted to comply with proposed federal requirements and to ensure that New York certified herds will be accepted as such by other states and the federal government.

Public Comment: Comment was received indicating that the regulations have had a detrimental effect on the deer industry in New York State.

Agency Response: The Department believes that chronic wasting disease poses a serious threat to the continued viability of the captive cervid industry in New York State. The regulations are designed to prevent the introduction and spread of the disease and to do so in a way that minimizes, to the extent possible, the burden on regulated parties. In doing so, the regulations will help to ensure the continued viability of New York's captive cervid industry.

Public Comment: Comment was received noting that although the rule making indicates that a white-tail deer is worth between fifty and fifteen hundred dollars, the person submitting the comment had paid more than thirty thousand dollars for six animals.

Agency Response: The Department recognizes that individual animals can be worth more than the average prices set forth in the rule making documents.

Public Comment: Comment was received questioning the use of plastic fence in the cost estimate regarding compliance with the fencing requirement of the regulation.

Agency Response: The Department believes that the use of plastic fence provides a reasonable and cost effective means of complying with the fencing requirement. Plastic fence can be used as a visual barrier above woven wire to discourage deer from attempting to jump over the fence.

Public Comment: Comment was received regarding the lack of indemnity for the loss of animals associated with compliance with the regulations and contrasted that with the indemnity provided for tuberculosis.

Agency Response: The indemnity provided under the State and Federal tuberculosis programs is statutory in nature and does not provide indemnity for animals lost during testing.

Public Comment: Comment was received questioning the herd inventory requirements of the regulations.

Agency Response: The Department recognizes the difficulties and expense associated with conducting inventories of captive cervids, but believes that such inventories are an essential component of an effective disease control program.

Public Comment: Comment was received questioning the requirement that breaks in fences be promptly identified and repaired.

Agency Response: The Department believes that maintaining adequate fencing is essential to preventing the escape of captive cervids and the commingling of such cervids with wild deer. The separation of wild and captive deer is an important element of the CWD program implemented by the regulations.

Public Comment: Comment was received questioning exceptions made for scientific and breeding purposes.

Agency Response: The regulations have been drafted to allow reasonable movement of captive cervids in a manner consistent with preventing the introduction and spread of chronic wasting disease.

Public Comment: Comment was received asking that the regulations be revisited if it is determined that deer farms do not harbor chronic wasting disease.

Agency Response: The Department agrees that as more information about chronic wasting disease becomes available the regulations should be reviewed and, if necessary, revised to provide the best protection against the introduction and spread of CWD while minimizing, to the extent possible, the impact on regulated parties.

Public Comment: Comment was received suggesting that there should be no licensing of rehabilitators of animals in New York State.

Agency Response: The rehabilitation of wild animals falls under the jurisdiction of the New York State Department of Environmental Conservation. Certain wild deer, held in captivity for short periods of time, pursuant to DEC licenses have been exempted from the regulations. DEC has a surveillance program for wild deer in New York. The exempted wild deer are considered part of the wild population although temporarily captive and are monitored by DEC.

Public Comment: Comment was received questioning the cost to the State of the testing of animals by veterinarians.

Agency Response: The Department believes that the costs associated with this regulatory program are reasonable given the importance of preventing the introduction and spread of Chronic Wasting Disease within the State.

Public Comment: Comment was received suggesting that information should be available indicating the length of time farmers have been enrolled in the Chronic Wasting Disease Program.

Agency Response: The Department is in the process of evaluating past inventories of farms for purposes of providing their CWD certification status. It is developing a database to facilitate this process.

Public Comment: Comment was received inquiring whether the requirement in the regulations that an official test is a test approved by USDA APHIS and performed by a USDA approved laboratory applies to tests other than that for Chronic Wasting Disease.

Agency Response: This requirement in the regulation applies only to the test for Chronic Wasting Disease. Other tests are governed by the regulations relating to those test.

Public Comment: Comment was received inquiring as to where a listing of USDA approved laboratories could be obtained.

Agency Response: The Department and the USDA can provide a list of laboratories approved by the USDA.

Public Comment: Comment was received asking what additional testing is available in the event of a false positive is detected.

Agency Response: In the case of any positive, all relevant samples are retested at the National Veterinary Services Laboratory at Ames, Iowa which is the national reference laboratory for all transmissible spongiform encephalities.

Public Comment: Comment was received questioning the requirement that records relating to purchases, sales, inter-state shipments, escaped cervids and deaths be kept for at least seventy-two months.

Agency Response: The keeping of these records is necessary in order to do trace backs and trace forwards in the event Chronic Wasting Disease is detected in a New York State captive cervid herd.

Public Comment: Comment was received suggesting that the testing of all animals that die a natural death should not be required.

Agency Response: The Department believes that the testing of captive cervids that die a natural death is an important component of a program to detect Chronic Wasting Disease.

Public Comment: Comment was received as to whether the identification second tag required by the regulations can be affixed at the time of the next annual inventory.

Agency Response: At each inventory, an animal must be identified with two tags. If an animal loses a tag, it does not have to be replaced until the next inventory or until the animal leaves the premises, whichever is earlier. The purpose of the second tag requirement is to avoid having to retag the animal immediately after it loses a tag.

Public Comment: Comment was received as to whether samples from a decomposed deer are appropriate Chronic Wasting Disease test samples.

Agency Response: An owner is required to notify the Department of the death of any susceptible animal over 16 months of age. The length of time after death that samples remain suitable for testing depends on envi-

ronmental conditions. The Department and the laboratory will ascertain which samples remain suitable for testing.

**Public Comment:** Comment was received questioning whether the sixteen month requirement for the testing of susceptible cervids that die natural deaths is based on that age as the youngest age an animal has tested positive for Chronic Wasting Disease.

**Agency Response:** The longer that an animal has Chronic Wasting Disease the more likely it will test positive for the disease. Although the disease has been detected in younger animals, the sixteen month requirement was established several years ago as the most productive age at which to detect the disease.

**Public Comment:** Comment was received questioning the requirement that ten percent or thirty animals in special purpose herds must be tested.

**Agency Response:** The Department believes that the testing is necessary to detect Chronic Wasting Disease in New York State's captive cervid population. The testing protocol has been designed to provide a reasonable probability of detecting the disease without unduly disrupting captive cervid operations.

**Public Comment:** Comment was received indicating that it is an undue burden to prohibit, as of July 14, 2007, the sale of animals that do not have four year status.

**Agency Response:** The certification program was established in 2004. Herds without prior status that complied with the program achieved first year status that year, second year status in 2005, third year status in 2006 and fourth year status in 2007.

**Public Comment:** Comment was received indicating that the quarantining of land and animals in a containment area resulting from the detection of Chronic Wasting Disease places an undue constraint on farmers.

**Agency Response:** The Department believes that the quarantining of premises and animals in an area in which Chronic Wasting Disease has been detected is necessary in order to prevent the spread of Chronic Wasting Disease in the event of an outbreak.

**Public Comment:** Comment was received questioning whether Chronic Wasting Disease poses a serious enough threat to warrant the imposition of special requirements, such as additional fences, in the event of a Chronic Wasting Disease outbreak.

**Agency Response:** The Department believes that Chronic Wasting Disease poses a sufficient threat to the captive cervid industry, as well as to the wild white tail deer population, to warrant the preventative measures contained in the regulations.

**Public Comment:** Comment was received questioning the prohibition against the sale of captive cervid carcasses until they have tested negative for Chronic Wasting Disease.

**Agency Response:** The Department believes that it is important to ascertain the Chronic Wasting Disease status of susceptible captive cervids that have been sampled and tested before the carcasses of such animals are sold or donated.

**Public Comment:** Comment was received suggesting that to conform with USDA/APHIS testing protocol the term "not detected" be used rather than "not detected or negative" in referring to test results in which Chronic Wasting Disease is not detected.

**Agency Response:** The Department has concluded that since "negative" means "not detected" for purposes of this regulation, it is appropriate to use the phrase "not detected or negative".

**Public Comment:** Comment was received suggesting that a tonsil biopsy be used to detect Chronic Wasting Disease in place of the testing protocol provided for in the regulations.

**Agency Response:** The testing protocol provided for in the regulations is the protocol currently approved by the federal government to detect Chronic Wasting Disease. The tonsil biopsy is currently being evaluated on an experimental basis.

**Public Comment:** Comment was received suggesting that the cost of handling captive cervids will be much more than the \$250.00 stated.

**Agency Response:** The cost estimates given are averages. The labor costs associated with handling captive cervids will vary depending upon the number of deer, how much they are accustomed to human contact and the design and construction of handling facilities.

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## Banking Department

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### NOTICE OF ADOPTION

#### Licensed Check Cashers

**I.D. No.** BNK-47-06-00009-A

**Filing No.** 172

**Filing date:** Feb. 12, 2007

**Effective date:** Feb. 28, 2007

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

**Action taken:** Amendment of section 400.5(a) of Title 3 NYCRR.

**Statutory authority:** Banking Law, section 371

**Subject:** Permissible banking institutions with which licensed check cashers may maintain deposit accounts.

**Purpose:** To permit licensed check cashers to maintain bank accounts with banking institutions or their branches located inside or outside this State.

**Text or summary was published** in the notice of proposed rule making, I.D. No. BNK-47-06-00009-P, Issue of November 22, 2006.

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

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

#### Assessment of Public Comment

The agency received no public comment.

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## Department of Civil Service

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

#### Supplemental Military Leave Benefits

**I.D. No.** CVS-09-07-00002-P

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

**Proposed action:** This is a consensus rule making to amend sections 21.15 and 28-1.17 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Supplemental military leave benefits.

**Purpose:** To amend the attendance rules for employees in New York State departments and institutions to extend the availability of a single grant of supplemental military leave with pay, military leave at reduced pay, and a grant of training leave at reduced pay, through Dec. 31, 2007.

**Substance of proposed rule (Full text is not posted on a State website):**

The proposed rule amends sections 21.15 and 28-1.17 of the Attendance Rules for Employees in New York State Departments and Institutions to continue the availability of the single grant of supplemental military leave with pay and further leave at reduced pay through December 31, 2007, and to provide for separate grants of the greater of 22 working days or 30 calendar days of training leave at reduced pay during calendar year 2007. Union represented employees already receive these benefits pursuant to memoranda of understanding (MOUs) negotiated with the Governor's Office of Employee Relations (GOER). The proposed rule merely amends section 21.15 of the Attendance Rules consistent with the current MOUs, and amends section 28-1.17 to extend equivalent benefits to employees serving in positions designated managerial or confidential (m/c).

Under current statute, section 242 of the New York State Military Law provides that public officers and employees who are members of the organized militia or any reserve force or reserve component of the armed forces of the United States may receive the greater of 22 working days or 30 calendar days of leave with pay to perform ordered military duty in the

service of New York State or the United States during each calendar year or any continuous period of absence.

Following the events of September 11, 2001, certain State employees were ordered to extended active military duty, or frequent periods of intermittent active military duty. These employees faced the loss of State salary, with attendant loss of benefits for their dependents, upon exhaustion of the annual grant of Military Law paid leave. Accordingly, supplemental military leave, leave at reduced pay and training leave at reduced pay were made available to such employees pursuant to MOUs negotiated with the employee unions. Corresponding amendments to the Attendance Rules were adopted extending equivalent military leave benefits to employees in m/c designated positions. While these benefits are intended to expire upon a date certain, the benefits described herein have been repeatedly renewed in the wake of the continuing war on terror, including homeland security activities, and the armed conflicts in Afghanistan and Iraq.

With respect to supplemental military leave, eligible State employees federally ordered, or ordered by the Governor, to active military duty (other than for training) in response to the war on terror receive a single, non-renewable grant of the greater of 22 working days or 30 calendar days of supplemental military leave with full pay.

With respect to military leave at reduced pay, upon exhaustion of the military leave benefit conferred by the Military Law, and the single grant of supplemental military leave with pay, and any available accruals (other than sick leave) which an employee elects to use, employees who continue to perform qualifying military duty are eligible to receive military leave at reduced pay. Compensation for such leave is based upon the employee's regular State salary as of his/her last day in full pay status (defined as base pay, plus location pay, plus geographic differential) reduced by military pay (defined as base pay, plus food and housing allowances) received from the United States or New York State for military service, if the former exceeded the latter. While in leave at reduced pay status, employees are eligible to receive leave days due upon his/her personal leave anniversary if such anniversary date falls during a period of military leave at reduced pay, and can accumulate biweekly vacation and sick leave credits for any pay period in which they remain in full pay status for at least seven out of ten days (or a proportionate number of days for employees with work weeks of less than 10 days per bi-weekly pay period.) These leave benefits are available even for employees who do not receive supplemental pay because their military salaries (as defined) exceed their regular State pay.

With respect to training leave at reduced pay, many employees ordered to military duty in response to the war on terror also continue to perform other required military service unrelated to the war on terror. To support employees performing other military duty, including mandatory summer and weekend training and other activation, a new category of leave was established, entitled "training leave at reduced pay." Eligible employees receive the greater of 22 work days or 30 calendar days of training leave at reduced pay following qualifying military duty in response to the war on terror, and after depleting the annual Military Law grant of leave with pay and any leave credits (other than sick leave) that they elect to use. Training leave at reduced pay may then be used for any ordered military duty during the calendar year that is not related to the war on terror. Employees who have already utilized leave at reduced pay receive the same compensation for any periods of training leave at reduced pay. Employees who have not used leave at reduced pay prior to their initial use of training leave at reduced pay are paid according to the employee's regular State salary as of his or her last day in full pay status reduced by military pay received from the United States or New York State for military service, if the former exceeds the latter. Employees on training leave at reduced pay retain the same leave accrual benefits as apply to leave at reduced pay.

The proposed rule extends the availability of supplemental military leave with pay, leave at reduced pay and training leave at reduced pay through December 31, 2007. Employees must establish eligibility for supplemental military leave (provided they have not already depleted the single grant of such leave), leave at reduced pay and training leave at reduced pay during 2007 by performing qualifying military service.

Employees on leave at reduced pay or training leave at reduced pay on January 1, 2007, have their rate of pay calculated from their base State pay as of January 1, 2007, reduced by the military pay rate applied to their most recent period in either reduced pay category prior to 2007. For employees who have used leave at reduced pay or training leave at reduced pay prior to year 2007, their pay for either type of reduced pay leave at point between January 1, 2007 and December 31, 2007, will be calculated from their base State pay as of their last day in full pay status after January 1, 2007, prior to their initial use of leave of reduced pay or training leave at

reduced pay, offset by the rate of military pay from their most recent period of reduced pay leave, prior to 2007. Employees whose initial use of either reduced pay leave category occurs during 2007 will have their pay rate determined by their base State pay on their last day of full pay status, minus military pay. For all employees receiving leave at reduced pay or training leave at reduced pay in 2007, the initial pay calculation will apply to all subsequent periods of reduced pay leave.

The proposed amendment provides that in no event shall supplemental military leave, leave at reduced pay or training leave at reduced pay be granted for military service performed after December 31, 2007, nor shall such leaves be available to employees who have voluntarily separated from State service or who are terminated for cause.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Brian S. Reichenbach, Department of Civil Service, Albany, NY 12239, (518) 457-3177, e-mail: brian.reichenbach@cs.state.ny.us

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

#### **Consensus Rule Making Determination**

Section 6(1) of the Civil Service Law authorizes the State Civil Service Commission to prescribe and amend suitable rules and regulations concerning leaves of absence for employees in the Classified Service of the State.

Following September 11, 2001, certain State employees were federally ordered, or ordered by the Governor, to active military duty. The New York State Military Law provides for the greater of 22 working days or 30 calendar days of military leave at full (State) pay for ordered service during each calendar year or continuous period of absence. Employees ordered to prolonged active duty, or repeatedly ordered to intermittent periods of active duty, faced exhaustion of the Military Law leave with pay benefit. Further periods of military service would then subject these employees to economic hardship from the loss of their regular State salaries and deprive their dependents of needed benefits derived from State employment.

To support State employees called to military duty after September 11, 2001, the Governor's Office of Employee Relations (GOER) executed memoranda of understanding (MOUs) with the employee unions to provide for a supplemental grant of military leave with pay and leave at reduced pay. Subsequent MOUs established a new benefit entitled training leave at reduced pay. These military leave benefits have been repeatedly renewed in the wake of the ongoing war on terrorism, including homeland security activities and military actions in Afghanistan and Iraq.

Upon depletion of the Military Law paid leave benefit, employees federally ordered, or ordered by the Governor, to active military duty in response to the war on terror receive a single grant of the greater of 22 work days or 30 calendar days of military leave with pay. Employees who continue to perform active duty in response to the war on terror and have exhausted their paid Military Law leave and supplemental military leave with pay, and any available leave credits (other than sick leave), which they elect to use, become eligible for leave at reduced pay. Leave at reduced pay provides eligible employees with the difference between their regular State salaries (defined as base pay, plus location pay, plus geographic differential) and their pay for military service (defined as base pay plus food and housing allowances), if the former exceeds the latter. Individuals in leave at reduced pay status also retain certain other leave benefits, even if they do not receive additional salary.

Members of the Reserves and National Guard may also continue to perform duty unrelated to the war on terror, including mandatory weekend and summer training or other activation. Following any military service related to the war on terror, and exhaustion of the annual Military Law paid leave benefit, plus any available leave credits (other than sick leave) that an employee elects to use, eligible employees can use up to 22 work days or 30 calendar days of training leave at reduced pay for any ordered military service that is not in response to the war on terror. Salary computations for training leave at reduced pay are substantially derived from the calculations for leave at reduced pay.

The Governor's Office of Employee Relations has executed new MOUs with the Classified Service employee unions extending the availability of the single grant of supplemental military leave with pay and leave at reduced pay, and training leave at reduced pay through December 31, 2007. The State Civil Service Commission shall amend the Attendance Rules in accordance with the MOUs and extend equivalent benefits to employees serving in m/c designated positions.

No person or entity is likely to object to the rule as written, because it conforms the Attendance Rules to the current, approved MOUs negotiated with the employee unions and provides equivalent benefits to employees serving in m/c positions. Cost estimates are expected to remain consistent with the \$2-5 million per annum cost estimates prepared before prior adoptions of the military leave benefits described herein. These cost projections include both the anticipated full and partial State salary payments for employees on all categories of additional military leave and the cost of any replacement staffing for mission-critical State positions. Most eligible employees are expected to have already utilized the sole grant of supplemental military leave at full pay, so direct leave costs for calendar year 2007 may be slightly lower than projected. Estimates cannot anticipate sudden changes in global conditions or homeland security needs. No new compliance costs or implementation difficulties are associated with the extension of the subject benefits.

The Civil Service Commission received no public comments after publication of the amendments to the Attendance Rules establishing or re-authorizing the benefits now put forward for renewal. Previous re-adoptions of the proposed amendments have been proposed and adopted as consensus rules. As no person is likely to object to the rule as written, the proposed rule is advanced as a consensus rule pursuant to State Administrative Procedure Act (SAPA) § 202(1)(b)(i).

**Job Impact Statement**

By modifying Title 4 of the NYCRR to extend the availability of supplemental military leave, leave at reduced pay and training leave at reduced pay for eligible employees subject to the Attendance Rules for Employees in New York State Departments and Institutions, these rules will positively impact jobs or employment opportunities for eligible employees, as set forth in section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). Therefore, a Job Impact Statement (JIS) is not required by section 201-a of such Act.

|             |             |                              |
|-------------|-------------|------------------------------|
| \$ 5,400.00 | \$ 6,000.00 | State senate primary         |
|             |             | Statewide primary minimum    |
|             |             | NYC citywide primary minimum |
| \$16,200.00 | \$18,100.00 | Statewide primary maximum    |
|             |             | NYC citywide primary minimum |
| \$33,900.00 | \$37,800.00 | Statewide general            |
|             |             | NYC citywide general         |
| \$ 8,500.00 | \$ 9,500.00 | State senate general         |
| \$ 3,400.00 | \$ 3,800.00 | State assembly primary       |
|             |             | State assembly general       |
| \$84,400.00 | \$94,200.00 | Party committees             |

**Text of proposed rule and any required statements and analyses may be obtained from:** Patricia L. Murray, Board of Elections, 40 Steuben St., Albany, NY 12207, (518) 474-6367, e-mail: pmurray@elections.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 rule implements a non-discretionary statutory requirement. For that reason, we do not believe that anyone will object to this rulemaking.

**Job Impact Statement**

This rule will impact neither the creation nor the diminution of employment opportunities in New York State.

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

**Creation and Maintenance of Statewide Voter Registration List**

**I.D. No.** SBE-09-07-00003-P

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

**Proposed action:** This is a consensus rule making to amend Part 6217 of Title 9 NYCRR.

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

**Subject:** Creation and maintenance of statewide voter registration list.

**Purpose:** To make adjustments in adopted rules so the rules accurately reflect the technical and functional requirements of the system that will house the statewide list.

**Substance of proposed rule (Full text is not posted on a State website):** These regulations are being submitted as a consensus rule based upon the agency's determination that no person is likely to object to the adoption of the rule as written as no person is likely to object to the adoption of the rule.

These regulations make specific, general technical requirements of the database; use more precise language to describe procedures for verifying whether or not a voter has moved between counties; and, in language that more accurately reflects the statute, defines the categories of voter status that will be retained by the statewide database.

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

These regulations are being submitted as a consensus rule based upon the agency's determination that no person is likely to object to the adoption of the rule as written as the amendments contain a change/clarification in language relating to Title 9 Subtitle V Part 6217.

**Job Impact Statement**

These regulations neither create nor eliminate employment positions and/or opportunities, and, therefore, have no adverse impact on employment opportunities in New York State. Amendments to the proposed regulation does not change this analysis.

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## State Board of Elections

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

**Campaign Contribution Limits**

**I.D. No.** SBE-09-07-00001-P

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

**Proposed action:** This is a consensus rule making to amend section 6214.0 of Title 9 NYCRR.

**Statutory authority:** Election Law, section 14-114(1)(c)

**Subject:** Campaign contribution limits.

**Purpose:** To set contribution limits as adjusted to reflect the consumer price index.

**Text of proposed rule:** Section 6214.0 Campaign Contribution Limits.

The following limits will apply to campaign contributions until such time as the State Board of Elections adjusts the limits to reflect changes in the consumer price index:

| Previous Limit | Current Limit | Office/Election              |
|----------------|---------------|------------------------------|
| [\$ 4,900.00   | \$ 5,400.00   | State senate primary         |
|                |               | Statewide primary minimum    |
|                |               | NYC citywide primary minimum |
| \$30,700.00    | \$33,900.00   | Statewide general            |
|                |               | NYC citywide general         |
| \$ 7,700.00    | \$ 8,500.00   | State senate general         |
| \$ 3,100.00    | \$ 3,400.00   | State assembly primary       |
|                |               | State assembly general       |
| \$14,700.00    | \$16,200.00   | Statewide primary maximum    |
|                |               | NYC citywide primary minimum |
| \$76,500.00    | \$84,400.00   | Party committees]            |

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## Office of General Services

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

#### Facility Use

**I.D. No.** GNS-09-07-00005-P

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

**Proposed action:** This is a consensus rule making to amend section 300-1.2(r) of Title 9 NYCRR.

**Statutory authority:** Executive Law, section 200; and Public Buildings Law, section 2

**Subject:** Facility use.

**Purpose:** To clarify that the New York State Executive Mansion, as established under art. IV of the New York State Constitution is a residence and shall not be considered a "State facility."

**Text of proposed rule:** Subdivision (r) of section 300-1.2 is amended to read as follows:

(r) State facilities shall mean buildings or building complexes, *excluding the Executive Mansion as established under Article IV of the New York State Constitution*, under the jurisdiction, custody and control of the office and the grounds thereof, or any distinct rooms or areas thereof.

**Text of proposed rule and any required statements and analyses may be obtained from:** Paula B. Hanlon, Office of General Services, 41st FL., Corning Tower, Empire State Plaza, Albany, NY 12242, (518) 474-0571, e-mail: paula.hanlon@ogs.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 rule is being proposed as a consensus rule because, in accordance with State Administrative Procedure Act § 102 (11)(b), it is non-controversial and simply clarifies that the definition of "state facilities" does not include the Executive Mansion as established under Article IV of the New York State Constitution, for purposes of 9 NYCRR Part 300.

Public Buildings Law § 2 states that the Commissioner of the Office of General Services ("OGS"), "shall have supervision and control of public buildings of the state of New York, including the capitol and executive mansion . . .". Article IV of the New York State Constitution establishes an executive residence for the Governor of New York State (Executive Mansion). The Executive Mansion is maintained primarily as a residence for the Governor and his/her family and was never intended to be included as a "state facility" for purposes of 9 NYCRR Part 300. The proposed consensus rule will clarify that intent. No one is likely to object to this clarification.

#### Job Impact Statement

The Office of General Services projects no substantial adverse impact on jobs or employment opportunities in the State of New York as a result of this rule. The rule simply clarifies that the New York State Executive Mansion, as established under Article IV of the New York State Constitution is a residence and shall not be considered a "state facility" for purposes of 9 NYCRR Part 300. There will be no change in the number of agency employees as a result of these regulations. Nothing in the proposed regulations will increase or decrease the number of jobs in New York State, have an adverse impact on specific regions in New York State or negatively impact jobs in New York State.

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## Department of Health

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### EMERGENCY RULE MAKING

#### Serialized Official New York State Prescription Form

**I.D. No.** HLT-42-06-00005-E

**Filing No.** 171

**Filing date:** Feb. 9, 2007

**Effective date:** Feb. 9, 2007

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

**Action taken:** Addition of Part 910; amendment of Parts 85 and 80 of Title 10 NYCRR; amendment of section 505.3 and repeal of sections 528.1 and 528.2 of Title 18 NYCRR.

**Statutory authority:** Public Health Law, section 21

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

**Specific reasons underlying the finding of necessity:** We are proposing that these regulations be adopted on an emergency basis because immediate adoption is necessary to protect the public health and safety and to meet statutory requirements. The budget proposal enacting Section 21 contains explicit authority for the Commissioner to promulgate emergency regulations. This was done recognizing the need to provide for the implementation of the use of statewide forge proof prescriptions by the April 19, 2006 date mandated by the law.

Immediate adoption of these regulations is necessary to allow the implementation of Section 21 of Public Health Law, achieve the health care cost savings and to enhance the quality of health care by preventing drug diversion resulting from forged or stolen prescriptions.

The practitioner groups affected by this proposal, PSSNY, MSSNY and the Health Plan Association of New York were consulted during budget negotiations. Their concerns are addressed in the statutory proposal set forth in the state budget and in these regulations.

**Subject:** Enactment of a serialized New York State prescription form.

**Purpose:** To enact a serialized New York State prescription form.

**Substance of emergency rule:** Part 910 (10 NYCRR)

These regulations are being proposed on an emergency basis to implement Section 21 of the Public Health Law. The purpose of the law is to combat and prevent prescription fraud by requiring the use of an official New York State prescription for all prescribing done in this state. Official prescriptions contain security features that will curtail alterations and forgeries that divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

The emergency regulations consist of a new Part 910 to Title 10 NYCRR. Section 910.1 defines terms used in the Part. Section 910.2 states requirements for practitioner prescribing, including that, until April 19, 2007, hospitals and comprehensive voluntary non-profit community diagnostic and treatment centers designated by the Department are exempted from the requirement for their staff practitioners to prescribe non-controlled substances on an official prescription form. The exemption will continue beyond April 19, 2007 if the hospital and the comprehensive voluntary non-profit community diagnostic and treatment center implements and utilizes an electronic prescribing system to transmit prescriptions to pharmacies capable of receiving them. Section 910.3 covers registration with the Department, which practitioners and healthcare facilities are required to do to order official prescriptions. Section 910.4 states the manner in which official prescriptions will be issued by the Department, while section 910.5 lists the practitioner and facility requirements for safeguarding the official prescriptions against theft, loss or unauthorized use. Section 910.6 states pharmacy requirements for dispensing official prescriptions and out-of-state prescriptions, which may be dispensed in lieu of an official prescription. Section 910.6 also states pharmacy requirements for submission of official prescription data to the Department. Section 910.6 also authorizes pharmacies to fill prescriptions for non-controlled substances until October 19, 2006 that are not written on an official prescription provided that the pharmacy notify the Department of the prescribing practitioner so that the practitioner may be contacted and issued official prescriptions for subsequent prescribing.

Both 10 NYCRR and 18 NYCRR have been revised to reflect the above regulations, update outdated/obsolete sections and to allow for greater flexibility for changes in law. The following changes have been proposed:

Section 505.3 (18 NYCRR)

- Language included to reflect use of facsimile prescriptions.
- Language included to allow electronically transmitted prescriptions.
- Language included to mandate that all claims for payments of drugs or supplies under the MA program shall contain the serial number of the Official NYS Prescription Form.
- Delete language prohibiting telephone orders for OTCs.
- Language amended—telephone prescriptions for non-controlled substances WILL NOT require a follow-up hard copy prescription (even with refills).
- Delete Estimated Acquisition Cost—defined in Social Services Law 367-a(9)(b)(ii).
- Delete language referencing “triplicate” prescriptions and update to language consistent with Official NYS Prescription Form and Article 33 of the Public Health Law.
- Delete language referencing other Sections that have been deleted (i.e. 10 NYCRR 85.25).
- Delete language referencing dispensing fees—in Social Services Law 367-a(9)(d).
- Language is added to reference prescription drugs filled in compliance with 6810 of the Education Law, Article 33 of the Public Health Law and new 10 NYCRR Part 910.
- A change has been made to the prior version of the emergency filing for 18 NYCRR 505.3(b)(7). The words “or supplies” has been deleted since the enacting legislation (Section 21 of the Public Health Law) only mandated that forged proof prescriptions be utilized for prescription drugs. This change conforms the regulations to the law.

Part 528 (18 NYCRR)

- Section 528.1 is deleted—obsolete listing of non-prescription drugs covered under the MA program. Listing of reimbursable drugs and rate is available on-line at the NYS eMedNY website.
- Section 528.2 is deleted—language regarding “dispensing fees include routine delivery charges” is moved to 18 NYCRR 505.3(f)(6). Compounding fee language in 18 NYCRR 505.3 [6] (3).

Part 85 (10 NYCRR)

- Section 85.21 amended—OTC List—quantities and dosage forms have been deleted to allow greater flexibility in coverage. Remove OTC categories that are no longer marketed.
- Section 85.22 amended—establishment of OTC prices amended to more accurately reflect OTC pricing (Ad Hoc Committee is obsolete) and removal of references to deleted Sections (i.e., 18 NYCRR 528.2 and 10 NYCRR 85.25)
- Section 85.23 deleted—Revisions to list of OTCs and Maximum Reimbursable Prices—in Social Services Law 365-a(4)(a).
- Section 85.25 deleted—Prescription drug list covered under MA—obsolete. Drug list available on line at NYS eMedNY website.

Part 80 (10 NYCRR)

- Part 80 table of contents has been revised to reflect amendments in titles of sections of regulations.
- Sections have been amended throughout Part 80 to revise the previous title of ‘Bureau of Narcotic Control’ and ‘Bureau of Controlled Substances’ to the current title of ‘Bureau of Narcotic Enforcement’.
- Sections have been amended throughout Part 80 to revise the previous title of ‘Bureau of Narcotics and Dangerous Drugs’ to the current title of ‘Drug Enforcement Administration’.
- Section 80.1—language added to define ‘automated dispensing system’.
- Section 80.5—language deleted for 3b Institutional Dispenser license due to registration of facilities to be issued official prescriptions. Language added for retail pharmacy license, installation, and operation of automated dispensing system in Residential Healthcare Facility (RHCF).
- Section 80.11—language added to make requirements for supervising pharmacist of controlled substance manufacturer and distributor consistent with pharmacist licensure requirements in New York State Education Law.
- Section 80.46—language added to require supervising physician countersignature of medical order of physician’s assistant if deemed necessary by supervising physician or hospital to bring regulation into consistency with PHL 3703.

- Section 80.47—language revised to except administration of controlled substances in emergency kits to patients in Title 18 adult care facilities.
- Section 80.49—language revised from prescription serial number to pharmacy prescription number.
- Section 80.50—language added to require pharmacies to maintain separate stocks of controlled substances received for use in automated dispensing system in RHCF and to authorize storage of non-controlled substances in such system.
- Section 80.60—language added for female gender reference to practitioner.
- Section 80.63—deleted definition of written prescription and added definition of out-of-state prescription. Language added to authorize printed prescriptions generated by computer or electronic medical record system. Language added regarding practitioner oral prescribing requirement.
- Section 80.67—midazolam and quazepam added to list of benzodiazepine controlled substances, as per PHL 3306. Language added requiring quantity of dosage units to be indicated in both numerical and written word form. Language amended to include chorionic gonadotropin as controlled substance for prescribing up to a 3-month supply. Language added to assign code letters to medical conditions for prescribing more than a 30-day supply.
- Section 80.67(con’t)—language deleted regarding Department’s issuance of official New York State prescriptions, due to added language in section 80.72. Language deleted for face and back of prescription to facilitate timely pharmacist dispensing. Language added authorizing practitioner faxing of prescription for hospice or RHCF patient and for prescription to be compounded for direct parenteral administration to patient.
- Section 80.68—language added for certain other controlled substances. Language deleted requiring pharmacist to endorse pharmacy DEA number on official NYS prescription to facilitate timely dispensing. Language added requiring electronic transmission of prescription data to Department.
- Section 80.69—language added requiring quantity of dosage units to be indicated in numerical and written word form. Language added to assign letters for condition codes. Deleted reference to PHL sections 3335 and 3336, which were deleted by PHL 21, and added reference PHL sections 3332 and 3333, which are now the relevant sections. Deleted written prescription and added official prescription. Deleted back of the prescription and face of the prescription to facilitate timely dispensing. Language added authorizing practitioner faxing of prescription for hospice or RHCF patient and for prescription to be compounded for direct parenteral administration to patient.
- Section 80.70—Language added specifying oral prescriptions for 30-day supply or 100 dosage units does not apply to substance limited to 5-day supply by section 80.68. Deleted serial prescription number and added pharmacy prescription number. Added female gender language in reference to pharmacist. Language added requiring filing of prescription information with Department.
- Section 80.71—Deleted section (b) to reflect that practitioners are no longer required by PHL 3331 to complete an official prescription when dispensing controlled substances. Corrected spelling of chorionic gonadotropin. Added reference to condition codes in sections 80.67 and 80.69. Added packaging and labeling requirements for practitioner dispensing of controlled substances. Added requirement for practitioners to submit dispensing information to Department by electronic transmission.
- Section 80.72—deleted all references to practitioner dispensing and labeling requirements because practitioner dispensing now covered by section 80.71. Language added regarding practitioner registration with Department and Department issuance of official NYS prescription forms.
- Section 80.73—added language specifying pharmacist dispensing of schedule II and controlled substances listed in section 80.67. Added female gender language in reference to pharmacist. Deleted requirement for pharmacist to endorse pharmacy DEA number on prescription for timely dispensing. Language added requiring pharmacy to verify identity of person picking up dispensed prescription. Language added requiring pharmacy electronic transmission of prescription data to Department.
- Section 80.73(con’t)—language added specifying emergency oral prescriptions for schedule II and controlled substances listed in section 80.67 and filing of emergency oral prescription memorandum. Language added requiring pharmacy electronic transmission of oral prescription data to Department. Language added specifying partial filling of official prescription for schedule II and controlled substances listed in section 80.67.

Language added authorizing pharmacist dispensing of faxed prescription and requiring delivery of original within 72 hours.

- Section 80.74—language added in section title specifying pharmacist dispensing of controlled substances. Language added for prescription labeling requirements. Added female gender reference to pharmacist. Added requirement for filing prescription data with Department. Language added authorizing pharmacist dispensing of faxed prescription and requiring delivery of original within 72 hours.

- Section 80.74(con't)—language added for pharmacy requirement to verify identification of person picking up prescription. Deleted reference to schedule II controlled substances and those substances listed in section 80.67 because all controlled substances now require official NYS prescription. Deleted labeling requirement reference to section 80.72 and added reference to section 80.71.

- Section 80.75—deleted language regarding requirement to purchase official prescriptions. Added language regarding registration and issuance of official prescriptions for institutional dispenser.

- Section 80.78—Added a new section regarding pharmacist requirements for dispensing of out-of-state prescriptions for controlled substances, to be dispensed in conformity with provisions set forth for official prescriptions.

- Section 80.84—deleted language requiring group practice providing treatment of opiate dependence with buprenorphine to be limited to 30 patients at any one time, making New York State regulations consistent with the federal Drug Addiction Treatment Act. Deleted language requiring practitioners and pharmacies to register with Department to prescribe and dispense buprenorphine. Deleted language requiring pharmacy to file prescription data and report loss of controlled substances because redundant. Deleted reference to PHL 3335 and 3336 because deleted by PHL 21 and added reference to PHL 3332 and 3333 because now relevant sections.

- Section 80.106—added language requiring separate record-keeping for pharmacies installing automated dispensing system in RHCF.

- Section 80.107—added language authorizing Department to notify practitioner of patient treatment with controlled substances by multiple practitioners, consistent with PHL 3371.

- Section 80.131—deleted written prescription, added official prescription and out-of-state prescription. Language added increasing oral prescription for hypodermic needles and syringes to quantity of one hundred hypodermic needles and syringes.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-42-06-00005-P, Issue of October 18, 2006. The emergency rule will expire April 9, 2007.

**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:**

Section 3308(2) of the Public Health Law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provisions of Article 33 of the Public Health Law in order to effectuate its purpose and intent.

The state budget for SFY 2004-2005 enacted new Section 21 of the Public Health Law which mandates a statewide official prescription form for all prescriptions written in New York for the purpose of curtailing prescription fraud and enhancing patient safety. The law, Chapter 58 of the Laws of 2004, permits the Commissioner to promulgate emergency regulations in furtherance of this new section of law.

##### **Legislative Objectives:**

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administering and distribution of controlled substances within New York. New Section 21 of the Public Health law mandates a statewide official prescription, supports electronic prescribing and facilitates the dispensing process.

##### **Needs and Benefits:**

This regulation will support the enactment of an official New York State prescription form, which will deter fraud by curtailing theft or copying of prescriptions by individuals engaged in drug diversion. These regulations have been drafted after discussions with such provider groups as the State Health Plan Association, Medical Society of the State of New York and the Pharmacist Society of the State of New York.

Regulations are being proposed to implement Section 21 of the Public Health Law (PHL). The purpose of the law is to combat and prevent prescription fraud by requiring an official New York State prescription for every prescription written in New York. Official prescriptions contain security features designed specifically to curtail alterations, counterfeiting, and forgeries, all of which divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

Regulations have been amended to reflect the implementation of the above Public Health Law and to update obsolete or outdated language in the existing regulations. The proposed regulations also include amendments to authorize a practitioner to deliver a controlled substance prescription to a pharmacy by facsimile transmission in specified circumstances and to authorize a pharmacist to dispense such faxed prescription. By facilitating timely prescribing and dispensing, such facsimile transmission will enhance healthcare for patients enrolled in hospice programs or residing in a Residential Healthcare Facility (RHCF) and for patients who require controlled substance prescriptions to be compounded for administration by parenteral infusion.

Regulations have also been amended to authorize the Department to license a retail pharmacy to install and operate an automated dispensing system in a RHCF, which will bring New York regulations into consistency with federal regulations. The installation and operation of such systems will significantly benefit patient care through timely and efficient dispensing of prescriptions for controlled substances. Automated dispensing systems will also lessen the cost of medications remaining from wastage due to discontinued drug therapy and will simultaneously decrease the amount of such controlled substances that are susceptible to diversion.

These regulations are found in amendments to 10 NYCRR Part 80 and in the newly promulgated regulations in 10 NYCRR Part 910. Included in the Part 910 regulations is an exemption allowing hospital practitioners or practitioners in a comprehensive voluntary non-profit diagnostic and treatment center designated by the Department to prescribe non-controlled substances on a non-official hospital prescription until April 19, 2007. The exemption will continue beyond April 19, 2007 for hospitals and designated comprehensive voluntary non-profit diagnostic and treatment center that implement and utilize an electronic prescription system to transmit prescriptions to pharmacies capable of receiving them.

Also included in the Part 910 regulations is an exemption allowing pharmacies to dispense prescriptions for non-controlled substances that are not issued on an official prescription until October 19, 2006 in order that optimum care may continue to be provided to patients. The regulation requires pharmacies to notify the Department so that the practitioner may be contacted and issued official prescriptions for all subsequent prescribing.

##### **Costs:**

##### **Costs to Regulated Parties:**

This program is being funded by an annual assessment on the State Insurance Department of \$16.9 million. The assessment funds the costs of providing 180 million official prescriptions annually as well as administrative and enforcement staffing to operate and enforce the program. The current fee to practitioners and institutions for the official prescription has been eliminated. Private insurers and the Medicaid program will realize, respectively, an estimated \$75 million and \$25 million in annual savings due to the reduction of fraudulent prescription claims.

The \$25 million estimated saving for the Medicaid program represents the 25% New York State share. \$50 million in estimated savings would accrue to the 50% federal government share of Medicaid, while \$25 million in estimated savings would accrue to the 25% local government share of Medicaid.

The allowance for electronic prescribing in the Medicaid program and the expedition of the dispensing process through the use of bar coding will save valuable professional time for practitioners and pharmacists.

There will be a slight expenditure to pharmacies for software adjustments, due to minor changes in reporting requirements for controlled substance prescriptions.

##### **Costs to State and Local Government:**

There will be no costs to state or local government. Savings to State government are estimated at \$25 million to the 25% New York State share of Medicaid. Savings to local government, from reduction in subsidizing of prescription costs for patients in their Medicaid population, will result in an estimated \$25 million to the 25% local government share of Medicaid.

##### **Costs to the Department of Health:**

There will be no additional costs to the Department. The decrease in prescription fraud as a result of use of the official prescription will result in

savings for the Department for the Medicaid, EPIC, and Empire programs. An increase in the efficiency of investigations made possible by the official prescription program will result in additional savings for the Department.

**Local Government Mandates:**

The proposed rule does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other specific district.

**Paperwork:**

No additional paperwork is required. The use of a single prescription form for controlled substances and non-controlled substances will simplify paperwork and record keeping for practitioners and institutions. Currently, practitioners use their own prescription form as well as the official prescription. The official prescription will replace existing prescriptions that are currently used in addition to the official prescription. Encouragement of electronic prescribing will significantly reduce paperwork requirements for practitioners, institutions and pharmacists.

**Duplication:**

The requirements of this proposed regulation do not duplicate any other state or federal requirement.

**Alternatives:**

There are no alternatives that would support the approach to be taken under the regulations. The limitation on reporting requirements by pharmacies (only for controlled substances as opposed to requiring reporting on all prescriptions) was done after consultation with affected provider organizations.

As a result of consultations with the hospital community, hospitals were granted a one-year exemption, until April 19, 2007, from the requirement for their staff practitioners to prescribe non-controlled substance medications on the official prescription. The purpose of the exemption is to serve as an incentive for hospitals to develop electronic prescription systems. The exemption will be extended if the hospital implements and utilizes an electronic prescription system to transmit such prescriptions directly to a pharmacy in lieu of an official prescription.

**Federal Standards:**

The regulatory amendment does not exceed any minimum standards of the federal government.

**Compliance Schedule:**

These regulations will become effective immediately upon filing a Notice of Emergency Adoption with the Secretary of State.

**Regulatory Flexibility Analysis**

**Effect of Rule on Small Business and Local Government:**

This proposed rule will affect practitioners, pharmacists, retail pharmacies, hospitals and nursing homes.

According to the New York State Department of Education, Office of the Professions, there are approximately 120,000 licensed and registered practitioners authorized to prescribe and order prescription drugs. According to the New York State Board of Pharmacy, there are a total of approximately 4,500 pharmacies in New York State. According to the New York State Education Department's Office of the Professions, there are approximately 18,000 licensed and registered pharmacists in New York.

**Compliance Requirements:**

The regulations follow the newly enacted Section 21 of the Public Health Law and require the use of the official New York State Prescription form. In addition to curtailing fraud and diversion, these regulations will expedite the prescribing and dispensing process. Practitioners, institutions and pharmacists will benefit from the following amendments;

- (1) Eliminating the fee to practitioners and institutions for official prescriptions;
- (2) Eliminating the requirement that pharmacists write the DEA number of the pharmacy on the official prescription;
- (3) Bar coding of the serial number on the official prescription to expedite the dispensing process; and
- (4) Eliminating multiple prescription forms practitioners currently use to prescribe drugs.

Currently, dispensing data is required from all Schedule II and benzodiazepines prescriptions. The only new requirement is the submission of dispensing data from the original dispensing of all prescriptions for controlled substances.

**Professional Services:**

No additional professional services are necessary.

**Compliance Costs:**

Pharmacies may require minor adjustments in computer software programming due to additional prescription data submission requirements.

**Economic and Technological Feasibility:**

The proposed rule is both economically and technologically feasible. The process utilizes existing electronic systems for reporting of dispensing by pharmacies. The regulations encourage the use of electronic prescribing by practitioners. Electronic prescribing is not only more efficient than the current paper process, it is also a secure procedure that will reduce prescription fraud. Electronic prescribing will protect the public health and result in substantial savings to the Medicaid program and private insurance as well as enhancing public safety.

**Minimize Adverse Impact:**

The regulations require only a minimal increase in reporting requirements. These requirements were negotiated with organizations representing the affected groups. The use of bar coding and the encouragement of electronic prescribing minimize any adverse impact.

**Small Business and Local Government Participation:**

During the drafting of the statute which is the basis of these regulations, the Department met with the Pharmacist Society of the State of New York (PSSNY), the Medical Society of the State of New York (MSSNY) and the Health Plan Association of New York. The regulations were drafted considering their comments. Local governments are not affected.

**Rural Area Flexibility Analysis**

**Types and Estimated Numbers of Rural Areas:**

The proposed rule will apply to participating pharmacies, practitioners and institutions located in all rural areas of the state. Outside of major cities and metropolitan population centers, the majority of counties in New York contain rural areas. These can range in extent from small towns and villages and their surrounding areas, to locations that are sparsely populated.

**Compliance Requirements:**

The only compliance requirements are the use of the official prescription provided free of charge and additional minimal reporting requirements by pharmacies. The regulations are in furtherance of new Section 21 of the Public Health Law authorizing a statewide official prescription aimed at reducing fraud. Additionally, the regulations assist practitioners and pharmacies by making the prescribing and dispensing process more efficient through the use of electronic prescribing.

**Professional Services:**

None necessary.

**Compliance Costs:**

The new law requires all pharmacies in New York State to electronically transmit information from controlled substance prescriptions to the Department on a monthly basis, for monitoring and analysis purposes in combating prescription fraud. Pharmacies may require minor adjustments in computer software programming due to this additional prescription data submission requirement.

**Economic and Technological Feasibility:**

The proposed rule is both economically and technologically feasible. The process will utilize existing electronic systems for reporting of dispensing information by pharmacies. The regulations encourage the use of electronic prescribing, which is more efficient and more secure than a paper process. Electronic prescribing will also enhance patient safety through a reduction in medication error due to legibility issues.

**Minimize Adverse Impact:**

The regulations require only a minimal increase in reporting requirements. This requirement is minimized by permitting pharmacies to scan the bar code of the prescription serial number onto the Medicaid claim form also through the allowance of electronic prescribing. Additionally, the benefits on regulated entities resulting from these regulations and described herein outweigh any adverse impact.

**Rural Area Participation:**

During the drafting of this regulation, the Agency met with and solicited comments from pharmacist, health plan and practitioner associations who represent these professions in rural areas. No particular issues relating to the effect of this program on rural areas was expressed.

**Job Impact Statement**

**Nature of Impact:**

This proposal will not have a negative impact on jobs and employment opportunities. In benefiting the public health by ensuring that drug diversion does not occur through the use of forged or stolen prescriptions, the proposed amendments are not expected to either increase or decrease jobs overall. The fiscal savings to public and private insurers will result in an economic benefit to these groups and could have a positive influence on jobs. Additionally, the anticipated time saved by practitioners and pharmacists will benefit all parties involved as well as patients.

**Assessment of Public Comment**

The agency received no public comment.

## Division of the Lottery

### EMERGENCY RULE MAKING

**Lotto Extra Game Feature**

**I.D. No.** LTR-09-07-00004-E

**Filing No.** 173

**Filing date:** Feb. 13, 2007

**Effective date:** Feb. 13, 2007

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

**Action taken:** Amendment of Part 2817 of Title 21 NYCRR.

**Statutory authority:** Tax Law, section 1604(a)

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

**Specific reasons underlying the finding of necessity:** The New York Lottery will be conducting Lotto Extra as a new feature to the existing game available to New York's Lotto players. Game sales are scheduled to commence on or about March 1, 2007 thereby leaving insufficient time for the normal rule making process under SAPA § 202 to be completed. This game is necessary to assist the Lottery in reaching its projected revenue target for this fiscal year. This feature is intended to improve somewhat slow revenues and will provide needed aid to education by the end of this fiscal year.

**Subject:** Lotto Extra game feature.

**Purpose:** To add the Lotto Extra game feature to current New York Lottery regulations.

**Text of emergency rule:** Lotto Extra

Section 1. Part 2817 is amended by adding a new section 2817.12 to read as follows:

Section 2817.12 Lotto Extra.

(a) Lotto Extra is a feature of New York's Lotto game. Except as otherwise noted in this section, the rules of Lotto apply to all Lotto Extra wagers.

(b) Lotto Extra shall determine winners from bet tickets by correctly matching some or all of the numbers in the player's number selection against the winning numbers, bonus number and Extra bonus number drawn by the Lottery for that drawing.

(c) Players of Lotto Extra are automatically included in the respective Lotto drawing, and have the added benefit of matching their number selections against the Extra bonus number for additional prize levels not available to Lotto players.

(d) To place a bet, a purchaser must communicate the desired game bet data to an agent by presenting a completed Lotto Extra playcard or by requesting a Lotto Extra quick pick. The playcard provides for the player's number selections, number of drawings requested and the option for Cash Value or Annuity Payments if the jackpot is won. The agent will issue a bet ticket. Such bet ticket will reflect the numbers played by the purchaser on that wager as the Lotto Extra.

(e) Forty percent of the gross Lotto Extra sales for each Lotto drawing shall be paid into the New York Lottery prize account for allocation of prize winnings.

(f) Not less than 38 percent of gross Lotto Extra sales for a particular drawing shall be the amount allocated to the winning pool for that particular game.

(g) During each Lotto drawing, the Lottery will draw an Extra bonus number. Numbers will be drawn in the following sequence: the first randomly chosen six numbers will be the winning numbers; the seventh number will be the bonus; and the eighth number will be the Extra bonus number.

(h) Lotto Extra bets may be purchased for a minimum of \$2.00 per two game panels; \$1.00 of such bet is on the Lotto game, and \$1.00 of such bet is for the Lotto Extra feature.

(i) Determination of Prizes: The prize structure and odds for this feature are:

|   | Match          | Odds         | Percentage |
|---|----------------|--------------|------------|
| 5 | + Either Bonus | 3,754,789.50 | 14.50%     |
| 5 |                | 147,246.65   | 5.50%      |
| 4 | + Either Bonus | 29,449.33    | 25.25%     |
| 4 |                | 2,355.95     | 5.75%      |
| 3 | + Either Bonus | 883.48       | 15.00%     |
| 3 |                | 108.18       | 11.00%     |
| 2 | + Either Bonus | 72.12        | 23.00%     |
|   | Overall Odds   | 40.47        | 100.00%    |

(j) In the event that supplemental prize funds are necessary to fund prizes for Lotto Extra, those funds will be supplemented from unclaimed prize funds in accordance with sixteen hundred fourteen (a) of this article.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 13, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** Julie B. Silverstein Barker, New York Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: jrbarker@lottery.state.ny.us

**Regulatory Impact Statement**

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law, Section 1604[a] and the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 21, Chapter XLIV, Section 2817, the following official game rules shall take effect and shall remain in full force and effect throughout the New York Lottery's LOTTO Extra as a new feature to the existing LOTTO game.

2. Legislative objectives: The purpose of operating Lottery games is to generate revenue for the support of education in the State. Amendment of these regulations forwards the mission of the New York State Lottery to generate revenue for education.

3. Needs and benefits: The New York Lottery has sustained competitive pressure from large jackpot lottery games in adjoining states. New Yorkers routinely travel outside the state to participate in those games. The New York Lottery's LOTTO Extra, as an existing game feature, allows the New York Lottery to continue its effort to keep and enlarge its market share of players (from within New York State and those visiting New York State from other states) who participate in large jackpot lottery games while also providing more opportunities for players to win prizes. The New York Lottery's LOTTO Extra as a new feature to existing games is anticipated on a full annual basis, to bring in more than \$5.4 million in revenue to benefit education in the State.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing lottery games are expected to be sufficient to support this new game.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 30 years.

5. Local government mandates: None.

6. Paperwork: There are no changes in paperwork requirements. Game feature brochures will be issued by the New York State Lottery for public convenience at retailer locations free of charge.

7. Duplication: None.

8. Alternatives: The alternative to adding New York Lottery's LOTTO Extra as an existing game feature is not to proceed and forfeit the investment already made by the New York State Lottery for the game feature. The failure to proceed will also result in lost revenue to education that is anticipated to be earned.

9. Federal standards: None.

10. Compliance schedule: None.

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

The proposal does not require a Regulatory Flexibility Statement, Rural Flexibility Statement or Job Impact Statement. There will be no adverse impact on jobs, rural areas, small business or local governments.

Pool

## Public Service Commission

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

#### Waiver of Rules 8.6 and 47 by Niagara Mohawk Power Corporation d/b/a National Grid

**I.D. No.** PSC-09-07-00006-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, modify, or reject, in whole or in part, a request by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) for a waiver of rules 8.6 and 47 regarding a request to master-meter two new wings of an existing directly metered residential building known as Victorian Manor Senior Living Facility.

**Statutory authority:** Public Service Law, sections 2, 5(1)(b), 53, 65(1), (5) and 66(1)

**Subject:** Waiver of rules 8.6 and 47.

**Purpose:** To allow for master-metering of two new wings of the existing Victorian Manor Senior Living Facility.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, modify, or reject, in whole or in part, a request by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) for a waiver of its Rule 8.6 and Rule 47 regarding a request to master-meter two new wings of an existing directly metered residential building known as Victorian Manor Senior Living Facility.

**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.

(07-E-0060SA1)

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

#### Transfer of Hydroelectric Facility by Central Hudson Gas and Electric Corporation

**I.D. No.** PSC-09-07-00007-P

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

**Proposed action:** The commission is considering whether to approve or reject, in whole or in part, or modify the proposed transfer by Central Hudson Gas and Electric Corporation (the utility) of the Groverville Mills Hydroelectric Facility to Lower Saranac Corporation.

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

**Subject:** Transfer of the utility's hydroelectric facility.

**Purpose:** To consider the proposed transfer of the utility's hydroelectric facility.

**Substance of proposed rule:** The Commission may approve or reject in whole or in part or modify the proposal filed by Central Hudson Gas and Electric Corporation to transfer the Groverville Mills Hydroelectric Facility to Lower Saranac Corporation. The facility is 900 kW and is located on the Fishkill Creek in Beacon, New York. The purchase price is as follows, (a) if the closing occurs on or before March 1, 2007, \$700,000, (b) if the closing occurs on or before April 15, 2007, \$655,000, (c) if the closing occurs on or before June 1, 2007, \$625,000, (d) if the closing occurs on or

before June 15, 2007, \$610,000, and (e) if the closing occurs on or before July 1, 2007, \$595,000.

**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.

(07-E-0136SA1)

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

#### Transfer of Vacant Land by Central Hudson Gas and Electric Corporation

**I.D. No.** PSC-09-07-00008-P

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

**Proposed action:** The commission is considering whether to approve or reject, in whole or in part, or modify the proposed transfer by Central Hudson Gas and Electric Corporation (the utility) of approximately 1.33 acres of vacant utility land located at Tioronda Ave. in the Town of Beacon, Dutchess County, New York to Manny Kazanas.

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

**Subject:** Transfer of the utility's vacant land.

**Purpose:** To consider the proposed transfer of the utility's vacant land.

**Substance of proposed rule:** The Commission may approve or reject in whole or in part or modify the proposal filed by Central Hudson Gas and Electric Corporation to transfer approximately 1.33 acres of vacant utility land located at Tioronda Avenue in the Town of Beacon, Dutchess County, New York to Manny Kazanas. The purchase price is \$25,000.

**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.

(07-E-0155SA1)

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

#### Submetering of Electricity by American Metering & Planning Services, Inc.

**I.D. No.** PSC-09-07-00009-P

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

**Proposed action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by American Metering & Planning Services, Inc. to submeter electricity at 343-345 W. 51st 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 consider the request of American Metering & Planning Services, Inc., to submeter electricity at 343-345 W. 51st 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 American Metering & Planning Services, Inc., to submeter electricity at 343-345 West 51st Street, 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. Brillong, 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.

(07-E-0160SA1)

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

**Transfer of Ownership Interests by Mirant NY-Gen LLC and Alliance Energy Renewables LLC**

**I.D. No.** PSC-09-07-00010-P

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

**Proposed action:** The Public Service Commission is considering a petition from Mirant NY-Gen LLC and Alliance Energy Renewables LLC requesting approval of the transfer of ownership interests in approximately 93 MW of natural gas fired electric generation and approximately 25 MW of hydroelectric generation, located in Hillburn, Middletown, Forestburgh and Glen Spey, NY.

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

**Subject:** Transfer of ownership of approximately 93 MW of gas fired electric generation and 25 MW of hydroelectric generation.

**Purpose:** To consider approval of the transfer of ownership of approximately 93 MW of gas fired electric generation and 25 MW of hydroelectric generation.

**Substance of proposed rule:** The Public Service Commission is considering a petition from Mirant NY-Gen LLC and Alliance Energy Renewables LLC requesting approval of the transfer of ownership interests in approximately 93 MW of natural gas fired electric generation and approximately 25 MW of hydroelectric generation, located in Hillburn, Middletown, Forestburgh and Glen Spey, New York. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

**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. Brillong, 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.

(07-E-0170SA1)

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

**Pension Settlement by Niagara Mohawk Power Corporation**

**I.D. No.** PSC-09-07-00011-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, reject or modify, in whole or in part, a petition of Niagara Mohawk Power Corporation for authorization to defer actuarial experience pension settlement for fiscal year 2007.

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

**Subject:** Pension settlement.

**Purpose:** To resolve ratemaking of the pension settlement.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, reject or modify, in whole or in part, a petition of Niagara Mohawk Power Corporation (Niagara Mohawk) for Authorization to Defer Actuarial Experience Pension Settlement Loss for Fiscal Year 2007. The petition includes a proposal to record a regulatory asset equal to the amount of the Financial Accounting Standard 88 settlement loss and to amortize the regulatory asset on a straight line basis over ten years. The amortized amounts would be included in Niagara Mohawk's pension expense rate reconciliation. The pension settlement loss is triggered by Niagara Mohawk's lump sum payments to employees retiring during the fiscal year ending March 31, 2007. The final Actuarial Experience Pension Settlement Loss for Fiscal Year 2007, which will not be known until after March 31, 2007, will be subject to review and audit by the Department of Public Service Staff.

**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. Brillong, 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.

(07-M-0173SA1)

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

**Transfer of Property by New York State Electric and Gas Corporation**

**I.D. No.** PSC-09-07-00012-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by New York State Electric and Gas Corporation to sell its customer service center building located within the Town of Southeast, Putnam County, New York to The New York State Association of Retarded Children, Inc.- Putnam County chapter, who currently lease the property.

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

**Subject:** Transfer of property.

**Purpose:** To allow New York State Electric and Gas Corporation to transfer ownership of its customer service building to The New York State Association of Retarded Children, Inc. - Putnam County chapter.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject in whole or in part, a petition by New York State Electric and Gas Corporation to sell its Customer Service Center building located within the Town of Southeast, Putnam County, New York to The New York State Association of Retarded Children, Inc. - Putnam County Chapter, who currently lease the property.

**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.

(07-M-0174SA1)

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

**Transfer of Franchises by United Waterworks Inc., et al.**

**I.D. No.** PSC-09-07-00013-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, reject or modify, in whole or in part, a joint petition filed by Aquarion Water Company of New York, Inc., Kelda Group, Inc. and United Waterworks Inc. for approval of the acquisition by United Waterworks Inc. of Aquarion Water Company of New York, Inc. from Kelda Group, Inc. The commission may consider all other related matters.

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

**Subject:** Transfer of franchises or stock and water rules, rates and charges.

**Purpose:** To determine whether to allow United Waterworks Inc. to acquire the stock of Aquarion Water Company of New York, Inc. from Kelda Group, Inc. and all other related matters.

**Substance of proposed rule:** On February 8, 2007, Aquarion Water Company of New York, Inc. (AWC-NY), Kelda Group, Inc. (Kelda) and United Waterworks, Inc. (UWW) filed a joint petition requesting approval for United Waterworks, Inc. to acquire the stock of Aquarion Water Company of New York, Inc. from Kelda Group, Inc.

UWW, Kelda and AWC-NY state that the proposed transaction will have no impact on the management, operations and operating headquarters of AWC-NY. UWW will continue to provide service at the same rates, terms and conditions currently provided to customers. UWW, Kelda and AWC-NY maintain that the transfer of ownership is in the public interest and will benefit the customers of AWC-NY because it will provide for geographic aggregation and a consolidation of a smaller water company into a larger water utility with greater resources in such areas as security, reliability, water quality and, research and development.

AWC-NY provides water service to approximately 12,200 customers in the Villages of Port Chester and Rye Brook, the Town of Rye and the City of Rye in Westchester County.

**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.

(07-W-0176SA1)

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

**Transfer of Franchises by Aqua New York, Inc. and Aquarion Water Company of Sea Cliff, Inc.**

**I.D. No.** PSC-09-07-00014-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, reject or modify, in whole or in part, a joint petition filed by Aqua New York, Inc. and Aquarion Water Company of Sea Cliff, Inc. for approval of the acquisition by Aqua New York, Inc. of the stock of Aquarion Water Company of Sea Cliff, Inc. and continue Aquarion Water Company of Sea Cliff, Inc.'s existing rate plan. The Commission may consider all other related matters.

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

**Subject:** Transfer of franchises or stock and water rules, rates and charges.

**Purpose:** To determine whether to allow Aqua New York, Inc. to acquire the stock of Aquarion Water Company of Sea Cliff, Inc. and continue Aquarion Water Company of Sea Cliff, Inc.'s existing rate plan and all other related matters.

**Substance of proposed rule:** On February 8, 2007, Aqua New York, Inc. (Aqua NY) and Aquarion Water Company of Sea Cliff, Inc. (Aquarion Sea Cliff) filed a joint petition requesting approval for Aqua NY to acquire the stock of Aquarion Sea Cliff and Aquarion Sea Cliff's existing rate plan continuing until the effective date of the next rate case.

Aqua NY and Aquarion Sea Cliff state that the proposed transaction will have no impact on the management, operations and operating headquarters of Aquarion Sea Cliff. Aqua NY will continue to provide service at the same rates, terms and conditions currently provided to customers. Aqua NY and Aquarion Sea Cliff maintain that the transfer of ownership is in the public interest because the customers of Aquarion Sea Cliff will benefit from the substantial economies of scale, the provision of centralized services, be better equipped to comply with water quality standards and environmental requirements, and allow it to continue to make capital improvements and deliver high quality water service to its customers.

Aquarion Sea Cliff provides water service to approximately 4,300 customers in the Villages of Sea Cliff, Glenwood landing, Glen Head, Old Brookville, Roslyn Harbor and the Town of Glen Cove, Nassau County.

**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.

(07-W-0177SA1)

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

**Corporate Restructuring by Aquarion Water Company of New York, Inc., et al.**

**I.D. No.** PSC-09-07-00015-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, in whole or in part, a joint petition filed by Aquarion Water Company of New York, Inc., Aquarion Water Company of Sea Cliff, Inc., Aquarion Company, Aquarion Water Company and Kelda Group, Inc. regarding a corporate restructuring. The commission may consider all other related matters.

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

**Subject:** Corporate restructuring.

**Purpose:** To determine whether to allow the corporate restructuring of Aquarion Water Company of New York, Inc., Aquarion Water Company of Sea Cliff, Inc., Aquarion Water Company, Aquarion Water Company and Kelda Group, Inc. and all other related matters.

**Substance of proposed rule:** On February 8, 2007, Aquarion Water Company of New York, Inc., Aquarion Water Company of Sea Cliff, Inc. (Regulated Water Companies), Aquarion Company (AC), Aquarion Water Company (AWC) and Kelda Group, Inc. (Kelda) filed a joint petition regarding a corporate restructuring.

The Regulated Water Companies are currently owned by AWC which is in turn owned by AC. AC is owned by Kelda. The proposed transaction would eliminate AWC and AC as intermediate corporate entities and transfer direct ownership of the Regulated Water Companies to their corporate parent, Kelda. Kelda then seeks to transfer ownership of the two Regulated Water Companies to two appropriate New York jurisdictional utility companies. According to Kelda, the proposed corporate restructuring is in the public interest because the smaller Regulated Water Companies will be transferred to two larger existing water utilities in New York with greater resources in such areas as security, reliability, water quality, and research and development.

**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. Brillong, 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.

(07-W-0178SA1)

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

**Incidental and Lightened Regulation by Applied Water Management, Inc.**

**I.D. No.** PSC-09-07-00016-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition by Applied Water Management, Inc. for an order granting incidental and lightened regulation as a waterworks corporation.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (11) and 89-e

**Subject:** Incidental and lightened regulations.

**Purpose:** To approve an order granting incidental and lightened regulation as a waterworks corporation to Applied Water Management, Inc.

**Substance of proposed rule:** On February 9, 2007, Applied Water Management, Inc. (Applied Water or the company) filed a petition seeking Commission approval of its operations pursuant to Public Service Law Sections 89-e and 89-c(11), and an order granting incidental and lightened regulation as a waterworks corporation. Applied Water states it is a provider and operator of non-potable decentralized water treatment, waste water treatment and water reuse systems. The company also states it is not competing with the existing water and wastewater services nor is it duplicating existing potable water supply infrastructure. Applied Water indicates that it will not install water mains and supplies only wastewater/stormwater treatment and non-potable reuse water. In the Applied Water systems that are the subject of this petition, wastewater and stormwater from a particular building or complex of buildings is collected, appropriately treated and reused for non-potable purposes. The Commission may approve or reject, in whole or in part, or modify the company's request.

**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. Brillong, 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.

(07-W-0180SA1)

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

**Water Rates and Charges by Reagans Mill Water Company, Inc.**

**I.D. No.** PSC-09-07-00017-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, tariff revisions filed by Reagans Mill Water Company, Inc. to make various changes in the rates, charges, rules and regulations in its tariff schedule to become effective June 1, 2007, and approval of its electronic tariff schedule, P.S.C. No. 1—Water.

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

**Subject:** Water rates and charges and electronic tariff filing.

**Purpose:** To increase the restoration of service charges for Reagans Mill Water Company, Inc., and approve an electronic tariff schedule, P.S.C. No. 1—Water.

**Substance of proposed rule:** On February 12, 2007, Reagans Mill Water Company, Inc. (Reagans or the company) filed, to become effective on June 1, 2007, 1st Revised Leaf No. 10 to its tariff schedule, P.S.C. No. 1—Water. The company proposes an increase in its restoration of service charges from a flat rate of \$25 to \$37.50 outside of normal business hours Monday through Friday, and \$50 during weekends and public holidays. The company will retain its current charge of \$25 during normal business hours (8:00 a.m. to 4:00 p.m. Monday through Friday). The company provides metered water service to 325 customers in the Town of Dover, Dutchess County. The company has also filed an electronic tariff schedule, P.S.C. No. 1—Water, which sets forth the rates, charges, rules and regulations under which Reagans will provide water service to become effective June 1, 2007. The company's tariff, along with its proposed changes, will be available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us) located under Commission Documents — Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's request.

**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. Brillong, 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.

(07-W-0187SA1)

## Department of State

### REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS AND/OR JOB IMPACT STATEMENT

#### Energy Conservation Construction Code

I.D. No. DOS-02-07-00009-P

**This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement** pertain(s) to a notice of proposed rule making, I.D. No. DOS-02-07-00009-P, printed in the *State Register* on Jan. 10, 2007.

#### Summary of Revised Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY

Energy Law Section 11-103(2) authorizes the State Fire Prevention and Building Code Council (the "Code Council") to review and amend the State Energy Conservation Construction Code (the "State Energy Code"), provided the State Energy Code remains cost effective with respect to building construction. Energy Law Section 11-103(2) provides that the State Energy Code is cost effective if the cost of materials and their installation to meet its standards would be equal to or less than the present value of energy savings that could be expected over a 10 year period in a building where such materials are installed.

Energy Law section 11-104 provides that the State Energy Code must be designed to satisfy the following criteria:

- as far as practicable, the State Energy Code's standards and requirements must be formulated in terms of performance objectives;
- to the fullest extent feasible, use of modern technical methods, devices and improvements which tend to minimize consumption of energy and utilize to the greatest extent practical solar and other renewable sources of energy without affecting reasonable requirements for the health, safety and security of the occupants or users of buildings must be permitted;
- as far as practicable, the improvement of energy conservation construction must be encouraged;
- reasonable uniform standards and requirements for construction and construction materials for the improvement of energy conservation construction practices must be provided; and
- property that is listed on the national register of historic places, listed on the State register of historic places, or determined to be eligible for listing on the State register by the Commissioner of Parks, Recreation and Historic Preservation must be exempted from the State Energy Code's uniform standards.

##### 2. LEGISLATIVE OBJECTIVES

Article 11 of the Energy Law, entitled State Energy Conservation Construction Code Act, was first adopted by the State Legislature in 1978. Energy Law section 11-101 directs the adoption of a State Energy Code to protect the health, safety and security of the people of the State and to assure a continuing supply of energy for future generations. Energy Law section 11-101 provides that the State Energy Code must mandate that economically reasonable energy conservation techniques be used in the design and construction of all new public and private buildings in New York State. Energy Law section 11-101 further states that adoption of the State Energy Code is in furtherance of the following policy, as set forth in Energy Law section 3-101(2):

"to encourage conservation of energy in the construction and operation of new commercial, industrial, and residential buildings, and in the rehabilitation of existing structures, through heating, cooling, ventilation, lighting, insulation and design techniques and the use of energy audits and life-cycle costing analysis."

Pursuant to Energy Law section 11-103(2), the Code Council has reviewed the existing State Energy Code and determined that it no longer adequately effectuates the policies and purposes articulated by the State Legislature when it adopted Article 11 of the Energy Law.

The Code Council proposes to repeal the existing State Energy Code, which is based on text of the 2000 edition of the International Energy Conservation Code, a model code developed and published by the International Conference of Building Officials ("ICBO"), and the 2001 supple-

ment thereto, and replace it with a new State Energy Code, which will be based on the 2003 edition of the International Energy Conservation Code. The revised text will provide for the continued widespread use of modern technical methods and devices and will maintain harmonization of the New York energy conservation regulations with those of other states which use a model energy code. The standardization of the practices, methods and techniques used for energy conservation in New York with the practices, methods and techniques used in other states will maintain and enhance New York State's competitive standing in attracting new business and jobs to the State.

##### 3. NEEDS AND BENEFITS

The proposed rule would amend the State Energy Code by repealing the existing text and adopting new text which, in principal part, consists of provisions developed and published by the International Code Council (the "ICC") as the International Energy Conservation Code ("IECC") 2003. Certain modifications have been made to the IECC text to address specific New York needs. The proposed rule will include updated technologies and increase energy conservation requirements for residential and commercial buildings. This will insure that energy efficient construction practices continue to occur within New York State.

One of the primary benefits of the proposed State Energy Code to building owners would be reduced fuel needs and thereby lower operating costs. Reduced energy consumption will have a tremendous positive benefit to New York State by reducing dependence upon imported energy sources and through the reduction of associated emissions and pollutants produced by fossil fuel and electric use.

Further information concerning the needs and benefits of significant provisions of the revised State Energy Code are further discussed in the full Revised Regulatory Impact Statement.

##### STUDIES WHICH SERVED AS A BASIS FOR THE RULE

Seven studies served as a basis for the rule. These studies are:

A. *Climate Classification for Building Energy Codes and Standards*, R. S. Briggs, R. G. Lucas and Z. T. Taylor, Pacific Northwest National Laboratory for the United States Department of Energy, March 26, 2002.

B. *Eliminating Window-Area Restrictions in the IECC*, Z. T. Taylor, C. C. Conner, R. G. Lucas, Pacific Northwest.

C. *Comparison of the Supplement to the 2004 IECC to the Current New York Energy Conservation Code - Residential Buildings*, R. G. Lucas, Pacific Northwest National Laboratory for the United States Department of Energy, September, 2004.

D. *Analysis of IECC 2003 Chiller Heat Recovery for Service Water Heating Requirements for New York State*, D. W. Winiarski, Pacific Northwest National Laboratory for the United States Department of Energy, August, 2004.

E. *New York State Code Adoption Analysis: Lighting Requirements*, E. E. Richman, Pacific Northwest National Laboratory for the United States Department of Energy, June, 2004.

F. *Technical Analysis of Residential Energy Code Options for New York State*, A. Fisk, B. McVoy and W. Parlapiano, NYSERDA, M. DeWein, Building Codes Assistance Project, et. al., February, 2005.

G. *Economic Analysis of Residential Energy Code Options for New York State*, S. Nadel, American Council for an Energy-Efficient Economy, March, 2005.

##### 4. COSTS

a. Costs to regulated parties.

Overall, the proposed amendments to the State Energy Code are not expected to result in an increase in the cost of construction in New York State. However, the costs for specific construction subsystems in certain areas of the State are expected to experience modest increases when compliance is demonstrated utilizing prescriptive provisions of the code; the use of software-based compliance paths could eliminate these cost increases. In other cases, provisions that would reduce energy costs actually result in a reduction in construction costs.

Energy Law section 11-103(2) specifies that "the code shall be deemed cost effective if the cost of materials and their installation to meet its standards would be equal to or less than the present value of energy savings that could be expected over a ten-year period in the building in which they are installed." The additional costs of materials and their installation to achieve conservation improvements required by the proposed rule will result in a payback within ten-years, thereby satisfying the statutory requirement.

Further information concerning costs and significant provisions of the new State Energy Code are further discussed in the full Revised Regulatory Impact Statement.

b. Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule.

It is not anticipated that this rule will place any greater burden on local governments with respect to code enforcement and administration than that which currently exists. Furthermore, the Department of State – Division of Code Enforcement and Administration has a program in place for training local government code enforcement officials. The staff of the Division of Code Enforcement and Administration has undergone training to assist local governments.

Local governments that construct buildings for their own use should experience effects on costs similar to those experienced by private owners, as discussed in part “a” of this Item 4.

The Department of State proposes to enter into a contract with the ICC under which the ICC will provide (1) a license to modify the model codes and to use the modified model code as the new Uniform Code and the new State Energy Code, (2) 4,500 sets of the new codes books for local governments, local governmental officials, and Department of State staff, and (3) examinations and related study materials leading to certification of Department of State staff in a variety of code-enforcement related categories. The contract would also grant the Department of State the option to purchase annual governmental memberships in the ICC for approximately 1,600 local governments in New York State for three years. The sums to be paid under this proposed contract total approximately \$1,638,000 over three years, and represent a cost to the Department of State and the State. (This total cost includes approximately \$159,110 per year for the optional purchase of governmental memberships. The total cost of this contract would be reduced if the Department of State elects not to exercise its option to purchase governmental memberships in the ICC for any of the three years covered by the contract.)

#### 5. LOCAL GOVERNMENT MANDATES

Adoption of the proposed rule would do nothing to change that basic enforcement and administrative structure of the State Energy Code. Energy Law section 11-107 provides that the State Energy Code will be principally administered and enforced by the cities, towns and villages of New York.

Local government personnel will require training in the details of this rule. The Department of State – Division of Code Enforcement and Administration has a program in place for training local government code enforcement officials. This training will provide knowledge to enable local government to enforce the proposed rule.

#### 6. PAPERWORK

This rule will not impose any additional reporting or record keeping requirements. No additional paperwork is anticipated.

#### 7. DUPLICATION

The proposal does not duplicate, nor is it inconsistent with any existing Federal Law. The Department Of Energy has issued a determination that the 2000 editions of the International Energy Conservation Code (IECC) and ASHRAE Standard 90.1-1999 will improve energy efficiency in residential and commercial buildings. Each state is required to certify to DOE that its energy code mandates that commercial buildings meet the requirements of ASHRAE/IESNA 90.1-1999. The Department of State provided the required certification on March 26, 2004.

Subdivision 3 of Energy Law section 11-103 provides that any regulations of other State agencies pertaining to energy conservation be superseded by the adoption of the State Energy Code.

#### 8. ALTERNATIVES

It is the policy of the Department of State to modernize and amend the State Energy Code and Chapter 11 of the Residential Code regularly, so as to maintain consistency with national model codes, to keep energy construction practices in New York State consistent with practice nationally, and to incorporate new technical developments in a timely manner. Consequently, the alternative of maintaining existing provisions of the State Energy Code was rejected.

Further information concerning alternatives considered concerning significant provisions of the new State Energy Code are further discussed in the full Revised Regulatory Impact Statement.

#### 9. FEDERAL STANDARDS

Title III of the Energy Conservation and Production Act (ECPA), establishes requirements for the Building Energy Standards Program [42 U.S.C. 6831 – 6837]. Further discussion of these requirements is contained in the full Revised Regulatory Impact Statement.

#### 10. COMPLIANCE SCHEDULE

The target date for publication of a notice of adoption for this rule is between April of 2007 and July of 2007. It is anticipated that the revised

State Energy Code will become effective immediately upon publication of the notice of adoption.

## REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS AND/OR JOB IMPACT STATEMENT

### Uniform Fire Prevention and Building Code

**I.D. No.** DOS-02-07-00010-P

**This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement** pertain(s) to a notice of proposed rule making, I.D. No. DOS-02-07-00010-P, printed in the *State Register* on Jan. 10, 2007.

#### **Summary of Revised Regulatory Impact Statement**

##### 1. STATUTORY AUTHORITY

Article 18 of the Executive Law entitled, the New York State Uniform Fire Prevention and Building Code Act establishes the State Fire Prevention and Building Code Council (hereinafter “Code Council”) and authorizes such council to formulate a code to be known as the Uniform Fire Prevention and Building Code (hereinafter “Uniform Code”). Executive Law § 377 directs that the Uniform Code shall provide reasonably uniform standards and requirements for construction and construction materials for public and private buildings, including factory manufactured homes, consonant with accepted standards of engineering and fire prevention practices.

Executive Law § 378 provides that the Uniform Code shall address certain specified subjects. The subjects are listed in the full Revised Regulatory Impact Statement (the “Revised RIS”).

Executive Law § 377 (1) specifically states that the Code Council may amend particular provisions of the Uniform Code and shall periodically review the entire code to assure that it effectuates the purposes of Article 18 of the Executive Law. This rule making would repeal the existing text of the Uniform Code which is based on the 2001 versions of model International Codes (and 2001 supplements thereto), and replace it with new text which is based upon the 2003 International Code, eight individual model codes developed and published by the International Code Council (the “ICC”), a national building officials organization. Although the existing text of the Uniform Code is to be repealed, much of the new code text will essentially be a recodification of current Uniform Code provisions but with appropriate modification to accommodate advances in construction technology.

##### 2. LEGISLATIVE OBJECTIVES

When the State Legislature adopted Article 18 of the Executive Law in 1981, it declared in Executive Law § 371(2) that it shall be the public policy of the State of New York to provide for promulgation of a Uniform Code addressing building construction and fire prevention in order to provide a basic minimum level of protection to all people of the State from the hazards of fire and inadequate building construction. The Code Council was assigned the task of formulating the Uniform Fire Prevention and Building Code which took effect January 1, 1984. However, in the years following 1984, the Uniform Code did not keep pace with the evolving technology of fire prevention and building construction. Furthermore, as the rest of the nation moved to using a nationally accepted set of model codes, New York continued to maintain the separate identity of its building and fire prevention code. This changed in January of 2003, when New York repealed its entire code and replaced it with a new code based primarily on the 2000 edition of the International Codes.

The Uniform Code adopted in 2003 was based on model International Codes, and represented the first major revision of the Uniform Code since its inception in January 1984. This rule making would adopt new text for the Uniform Code, and would constitute the first major update of the International Code-based version of the Uniform Code. The Code Council has concluded that this rule making would further the purposes, objectives and standards of Article 18.

By repealing the existing text of the Uniform Code and replacing it with an update based primarily upon newer versions of model International Codes developed and published by the ICC, the Code Council seeks to better effectuate the purposes, objectives, and standards set forth in Article 18 of the Executive Law.

##### 3. NEEDS AND BENEFITS

The purpose of this rule making is to adopt new provisions for the Uniform Fire Prevention and Building Code. This change is necessary if

New York State is to remain competitive with the rest of the nation in matters involving building construction while at the same time providing an adequate level of safety to its residents. It is also necessary if New York State wishes to keep pace with evolving technology concerning fire prevention and building construction and to have a building and fire prevention code which is consistent with nationally accepted model codes. The benefits to be derived from the rule making will be the creation of an enhanced economic atmosphere in which building construction is encouraged.

The Needs and Benefits of significant provisions of the Uniform Code are discussed in Item #3 in the full Revised RIS.

#### 4. COSTS

a. Cost to Regulated Parties for the Implementation of and Continuing Compliance with the Proposed Rule.

This rule making seeks to implement performance based regulatory requirements providing regulated parties more alternatives to protect the occupants and users of buildings while at the same time fulfilling programmatic space needs in the most cost-effective manner.

It is anticipated that regulated parties will not typically see significant changes in costs of construction as a result of this proposed rule making. Certain proposals discussed in the full Revised RIS will increase the cost of construction in some cases. However, for the most part such cost increases will be attributable to new life safety requirements to be added to the Uniform Code by this rule making.

Regulated parties will incur costs if they wish to obtain copies of the eight codes which will comprise the Uniform Code as revised by this rule making. It is expected that the cost of an entire set of these eight code books will be approximately \$349.

b. Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule.

It is anticipated that the State and local governments will not typically see significant changes in costs of construction as a result of this proposed rule making. While certain proposed changes will increase the construction costs in some cases, for the most part such cost increases will be attributable to new life safety requirements to be added to the Uniform Code by this rule making.

It is not anticipated that this rule will place any greater burden on local governments with respect to their code administration and enforcement responsibilities. Local government personnel will require training in the details of this rule. The Department of State, Division of Code Enforcement and Administration has a program in place for training local government code enforcement officials.

The Department of State proposes to enter into a contract with the ICC under which the ICC will provide (1) a license to modify the model codes and to use the modified model code as the new Uniform Code (and the new State Energy Code), (2) 4,500 sets of the new codes books for local governments, local governmental officials, and Department of State staff, and (3) examinations and related study materials leading to certification of Department of State staff in a variety of code-enforcement related categories. The contract would also grant the Department of State the option to purchase annual governmental memberships in the ICC for approximately 1,600 local governments in New York State for three years. The sums to be paid under this proposed contract total approximately \$1,638,000 over three years, and represent a cost to the Department of State and the State. (This total cost includes approximately \$159,110 per year for the optional purchase of governmental memberships, and will be reduced if the Department of State elects not to exercise its option for any of the three years covered by the contract.)

#### 5. LOCAL GOVERNMENT MANDATES

This rule making will not impose any program, service, duty or responsibility specifically upon counties, cities, towns, villages, school districts, fire districts or other special districts. If any of these governmental entities were to undertake the construction of a building or structure, however, the construction process would be subject to the provisions of the proposed rule. Similarly, existing buildings and structures owned or under the control of local government entities are potentially subject to maintenance or fire prevention provisions of the Uniform Code.

#### 6. PAPERWORK

This rule will not impose any additional reporting or record keeping requirements. No additional paperwork is anticipated.

#### 7. DUPLICATION

The Uniform Code provides standards for the construction and maintenance of buildings and structures and for the protection of buildings and structures and their occupants from the hazards of fire. These are matters for which the federal government does not impose comprehensive requirements. The federal government has addressed the topic of accessible and usable facilities for the physically disabled, however, through adoption of the Americans with Disabilities Act (ADA) and the Fair Housing Act. The new text proposed for the Uniform Code also requires accessibility to buildings and structures for the physically disabled. Although the existence of federal and state standards may raise issues of overlap or conflict, no such overlap or conflict exists with this proposed rule.

Several State agencies have promulgated regulations which impose requirements upon buildings or structures which house activities which are licensed or regulated by the particular agency. Such regulations may impose an additional layer of regulation upon the construction, maintenance, or use of certain categories of buildings. These other regulations, however, are focused upon activities or occupants regulated or protected by the particular State agency and have been promulgated pursuant to statutory authority other than Article 18 of the Executive Law.

The version of the Uniform Code to be adopted by this rule making will include an index listing all state agencies that have building code related regulations.

This rule making will also add the Existing Building Code, which will be based on the 2003 edition of the model existing building code published by the ICC. The code requirements for existing buildings currently found in Appendix K of the Building Code. Now, with this proposal, New York will be adding the ICC Existing Building Code, with modifications appropriate to New York, to the other seven 2003 ICC based codes as a basis for the Uniform Code.

#### 8. ALTERNATIVES

It is the policy of the Department of State to modernize and amend the Uniform Code, so as to maintain consistency with the national model codes, to keep building practices in New York State consistent with practice nationally, and to incorporate new technical developments in a timely manner. Consequently, the alternative of maintaining existing provisions of the Uniform Code was rejected.

To assist the Code Council, technical subcommittees were established to review the ICC model codes and make recommendations to the Code Council to ensure that the new provisions of the Uniform Code would remain appropriate and addresses developing design and construction issues and needs in New York State.

All subcommittees found it was necessary to recommend changes to the 2003 ICC family of codes. Significant provisions of the proposed new Uniform Code are discussed with reference to Needs and Benefits, Costs, and Alternatives in Item #3 of the full Revised RIS.

Numerous hearings and public hearings took place throughout New York State in anticipation of the formal initiation of the rule making process. These meetings are listed in the full Revised RIS.

#### 9. FEDERAL STANDARDS

The federal government has adopted the Americans with Disabilities Act (ADA) which requires certain facilities to be accessible and usable by the physically disabled. The new text proposed for the Uniform Code also includes provisions which require buildings and structures to be accessible and usable by the physically disabled. The proposed rule would exceed the minimum standards established by the federal government.

#### 10. COMPLIANCE SCHEDULE

The target date for publishing a notice of adoption for this rule making is between April of 2007 and July of 2007. It is the intention of the Code Council to establish a 90 day transition period to begin with publication of the notice of adoption. During this period, regulated parties will have the option of construction in compliance with either the current code provisions or the newly adopted provisions.

The delay of the effective date of the new Uniform Code provisions until after adoption, and the option of compliance with either the existing or the proposed Code during that period, ensure that regulated parties will be able to achieve compliance with the rule on the date it is adopted.

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## State University of New York

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### NOTICE OF ADOPTION

#### Traffic and Parking Regulations of the State University of New York College at Cortland

**I.D. No.** SUN-44-06-00003-A

**Filing No.** 174

**Filing date:** Feb. 13, 2007

**Effective date:** Feb. 28, 2007

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

**Action taken:** Amendment of sections 585.3 and 585.14 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 360(1)

**Subject:** Traffic and parking regulations of the State University of New York College at Cortland.

**Purpose:** To increase the allowable amount for fines for violations of parking and traffic regulations, 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 at Cortland from parking and registration fees.

**Text or summary was published** in the notice of proposed rule making, I.D. No. SUN-44-06-00003-P, Issue of November 1, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Carolyn J. Pasley, Associate Counsel, State University of New York, State University Plaza, S321, Albany, NY 12246, (518) 443-5400, e-mail: Carolyn.Pasley@suny.edu

**Assessment of Public Comment**

The agency received no public comment.

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## Office of Temporary and Disability Assistance

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### NOTICE OF ADOPTION

#### Home Energy Assistance Program

**I.D. No.** TDA-42-06-00015-A

**Filing No.** 169

**Filing date:** Feb. 9, 2007

**Effective date:** Feb. 28, 2007

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

**Action taken:** Amendment of section 358-2.2(a)(14) of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 97 and 131(1)

**Subject:** Adequate notice requirements for Home Energy Assistance Program (HEAP) determinations.

**Purpose:** To amend adequate notice requirements to reflect the current policy and practice of providing budget information in HEAP notices that are based upon budget computations.

**Text or summary was published** in the notice of proposed rule making, I.D. No. TDA-42-06-00015-P, Issue of October 18, 2006.

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

**Text of 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

**Assessment of Public Comment**

The agency received no public comment.