

# 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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### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Asian Long Horned Beetle Quarantine

**I.D. No.** AAM-28-07-00018-P

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

**Proposed action:** Amendment of Part 139 of Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 18, 164 and 167

**Subject:** Firewood (all hardwood species), nursery stock, logs, green lumber, stumps, roots, branches and debris of a half inch or more in diameter of the following trees: maple, horse chestnut, silk tree or mimosa, birch, poplar, willow, elm, hackberry, ash, plane tree or sycamore, and mountain ash.

**Purpose:** To modify the Asian long horned beetle quarantine by establishing a quarantine area on Staten Island in order to prevent the spread of the beetle to other areas.

**Public hearing(s) will be held at:** 11:00 a.m., Aug. 30, 2007 at Department of Agriculture and Markets, 10B Airline Dr., Albany, NY

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Interpreter Service:** Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Text of proposed rule:** Section 139.2 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new subdivision (d) to read as follows:

*(d) That area in the Borough of Richmond in the City of New York bound by a line beginning at a point along the State of New York and the State of New Jersey border due north of the intersection of Richmond Terrace and South Avenue; then south to the intersection of South Avenue and Richmond Terrace; then south along South Avenue to its intersection with Fahy Avenue; then east along Fahy Avenue to Arlene Street; then south along Arlene Street until it becomes Park Drive North; then south on Park Drive North to its intersection with Rivington Avenue; then east along Rivington Avenue to the intersection of Mulberry Avenue; then south on Mulberry Avenue to its intersection with Travis Avenue; then northwest on Travis Avenue until it crosses Main Creek; then along the west shoreline of Main Creek to Fresh Kills Creek; then along the north shoreline of Fresh Kills Creek to Little Fresh Kills Creek; then along the north shoreline of Little Fresh Kills Creek to the Arthur Kill; then west to the border of the State of New York and the State of New Jersey in the Arthur Kill; then north along the borderline of the State of New York and the State of New Jersey to the point of beginning.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Robert J. Mungari, Director, Division of Plant Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-2087

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

**Public comment will be received until:** Five days after the last scheduled public hearing.

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

#### Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Said Section also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative objectives:

The proposed modification of the quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the spread within the State of an injurious insect, the Asian Long Horned Beetle.

3. Needs and benefits:

The Asian Long Horned Beetle, *Anoplophora glabripennis*, an insect species non-indigenous to the United States was detected in the Greenpoint section of Brooklyn, New York in August of 1996. Subsequent survey activities delineated other locations in Brooklyn as well as locations in and about Amityville, Queens and Manhattan.

As a result, 1 NYCRR Part 139 was adopted, establishing a quarantine of the areas in which the Asian Long Horned Beetle had been observed. The boundaries of those areas are described in 1 NYCRR section 139.2. Subsequent observations of the beetle have resulted in a need to establish a new quarantine area on Staten Island. The proposed rule contains the needed modifications.

The Asian Long Horned Beetle (ALB) is a destructive wood-boring insect native to China, Japan, Korea and the Isle of Hainan. It can cause serious damage to healthy trees by boring into their heartwood and eventually killing them. The adult Asian Long Horned Beetle has a large body (1 to 1.5 inches in length) with very long antenna (1.3-2.5 times their body length). Its body is black with white spots and its antenna are black and white. Adult beetles emerge during the spring and summer months from large (1/2 inch in diameter) round holes anywhere on infested trees, including branches, trunks and exposed roots. They fly for two or three days, during which they feed and mate. To lay eggs, adult females chew depressions in the bark of host trees to lay eggs. One female can lay 35 to 90 eggs. The larvae bore into and feed on the interior of the trees, where they overwinter. The accumulation of coarse sawdust around the base of the infested tree where branches meet the main stem and where branches meet other branches, is evidence of the presence of the borer. One generation is produced each year. Nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Host hardwood materials at risk to attack and infestation include species of the following: Acer (Maple); Aesculus (Horse Chestnut), Albizzia (Silk Tree or Mimosa); Betula (Birch); Populus (Poplar); Salix (Willow); and Ulmus (Elm); Celtis (Hackberry), Fraxinus (Ash), Platanus (Plane tree, Sycamore) and Sorbus (Mountain Ash).

Since the Asian Long Horned Beetle is not considered established in the United States, the risk of moving infested nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter poses a serious threat to the hardwood forests and street, yard, park and fruit trees of the State. Approximately 858 million susceptible trees above 5 inches in diameter involving 62 percent (18.6 million acres) of the State's forested land are at risk.

Control of the Asian Long Horned Beetle is accomplished by the removal of infested host trees and materials and then chipping or burning them. More than 8,000 infested trees have been removed to date. Chemical treatments are also used to suppress ALB populations with approximately 350,000 treatments administered. However, the size of the area infested and declining fiscal resources cannot mitigate the risk from the movement of regulated articles outside of the area under quarantine. As a result, the quarantine imposed by this rule has been determined to be the most effective means of preventing the spread of the Asian Long Horned Beetle. It will help to ensure that as control measures are undertaken in the areas the Asian Long Horned Beetle currently infests, it does not spread beyond those areas via the movement of infested trees and materials.

The effective control of the Asian Long Horned Beetle within the limited areas of the State where this insect has been found is also important to protect New York's nursery and forest products industry. The failure of states to control insect pests within their borders can lead to federal quarantines that affect all areas of those states, rather than just the infested portions. Such a widespread federal quarantine would adversely affect the nursery and forest products industry throughout New York State.

#### 4. Costs:

- (a) Costs to the State government: none.
- (b) Costs to local government: none.
- (c) Costs to private regulated parties:

Under the proposal, nurseries exporting host material from the quarantine area, other than pursuant to compliance agreement, would require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most inspections will take one hour or less. It is anticipated that there would be 25 or fewer such inspections each year with a total annual cost of less than \$1,000.

Most shipments would be made pursuant to compliance agreements for which there is no charge.

Tree removal services would have to chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the quarantine area may not move outside that area due to the fact that it is not practical at this time to determine for certification purposes that the material is free from infestations.

Under the proposal, the establishment of a quarantine area on Staten Island would affect 15 nursery dealers, nursery growers, landscaping companies, transfer stations, compost facilities and general contractors located within that area.

#### (d) Costs to the regulatory agency:

- (i) The initial expenses the agency will incur in order to implement and administer the regulation: None.
- (ii) It is anticipated that the Department would be able to administer the proposed quarantine with existing staff.

#### 5. Local government mandate:

Yard waste, storm clean-up and normal tree maintenance activities involving twigs and/or branches of 1/2" or more in diameter of host species would require proper handling and disposal, i.e., chipping and/or incineration if such materials are to leave the area under quarantine. An effort is underway to identify centralized disposal sites that would accept such waste from cities, villages and other municipalities at no additional cost.

#### 6. Paperwork:

Under the proposal, regulated articles inspected and certified to be free of Asian Long Horned Beetle moving from quarantine area would have to be accompanied by a state or federal phytosanitary certificate of a limited permit or be undertaken pursuant to a compliance agreement.

#### 7. Duplication:

None.

#### 8. Alternatives:

The failure of the State to establish the quarantine on Staten Island where the Asian Long Horned Beetle has been observed could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of Asian Long Horned Beetle that could result from the unrestricted movement of regulated articles from the areas covered by the modified quarantine. In light of these factors there does not appear to be any viable alternative to the modification of quarantine proposed in this rulemaking.

#### 9. Federal standards:

The proposed amendment does not exceed any minimum standards for the same or similar subject areas.

#### 10. Compliance schedule:

It is anticipated that regulated persons would be able to comply with the proposed rule immediately.

#### **Regulatory Flexibility Analysis**

##### 1. Effect on small business:

The small businesses affected by the proposed establishment of a quarantine area on Staten Island are the nursery dealers, nursery growers, landscaping companies, transfer stations, compost facilities and general contractors located within that area. It is estimated that there are 15 such businesses within that area. The local governments involved in the proposed establishment of the quarantine area are the City of New York and the borough of Staten Island.

Although it is not anticipated that local governments would be involved in the shipment of regulated articles from the proposed quarantine area, in the event that they do, they would be subject to the same quarantine requirements as other regulated parties.

##### 2. Compliance requirements:

All regulated parties in the quarantine area on Staten Island established by this proposed amendment would be required to obtain certificates and limited permits in order to ship regulated articles from that quarantine area. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

##### 3. Professional services:

In order to comply with the proposal, small businesses and local governments shipping regulated articles from the quarantine area on Staten Island would require professional inspection services, which would be provided by the Department and the USDA.

##### 4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule: None

(b) Annual cost for continuing compliance with the proposed rule:

Nurseries exporting host material from the proposed quarantine area on Staten Island, other than pursuant to a compliance agreement, would require an inspection and the issuance of a federal or state phytosanitary

certificate. This service is available at a rate of \$25 per hour. Most such inspections will take one hour or less. It is anticipated that there would be 25 or fewer such inspections each year, with a total cost of less than \$1,000. Most shipments would be made pursuant to compliance agreements for which there is no charge.

Tree removal services would have to chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the proposed quarantine area may not move outside that area due to the fact that it is not practical at this time to determine for certifications purposes that the material is free from infestation.

Local governments shipping regulated articles from the modified quarantine areas would incur similar costs.

5. Minimizing adverse impact:

The Department has designed the proposed rule to minimize adverse economic impact on small businesses and local governments. This is done by limiting the quarantine area to only parts of Staten Island where the Asian Long Horned Beetle has been detected; and by limiting the inspection and permit requirements to only those necessary to detect the presence of the Asian Long Horned Beetle and prevent its movement in host materials from the quarantine area. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the proposal minimizes adverse economic impact as much as is currently possible.

6. Small business and local government participation:

The Department has contacted various representatives of nurseries, arborists, the forestry industry, and local government to discuss the proposed quarantine. It has also had extensive consultation with the United States Department of Agriculture.

The Department is involved in a continuing outreach program involving all of the parties affected by the proposed amendment. The proposed amendment has been discussed with the members of the Department's Plant Industry Advisory Committee, which includes representatives of the various types of regulated parties affected by the rule. In addition, a press release was issued at the time the original quarantine was imposed announcing the steps the State is taking to address the problem presented by the Asian Long Horned Beetle. Department representatives also attended a public meeting in Brooklyn, New York at which these issues were discussed and input was received. This outreach program will continue.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments:

The economic and technological feasibility of compliance with the proposed rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Regulated parties shipping host materials from the quarantine area, other than pursuant to a compliance agreement, would require an inspection and the issuance of a phytosanitary certificate. Most shipments, however, will be made pursuant to compliance agreements for which there is no charge.

**Rural Area Flexibility Analysis**

The proposed rule would not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This finding is based upon the fact that the quarantine area established by this proposal is situated on Staten Island, which does not fall within the definition of "rural areas" set forth in section 481(7) of the Executive Law.

**Job Impact Statement**

The proposed rule would not have a substantial adverse impact on jobs and employment opportunities. The proposed establishment of a quarantine area on Staten Island is designed to prevent the spread of the Asian Long Horned Beetle to other parts of the State. A spread of the infestation would have very adverse economic consequences to the nursery, forestry, fruit and maple product industries of the State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government, other states and foreign countries. By helping to prevent the spread of the Asian Long Horned Beetle, the rule will help to prevent such adverse economic consequences and in so doing, protect the jobs and employment

opportunities associated with the State's nursery, forestry, fruit and maple product industries.

Forest related activities in New York State provide employment for approximately 70,000 people. Of that number, 55,000 jobs are associated with the wood-based forest economy, including manufacturing. The forest-based economy generates payrolls of more than \$2 billion.

As set forth in the regulatory impact statement, the cost of the proposed amendment to regulated parties is relatively small. The responses received during the Department's outreach to regulated parties indicate that the rule will not have a substantial adverse impact on jobs and employment opportunities.

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## Office of Children and Family Services

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### EMERGENCY RULE MAKING

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

**I.D. No.** CFS-28-07-00016-E

**Filing No.** 643

**Filing date:** June 26, 2007

**Effective date:** June 26, 2007

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

**Action taken:** Amendment of Parts 357, 421, 428, 430, 441 and 443 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 374-a and 378-(5)

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

**Specific reasons underlying the finding of necessity:** To enhance permanency for foster children by expediting the home study process and by requiring agencies to consider all viable placement options where a child may not return home, including out of state options. The regulations increase the frequency of caseworker visits of foster children placed outside of New York State and expands the options available for who may conduct such visits. The regulations will enhance the health and well-being of former foster children by providing them with relevant available health and education information where the child is discharged to his or her own care. The regulations will also enhance the safety of foster and adoptive children by broadening the scope of screening prospective foster and adoptive parents and other adults residing in the home of the prospective foster or adoptive parents. The regulations are also necessary to satisfy federal Title IV-E State Plan requirements that impact the availability of federal funding for foster care and adoption assistance.

**Subject:** Home studies for adoptive and foster placements for out-of-state children and for inter-county placements; child abuse and maltreatment screening for prospective adoptive and foster parents.

**Purpose:** To implement the requirements of the Federal Safe and Timely Interstate Placement of Foster Children Act of 2006 (Public Law 109-239) which establishes timeframes for the completion and submission of home studies of prospective foster or adoptive parents who are being considered as potential resources for foster children from other states and for the frequency of casework visits of foster children placed outside of New York State and provisions of the Federal Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248) which requires that whenever a person applies for certification or approval as a foster or adoptive parent, or any other person over the age of 18 who resides in the home of such applicant resided in another state or states in the five years preceding the application for certification or approval, be screened for request child abuse and maltreatment information maintained by the previous state(s) of residence. Both laws took effect on October 1, 2006.

**Substance of emergency rule:** Section 357.3 (Access to Medical and Education Records)

The amendment provides for access to education and medical information at no cost to a foster child who is discharged to his or her own care.

## Part 421 (Standards of Practice for Adoption Services)

The amendment clarifies who may adopt a child. The amendment requires authorized agencies to seek child protective services information from other states regarding a person applying for approval as an adoptive parent and any other person who resides with the applicant where such applicant or other person resided in the other state within 5 years of the application for approval. The amendment establishes timeframes for the completion of home studies for a person seeking to be approved as an adoptive parent to receive a child from another state or social services district. The amendment also sets forth who may perform such home studies. The amendment clarifies that a social services district or a voluntary authorized agency may not delay or deny an application or the conducting of a home study of a person seeking to adopt a child in the custody of another authorized agency.

Sections 428.3, 428.5 and 428.6 (Standards for Uniform Case Recording)

The amendment addresses case recording requirements for foster children placed outside of New York State and reflects the change in standards for the frequency of casework visits with such children. The amendment clarifies that when reunification with the parent is not the child's permanency planning goal, the social services district or the voluntary authorized agency must document the reasonable efforts made to finalize the child's permanency plan, including the identification of both in-state and out-of-state placement options. The amendment provides that when concurrently planning for the permanency of a child in foster care, the social services district or the voluntary authorized agency must document the description of the alternative plan to achieve permanency for the child which must include identification of appropriate in-state and out-of-state placements, if the child can not be safely returned home to his or her parents.

## Section 430.11 (Appropriateness of Placement)

The amendment increases the frequency of caseworker visits of foster children placed outside of New York State from every 12 months to every six months. The amendment also expands the entities that may conduct such visits to include a private agency under contract with either the authorized agency in New York or the state in which the foster child is placed.

## Section 430.12 (Diligence of Effort)

The amendment clarifies that if the child's permanency planning goal is adoption or placement in a permanent home other than that of the child's parent, the social services district or the voluntary authorized agency must document the reasonable efforts made to place the child in-state or out-of-state in a timely and orderly manner.

## Section 441.22 (Health and Medical Services)

The amendment provides for access to health information at no cost to a foster child who is discharged to his or her own care.

## Part 443 (Certification, Approval and Supervision of Foster Boarding Homes)

The amendment requires authorized agencies to seek child protective services information from other states regarding a person applying for certification or approval as a foster parent and any other person who resides with the applicant where the applicant or other person resided in another state within 5 years of the application for certification or approval. The amendment establishes timeframes for the completion of home studies for a person seeking to be certified or approved as a foster parent to receive a child from another state or social services district. The amendment also sets forth who may perform such home studies. The amendment clarifies that a social services district or a voluntary authorized agency may not delay or deny an application or the conducting of a home study of a person seeking to care for a foster child in the custody of another authorized agency. The amendment allows an emergency certified or approved foster parent to remain in the status of an emergency certified or an emergency approved foster parent pending the completion of the Statewide Central Register of Child Abuse and Maltreatment data-base check required by section 424-a of the Social Services Law.

**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 September 23, 2007.

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

**Regulatory Impact Statement**

## 1. Statutory authority:

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

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

Section 372-b(3) of the SSL requires OCFS to promulgate regulations to maintain enlightened adoption policies and to establish standards and criteria for adoption practices.

Section 374-a of the SSL sets forth the standards and procedures relating to the Interstate Compact on the Placement of Children (ICPC) that involve the placement of children from one state to another for the purpose of foster care or adoption.

Section 378(5) of the SSL authorizes OCFS to establish and amend regulations governing the issuance and revocation of a certificate to board foster children and to prescribe standards for the care of foster children.

Section 471(a) of the Social Security Act provides that in order for a state to be eligible for federal Title IV-E funding for foster care and adoptions assistance, the state must have a State Plan approved by the federal Department of Health and Human Services which reflects the standards set forth in such section.

## 2. Legislative objectives:

The regulations implement the requirements of the federal Safe and Timely Interstate Placement of Foster Children Act of 2006 (Interstate Placement Act) that took effect on October 1, 2006. The Interstate Placement Act establishes timeframes for the completion and submission of home studies of prospective foster or adoptive parents who are being considered as potential resources for foster children from other states. The regulations impose standards on the content and timeframes for the completion of such home studies.

The regulations also implement federal requirements for the dissemination of the foster child's health and education records at no cost when the child is being discharged from care. Furthermore, the regulations implement federal requirements relating to the documentation of reasonable efforts to finalize a child's permanency plan, including consideration of both in-state and out-of-state placement options.

In addition, the regulations implement federal requirements relating to case recording requirements for foster children placed outside of New York and the frequency of casework visits with such children. The frequency of such visits is increased from every 12 months to every six months. The regulations also add the option that such visits may be made by a private agency under contract with either the authorized agency in New York with custody of the child or the state in which the foster child is placed.

The regulations implement the requirements of the federal Adam Walsh Child Protection Act of 2006 (Walsh Protection Act), parts of which also took effect on October 1, 2006. The Walsh Protection Act requires that whenever a person applies for certification or approval as a foster or adoptive parent, or any other person over the age of 18 who resides in the home of such applicant resided in another state or states in the five years preceding the application for certification or approval, the licensing or approving agency must request child abuse and maltreatment information maintained by the previous state(s) of residence.

## 3. Needs and benefits:

The regulations will enhance permanency for foster children by expediting the home study process and by requiring agencies to consider all viable placement options where a child may not return home. Currently, the ICPC does not set forth any timeframes for the conducting of home studies of persons seeking to be foster parents or adoptive parents of foster children. Regarding the consideration of out-of-state options for children in foster care, current regulatory standards do not expressly refer to out-of-state placement options.

The regulations establish that upon receipt of a referral, the social services district may conduct such home study directly or may use a voluntary authorized agency under contract with such district or a voluntary authorized agency under contract with the OCFS to conduct the home study, and that if the latter option is selected, the costs of the home study will be charged back to the district in which the prospective foster or adoptive parent(s) reside.

The regulations codify the policies regarding the time frames for completion of a home study and which entity is permitted to do a home study to apply to New York State inter-county placements, when an inter-county placement is sought for a foster child for the purposes of foster care in another county or to make an adoptive placement in another county.

The regulations will also enhance the safety and permanency of foster children placed outside of New York by increasing the frequency of caseworker visits of the child in the home or facility in which the child is placed.

The regulations will enhance the health and well-being of former foster children by providing them with relevant available health and education information where the child is discharged to his or her own care.

The regulations will also enhance the safety of foster and adoptive children by broadening the scope of screening prospective foster and adoptive parents and other adults residing in the home of the prospective foster or adoptive parents. It is possible that such persons may have a child abuse or maltreatment history in their prior state of residence. Such information is highly relevant to whether a foster or adoptive child may be safely cared for in such home. The regulations are necessary to satisfy federal Title IV-E State Plan requirements that impact the availability of federal funding for foster care and adoption assistance. Furthermore, the regulations allow an emergency certified or approved foster parent to remain in that status pending completion of the Statewide Central Register of Child Abuse and Maltreatment data-base check required by section 424-a of the SSL. A similar provision currently exists for the completion of the criminal history record check.

#### 4. Costs:

Local social services districts or voluntary authorized agency under contract with social services districts are already required to complete a home study; therefore, this does not represent an additional workload. It is unknown if social services districts or voluntary authorized agency under contract with social services districts are currently completing the home study within 60 days (or 75 days in certain circumstances) of the receipt of the request. Therefore, to facilitate compliance with the timeframes, OCFS will issue a request for applications in order to make available the services of one or more voluntary agencies to conduct the home study.

Minimal costs are expected related to the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states. It is expected that this activity will be completed through routine correspondence to such state(s).

The regulations also increase the frequency of caseworker visits and reports for foster children placed outside of New York State from every 12 months to every six months. In general, such visits and reports are already requested and conducted within these timeframes, and in many cases are done more frequently. To facilitate this activity, the regulations expand the entities that may conduct such visits to include a private agency under contract with either the authorized agency in New York or the state in which the foster child is placed. In accordance with the ICPC, such reports and visits often are done by the state where the child is placed and are typically completed within these timeframes. As a result, it is anticipated that there will be no significant cost impact on local social services districts for this activity.

There is no additional cost anticipated for the dissemination of health and education records when the child is being discharged from foster care since this activity is the current practice.

There is no cost related to any of the documentation requirements contained in these regulations since this information will be recorded in the CONNECTIONS where this functionality already exists or is under development.

#### 5. Local government mandates:

When the ICPC office of OCFS receives a request from another state seeking to place a foster child from the other state with a person in New York State as a foster or adoptive parent, the social services district or voluntary authorized agency under contract with the social services district is required to commence and compete a home study within 60 days of the receipt of such request. An additional 15 days to complete the home study is allowed for circumstances outside of the control of the social services district or voluntary authorized agency if a timely request for such documentation was made by the district or agency.

Currently, social services districts and voluntary authorized agencies are required pursuant to 18 NYCRR 357.3 to provide a foster child with the child's comprehensive health history when the foster child is discharged to his or her own care. The regulations clarify that this history must be provided at no cost and include the child's current health providers. The regulations also require the provision of the child's education record at the time of the child's discharge to his or her own care, also at no cost to the child.

Social services districts are currently required to assess the appropriateness of placement of children in foster care pursuant to 18 NYCRR 430.11. Each foster child must have periodic assessments performed to address the issue of permanency. The regulations require the social services district to expressly document the consideration of out-of-state placement options if the child will not be returned to his or her parent.

Current law and regulations in section 424-a of the SSL and 18 NYCRR Parts 421 and 443 require data base checks of New York's Statewide Central Register of Child Abuse and Maltreatment for all persons applying for certification or approval as foster or adoptive parents and for any other persons over the age of 18 who reside in the home of such applicants. The regulations expand the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states.

#### 6. Paperwork:

The regulations require the specific documentation of the consideration of out-of-state placement as an option for foster children who do not have the permanency goal of return to the parent. Such documentation will be recorded in the CONNECTIONS system.

Documentation relating to home studies for the certification or approval of a foster or adoptive parent will be maintained in the state's CONNECTIONS system. This reflects current standards.

Documentation of health information is already mandated by OCFS regulations 18 NYCRR 357.3 and 441.22. Documentation of educational information is already mandated by OCFS regulation 18 NYCRR 428.5.

The regulations require the documentation of requests to appropriate child welfare agencies in the prior state(s) of residence (5 years preceding the date of the application for certification or approval) of prospective foster or adoptive parents and/or any other persons over the age of 18 who resides in the home of the applicant and the results of such requests. As is currently required for in-State inquiries made pursuant to section 424-of the SSL, if the agency decides to certify or approve an applicant where there is a history of abuse or maltreatment, the agency must document the basis for making such decision.

#### 7. Duplication:

The regulations do not duplicate other State requirements.

#### 8. Alternatives:

These regulations are necessary to comply with federal statutory mandates. Therefore, there are no alternatives to these regulations.

#### 9. Federal standards:

The regulations are required to implement the federal Safe and Timely Interstate Placement of Foster Children Act of 2006 and the federal Adam Walsh Child Protection Act of 2006 and to maintain compliance with federal Title IV-E State Plan requirements.

#### 10. Compliance schedule:

Compliance with the regulations must begin immediately upon emergency filing.

### **Regulatory Flexibility Analysis**

#### 1. Effect of Rule:

Social services districts will be affected by the regulations. There are 58 social services districts and the St. Regis Mohawk Tribe which is authorized by section 371(10)(b) of the Social Services Law to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Most voluntary foster care and adoption agencies also will be affected by portions of the regulations. There are approximately 114 voluntary agencies operating foster care programs. Of those, 68 such agencies operate foster boarding home programs. There are 119 voluntary agencies authorized that operate adoption programs, including 19 agencies located out-of-state and approved to do adoptions in New York State pursuant to Article 13 of the Not-For-Profit Corporation Law.

#### 2. Compliance Requirements:

When the Interstate Compact on the Placement of Children (ICPC) office of OCFS receives a request from another state seeking to place a foster child from the other state with a person in New York State as a foster or adoptive parent, the social services district or voluntary authorized agency under contract with the social services district or under contract with OCFS is required to commence and compete a home study within 60 days of the receipt of such request. An additional 15 days to complete the home study is allowed for circumstances outside of the control of the social services district or voluntary authorized agency if a timely request for such documentation was made by the district or agency.

Currently, social services districts and voluntary authorized agencies are required pursuant to 18 NYCRR 357.3 to provide a foster child with his or her comprehensive health history when the foster child is discharged to his or her own care. The regulations clarify that this history must include the child's current health providers and clarify that there is no cost to the child for these records. The regulations also require the provision of the child's education record at the time of the child's discharge to his or her own care, also at no cost to the child.

Social services districts are currently required to assess the appropriateness of placement of children in foster care pursuant to 18 NYCRR 430.11. Each foster child must have periodic assessments performed to address the issue of permanency, including whether the child will be returned home or to another placement resource (see section 409-e of the SSL and 18 NYCRR Part 428). The regulations require the social services district to expressly document the consideration of out of state placement options if the child will not be returned to his or her parent.

When a foster child is placed outside of New York State, the child must be visited periodically by a caseworker pursuant to 18 NYCRR 430.11(c)(2)(ix) and the visits must be recorded in the child's case record. The regulations increase the frequency of such visits from every 12 months to every six months. The regulations also authorize that such visits may be conducted by a private agency under contract with the either the authorized agency in New York with custody of the child or the state in which the foster child is placed.

Current law and regulations in section 424-a of the SSL and 18 NYCRR Parts 421 and 443 require data base checks of New York's Statewide Central Register of Child Abuse and Maltreatment for all persons applying for certification or approval as foster or adoptive parents and for any other persons over the age of 18 who reside in the home of such applicants, irrespective of how long such persons resided in New York State. The regulations expand the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states. Furthermore, the regulations allow an emergency certified or approved foster parent to remain in that status pending completion of the Statewide Central Register of Child Abuse and Maltreatment data-base check required by section 424-a of the SSL. A similar provision currently exists for the completion of the criminal history record check.

### 3. Professional Requirements:

The regulations would not require social services districts or voluntary authorized agencies to hire additional staff in order to implement them. Current training programs will be enhanced to emphasize the casework support that these amendments bring. In addition, OCFS will issue a request for applications in order to make available the services of one or more voluntary authorized agencies to conduct home studies for out-of-state placements or inter-county placements, in accordance with these regulations.

### 4. Compliance Costs:

Local social services districts or voluntary authorized agency under contract with social services districts are already required to complete a home study; therefore, this does not represent an additional workload. It is unknown if social services districts or voluntary authorized agency under contract with social services districts are currently completing the home study within 60 days (or 75 days in certain circumstances) of the receipt of the request. Therefore, to facilitate compliance with the timeframes, OCFS will issue a request for applications in order to make available the services of one or more voluntary agencies to conduct the home study.

Minimal costs are expected related to the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states. It is expected that this activity will be completed through routine correspondence to such state(s).

The regulations also increase the frequency of caseworker visits and reports for foster children placed outside of New York State from every 12 months to every six months. In general, such visits and reports are already requested and conducted within these timeframes, and in many cases are done more frequently. To facilitate this activity, the regulations expand the entities that may conduct such visits to include a private agency under contract with either the authorized agency in New York or the state in which the foster child is placed. In accordance with the ICPC, such reports and visits often are done by the state where the child is placed and are typically completed within these timeframes. As a result, it is anticipated

that there will be no significant cost impact on local social services districts for this activity.

There is no additional cost anticipated for the dissemination of health and education records when the child is being discharged from foster care since this activity is the current practice.

There is no cost related to any of the documentation requirements contained in these regulations since this information will be recorded in the CONNECTIONS where this functionality already exists or is under development.

### 5. Economic and Technological Feasibility:

The regulations will not impose additional economic or technological burdens on social services districts or voluntary authorized agencies.

### 6. Minimizing Adverse Impact:

The aforementioned request for applications will be issued by OCFS in order to provide an additional resource to the field for the purpose of conducting home studies in accordance with these regulations, including meeting the new timeframes prescribed by the federal law.

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

The timeframes prescribed by the federal legislation precluded the participation of small businesses in the development of these regulations. They are being filed on an emergency basis in order to meet the federal timeframes; those affected will have an opportunity to comment upon publication of a Notice of Proposed Rule-Making in the State Register.

### **Rural Area Flexibility Analysis**

#### 1. Effect on Rural Areas:

The regulations will affect the 44 social services districts that are in rural areas and the St. Regis Mohawk Tribe, which is authorized by section 371(10)(b) of the Social Services Law to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Those voluntary authorized agencies in rural areas contracting with social services districts to provide foster care and adoption services also will be affected by the proposed regulations. Currently, there are approximately 85 such agencies.

#### 2. Compliance Requirements:

When the Interstate Compact on the Placement of Children (ICPC) office of OCFS receives a request from another state seeking to place a foster child from the other state with a person in New York State as a foster or adoptive parent, the social services district or voluntary authorized agency under contract with the social services district or under contract with OCFS is required to commence and complete a home study within 60 days of the receipt of such request. An additional 15 days to complete the home study is allowed for circumstances outside of the control of the social services district or voluntary authorized agency if a timely request for such documentation was made by the district or agency.

Currently, social services districts and voluntary authorized agencies are required pursuant to 18 NYCRR 357.3 to provide a foster child with his or her comprehensive health history when the foster child is discharged to his or her own care. The regulations clarify that this history must include the child's current health providers and clarify that there is no cost to the child for these records. The regulations also require the provision of the child's education record at the time of the child's discharge to his or her own care, also at no cost to the child.

Social services districts are currently required to assess the appropriateness of placement of children in foster care pursuant to 18 NYCRR 430.11. Each foster child must have periodic assessments performed to address the issue of permanency, including whether the child will be returned home or to another placement resource (see section 409-e of the SSL and 18 NYCRR Part 428). The regulations require the social services district to expressly document the consideration of out-of-state placement options if the child will not be returned to his or her parent.

When a foster child is placed outside of New York State, the child must be visited periodically by a caseworker pursuant to 18 NYCRR 430.11(c)(2)(ix) and the visits must be recorded in the child's case record. The regulations increase the frequency of such visits from every 12 months to every six months. The regulations also authorize that the caseworker visit may be performed by a private agency under contract with either the authorized agency in New York with custody of the child or the state in which the foster child is placed.

Current law and regulations in section 424-a of the SSL and 18 NYCRR Parts 421 and 443 require data base checks of New York's Statewide Central Register of Child Abuse and Maltreatment for all persons applying for certification or approval as foster or adoptive parents and for any other persons over the age of 18 who reside in the home of such applicants, irrespective of how long such persons resided in New York State. The regulations expand the requirements to check with the appropri-

ate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states. Furthermore, the regulations allow an emergency certified or approved foster parent to remain in that status pending completion of the Statewide Central Register of Child Abuse and Maltreatment data-base check required by section 424-a of the SSL. A similar provision currently exists for the completion of the criminal history record check.

### 3. Professional Services:

The regulations would not require social services districts or voluntary authorized agencies to hire additional staff in order to implement them. Current training programs will be enhanced to emphasize the casework support that these amendments bring. In addition, OCFS will issue a request for applications in order to make available the services of one or more voluntary agencies to conduct home studies for out-of-state placements or inter-county placements, in accordance with these regulations.

### 4. Compliance Costs:

Local social services districts or voluntary authorized agency under contract with social services districts are already required to complete a home study; therefore, this does not represent an additional workload. It is unknown if social services districts or voluntary authorized agency under contract with social services districts are currently completing the home study within 60 days (or 75 days in certain circumstances) of the receipt of the request. Therefore, to facilitate compliance with the timeframes, OCFS will issue a request for applications in order to make available the services of one or more voluntary agencies to conduct the home study.

Minimal costs are expected related to the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states. It is expected that this activity will be completed through routine correspondence to such state(s).

The regulations also increase the frequency of caseworker visits and reports for foster children placed outside of New York State from every 12 months to every six months. In general, such visits and reports are already requested and conducted within these timeframes, and in many cases are done more frequently. To facilitate this activity, the regulations expand the entities that may conduct such visits to include a private agency under contract with either the authorized agency in New York or the state in which the foster child is placed. In accordance with the ICPC, such reports and visits often are done by the state where the child is placed and are typically completed within these timeframes. As a result, it is anticipated that there will be no significant cost impact on local social services districts for this activity.

There is no additional cost anticipated for the dissemination of health and education records when the child is being discharged from foster care since this activity is the current practice.

There is no cost related to any of the documentation requirements contained in these regulations since this information will be recorded in the CONNECTIONS where this functionality already exists or is under development.

### 5. Minimizing Adverse Impact:

The aforementioned request for applications will be issued by OCFS in order to provide an additional resource to the field for the purpose of conducting home studies in accordance with these regulations, including meeting the new timeframes prescribed by the federal law.

### 6. Small Business Participation:

The timeframes prescribed by the federal legislation precluded the participation of small businesses in the development of these regulations. They are being filed on an emergency basis in order to meet the federal timeframes; those affected will have an opportunity to comment upon publication of a Notice of Proposed Rule-Making in the State Register.

### Job Impact Statement

A full job statement has not been prepared for the regulations implementing the federal Safe and Timely Interstate Placement of Foster Children Act of 2006, and portions of the federal Adam Walsh Child Protection Act of 2006. The regulations would not have a substantial adverse impact on jobs or employment opportunities and in fact would not result in the loss of any jobs. This finding is based upon the fact that the regulations prescribe additional duties for child welfare staff. In addition, these regulations allow for a potential increase in jobs based upon the contracting authority granted by these regulations, if the social services district so chooses to contract for certain activities.

## EMERGENCY RULE MAKING

### National Criminal History Record Checks through the FBI

**I.D. No.** CFS-28-07-00017-E

**Filing No.** 644

**Filing date:** June 26, 2007

**Effective date:** June 26, 2007

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

**Action taken:** Amendment of Parts 421 and 443 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d) and 378-a(2); and L. 2006, ch. 668, section 3

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

**Specific reasons underlying the finding of necessity:** To adopt these regulations on an emergency basis is necessary for the preservation of the health, safety and welfare of foster children needing foster and adoptive placement. New federal and State statutes require a national criminal history record check through the Federal Bureau of Investigation (FBI) of persons applying for certification or approval as foster or adoptive parents and new State statute requires a national criminal history record check through the FBI of other persons over the age of 18 who reside in the home of such applicants.

The current criminal history record check authorized by section 378-a(2) of the Social Services Law (SSL) and Office of Children and Family Services (OCFS) regulations 18 NYCRR Parts 421 and 443 only authorize a check of the data base maintained by the Division of Criminal Justice Services (DCJS). The DCJS data base generally does not reflect crimes committed outside of the State of New York. Therefore, authorized agencies to which persons apply for certification or approval as a foster or adoptive parent would not be aware of whether an applicant or another person over the age of 18 residing in the home of an applicant has a criminal history in another state which could present a health and safety issue for foster children placed in the applicant's home. The regulations enable authorized agencies to conduct a national criminal history record check on such persons, thereby enhancing the safety of children placed in such foster or adoptive homes.

**Subject:** National criminal history record checks through the FBI of prospective foster or adoptive parents and persons over the age of 18 residing in the homes of such individuals.

**Purpose:** To implement the requirements of chapter 668 of the Laws of 2006 that amended section 378-a (2) of the SSL to require a national criminal history record check through the FBI of all persons applying for certification or approval as foster or adoptive parents and all other persons over the age of 18 who reside in the homes of such applicants. The amendment to section 378-a (2) of the SSL became effective on Jan. 11, 2007. Section 3 of chapter 3 of the Laws of 668 grants OCFS emergency rule making authority to implement the law by its effective date.

The regulations also implement the requirements of the federal Adam Walsh Child Protection Act of 2006 (P.L. 109-248) that require states to conduct a national criminal history record check on all persons applying for certification or approval as foster or adoptive parents, irrespective of whether federal Title IV-E funding is being sought for the placement of a foster child in the home of such a person. Compliance with the federal act is required for New York to have a compliant Title IV-E State Plan and to satisfy federal safety requirements for individual foster care placements.

**Substance of emergency rule:** Section 421.11 (First Contact With Prospective Adoptive Parents)

The regulations require authorized agencies that operate an adoption program to inform a person applying to be an approved adoptive parent of the requirement that the applicant and each person over the age of 18 who resides in the home of the applicant be fingerprinted for the purpose of conducting a national criminal history record check through the Federal Bureau of Investigation (FBI).

In addition, the regulations require that a voluntary authorized agency must notify a person applying for approval as an adoptive parent that the applicant and each person over the age of 18 who resides in the home of the applicant will be asked to sign a consent for the release to the voluntary authorized agency of crime specific information provided to the Office of Children and Family Services (OCFS) by the FBI. The voluntary authorized agency must also advise the applicant that the refusal to sign the consent is a basis, in and of itself, to deny the person's application.

## Section 421.15 (Adoption Study Process)

The regulations require authorized agencies that operate an adoption program to inform the applicant at the initial appointment or meeting with the authorized agency that a national criminal history record check through the FBI must be performed before the conclusion of the applicant's home study.

## Section 421.19 (Foster Parents)

The regulations require voluntary authorized agencies to inform a person who is currently a certified or approved foster parent and who applies to such agency for approval as an adoptive parent that the applicant and each person over the age of 18 who resides in the home of the applicant will be asked to sign a consent for the release of crime specific information received by OCFS from the FBI and that the refusal to provide such a consent is a basis, in and of itself, for denial of the person's application.

The regulations require authorized agencies that operate an adoption program to perform a national criminal history record check through the FBI of a foster parent seeking approval as an adoptive parent and each person over the age of 18 who resides in the home of such person.

## Section 421.27 (Criminal History Record Review)

The regulations require that authorized agencies perform a national criminal history record check through the FBI for each person seeking approval as an adoptive parent and each person over the age of 18 who resides in the home of the applicant. The regulations set forth the process for collecting and processing fingerprints for the national criminal history record check and the standards for the review and dissemination to authorized agencies of criminal history record information received by OCFS from the FBI.

The regulations provide that a voluntary authorized agency must deny an application when the applicant or other person over the age of 18 who resides in the home of the applicant has a criminal conviction or open charge reported to OCFS by the FBI for a crime committed outside of New York State and such person thereafter refuses to consent to disclosure of the specific crime or crimes when requested to do so by the voluntary authorized agency.

In addition, the regulations provide that if an application for approval is denied, the authorized agency must include within its notice of denial a description of the record review process available through the FBI.

## Section 443.2 (Authorized Agency Operating Requirements)

The regulations require authorized agencies that operate a foster boarding home program to inform a person applying for certification or approval as a foster parent of the requirement that the applicant and each person over the age of 18 who resides in the home of the applicant must be fingerprinted for the purpose of conducting a national criminal history record check through the FBI.

The regulations require that each applicant for certification or approval as a foster parent and each person over the age of 18 who resides in the home of the applicant must submit completed fingerprint cards for a national criminal history check performed by the FBI.

In addition, the regulations provide that if an application for certification or approval is denied, the authorized agency must include within its notice of denial a description of the record review process available through the FBI.

The regulations clarify that the records maintained by the authorized agency must include such criminal history responses from OCFS to reflect that both FBI and DCJS checks have been completed.

## Section 443.7 (Agency Procedures for Certification or Approval of Potential Emergency Foster Homes and Emergency Relative Foster Homes)

The regulations provide that when a foster child is placed in a foster home that is certified or approved on an emergency basis that the authorized agency placing the child must secure fingerprints from the foster parent and each person over the age of 18 who resides in the home of the foster parent for the purpose of conducting a national criminal history record check through the FBI.

## Section 443.8 (Criminal History Record Review)

The regulations require that authorized agencies perform a national criminal history record check through the FBI for each person applying for certification or approval as a foster parent and each person over the age of 18 who resides in the home of the applicant. The regulations set forth the process for collecting and processing fingerprints for the national criminal history record check and the standards for the review and dissemination to authorized agencies of criminal record information received by OCFS from the FBI.

The regulations require that when a person applies for certification or approval to a voluntary authorized agency that the voluntary authorized

agency must notify the applicant that the applicant and each person over the age of 18 who resides in the home of the applicant will be asked to sign a consent for the release of crime specific information provided to OCFS by the FBI and that the voluntary authorized agency must advise the applicant that the refusal to sign the consent is a basis, in and of itself, to deny the person's application.

The regulations provide that a voluntary authorized agency must deny an application when the applicant or other person over the age of 18 who resides in the home of the applicant has a criminal conviction or open charge reported to OCFS by the FBI for a crime committed outside of New York State and such person thereafter refuses to consent to disclosure of the specific crime or crimes when requested to consent by the authorized agency.

## Section 443.10 (Annual Renewal of Certified and Approved Foster Homes)

The regulations require that an authorized agency that operates a foster boarding home program must, at the time of renewal of the certification or approval of a foster home, conduct a national criminal history record check through the FBI of any person over the age of 18 who currently resides in such foster home, other than the foster parent, who has not previously had a national criminal record check completed pursuant to 18 NYCRR Part 443.

**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 September 23, 2007.

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

**Regulatory Impact Statement**

## 1. Statutory authority:

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

Section 378-a (2) of the SSL requires criminal history record checks be made on foster and adoptive parent applicants and other persons over the age of 18 who reside with such applicants.

## 2. Legislative objectives:

The regulations implement the requirements of Chapter 668 of the Laws of 2006 that amended section 378-a(2) of the SSL to require a national criminal history record check through the Federal Bureau of Investigation (FBI) for all persons applying for certification or approval as foster or adoptive parents and all other persons over the age of 18 who reside in the home of the applicants.

The regulations also implement the requirements of the federal Adam Walsh Child Protection Act of 2006 (P. L. 109-248) that requires states to conduct a national criminal history record check on all persons applying for certification or approval as foster or adoptive parents, irrespective of whether or not the social services district seeks federal Title IV-E funding for the placement. Compliance with the federal act is required for the state to have a compliant Title IV-E State Plan and to satisfy federal safety requirements for individual foster care placements.

The requirements for a national criminal history record check set forth in the regulations are in addition to the existing provisions in section 378-a(2) of the SSL that require a New York State criminal history record check to be conducted through the New York State Division of Criminal Justice Services (DCJS). In addition, the applicant must provide a sworn statement attesting to any criminal convictions of any applicable family member in New York State or any other jurisdiction.

By enacting Chapter 668 of the Laws of 2006, the legislature sought to enhance the scope of the criminal background checks performed by social services districts and voluntary authorized agencies by requiring that fingerprints also be checked through the FBI, thus allowing officials to corroborate information and gain a more accurate picture about any crimes committed nationally, including arrests and/or convictions.

## 3. Needs and benefits:

Both federal and state lawmakers enacted new laws requiring national criminal background checks to determine the complete criminal history of applicants to be foster or adoptive parents and adults who reside in their households. It is important that foster and adoptive parents not be fully certified or approved without taking into account all applicable criminal records, and where such records are found, doing a safety assessment as prescribed by OCFS. These new requirements should afford a safer envi-

ronment for foster children placed in foster homes or for the purpose of adoption.

#### 4. Costs:

The federal and State statutory provisions requiring national criminal history background checks, which are being implemented through these regulations, will result in increased costs to the State. Based on the current statistics for conducting State criminal history background checks, it is projected that 17,000 persons will be subject to the new required national criminal history records checks during the first year of implementation. Based on that projection, OCFS estimates that the total costs associated with the national criminal history database check process during the first year of implementation will be approximately \$875,000. The estimate includes \$408,000 to cover the \$24 fee that must be paid to the FBI for processing each set of fingerprints, as well as \$467,000 for the costs to enhance OCFS' criminal history review administrative and legal units and the OCFS criminal history computer system to process the national criminal history database checks.

It is anticipated that approximately \$188,125 in federal reimbursement under Title IV-E of the federal Social Security Act will be available for the annual costs of conducting the national criminal history record checks. The remaining cost of \$686,875 will be State share.

#### 5. Local government mandates:

The regulations require social services districts and voluntary authorized agencies that certify or approve foster and/or adoptive parents, to include as part of the licensing process conducting national criminal history background checks through the FBI in order to compile a complete criminal record on applicants and other adults residing in their household and take any such record into account by performing the OCFS prescribed safety assessment, prior to fully certifying or approving the home.

#### 6. Paperwork:

Social services districts and voluntary authorized agencies will need to review all results of the national criminal background checks as they currently must review the results of the state criminal background checks. Where a criminal record exists, safety assessments must be documented. Pertinent information must be recorded on the State's SACWIS system, CONNECTIONS.

#### 7. Duplication:

The regulations do not duplicate other State requirements.

#### 8. Alternatives:

There are no alternatives to imposing these regulations, as they are required by both State and federal statutes.

#### 9. Federal standards:

The aforementioned Adam Walsh Child Protection Act of 2006, contains comparable standards and requirements to Chapter 668 of the Laws of 2006.

#### 10. Compliance schedule:

Compliance with the regulations must begin upon the effective date of Chapter 668 of the Laws of 2006, January 11, 2007.

### **Regulatory Flexibility Analysis**

#### 1. Effect of Rule:

Social services districts will be affected by the regulations. There are 58 social services districts and the St. Regis Mohawk Tribe which is authorized by section 371(10)(b) of the Social Services Law to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Most voluntary foster care and adoption agencies also will be affected by the regulations. There are approximately 68 voluntary agencies operating foster care programs that include foster boarding home programs. There are 119 voluntary agencies authorized that operate adoption programs, including 19 agencies located out-of-state and approved to do adoptions in New York State pursuant to Article 13 of the Not-For-Profit Corporation Law.

#### 2. Compliance Requirements:

The regulations require social services districts and voluntary authorized agencies that certify or approve foster and/or adoptive parents, to include as part of the licensing process conducting national criminal history background checks through the Federal Bureau of Investigation (FBI) in order to compile a complete criminal record on applicants and other adults residing in their household and take any such record into account by performing the OCFS prescribed safety assessment, prior to fully certifying or approving the home.

#### 3. Professional Requirements:

The regulations would not require social services districts or voluntary agencies to hire additional staff in order to implement them. Existing staff will be able to procedurally accommodate the minimal changes on the business process these regulations entail.

#### 4. Compliance Costs:

The federal and State statutory provisions requiring national criminal history background checks, which are being implemented through these regulations, will result in increased costs to the State. Based on the current statistics for conducting State criminal history background checks, it is projected that 17,000 persons will be subject to the new required national criminal history records checks during the first year of implementation. Based on that projection, OCFS estimates that the total costs associated with the national criminal history database check process during the first year of implementation will be approximately \$875,000. The estimate includes \$408,000 to cover the \$24 fee that must be paid to the FBI for processing each set of fingerprints, as well as \$467,000 for the costs to enhance OCFS' criminal history review administrative and legal units and the OCFS criminal history computer system to process the national criminal history database checks.

It is anticipated that approximately \$188,125 in federal reimbursement under Title IV-E of the federal Social Security Act will be available for the annual costs of conducting the national criminal history record checks. The remaining cost of \$686,875 will be State share.

#### 5. Economic and Technological Feasibility:

The regulations will not impose additional economic or technological burdens on social services districts or voluntary authorized agencies.

#### 6. Minimizing Adverse Impact:

OCFS will use card scan, which will enable social services districts and voluntary authorized agencies to continue to submit a single fingerprint card per person. Card scan allows OCFS to electronically send fingerprint cards to the Division of Criminal Justice Services (DCJS). DCJS then electronically sends the fingerprint cards to the FBI. This process reduces the timeframe for the receipt of results from weeks to days, consequently allowing for more timely approval or certification decisions.

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

The timeframes prescribed by the State and federal legislation precluded the participation of small businesses and local governments in the development of these regulations. They were filed on an emergency basis in order to meet the State and federal timeframes; those affected will now have an opportunity to comment upon publication of this Notice of Proposed Rule-Making in the State Register.

### **Rural Area Flexibility Analysis**

#### 1. Effect on Rural Areas:

The regulations will affect the 44 social services districts that are in rural areas and the St. Regis Mohawk Tribe, which is authorized by section 371(10)(b) of the Social Services Law to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Those voluntary authorized agencies in rural areas contracting with social services districts to provide foster care and adoption services also will be affected by the proposed regulations. Currently, there are approximately 85 such agencies.

#### 2. Compliance Requirements:

The regulations require social services districts and voluntary authorized agencies that certify or approve foster and/or adoptive parents, to include as part of the licensing process conducting national criminal history background checks through the Federal Bureau of Investigation (FBI) in order to compile a complete criminal record on applicants and other adults residing in their household and take any such record into account by performing the OCFS prescribed safety assessment, prior to fully certifying or approving the home.

#### 3. Professional Services:

The regulations do not require social services districts or voluntary authorized agencies to hire additional staff in order to implement them. Existing staff will be able to procedurally accommodate the minimal changes to the business process these regulations entail.

#### 4. Compliance Costs:

The federal and State statutory provisions requiring national criminal history background checks, which are being implemented through these regulations, will result in increased costs to the State. Based on the current statistics for conducting State criminal history background checks, it is projected that 17,000 persons will be subject to the new required national criminal history records checks during the first year of implementation. Based on that projection, OCFS estimates that the total costs associated with the national criminal history database check process during the first year of implementation will be approximately \$875,000. The estimate includes \$408,000 to cover the \$24 fee that must be paid to the FBI for processing each set of fingerprints, as well as \$467,000 for the costs to enhance OCFS' criminal history review administrative and legal units and

the OCFS criminal history computer system to process the national criminal history database checks.

It is anticipated that approximately \$188,125 in federal reimbursement under Title IV-E of the federal Social Security Act will be available for the annual costs of conducting the national criminal history record checks. The remaining cost of \$686,875 will be State share.

**5. Minimizing Adverse Impact:**

OCFS will utilize card scan which will enable social services districts and voluntary authorized agencies to continue to submit a single fingerprint card per person. Card scan allows OCFS to electronically send fingerprint cards to the Division of Criminal Justice Services (DCJS). DCJS in turn electronically sends them to the FBI. This process reduces the timeframe for the receipt of results from weeks to days, consequently allowing for more timely licensing decisions.

**6. Small Business Participation:**

The timeframes prescribed by the State and federal legislation precluded the participation of small businesses in the development of these regulations. They were filed on an emergency basis in order to meet the State and federal timeframes; those affected will now have an opportunity to comment upon publication of this Notice of Proposed Rule-Making in the State Register.

**Job Impact Statement**

A full job statement has not been prepared for the proposed regulation implementing portions of the federal Adam Walsh Child Protection Act of 2006 and Chapter 668 of the Laws of 2006. The regulations will not have a substantial adverse impact on jobs or employment opportunities and in fact will not result in the loss of any jobs. This finding is based upon the fact that the regulations prescribe small additional duties for child welfare staff.

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## Department of Civil Service

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### NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Civil Service publishes a new notice of proposed rule making in the *NYS Register*.

**Jurisdictional Classification**

I.D. No.	Proposed	Expiration Date
CVS-25-06-00005-P	June 21, 2006	June 21, 2007

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## Crime Victims Board

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

**Reimbursement of Claim Indebtedness**

**I.D. No.** CVB-28-07-00002-P

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

**Proposed action:** Amendment of section 525.12 of Title 9 NYCRR.

**Statutory authority:** Executive Law, sections 626 and 631

**Subject:** Reimbursement of claimant indebtedness.

**Purpose:** To establish the process through which such third party payers may be reimbursed by the board and allow claimants or potential claimants to be aware of what indebtedness the board would consider reimbursable under its statutory authority.

**Text of proposed rule:** A new subpart (i) is added to subsection 1 of subdivision g of section 525.12 to read as follows:

*(i) Where a third party, non-claimant pays for a causally-related out of pocket expense on behalf of a claimant and the third party has no legal responsibility to the claimant to make such payment, the board shall require affidavits from both the claimant and the third party stating that*

*the payment by the third party was meant as a loan to the claimant, as proof for the board to reimburse the third party.*

**Text of proposed rule and any required statements and analyses may be obtained from:** John Watson, General Counsel, Crime Victims Board, One Columbia Circle, Suite 200, Albany, NY 12203, (518) 457-8066, e-mail: johnwatson@cvb.state.ny.us

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

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

**Regulatory Impact Statement**

1. Statutory authority: The New York State Executive Law, section 623 creates the Crime Victims Board (the Board) and grants the Board the authority to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Article 22 of the Executive Law. New York State Executive Law, sections 626 and 631 provide that the Board may make awards to for out-of-pocket losses which include unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care, including counseling, or other services necessary as a result of the injury upon which the claim is based, including such expenses incurred as a result of the exacerbation of a pre-existing disability or condition directly resulting from the crime or causally related to the crime.

2. Legislative objectives: By enacting the New York State Executive Law, sections 626 and 631, the Legislature sought to ensure that the Board could reimburse claimants' out-of-pocket losses which include unreimbursed and unreimbursable expenses or indebtedness reasonably incurred from, and causally related to, a crime.

3. Needs and benefits: Currently, New York State Executive Law, article 22, and 9 NYCRR 525, do not specify the circumstances under which the Board can reimburse third party payers of claimants' causally-related expenses when those third party payers have no legal obligation to do so. From recent history to date, the Board has consistently interpreted the statute to mean such indebtedness could be reimbursed, but needed to be proven through affidavits from both the claimant and the third party payer that such payment was meant to be a loan. These proposed regulations would establish the process through which such third party payers may be reimbursed by the Board and allow claimants or potential claimants to be aware of what indebtedness the Board would consider reimbursable under its statutory authority.

4. Costs: a. Costs to regulated parties. For the most part, these proposed regulations would be codifying the Board's current interpretation of its statutory authority, therefore it is not expected that the proposed regulations would impose any additional costs to the agency or State.

b. Costs to local governments. These proposed regulations do not apply to local governments and would not impose any additional costs on local governments.

c. Costs to private regulated parties. The proposed regulations do not apply to private regulated parties and would not impose any additional costs on private regulated parties.

5. Local government mandates: These proposed regulations do not impose any program, service duty or responsibility upon any local government.

6. Paperwork: These proposed regulations do not require any additional paperwork requirements more than is currently required of the Board's claimants.

7. Duplication: These proposed regulations do not duplicate any other existing state or federal requirements.

8. Alternatives: Although the current Board has consistently applied its interpretation of Executive Law, sections 626 and 631, not implementing these proposed regulatory changes could result in inconsistent claimant award decisions in the future.

9. Federal standards: Not addressed under 42 USCS 10602.

10. Compliance schedule: The regulations will be effective on the date they are adopted.

**Regulatory Flexibility Analysis**

The New York State Crime Victims Board (the Board) projects there will be no adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments in the State of New York as a result of these proposed rule changes. This proposed rule change simply establishes the circumstances under which the Board can reimburse third party payers of claimants' causally-related expenses when those third party payers have no legal obligation to do so. Since nothing in these proposed rule changes will create any adverse impacts on any small businesses or local governments in the state, no further steps were needed to ascertain these facts and one were taken. As apparent from the nature

and purpose of these proposed rule changes, a full Regulatory Flexibility Analysis is not required and therefore one has not been prepared.

**Rural Area Flexibility Analysis**

The New York State Crime Victims Board (the Board) projects there will be no adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas in the State of New York as a result of these proposed rule changes. This proposed rule change simply establishes the circumstances under which the Board can reimburse third party payers of claimants' causally-related expenses when those third party payers have no legal obligation to do so. Since nothing in these proposed rule changes will create any adverse impacts on any public or private entities in rural areas in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of these proposed rule changes, a full Rural Area Flexibility Analysis is not required and therefore one has not been prepared.

**Job Impact Statement**

The New York State Crime Victims Board (the Board) projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of these proposed rule changes. This proposed rule change simply establishes the circumstances under which the Board can reimburse third party payers of claimants' causally-related expenses when those third party payers have no legal obligation to do so. Since nothing in these proposed rule changes will create any adverse impacts on jobs or employment opportunities in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of these proposed rule changes, a full Job Impact Statement is not required and therefore one has not been prepared.

**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 implements or confirms to non-discretionary statutory provisions. Chapter 11 of the Laws of 2006 added paragraph (g) to State Finance Law § 163(4) (General Provisions for Purchasing Services) to require contractors and subcontractors, providing services for State purposes pursuant to a contract, to submit annual employment reports.

As New York State's primary procurement agency, it is important that OGS regulations reflect and include the statutory additions regarding employment reporting requirements for contractors and subcontractors. 9 NYCRR § 250.4 must reflect the addition of § 163(4)(g). As a result, the proposed rule adds a new § 250.4(f).

**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 mirrors the language in State Finance Law § 163 (4) (g) as amended by Section 4 of Chapter 11 of the Laws of 2006. The rule would require contractors and subcontractors, providing services for State purposes pursuant to a contract, to submit annual employment reports.

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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## Office of General Services

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

**General Provisions for Purchasing Services**

**I.D. No.** GNS-28-07-00001-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 add section 250.4(f) to Title 9 NYCRR.

**Statutory authority:** Executive Law, section 200; State Finance Law, section 163(4); and L. 2006, ch. 11, section 4

**Subject:** General provisions for purchasing services.

**Purpose:** To require contractors and subcontractors to submit annual employment reports.

**Text of proposed rule:** Subdivision (f) of section 250.4 is added to read as follows:

*(f) All state agencies shall require all contractors, including subcontractors, that provide services for state purposes pursuant to a contract, to submit an annual employment report for each contract for services that includes for each employment category within the contract the number of employees employed to provide services under the contract, the number of hours they work and their total compensation under the contract. Employment records shall be submitted to the agency that awarded the contract, the department of civil service and the department of audit and control and shall be available for public inspection and copying pursuant to section eighty-seven of the public officers law provided that in disclosing such reports pursuant to the public officers law, the agency making the disclosure shall redact the name or social security number of any individual employee that is included in such document.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Paula Hanlon, Office of General Services, Corning Tower, 41st Fl., Empire State Plaza, Albany, NY 12242, (518) 474-0571, e-mail: paula.hanlon@ogs.state.ny.us

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## Insurance Department

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**NOTICE OF ADOPTION**

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

**I.D. No.** INS-17-07-00002-A

**Filing No.** 640

**Filing date:** June 20, 2007

**Effective date:** July 11, 2007

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

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

**Statutory authority:** Insurance Law, sections 201, 301, 1303, 1304, 1305, 1308, 4117, 4217, 4310, and 4517

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

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

**Text or summary was published** in the notice of proposed rule making, I.D. No. INS-17-07-00002-P, Issue of April 25, 2007.

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

**Text of rule and any required statements and analyses may be obtained from:** Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5257, e-mail: amais@ins.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Labor

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

#### Public Employee Occupational Safety and Health Standards

**I.D. No.** LAB-28-07-00015-P

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

**Proposed action:** This is a consensus rule making to amend section 800.3 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 27-a.4(a)

**Subject:** Public employee occupational safety and health standards.

**Purpose:** To incorporate by reference into New York State occupational safety and health standards, those safety and health standards adopted by the U.S. Department of Labor, Occupational Safety and Health Administration, as of Aug. 24, 2006.

**Substance of proposed rule:** The proposed rule amends Section 800.3 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York, which sets forth those standards of the Occupational Safety and Health Administration which are incorporated by reference into state regulations. It is amended so as to incorporate those standards revised as of January 18, 2006.

The material incorporated by reference in Part 800.3 contains the following parts of Title 29 of the Code of Federal Regulations, revised as of the dates following the title of each part:

- Part 1910 - General Industry Standards; July 1, 1988 edition
- Part 1915 - Shipyard Employment Standards; July 1, 1988 edition
- Part 1917 - Marine Terminal Standards edition; July 1, 1988 edition
- Part 1918 - Longshoring Standards; July 1, 1988 edition
- Part 1926 - Construction Standards; July 1, 1988 edition
- Part 1928 - Agricultural Standards; July 1, 1988 edition

Certain revisions to these standards, published in the Federal Register through June 23, 2006 have been adopted previously.

Since the standards were last updated, the Department of Labor has obtained one additional standard:

1. Updating National Consensus Standards in OSHA's Standard for Fire Protection in Shipyard Employment, Final Rule, 71 Federal Register, 60843-60847.

**Text of proposed rule and any required statements and analyses may be obtained from:** Teresa Stoklosa, Legal Assistant II, Department of Labor, Counsel's Office, State Campus, Bldg. 12, Albany, NY 12240, (518) 457-4380, e-mail: teresa.stoklosa@labor.state.ny.us

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

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

#### Consensus Rule Making Determination

This amendment is necessary because Section 27-a(4)(a) of the Labor Law directs the Commissioner to adopt by rule, for the protection of the safety and health of public employees, all safety and health standards promulgated under the U.S. Occupational Safety and Health Act of 1970, and to promulgate and repeal such rules and regulations as may be necessary to conform to the standards established pursuant to OSHA. This insures that public employees will be afforded the same safeguards in their workplaces as are granted to employees in the private sector.

#### Job Impact Statement

As the proposed action does not affect jobs and employment opportunities but simply affords workplace safety and health guidelines to improve job performance and safety, a job impact statement is not submitted.

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## Power Authority of the State of New York

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### NOTICE OF ADOPTION

#### Rates for the Sale of Power and Energy

**I.D. No.** PAS-17-07-00003-A

**Filing date:** June 25, 2007

**Effective date:** First full billing period after the date of filing.

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

**Action taken:** Revision in rates for Village of Greenport.

**Statutory authority:** Public Authorities Law, section 1005(5)

**Subject:** Rates for the sale of power and energy.

**Purpose:** To maintain the system's fiscal integrity; this increase in rates is not the result of a power authority rate increase to the Village.

**Text or summary was published** in the notice of proposed rule making, I.D. No. PAS-17-07-00003-P, Issue of April 25, 2007.

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

**Text of rule and any required statements and analyses may be obtained from:** Anne Cahill, Corporate Secretary, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 390-8036, e-mail: secretarys.office@nypa.gov

#### Assessment of Public Comment:

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

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

#### Rates for the Sale of Power and Energy

**I.D. No.** PAS-28-07-00004-P

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

**Proposed action:** Consolidation of production and delivery service tariffs applicable to New York City and Westchester County governmental customers.

**Statutory authority:** Public Authorities Law, section 1005(6)

**Subject:** Rates for the sale of power and energy.

**Purpose:** To streamline and simplify multiple tariffs into two single tariffs in order to make them more user friendly and easier to understand.

#### Substance of proposed rule:

POWER AUTHORITY OF THE STATE OF NEW YORK NOTICE OF PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Pursuant to the New York Public Authorities Law, Section 1005(6), the Power Authority of the State of New York (the "Authority") proposes consolidating production and delivery service tariffs applicable to the Authority's New York City and Westchester County Governmental Customers.

The Authority proposes to streamline and simplify multiple tariffs for these Governmental Customers into two single tariffs in order to make them more user friendly and easier to understand. Each single tariff will be arranged by service classification, showing production and delivery rates applicable to that service classification. Common, general and special provisions will be identified. Provisions that relate to each other will be grouped together and new features will be added, (e.g., a section on bill components and bill computation to allow Governmental Customers to calculate a bill). Frequently used abbreviations and terms will also be added.

Written comments on the proposed tariff consolidation will be accepted through Monday, August 27, 2007, at the address below. For further information, contact:

POWER AUTHORITY OF THE STATE OF NEW YORK  
Anne B. Cahill, Corporate Secretary  
123 Main Street, 15M  
White Plains, New York 10601  
(914) 390-8036

(914) 681-6949 (fax)  
secretarys.office@nypa.gov

**Text of proposed rule and any required statements and analyses may be obtained from:** Anne B. Cahill, Corporate Secretary, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 390-8036, e-mail: secretarys.office@nypa.gov

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

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

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

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

## Public Service Commission

### NOTICE OF ADOPTION

#### Water Rates and Charges by National Aqueous Corporation

**I.D. No.** PSC-48-06-00003-A

**Filing date:** June 25, 2007

**Effective date:** June 25, 2007

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

**Action taken:** The commission, on June 20, 2007, adopted an order approving National Aqueous Corporation's request to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 1—Water, to become effective July 1, 2007.

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

**Subject:** Water rates and charges.

**Purpose:** To establish an additional customer restoration of service charge.

**Substance of final rule:** The Commission adopted an order approving National Aqueous Corporation's request to revise its tariff schedule, P.S.C. No. 1 - Water, to become effective July 1, 2007 and to establish an additional customer service charge to reflect the actual cost (up to \$1,000) of fixing or replacing the customer's shutoff valve for the discontinuance or restoration of service, subject to the terms and conditions of the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(06-W-1362SA1)

### NOTICE OF ADOPTION

#### Major Rate Case by Village of Freeport

**I.D. No.** PSC-51-06-00017-A

**Filing date:** June 21, 2007

**Effective date:** June 21, 2007

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

**Action taken:** The commission, on June 20, 2007, adopted an order approving the terms of a joint proposal entered into April 11, 2007 by the Village of Freeport, Freeport Electric Department and staff of the Department of Public Service.

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

**Subject:** Major rate case.

**Purpose:** To adopt the terms of a joint proposal.

**Substance of final rule:** The Public Service Commission adopted an order approving the terms of a joint proposal entered into April 11, 2007 by the Village of Freeport (Village), Freeport Electric Department (Freeport), and Staff of the Department of Public Service. The joint proposal includes rates, charges, rules and regulations effective June 30, 2007, and provides for changes to base revenues and Freeport's rate modifier, as well as addressing operational and accounting matters for its term. The Commission directed the Village to file a supplement, on not less than one day's notice, to become effective on June 29, 2007, cancelling certain leaves and supplements, and to file, on not less than one day's notice, to take effect June 30, 2007, such further revisions as are necessary to effectuate the joint proposal's terms, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(06-E-0911SA1)

### NOTICE OF ADOPTION

#### Water Rates and Charges by West Valley Crystal Water Company, Inc.

**I.D. No.** PSC-06-07-00023-A

**Filing date:** June 26, 2007

**Effective date:** June 26, 2007

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

**Action taken:** The commission, on June 20, 2007, adopted an order approving West Valley Crystal Water Company Inc.'s request to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 4—Water, to become effective July 1, 2007.

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

**Subject:** Water rates and charges.

**Purpose:** To approve the increase of West Valley Crystal Water Company Inc.'s annual revenues by \$10,251 or 45.4 percent.

**Substance of final rule:** The Commission adopted an order approving West Valley Crystal Water Company Inc.'s request to convert its tariff schedule, P.S.C. No. 4 - Water to electronic format and to increase its annual revenues by \$10,251 or 45.4%, subject to the terms and conditions of the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-W-0062SA1)

### NOTICE OF ADOPTION

#### Installation of Electric Facilities by Orange and Rockland Utilities, Inc.

**I.D. No.** PSC-07-07-00011-A

**Filing date:** June 20, 2007

**Effective date:** June 20, 2007

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

**Action taken:** The commission, on June 20, 2007, adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 2.

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

**Subject:** Installation of electric facilities.

**Purpose:** To provide builders/applicants with a cost effective alternate to upgrading services in place.

**Substance of final rule:** The Public Service Commission adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) tariff amendments to establish the conditions under which O&R will furnish excess facilities to builders/applicants.

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

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

**Assessment of Public Comment**

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

(07-E-0134SA1)

### NOTICE OF ADOPTION

#### Charges for Municipal Undergrounding by Niagara Mohawk Power Corporation

**I.D. No.** PSC-14-07-00007-A

**Filing date:** June 20, 2007

**Effective date:** June 20, 2007

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

**Action taken:** The commission, on June 20, 2007, adopted an order approving Niagara Mohawk Power Corporation's request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 207.

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

**Subject:** Rule 32.2—charges for municipal undergrounding.

**Purpose:** To establish provisions regarding the relocation of facilities at the request of a municipality.

**Substance of final rule:** The Public Service Commission adopted an order approving Niagara Mohawk Power Corporation's tariff amendments to implement a municipality-specific surcharge to recover costs of undergrounding all or a portion of existing distribution and/or transmission overhead facilities within the municipality's jurisdiction upon request of a municipality.

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

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

**Assessment of Public Comment**

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

(07-E-0323SA1)

### NOTICE OF ADOPTION

#### Exemption from Rate Setting Provisions by Beaver Dam Lake Water Corp.

**I.D. No.** PSC-14-07-00009-A

**Filing date:** June 26, 2007

**Effective date:** June 26, 2007

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

**Action taken:** The commission, on June 20, 2007, adopted an order approving Beaver Dam Lake Water Corp.'s request to make various

change in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 4—Water, to become effective July 1, 2007.

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

**Subject:** Exemption from the rate setting provisions of PSL.

**Purpose:** To approve Beaver Dam Lake Water Corp.'s request to set its own rates, charges and surcharges from time to time to cover the expenses associated with the operating, maintaining and upgrading the water system.

**Substance of final rule:** The Commission adopted an order approving Beaver Dam Lake Water Corp.'s (the Company) request to revise its tariff schedule, P.S.C. No. 4 - Water, to become effective July 1, 2007, to exempt the company, pursuant to Public Service Law (PSL) § 5(4) from the rate setting provisions of PSL 89-c(10), subject to the terms and conditions of the order.

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

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

**Assessment of Public Comment**

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

(07-W-0324SA1)

### NOTICE OF ADOPTION

#### Pole Attachment Rates by Central Hudson Gas & Electric Corporation

**I.D. No.** PSC-16-07-00023-A

**Filing date:** June 20, 2007

**Effective date:** June 20, 2007

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

**Action taken:** The commission, on June 20, 2007, adopted an order approving Central Hudson Gas & Electric Corporation's (Central Hudson) request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 15.

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

**Subject:** Pole attachment rates.

**Purpose:** To approve the pole attachment rates applicable to cable system operators and telecommunication carriers to reflect 2006 actual data.

**Substance of final rule:** The Public Service Commission adopted an order approving Central Hudson Gas & Electric Corporation's tariff amendments to reflect a new annual pole attachment rate applicable to cable system operators and telecommunication carriers that would increase its current annual pole attachment charge from \$14.08 to \$15.54.

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

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

**Assessment of Public Comment**

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

(07-E-0383SA1)

### NOTICE OF ADOPTION

#### Rider U—Distribution Load Relief Program by Consolidated Edison Company of New York, Inc.

**I.D. No.** PSC-16-07-00024-A

**Filing date:** June 21, 2007

**Effective date:** June 21, 2007

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

**Action taken:** The commission, on June 20, 2007, adopted an order approving Consolidated Edison Company of New York, Inc.'s request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 9.

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

**Subject:** Rider U — Distribution Load Relief Program.

**Purpose:** To approve the modified Rider U — Distribution Load Relief Program to enhance participation in the program.

**Substance of final rule:** The Public Service Commission adopted an order approving, with modifications Consolidated Edison Company of New York, Inc.'s (Con Edison) tariff amendments on a temporary basis to modify Rider U — Distribution Load Relief Program, and directed Con Edison to file further revisions to become effective on or less than one day's notice on July 1, 2007, on a temporary basis and to submit a report to the Commission by January 31, 2008, including a complete assessment of the effectiveness of the Rider U program changes ultimately adopted on increasing the level of customer (load) participation and any recommended tariff changes that it would propose for implementation prior to the summer 2008 capability period, subject to the terms and conditions of the order.

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

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

**Assessment of Public Comment**

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

(06-E-0392SA1)

## NOTICE OF ADOPTION

### Non-Residential Distributed Generation Firm Sales Service by Rochester Gas and Electric Corporation

**I.D. No.** PSC-16-07-00026-A

**Filing date:** June 20, 2007

**Effective date:** June 20, 2007

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

**Action taken:** The commission, on June 20, 2007, adopted an order allowing Rochester Gas and Electric Corporation (RG&E) to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service P.S.C. No. 16.

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

**Subject:** Service Classification No. 6 — non-residential distributed generation firm sales service and Service Classification No. 7 — firm gas transportation service for distributed generation facilities <50 MW.

**Purpose:** To file updated distributed generation rates for commercial and industrial customers.

**Substance of final rule:** The Public Service Commission adopted an order approving Rochester Gas and Electric Corporation's (RG&E) tariff amendments to update its distributed generation rates for its S.C. No. 6 — Non Residential Distributed Generation Firm Gas Sales Service and S.C. No. 7 — Firm Gas Transportation Service for Distributed Generation Facilities to become effective July 1, 2007.

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

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

**Assessment of Public Comment**

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

(02-M-0515SA17)

## NOTICE OF ADOPTION

### Underground Line Extension Rates and Trenching Credits by Central Hudson Gas & Electric Corporation

**I.D. No.** PSC-18-07-00008-A

**Filing date:** June 20, 2007

**Effective date:** June 20, 2007

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

**Action taken:** The commission, on June 20, 2007, approved Central Hudson Gas & Electric Corporation's (Central Hudson) request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 15.

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

**Subject:** Underground line extension rates and trenching credits.

**Purpose:** To approve Central Hudson's updated underground line extension rates and trenching credits.

**Substance of final rule:** The Public Service Commission approved Central Hudson Gas & Electric Corporation's tariff amendments to update the costs used in determining contributions required from applicants for underground extensions in new residential subdivisions.

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

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

**Assessment of Public Comment**

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

(07-E-0382SA1)

## NOTICE OF ADOPTION

### Expansion of the Photovoltaic Net Metering Load by New York Solar Energy Industries Association

**I.D. No.** PSC-18-07-00011-A

**Filing date:** June 21, 2007

**Effective date:** June 21, 2007

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

**Action taken:** The commission, on June 20, 2007, adopted an order approving the petition of New York Solar Energy Industries Association and Sustainable Hudson Valley to expand the ceiling on the photovoltaic net metering load for Central Hudson Gas and Electric Corporation.

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

**Subject:** Expansion of the photovoltaic net metering load.

**Purpose:** To approve the expansion of the ceiling on the photovoltaic net metering load from 1.2 MW to 1.8 MW.

**Substance of final rule:** The Public Service Commission adopted an order approving the petition of New York Solar Energy Industries Association and Sustainable Hudson Valley to expand the ceiling on the photovoltaic net metering load for Central Hudson Gas and Electric Corporation (Central Hudson), and directed Central Hudson to file, by June 27, 2007, such tariff amendments as are necessary to increase the ceiling for the net metering of photovoltaic systems sized at 10 kW or less, installed at residential locations pursuant to PSL § 66-j(3)(a), to 1.8 MW. The tariff amendments shall take effect on July 1, 2007, subject to the terms and conditions of the order.

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

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

**Assessment of Public Comment**

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

(07-E-0437SA1)

**NOTICE OF ADOPTION****Issuance of Common Stock by Corning Natural Gas Corporation****I.D. No.** PSC-18-07-00013-A**Filing date:** June 21, 2007**Effective date:** June 21, 2007

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

**Action taken:** The commission, on June 20, 2007, approved the petition of Corning Natural Gas Corporation (the company) to issue up to \$14.9 million of common stock.

**Statutory authority:** Public Service Law, section 69

**Subject:** Issuance of common stock.

**Purpose:** To allow the company to issue and sell additional shares of common stock.

**Substance of final rule:** The Commission adopted an order approving the Petition of Corning Natural Gas Corporation (the company) to issue up to \$14.9 million of common stock to be used toward debt reduction and a comprehensive construction plan to make the company's system more safe and reliable, subject to the terms and conditions of the order.

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

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

**Assessment of Public Comment**

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

(07-G-0445SA1)

**NOTICE OF ADOPTION****Transfer of Ownership of Steam, Water and Electric Plant by Continental Industrial Capital, LLC and Coby Housing Corporation****I.D. No.** PSC-18-07-00020-A**Filing date:** June 25, 2007**Effective date:** June 25, 2007

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

**Action taken:** The commission, on June 20, 2007, adopted an order approving the joint petition of Continental Industrial Capital, LLC and Coby Housing Corporation for the transfer of utility plant located at the Rochester Technology Park.

**Statutory authority:** Public Service Law, sections 2(13), 5(1)(b), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 83, 89-h, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

**Subject:** Transfer of ownership interests in steam, water, and electric plant, and for lightened regulation as an electric and steam corporation.

**Purpose:** To approve the transfer of ownership interests in steam, water, and electric plant, and for lightened regulation as an electric and steam corporation.

**Substance of final rule:** The Public Service Commission adopted an order approving the joint petition of Continental Industrial Capital, LLC (CII) and Coby Housing Corporation (Coby) for the transfer of utility plant located at the Rochester Technology Park from CII to Coby, and provide for lightened regulation of it as an electric and steam corporation, subject to the terms and conditions of the order.

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

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

**Assessment of Public Comment**

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

(07-M-0363SA1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Expansion of Photovoltaic Net Metering Load by Central Hudson Gas & Electric Corporation****I.D. No.** PSC-28-07-00006-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 or reject, in whole or in part, an additional expansion of the ceiling on the photovoltaic net metering load for Central Hudson Gas & Electric Corporation, as discussed in the order raising net metering ceiling and providing for additional proceedings issued June 21, 2007 in Case 07-E-0437.

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

**Subject:** Expansion of photovoltaic net metering load.

**Purpose:** To consider expanding the ceiling on the photovoltaic net metering load.

**Substance of proposed rule:** The Commission is considering an additional expansion to the ceiling on the photovoltaic net metering load for Central Hudson Gas & Electric Corporation (Central Hudson). As discussed in the Order Raising Net Metering Ceiling and Providing for Additional Proceedings issued June 21, 2007 in Case 07-E-0437, Central Hudson states that an expansion is not in the public interest. However, if the Commission finds an expansion to be in the public interest, Central Hudson asks that any expansion in the net metering be accompanied by an authorization for it to defer for future recovery the lost revenues and incremental costs it will experience as a result of expansion. The Commission may approve, reject or modify, in whole or in part, the 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. Brillinger, 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-0437SA2)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Submetering of Electricity by 123 Washington LLC****I.D. No.** PSC-28-07-00007-P

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

**Proposed action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by 123 Washington LLC to submeter electricity at 123 Washington St., New York, NY.

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

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

**Purpose:** To submeter electricity at 123 Washington 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 123 Washington LLC to submeter electricity at 123 Washington Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., filed in C26998.

*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-0723SA1)

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

**Restoration of Service by Consolidated Edison Company of New York, Inc.**

**I.D. No.** PSC-28-07-00008-P

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

**Proposed action:** The Public Service Commission is considering whether to find that Consolidated Edison Company of New York, Inc.'s (Con Edison) efforts to restore service after the September 2006 storm outage as soon as practicable were not reasonable and therefore, that it be required to reimburse customers for perishable losses in accord with its tariff and the order instituting proceeding and directing company to show cause, issued in Case 06-E-1158.

**Statutory authority:** Public Service Law, sections 2, 5, 65 and 66

**Subject:** Con Edison's efforts to restore service.

**Purpose:** To consider whether Con Edison's efforts to restore service were reasonable and any needed remedies.

**Substance of proposed rule:** The Public Service Commission is considering whether to find that Consolidated Edison Company of New York, Inc.'s (Con Edison) efforts to restore service after the September 2006 Storm Outage as soon as practicable were not reasonable and therefore, that it be required to reimburse customers for perishable losses in accord with its tariff and the Order Instituting Proceeding and Directing Company to Show Cause, issued in Case 06-E-1158.

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. 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-0742SA1)

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

**Submetering of Electricity by be@189 Schermerhorn LP**

**I.D. No.** PSC-28-07-00009-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 be@189

Schermerhorn LP to submeter electricity at 189 Schermerhorn St., Brooklyn, NY.

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

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

**Purpose:** To submeter electricity at 189 Schermerhorn St., Brooklyn, 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 be@189 Schermerhorn LP to submeter electricity at 189 Schermerhorn Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc., filed in C26998.

*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-0743SA1)

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

**Mini Rate Filing by Bath Electric, Gas and Water Systems**

**I.D. No.** PSC-28-07-00010-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 whether to approve or reject, in whole or in part, a proposal filed by the Bath Electric, Gas and Water Systems to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 1—Electricity, to become effective Oct. 1, 2007.

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

**Subject:** Mini rate filing.

**Purpose:** To increase annual electric revenues by approximately \$169,652 or 4.2 percent.

**Substance of proposed rule:** The Commission is considering Bath Electric, Gas and Water System's (Bath) request to increase its annual electric revenues by approximately \$169,652 or 4.2%. Bath's proposal includes an increase to the customer charge from \$2.90 per month to \$8.00 per month for S.C. No. 1—Residential (S.C. No. 1) and S.C. No. 2—General Service Non-Demand Metered (S.C. No. 2). Bath also proposes to introduce an Electric Heat Energy Conservation Provision that would apply to S.C. No. 1 and S.C. No. 2 customers. Under the Electric Heat Energy Conservation Provision, the tail block rates (over 2,200 kWh) of usage during the winter billing period (November to April) have been set to equal the estimated marginal cost of supplying power, as to be determined from time to time. The revenues collected under this provision will not be retained by Bath, but passed back to all customers under the Purchase Power Adjustment Clause. The proposed filing has an effective date of October 1, 2007. The Commission may approve, reject or modify, in whole or in part, Bath'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. 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-0754SA1)

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

**Wireless Attachments to Utility Distribution Poles**

I.D. No. PSC-28-07-00011-P

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

**Proposed action:** In June 2007, the commission issued an order instituting proceeding to consider issues related to attachment of wireless facilities to utility distribution poles. It also issued a notice requesting comments on those issues.

**Statutory authority:** Public Service Law, sections 66(1), 94(2) and 119-a  
**Subject:** Wireless attachments to utility distribution poles.

**Purpose:** To consider issues relating to wireless attachments to utility distribution poles.

**Substance of proposed rule:** In June 2007, the Commission issued an Order Instituting Proceeding to consider issues related to attachment of wireless facilities to utility distribution poles. It also issued a Notice Requesting Comments on those issues.

**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. Brillings, 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-0741SA1)

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

**Purchase of Cable System by Time Warner Entertainment-Advance/Newhouse Partnership**

I.D. No. PSC-28-07-00012-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 Time Warner Entertainment-Advance/Newhouse Partnership to purchase the cable system of D.W.S. Construction Company, Inc. serving the Town of Waverly located in Franklin County, NY.

**Statutory authority:** Public Service Law, section 222

**Subject:** Transfer certain cable system properties, franchise and certificate of confirmation of D.W.S. Construction Company, Inc. to Time Warner Entertainment-Advance/Newhouse Partnership.

**Purpose:** To approve the transfer.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Time Warner Entertainment-Advance/Newhouse Partnership to purchase the cable system of D.W.S. Construction Company, Inc. serving the Town of Waverly located in Franklin County, New York.

**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. Brillings, 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-V-0525SA1)

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

**Merger and Transfer of Franchises, Works and Systems by Aqua New York, Inc. et al.**

I.D. No. PSC-28-07-00013-P

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

**Proposed action:** The commission is considering the joint petition of Aqua New York, Inc., Cambridge Water Works Company, Dykeer Water Company, Inc., Waccabuc Water Works, Inc., and Wild Oaks Water Company, Inc. for an order approving merger and transfer of franchises, works and systems pursuant to Public Service Law, sections 89-h and 108.

**Statutory authority:** Public Service Law, sections 89-h and 108

**Subject:** Transfer of franchises or stocks and amendments to certificates of incorporation.

**Purpose:** To transfer franchises and approve a merger of companies.

**Substance of proposed rule:** The Commission is considering whether to approve, reject or modify the joint petition of Aqua New York, Inc., Cambridge Water Works Company, Dykeer Water Company, Inc., Waccabuc Water Works Inc., and Wild Oaks Water Company, Inc. for an order approving the merger and transfer of franchises, works and systems pursuant to Public Service Law, sections 89-h and 108. If approved, the proposed transaction would merge the four Aqua America's New York subsidiaries Cambridge Water Works Company, Dykeer Water Company, Inc., Waccabuc Water Works Inc. and Wild Oaks Water Company, Inc. into Aqua New York, Inc. The stock of the four companies would be cancelled and the companies would cease to exist.

**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. Brillings, 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-0711SA1)

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

**Initial Tariff Schedule by Castleview Development Water-Works Corporation**

I.D. No. PSC-28-07-00014-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 or reject, in whole or in part, or modify, Castleview Development Water-Works Corporation's initial tariff schedule, P.S.C. No. 1—Water, to become effective Nov. 1, 2007.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and 89-e(2)

**Subject:** Initial tariff schedule—electronic filing.

**Purpose:** To approve an initial tariff schedule, P.S.C. No. 1—Water for Castleview Development Water-Works Corporation which sets forth the initial rates, charges, rules and regulations under which the company will operate.

**Substance of proposed rule:** On June 19, 2007, Castleview Development Water-Works Corporation (Castleview or the company) filed an electronic initial tariff schedule, P.S.C. No. 1—Water, which sets forth the rates, charges, rules and regulations under which the company will operate, to become effective November 1, 2007. Castleview will serve the Chippewa Bay Housing Development in the Town of Hammond, St. Lawrence County. Castleview currently has no customers, but at full development plans to serve 8 buildings consisting of a total of 29 units. The proposed rates in the initial tariff are designed to generate, at full development, approximately \$36,785 in total operating revenues and a pre-tax rate of return of approximately 10.70% on a rate base of \$113,029. The proposed service charge would be \$260 per quarter plus a rate per 1,000 gallons of \$5.22. The estimated annual bill for an average annual usage of 43,800 gallons would be \$1,269. The tariff defines when a bill will be considered delinquent and established a late payment charge of 1-1/2 percent per month, compounded monthly and a returned check charge equal to the bank charge plus a handling fee of \$5. The restoration of service charge is \$50 during normal business hours Monday through Friday, \$75 outside of normal business hours Monday through Friday, and \$100 on weekends and public holidays. Castleview’s tariff is 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. 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. 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-0753SA1)

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## Office of Real Property Services

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

#### Certified Counties and School Districts

**I.D. No.** RPS-28-07-00005-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 repeal Subpart 186-12 of Title 9 NYCRR.

**Statutory authority:** Real Property Tax Law, sections 202(1)(l) and 848

**Subject:** Certified counties and school districts.

**Purpose:** To repeal Subpart 186-12 which has become obsolete.

**Text of proposed rule:** The State Board of Real Property Services hereby amends Part 186 Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York as follows:

Subpart 186-12 is repealed.

**Text of proposed rule and any required statements and analyses may be obtained from:** Hung Kay Lo, Senior Attorney, Office of Real Prop-

erty Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: [internet.legal@orps.state.ny.us](mailto:internet.legal@orps.state.ny.us)

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

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

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

#### Consensus Rule Making Determination

Subpart 186-12 of the State Board of Real Property Services’ rules, which addresses certified counties and certified school districts, is obsolete. Sections 845 and 1315 of the Real Property Tax Law, which form the statutory basis for this rule, have been repealed. Section 845 was repealed by chapter 654 of Law of 2004 effective October 26, 2004. Section 1315 was repealed by chapter 158 of Law of 2002 effective July 23, 2002. As the underlying statutes have been repealed, there is no need to continue this rule. No person is likely to object to the repeal of this rule.

#### Job Impact Statement

This proposed amendment would repeal Subpart 12 of Part 186 of the Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, concerning certified counties and certified school districts. The proposed repeal should have no effect, positive or negative, on job opportunities.

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## Department of State

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### EMERGENCY RULE MAKING

#### Pool Alarms

**I.D. No.** DOS-28-07-00003-E

**Filing No.** 641

**Filing date:** June 22, 2007

**Effective date:** June 22, 2007

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

**Action taken:** Repeal of section 1225.2 and addition of new Part 1228 to Title 19 NYCRR.

**Statutory authority:** Executive Law, sections 377 and 378

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

**Specific reasons underlying the finding of necessity:** This rule is adopted as an emergency measure to preserve public safety and because time is of the essence. This rule implements the provisions of paragraphs (b) and (c) of subdivision (14) of section 378 of the Executive Law, which requires that the New York State Uniform Fire Prevention and Building Code (the Uniform Code) provide that any residential or commercial swimming pool constructed or substantially modified after Dec. 14, 2006 (except hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers) shall be equipped with an acceptable pool alarm capable of detecting a child entering the water and of giving an audible alarm. This rule also implements the amendment of subdivision (5-a) of section 378 of the Executive Law made by chapter 438 of the Laws of 2005, which requires that the Uniform Code provide that every multiple dwelling constructed or offered for sale after August 9, 2005 shall have installed an operable carbon monoxide alarm.

The Introducer’s Memorandum in Support of the bill that added paragraph (b) of subdivision (14) of section 378 of the Executive Law (chapter 450 of the Laws of 2006) states, in pertinent part, that “drowning is the second leading cause of unintentional injury-related deaths in children between the ages of one and fourteen nationwide, and the third leading cause of injury-related deaths of children in New York. . . . (T)echnological advances have produced several different types of pool alarms designed to sound a warning if a child falls into the water. When used in conjunction with access barriers, these alarms provide greater protection against accidental pool drownings.” This pool alarm provisions added by this rule are similar to the provisions added by an emergency rule which was filed on Dec. 14, 2006 and expired on March 13, 2007, and by an emergency rule that was filed on April 5, 2007 and expired on June 21, 2007. (The exception for hot tubs and spas equipped with safety covers and

other pools equipped with automatic power safety covers are added by this rule pursuant to new paragraph (c) of Executive Law, section 378, which was added by chapter 75 of the Laws of 2007.

Executive Law section 378(5-a) was amended by Chapter 438 of the Laws of 2005 to require that the Uniform Code also provide for the installation of carbon monoxide alarms in multiple dwellings constructed or offered for sale after August 9, 2005. The Introducer's Memorandum in Support of chapter 438 of the Laws of 2005 states, in pertinent part, that "(t)his legislation is aimed at preventing more unnecessary deaths due to carbon monoxide poisoning. . . . Chapter 257 of the Laws of 2002 required carbon monoxide alarms be installed in one and two family dwellings and in condominiums and cooperatives . . . . This bill requires multiple dwelling units of three or more families to install carbon monoxide alarms as well." The carbon monoxide alarm provisions to be added by this rule are similar to the provisions added by an emergency rule which was filed on Dec. 14, 2006 and expired on March 13, 2007, and by an emergency rule that was filed on April 5, 2007 and expired on June 21, 2007. (Executive Law section 378(5-a) also requires the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002. The Uniform Code currently includes provisions [in section 1225.2 of Title 19 NYCRR] requiring the installation of carbon monoxide alarms in such occupancies. Said section 1225.2 is repealed by this rule. However, provisions requiring the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with the new provisions requiring the installation of carbon monoxide alarms in multiple dwellings constructed or offered for sale after Aug. 9, 2005, and the combined carbon monoxide alarm provisions are included in a single section [section 1228.3] which is part of the new Part 1228 added by this rule.)

Adoption of this rule on an emergency basis is necessary to protect public safety, to reduce the number of accidental drownings in swimming pools, the number of deaths and injuries due to carbon monoxide poisoning, and to satisfy the requirements of Executive Law, section 378 (5-a) and (14)(b)-(c). At its meeting held on June 12, 2007, the State Fire Prevention and Building Code Council determined that adopting this rule on an emergency basis is necessary to preserve the public safety, and establishing the date of filing of this rule as the effective date of this rule is necessary to protect health, safety and security.

**Subject:** Installation of pool alarms in residential and commercial swimming pools and the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings.

**Purpose:** To implement Executive Law, section 378(5-a) and (14)(b)-(c).

**Substance of emergency rule:** This rule repeals section 1225.2 of Title 19 NYCRR and adds a new Part 1228 to Title 19 NYCRR.

Section 1225.2 of Title 19 NYCRR requires the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives. Said section 1225.2 is repealed by this rule. However, provisions which require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with new provisions requiring the installation of carbon monoxide alarms in multiple dwellings, and the combined carbon monoxide alarm provisions are included in a single section (section 1228.3), which is part of new Part 1228 added by this rule.

New Part 1228 adds the following provisions to the State Uniform Fire Prevention and Building Code (the "Uniform Code"):

New section 1228.2 requires the installation of pool alarms in all commercial and residential swimming pools that are constructed, installed or substantially modified after December 14, 2006. New section 1228.2 provides that a hot tub or spa that is equipped with a safety cover that complies with ASTM F1346 (2003), and any other pool that is equipped with an automatic power safety cover that complies with ASTM F1346 (2003), need not be equipped with a pool alarm.

New section 1228.3 requires the installation of carbon monoxide alarms in multiple dwellings constructed or offered for sale after August 9, 2005.

As indicated above, provisions which require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling accommodations in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with the new

provisions requiring the installation of carbon monoxide alarms in multiple dwellings, and the combined carbon monoxide alarm provisions are included in the new section 1228.3 added by this rule.

This rule also adds a new section 1228.1, which provides that (1) Part 1228 is part of the Uniform Code, (2) Part 1228 is not repealed by the rule which was recently approved by the State Fire Prevention and Building Code Council (the "Code Council") and which amends that Uniform Code in its entirety, (3) Part 1228 will not be repealed by reason of the new version of the entire Uniform Code becoming effective, and (4) notwithstanding the fact that the Code Council has provided that during the transition period between adoption of the rule that amends the entire Uniform Code and the date on which that rule becomes effective, a person shall have the option of complying with the Uniform Code as it existed prior to the adoption of that rule or with the Uniform Code as it will be amended by that rule, such person must also comply with the provisions set forth in Part 1228.

**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 September 19, 2007.

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

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

##### 1. STATUTORY AUTHORITY.

Executive Law section 377(1) authorizes the State Fire Prevention and Building Code Council to periodically amend the provisions of the New York State Uniform Fire Prevention and Building Code ("Uniform Code").

Executive Law section 378(1) directs that the Uniform Code shall address standards for safety and sanitary conditions.

Executive Law section 378(14)(b) provides that the Uniform Code must require that residential and commercial swimming pools constructed or substantially modified after December 14, 2006 shall be equipped with an acceptable pool alarm capable of detecting a child entering the water and of giving an audible alarm.

Executive Law section 378(14)(c) provides that the Uniform Code must provide that a hot tub or spa equipped with a safety cover that complies with ASTM F1346 (2003), and any other pool equipped with an automatic power safety cover that complies with ASTM F1346 (2003), shall not be required to be equipped with a pool alarm.

Executive Law section 378(5-a), as amended by Chapter 438 of the Laws of 2005, provides that the Uniform Code must require multiple dwellings constructed or offered for sale after August 9, 2005 shall be equipped with carbon monoxide (CO) detectors.

This rule making adds provisions to the Uniform Code that (1) require the installation of pool alarms and (2) require the installation of CO alarms in multiple dwellings.

(Executive Law section 378(5-a) also provides that the Uniform Code must require the installation of CO alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002. The Uniform Code currently includes provisions [in section 1225.2 of Title 19 NYCRR] requiring the installation of CO alarms in such occupancies. Said section 1225.2 is repealed by this rule. However, provisions requiring the installation of CO alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 and been combined with the new provisions requiring installation of CO alarms in multiple dwellings, and the combined CO alarm provisions are included in a single section [new section 1228.3] which is added by this rule.)

##### 2. LEGISLATIVE OBJECTIVES.

The Legislative objectives to be achieved by this rule are (1) reducing the number of accidental drownings in swimming pools in this State and (2) reducing the number of deaths and injuries caused by CO poisoning in this State.

##### 3. NEEDS AND BENEFITS.

This rule requires residential and commercial swimming pools (other than hot tubs and spas equipped with safety covers that comply with ASTM F1346 (2003) and other pools equipped with automatic power safety covers that comply with ASTM F1346 (2003)) installed, constructed or substantially modified after December 14, 2006 to be equipped with approved pool alarms. By requiring the use of pool alarms in swimming pools (or, in the case of hot tubs and spas, by requiring the use of safety covers), this rule should meet the objective and provide the benefit

intended by the Legislature: a reduction in the number of accidental drownings.

This rule also requires the installation of CO alarms in multiple dwellings constructed or offered for sale after August 9, 2005. CO poisoning results from displacement of oxygen in the blood supply by carboxyhaemoglobin, reducing oxygen supply to the brain. In non-fire situations, elevated CO levels may be caused by improperly installed or maintained fuel-fired appliances, motor vehicles operated in enclosed garages, or appliances intended for outdoor use being used indoors during power failures. As CO is not detectable by the senses, its presence and concentration can only be determined by instruments.

A number of different sources, including those listed in the full Regulatory Impact Statement, were reviewed to develop an estimate of the annual number of fatalities attributable to unintentional, non-fire, building source CO poisoning. Extrapolating the national data from these sources indicates that New York State (excluding New York City) could expect between 8 and 48 annual fatalities.

CO poisoning will affect the judgment and capability of persons to evacuate or take other appropriate actions well before concentrations reach fatal levels. In addition, in situations where CO poisoning does not result in death, it may cause significant injuries and long term health consequences. Extrapolating national data provided by CPSC indicates that New York State (excluding New York City) could expect approximately 400 injuries annually.

The rule provides that CO alarms shall be listed and labeled as complying with UL 2034-2002. Listing of alarm devices ensures their safety and compliance with performance standards. The sensitivity standard in UL 2034 is based on an alarm response to specified concentrations of CO (in parts per million) within specified time frames. These are based on limiting carboxyhaemoglobin saturation to 10 percent.

The rule addresses multiple dwellings constructed or offered for sale after August 9, 2005 (the date specified in the statute). While the initial benefits of installing CO alarms in the multiple dwellings specified in the statute will be limited, there will be a cumulative effect over a period of years as multiple dwellings are sold and newly constructed multiple dwellings replace older multiple dwellings.

#### 4. COSTS.

The initial capital costs of complying with the pool alarm provisions added by this rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. In the case of a large, complex shaped pools, more sophisticated system may be required. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm. It is anticipated that these costs will be modest.

In the case of a hot tub or spa, the initial capital costs of complying with the rule will include the cost of purchasing and installing the safety cover. The Department of State estimates that the cost of a safety cover for a typical hot tub or spa is approximately \$450. The annual costs of complying with the rule will include the costs of operating and maintaining the cover. It is anticipated that these costs will be modest.

The initial costs of complying with the CO alarm provisions added by this rule include the cost of purchasing and installing the alarm. Cord or plug connected and battery operated CO alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. The annual costs of complying with the rule will include the costs of operating and maintaining the alarms. It is anticipated that these costs will be modest.

There are no costs to the Department of State for the implementation of the rule. The Department is not required to develop any additional regulations or develop any programs to implement the rule.

There are no costs to the State of New York or to local governments for the implementation of this rule, except as follows:

First, if the State or any local government constructs, installs or substantially modifies a swimming pool, the State or such local government, as the case may be, will be required to install a pool alarm, and if the State or any local government constructs, installs or substantially modifies a hot tub or spa, the State or such local government, as the case may be, will be

required to install a safety cover. Similarly, if the State or any local government constructs a new multiple dwelling or offers an existing multiple dwelling for sale, the State or such local government, as the case may be, will be required to install CO alarms.

Second, since this rule adds provisions to the Uniform Code, the authorities responsible for administering and enforcing the Uniform Code will be responsible for enforcing the provisions added by this rule, along with the other provisions of the Uniform Code. However, the need to verify the installation of required pool alarms (or, in the case of a hot tub or spa, the required safety covers) and the required CO alarms should not have a significant impact on the code enforcement process.

#### 5. PAPERWORK.

This rule imposes no new reporting requirements. No new forms or other paperwork will be required as a result of this rule.

#### 6. LOCAL GOVERNMENT MANDATES.

This rule does not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows:

First, any county, city, town, village, school district, fire district or other special district that owns or operates a swimming pool that is installed, constructed or substantially modified after December 14, 2006 will be required to comply with the pool alarm provisions added by this rule. Similarly, any county, city, town, village, school district, fire district or other special district that constructs a new multiple dwelling or sells an existing multiple dwelling will be required to comply with the CO alarm provisions added by this rule.

Second, since this rule adds provisions to the Uniform Code, cities, towns, villages and counties that are responsible for administering and enforcing the Uniform Code will be responsible for administering and enforcing the requirements of the rule, along with all other provisions of the Uniform Code.

The rule does not otherwise impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

#### 7. DUPLICATION.

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

#### 8. ALTERNATIVES.

Pool alarms. While the use of personal immersion alarms may provide supplemental protection in certain situations, such devices would not protect a child who was not wearing the device when he or she entered the water. Therefore, this rule provides that an alarm device which is located on person(s) or which is dependent on device(s) located on person(s) for its proper operation will not satisfy the requirements of the new provisions.

CO alarms. This rule requires installation of CO alarms in multiple dwellings constructed or offered for sale after August 9, 2005. Consideration was given to adopting a rule requiring all multiple dwellings be required to install CO detectors retroactively. This alternative was rejected at this time as it extends beyond the specific directive of the Legislature as set forth in subdivision (5-a) of Executive Law section 378.

#### 9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule. The U.S. Consumer Product Safety Commission does recommend installation of CO alarms.

#### 10. COMPLIANCE SCHEDULE.

Regulated persons will be able to achieve compliance with the pool alarm provisions added by this rule in the normal course of operations, either as part of the installation or construction of a new swimming pool or the substantial modification of an existing swimming pool.

Regulated persons will be able to achieve compliance with the CO provisions added by this rule in the normal course of operations, either as part of the construction process of a new multiple dwelling, as part of routine maintenance of an existing multiple dwelling constructed after August 9, 2005, or as part of the transfer process for an existing multiple dwelling offered for sale.

#### **Regulatory Flexibility Analysis**

##### 1. EFFECT OF RULE:

The new section 1228.2 which is added to Title 19 NYCRR by this rule will apply to any small business and any local government that owns or operates a swimming pool that is installed, constructed or substantially modified after December 14, 2006. The Department of State has not been able to estimate the number of small businesses and local governments that own or operate swimming pools, but it is believed that a majority of the non-residential swimming pools in this State are owned or operated by small businesses or local governments. Small businesses that install, con-

struct or modify swimming pools and small businesses that sell swimming pool alarms will also be affected by this rule.

The new section 1228.3 which is added to Title 19 NYCRR by this rule will apply to any small business and any local government that constructs a "multiple dwelling" (as that term is defined in subdivision (5-a) of section 378 of the Executive Law) or offers a multiple dwelling for sale. The Department of State believes that the majority of multiple dwellings in this State are owned by small businesses.

(Executive Law section 378(5-a) also provides that the Uniform Code must require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002. The Uniform Code currently contains provisions [in section 1225.2 of Title 19 NYCRR] requiring the installation of carbon monoxide alarms in such occupancies. Said section 1225.2 is repealed by this rule. However, provisions requiring the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with the new provisions requiring the installation of carbon monoxide alarms in multiple dwellings, and the combined carbon monoxide alarm provisions are included in a single section [section 1228.3] which is part of the new Part 1228 added by this rule.)

Since this rule adds provisions to the Uniform Fire Prevention and Building Code (the "Uniform Code"), each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. The Department of State estimate that approximately 1,604 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

#### 2. COMPLIANCE REQUIREMENTS:

No reporting or record keeping requirements are imposed upon regulated parties by the rule. Small businesses and local governments subject to the rule will be required to install, use and maintain swimming pool alarms and carbon monoxide alarms in accordance with the rule's provisions. In cases where the installation, construction or substantial modification of a swimming pool involves the issuance of a building permit, the local government responsible for administering and enforcing the Uniform Code will be required to consider the pool alarm requirements of this rule when reviewing plans and inspecting work. When a multiple dwelling is constructed, the local government responsible for administering and enforcing the Uniform Code will be required to consider the carbon monoxide alarm requirements of this rule when reviewing plans and inspecting work.

#### 3. PROFESSIONAL SERVICES:

No professional services will be required to comply with the rule.

#### 4. COMPLIANCE COSTS:

Pool alarms. The initial capital costs of complying with the rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (i.e., for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. In the case of a large, complex shaped pools, more sophisticated system may be required. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm, which are anticipated to be modest.

In the case of a hot tub or spa, the initial capital costs of complying with the rule will include the cost of purchasing and installing the safety cover. The Department of State estimates the cost of a safety cover for a typical hot tub or spa is approximately \$450. The annual costs of complying with the rule will include the costs of maintaining the safety cover, which are anticipated to be modest.

Any variations in the initial capital cost of complying with the rule or in the annual cost of complying with the rule are likely to be attributable to variations in the size and configuration of the swimming pools to be protected, and not to the type or size of the small businesses and local governments that own the pools. To the extent that larger businesses and larger local governments may tend to own larger swimming pools, or more than one swimming pool, the total costs of compliance would be higher for larger entities and larger local governments.

Carbon monoxide alarms. The initial capital costs of complying with the rule will include the cost of purchasing and installing the carbon monoxide alarm(s). Cord or plug connected and battery operated carbon

monoxide alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. With regard to the sale of existing multiple dwellings, regulated parties must purchase and install a carbon monoxide alarm, with similar costs as described above. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

Pool alarms. It is economically and technologically feasible for regulated parties to comply with the rule. Except in the case of very large or complex shaped swimming pools, which may require a more sophisticated alarm system, this rule imposes no substantial capital expenditures. No new technology need be developed for compliance with this rule.

Carbon monoxide alarms. It is economically and technologically feasible for regulated parties to comply with the rule. No substantial capital expenditures are imposed and no new technology need be developed for compliance.

#### 6. MINIMIZING ADVERSE IMPACT:

Pool alarms. The rule minimizes any potential adverse economic impact on regulated parties (including small businesses or local governments) by allowing several types of pool alarms on the market to be used. In the case of hot tubs and spas that fall within the Uniform Code's definition of "swimming pool," the rule minimizes any potential adverse impact by permitting providing that a hot tub or spa that is equipped with a safety cover need not be equipped with a pool alarm. Further, the rule provides that other swimming pools equipped with automatic power safety covers need not be equipped with a pool alarm.

The applicable statute (Executive Law section 378(14)(b)-(c)) requires that this rule apply to all swimming pools constructed or substantially modified after December 14, 2006. The statute does not authorize the establishment of differing compliance requirements or timetables with respect to swimming pools owned or operated by small businesses or local governments. Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(14)(b) and would endanger public safety.

Carbon monoxide alarms. The rule minimizes any potential adverse economic impact on regulated parties (including small businesses or local governments) by allowing for the installation of all types of carbon monoxide alarms, including those that are permanently connected to the building wiring system, those that are connected by cord or plug to the electrical system, and those that are battery operated. The applicable statute (Executive Law section 378(5-a)) requires that this rule apply to all multiple dwellings constructed or offered for sale after August 9, 2005. The statute does not authorize the establishment of differing compliance requirements or timetables with respect to multiple dwellings owned or operated by small businesses or local governments. Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(5-a) and would endanger public safety.

#### 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State notified local governments and other interested parties throughout the State of the adoption of the previous rules that were similar to this rule by means of a notice in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and currently distributed to approximately 3,700 subscribers representing all aspects of the construction industry. The Department of State will publish a similar notice regarding the adoption of this rule in a future edition of Building New York. In addition, when this rule is proposed for permanent adoption, the Department of State will conduct hearings and will solicit comments from the general public on this matter prior to voting to propose the adoption of this rule on a permanent basis.

#### *Rural Area Flexibility Analysis*

##### 1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule implements the provisions of paragraphs (b) and (c) of subdivision (14) of section 378 of the Executive Law, as added by Chapter 450 of the Laws of 2006 and Chapter 75 of the Laws of 2007, respectively, by adding provisions to the Uniform Fire Prevention and Building Code ("Uniform Code") requiring that a pool alarm be installed in any residential or commercial swimming pool (other than a hot tub or spa equipped with a safety cover or other pool equipped with an automatic power safety cover) that is installed, constructed or substantially modified after December 14, 2006.

This rule also implements the provisions of subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 438 of the Laws of 2005, by adding provisions to the Uniform Code requiring that carbon monoxide alarms be installed in any "multiple dwelling" (as that term is defined in subdivision (5-a) of section 378 of the Executive Law) that is constructed or offered for sale after August 9, 2005.

Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

## 2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The rule will not impose any reporting or recordkeeping requirements. The rule will impose the following compliance requirements:

**Pool alarms.** All residential and all commercial swimming pools that are installed, constructed or substantially modified after December 14, 2006 will be required to be equipped with an acceptable pool alarm that is capable of detecting a child entering the water and of giving an audible alarm, and such alarms will be required to be installed, used and maintained in accordance with the manufacturer's instructions. (Hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers will not be required to be equipped with pool alarms.) No professional services that are likely to be needed in a rural area in order to comply with such requirements.

**Carbon monoxide alarms.** All multiple dwellings constructed or offered for sale after August 9, 2005 will be required to be equipped with one or more carbon monoxide alarms. In the case of a multiple dwelling that contains dwelling units, at least one carbon monoxide alarm must be installed in each such dwelling unit. In the case of a multiple dwelling that contains sleeping units, at least one alarm must be installed on each floor level that contains sleeping units and, in addition, at least one alarm must be installed in each sleeping unit that contains any fuel-fired or solid-fuel burning appliance, equipment or system. Since this rule permits the use of battery operated carbon monoxide alarms, no professional services that are likely to be needed in a rural area in order to comply with such requirements.

(Executive Law section 378(5-a) also provides that the Uniform Code must require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling units constructed or offered for sale after July 30, 2002. The Uniform Code currently contains provisions [in section 1225.2 of Title 19 NYCRR] requiring the installation of carbon monoxide alarms in such occupancies. Section 1225.2 is repealed by this rule. However, provisions requiring the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with the new provisions requiring the installation of carbon monoxide alarms in multiple dwellings, and the combined carbon monoxide alarm provisions are included in a single section [section 1228.3] which is part of the new Part 1228 added by this rule.)

## 3. COMPLIANCE COSTS.

**Pool alarms.** The initial capital costs of complying with the rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. In the case of a large, complex shaped pools, more sophisticated system may be required. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm, which are anticipated to be modest.

A swimming pool (other than a hot tub or spa) equipped with an automatic power safety cover will not be required to be equipped with a pool alarm. However, this rule does not require the installation of an automatic power safety cover.

In the case of a hot tub or spa, the initial capital costs of complying with the rule will include the cost of purchasing and installing a safety cover. The Department of State estimates that the cost of a safety cover for a typical hot tub or spa is approximately \$450. The annual costs of complying with the rule will include the costs of maintaining the safety cover, which are anticipated to be modest.

Any variation in initial capital costs of complying and/or annual costs of complying with this rule for different types of public and private entities in rural areas will be attributable to the size and configuration of the

swimming pools owned or operated by such entities, and not to nature or type of such entities or to the location of such entities in rural areas.

**Carbon monoxide alarms.** The initial capital costs of complying with the rule will include the cost of purchasing and installing the carbon monoxide alarm(s). Cord or plug connected and battery operated carbon monoxide alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. With regard to the sale of existing multiple dwellings, regulated parties must purchase and install a carbon monoxide alarm, with similar costs as described above. Such costs are not likely to vary for different types of public and private entities in rural areas.

## 4. MINIMIZING ADVERSE IMPACT.

**Pool alarms.** Executive Law section 378(14)(b) makes no distinction between swimming pools located in rural areas and swimming pools located in non-rural areas. However, the economic impact of this rule in rural areas will be no greater than the economic impact of this rule in non-rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas. Executive Law section 378(14)(b)-(c) requires that this rule apply to all swimming pools (other than hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers) constructed or substantially modified after the effective date of section 378(14)(b), which is December 14, 2006. The statute does not authorize the establishment of differing compliance requirements or timetables in rural areas. Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(14)(b)-(c) and would endanger public safety.

**Carbon monoxide alarms.** Executive Law section 378(5-a) makes no distinction between multiple dwellings located in rural areas and multiple dwellings located in non-rural areas. However, the impact of this rule in rural areas will be no greater than the impact of this rule in non-rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas. Executive Law section 378(5-a) requires that this rule apply to all multiple dwellings constructed or offered for sale after August 9, 2005. The statute does not authorize the establishment of differing compliance requirements or timetables in rural areas. Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(5-a) and would endanger public safety.

## 5. RURAL AREA PARTICIPATION.

The Department of State notified code enforcement officials throughout the State, including those in rural areas, and other interested parties of the new requirements imposed by the previously adopted rules by means of notices in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and currently distributed to approximately 3,700 subscribers representing all aspects of the construction industry. The Department of State will include a similar notice regarding the adoption of this rule in a future edition of Building New York. In addition, when this rule is proposed for permanent adoption, the Department of State will conduct hearings and will solicit comments from the general public on this matter prior to voting to propose the adoption of this rule on a permanent basis.

### **Job Impact Statement**

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on jobs and employment opportunities" (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

1. **Pool alarms.** The rule adds a new Part 1228 to Title 19 NYCRR. New Part 1228 adds new provisions to the Uniform Fire Prevention and Building Code ("Uniform Code") requiring that residential and commercial swimming pools installed, constructed or substantially modified after December 14, 2006 be equipped with an pool alarm that is capable of detecting a child entering the water and giving an audible alarm. The pool alarms must be installed, used and maintained in conformance with the manufacturer's instructions. These provisions are added to satisfy the requirements of paragraphs (b) and (c) of subdivision (14) of section 378 of the Executive Law, which was added by Chapter 450 of the Laws of 2006. The pool alarm requirements added by this rule are substantially similar to the requirements that were added by an emergency rule which was filed on December 14, 2006 and expired on March 13, 2007 and by an

emergency rule which was filed on April 5, 2007 and expired on June 21, 2007.

Pool alarms that satisfy the requirements of this rule are currently available. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (*i.e.*, for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. The cost of providing the appropriate surface wave sensor or subsurface disturbance sensor pool alarm(s) is considered to be modest, particularly when considered in relation to the cost of the typical swimming pool. It is anticipated that requiring pool alarms will have no significant adverse impact on jobs or employment opportunities in businesses that manufacture, install or construct the types of swimming pools that can be protected by such surface wave sensor or subsurface disturbance sensor pool alarm(s). It is also anticipated that requiring pool alarms may have a positive impact on employment opportunities in businesses that sell, install and service pool alarms.

In the case of a large, complex shaped swimming pool, a more sophisticated system may be required. At least one manufacturer produces a pool alarm system, using sonar technology, which is claimed to be suitable for pools of virtually any size or shape. The cost of such a system is estimated to be between \$5,000 and \$8,000. A sonar-based pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. In these cases, the cost of providing the appropriate pool alarm system may add between 5% and 10% to the cost of the pool to be protected. This may have some negative impact on the segment of the swimming pool industry that constructs large, complex shaped swimming pools that require the more expensive sonar pool alarm systems. However, based on information provided on the International Aquatic Foundation website ([http://www.iafh2o.org/IAF\\_Statistics.asp](http://www.iafh2o.org/IAF_Statistics.asp)), of the estimated 8,349,000 swimming pools in the United States, only 270,000, or less than 3.25%, are "commercial" swimming pools. Based on this information, it is estimated that less than 3.25% of swimming pools that will be installed, constructed or substantially modified after December 14, 2006 will be "commercial" swimming pools. It is also anticipated that many such "commercial" swimming pools will be of a size and shape that can be protected by the less expensive surface wave sensor or subsurface disturbance sensor pool alarms mentioned above and, accordingly, it is estimated that the percentage of new swimming pools that will require the more expensive sonar pool alarm systems will be much less than 3.25%. Therefore, it is anticipated that this rule will not have a substantial adverse impact on jobs and employment opportunities.

Hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers are exempted from the pool alarm requirement by this rule.

2. Carbon monoxide alarms. The new Part 1228 added by this rule also adds provisions to the Uniform Code requiring that multiple dwellings constructed or offered for sale after August 9, 2005 be equipped with carbon monoxide alarms. The carbon monoxide alarm requirements were extended to multiple dwellings to satisfy the requirements of subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 438 of the Laws of 2005. The carbon monoxide alarm provisions added by this rule are substantially similar to the provisions added by an emergency rule which was filed on December 14, 2006 and expired on March 13, 2007 and by an emergency rule which was filed on April 5, 2007 and expired on June 21, 2007. (Executive Law section 378(5-a) also provides that the Uniform Code must require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed after July 30, 2002. The Uniform Code currently contains provisions [in section 1225.2 of Title 19 NYCRR] requiring the installation of carbon monoxide alarms in such occupancies. Said section 1225.2 is repealed by this rule. However, provisions requiring the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with the new provisions requiring the installation of carbon monoxide alarms in multiple dwellings, and the combined carbon monoxide alarm provisions are set forth in a single section [section 1228.3] in new Part 1228 added by this rule.)

For newly constructed multiple dwellings, the carbon monoxide alarms will be installed as part of the construction process. Carbon monoxide alarms must also be installed in existing multiple dwellings constructed after August 9, 2005. In exiting multiple dwellings constructed on or before August 9, 2005, carbon monoxide alarms may be installed at any time after the rule takes effect, or installation may be postponed until the

multiple dwelling is offered for sale. Any potential adverse economic impact on regulated parties is minimized by the provisions of the rule that allow the installation of all types of carbon monoxide alarms, including those that are permanently connected to the building wiring system, those that are connected by cord or plug to the electrical system, and those that are battery operated.

Once installed, the carbon monoxide alarms must be used and maintained in accordance with manufacturer's instructions.

The costs of purchasing, installing and maintaining the alarms is insignificant in comparison to the cost of construction of a typical new multiple dwelling and the sale price of a typical existing multiple dwelling that is offered for sale. Therefore, this rule should have no impact on jobs and employment opportunities related to the construction of new multiple dwellings or the sale of existing multiple dwellings.

## NOTICE OF ADOPTION

### Shared Municipal Services Incentive Awards Grants Program

**I.D. No.** DOS-19-07-00012-A

**Filing No.** 642

**Filing date:** June 26, 2007

**Effective date:** July 11, 2007

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

**Action taken:** Amendment of Part 814 of Title 19 NYCRR.

**Statutory authority:** State Finance Law, section 54(10)

**Subject:** Shared Municipal Services Incentive Awards Grant Program.

**Purpose:** To establish eligibility requirements and criteria for Shared Municipal Services Incentive Awards Program.

**Text or summary was published** in the notice of proposed rule making, I.D. No. DOS-19-07-00012-P, Issue of May 9, 2007.

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

**Text of rule and any required statements and analyses may be obtained from:** Richard L. Hoffman, Department of State, 41 State St., Counsel's Office, 8th Fl., Albany, NY 12231, (518) 474-6740, e-mail: Richard.Hoffman@dos.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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## Susquehanna River Basin Commission

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### SUSQUEHANNA RIVER BASIN

#### Notice of Actions Taken at June 13, 2007 Meeting

AGENCY: Susquehanna River Basin Commission

ACTION: Notice of Commission Actions.

SUMMARY: At a public hearing held on June 13, 2007 in North East, Md., the Susquehanna River Basin Commission approved certain water resources projects, accepted a settlement proposal, and incorporated two projects into the SRBC Comprehensive Plan, as described in the Supplementary Information section below. In other meeting action, the Commission heard informational presentations on: 1) the 2007 migratory fish runs through the fish passage facilities located at the lower Susquehanna River hydroelectric projects, 2) a Coastal Plain Aquifer Study being led by the U.S. Geological Survey Maryland District, and 3) hydrologic conditions in the basin indicating the occurrence of dry conditions during the month of May. The Commission also adopted the FY-2009 budget, elected Commission officers for FY-2008, approved/ratified several grants and contracts, and presented the SRBC Maurice K. Goddard Award to William A. Gast of the Pennsylvania Dept. of Environmental Protection. For further meeting details, visit the Commission's web site at [www.srbc.net](http://www.srbc.net).

DATE: June 13, 2007.

ADDRESS: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423; ext. 306; fax: (717) 238-2436; e-mail: [rcairo@srbc.net](mailto:rcairo@srbc.net) or Deborah J. Dickey, Secretary to the Commission, telephone: (717) 238-0422, ext. 301; fax: (717) 238-2436; e-

mail: ddickey@srbc.net. Regular mail inquiries may be sent to the above address.

**SUPPLEMENTARY INFORMATION:** At a public hearing on June 13, 2007, the Susquehanna River Basin Commission took the following actions:

**Public Hearing – Projects Approved**

1. Project Sponsor and Facility: Town of Conklin (Well 5), Broome County, N.Y. Approval for groundwater withdrawal of 0.350 mgd.

2. Project Sponsor and Facility: Town of Erwin (ID Well 2, Well 2, Well 3, ID Well 1), Steuben County, N.Y. Approval for groundwater withdrawals of 0.504 mgd, 0.350 mgd, 0.325 mgd, and 0.125 mgd.

3. Project Sponsor and Facility: Far Away Springs – Brandonville, East Union and Mahanoy Townships, Schuylkill County, Pa. Approval for groundwater withdrawal of 0.079 mgd and consumptive water use of up to 0.200 mgd.

4. Project Sponsor and Facility: Hughesville Borough Authority (Well 1, Well 2, Well 3), Wolf Township, Lycoming County, Pa. Approval for groundwater withdrawals of 0.260 mgd, 0.260 mgd and 1.440 mgd.

5. Project Sponsor: Glenn O. Hawbaker, Inc. Project Facility: Pleasant Gap, Spring Township, Centre County, Pa. Modification of consumptive water use approval (Docket No. 20050307).

6. Project Sponsor and Facility: Centre Hills Country Club (Hole #8 Well, Driving Range Well), College Township, Centre County, Pa. Approval for groundwater withdrawals of 0.316 mgd and 0.316 mgd.

7. Project Sponsor: New Enterprise Stone & Lime Co., Inc. Project Facility: Tyrone Quarry, Warriors Mark and Snyder Townships, Huntingdon and Blair Counties, Pa. Modification of surface water and groundwater approval (Docket No. 20031205).

8. Project Sponsor: New Enterprise Stone & Lime Co., Inc. Project Facility: Ashcom Quarry, Snake Spring Valley Township, Bedford County, Pa. Modification of groundwater approval (Docket No. 20031204).

9. Project Sponsor and Facility: AES Ironwood, LLC, South Lebanon Township, Lebanon County, Pa. Modification of surface water and consumptive use approval and diversion (Docket No. 19980502).

10. Project Sponsor and Facility: East Cocalico Township Authority (Well F, Well M), East Cocalico Township, Lancaster County, Pa. Approval for groundwater withdrawals of 1.150 mgd and 1.580 mgd.

11. Project Sponsor: Golf Enterprises, Inc. Project Facility: Valley Green Golf Course, Newberry Township, York County, Pa. Modification of consumptive water use approval (Docket No. 20021019).

12. Project Sponsor and Facility: Mount Joy Borough Authority (Well 3), Mount Joy Borough, Lancaster County, Pa. Approval for groundwater withdrawal of 1.020 mgd.

13. Project Sponsor and Facility: Dart Container Corporation of Pennsylvania (Well B), Upper Leacock Township, Lancaster County, Pa. Approval for groundwater withdrawal of 0.122 mgd.

14. Project Sponsor: Honey Run GIBG LLC. Project Facility: Honey Run Golf Club, Dover Township, York County, Pa. Modification of surface water withdrawal approval (Docket No. 20020827).

**Public Hearing – Enforcement Action – Settlement**

South Slope Development Corporation (Docket No. 19991103). The Commission accepted a settlement proposal from South Slope Development Corporation for certain docket violations occurring at the Song Mountain Ski Resort in the Town of Preble, Cortland County, New York.

**Public Hearing – Revision of Comprehensive Plan**

The Commission revised the SRBC Comprehensive Plan by including the following projects: 1) Whitney Point Lake Section 1135 Project Modification; and 2) Lancashire No. 15 AMD Treatment Plant. Both of these projects will provide releases of water for environmental improvement and low flow augmentation.

**AUTHORITY:** P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: June 20, 2007

Thomas W. Beauduy

Deputy Director