

RULE MAKING ACTIVITIES

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

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; 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.

Office of Children and Family Services

NOTICE OF ADOPTION

Public Assistance Employment Programs

I.D. No. CFS-06-07-00010-A

Filing No. 558

Filing date: June 5, 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: Amendment of sections 358-1.1, 415.2(a)(1)(i), (2)(i) and 415.4(a)(3) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 410-x(3)

Subject: Public assistance employment programs.

Purpose: To correct out-dated cross-references.

Text or summary was published in the notice of proposed rule making, I.D. No. CFS-06-07-00010-P, Issue of February 7, 2007.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

Department of Correctional Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Temporary Release Programs

I.D. No. COR-25-07-00005-P

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

Proposed action: Amendment of section 1900.4(c)(1)(ii) and (2)(ii) of Title 7 NYCRR.

Statutory authority: Correction Law, section 851(2)

Subject: Temporary release programs.

Purpose: To amend Part 1900 of Title 7 NYCRR in accordance with the Governor's Executive Order 9, enacted the fifth day of March, in the year two thousand seven.

Text of proposed rule: The text in section 1900.4(c)(1)(ii), is hereby amended as follows:

(ii) Except as provided by paragraph (4) of this subdivision, an inmate's current commitment must not be the result of a conviction or a youthful offender adjudication (Y.O.) for any of the following violent felony offenses if the crime involved either *being armed with*, the use of, [or] the threatened use of, or the possession with the intent to use unlawfully against another of, a deadly weapon or a dangerous instrument, or the crime involved the infliction of serious physical injury. The list of Offenses and Penal Law Sections in section 1900.4(c)(2)(ii) is hereby amended by as follows:

Offense	Penal Law Section
Criminally negligent homicide	125.10
Aggravated criminally negligent homicide	125.11
Vehicular manslaughter 2	125.12
Vehicular manslaughter 1	125.13
Manslaughter 2	125.15
Manslaughter 1	125.20
Aggravated manslaughter in the second degree	125.21
Aggravated manslaughter in the first degree	125.22
Murder 2	125.25
Aggravated murder	125.26
Murder 1	125.27
Abortion 2	125.40
Abortion 1	125.45
Self-abortion in the second degree	125.50
Self-abortion in the first degree	125.55
Issuing abortifacient articles	125.60
Sexual misconduct	130.20
Rape 3	130.25
Rape 2	130.30
Rape 1	130.35
[Consensual sodomy]	[130.38]
[Sodomy 3] Criminal sexual act in the third degree	130.40

[Sodomy 2] <i>Criminal sexual act in the second degree</i>	130.45
[Sodomy 1] <i>Criminal sexual act in the first degree</i>	130.50
<i>Forcible Touching</i>	130.52
<i>Persistent sexual abuse</i>	130.53
Sexual abuse 3	130.55
Sexual abuse 2	130.60
Sexual abuse 1	130.65
<i>Aggravated sexual abuse in the fourth degree</i>	130.65-A
Aggravated sexual abuse 3	130.66
Aggravated sexual abuse 2	130.67
Aggravated sexual abuse 1	130.70
Course of sexual conduct against a child 1	130.75
Course of sexual conduct against a child 2	130.80
Female genital mutilation	130.85
<i>Facilitating a sex offense with a controlled substance</i>	130.90
<i>Sexually motivated felony</i>	130.91
<i>Predatory sexual assault</i>	130.95
<i>Predatory sexual assault against a child</i>	130.96
Aggravated harassment of an employee by an inmate	240.32
<i>Incest in the third degree</i>	255.25
<i>Incest in the second degree</i>	255.26
<i>Incest in the first degree</i>	255.27
<i>Use of a child in a sexual performance</i>	263.05
<i>Promoting an obscene sexual performance by a child</i>	263.10
<i>Possessing an obscene sexual performance by a child</i>	263.11
<i>Promoting a sexual performance by a child</i>	263.15
<i>Possessing a sexual performance by a child</i>	263.16
<i>Soliciting or providing support for an act of terrorism in the second degree</i>	490.10
<i>Soliciting or providing support for an act of terrorism in the first degree</i>	490.15
<i>Making a terroristic threat</i>	490.20
<i>Crime of terrorism</i>	490.25
<i>Hindering prosecution of terrorism in the second degree</i>	490.30
<i>Hindering prosecution of terrorism in the first degree</i>	490.35
<i>Criminal possession of a chemical weapon or biological weapon in the third degree</i>	490.37
<i>Criminal possession of a chemical weapon or biological weapon in the second degree</i>	490.40
<i>Criminal possession of a chemical weapon or biological weapon in the first degree</i>	490.45
<i>Criminal use of a chemical weapon or biological weapon in the third degree</i>	490.47
<i>Criminal use of a chemical weapon or biological weapon in the second degree</i>	490.50
<i>Criminal use of a chemical weapon or biological weapon in the first degree</i>	490.55

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

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

The New York State Department of Correctional Services (DOCS) seeks to amend Parts 1900.4 (c) (1) (ii) by incorporating text and Part 1900.4 (c) (2) (ii) by adding penal law offenses to the list of crimes that render an inmate ineligible to participate in the Department's Temporary Release Program, in order to comply with the Governor's Executive Order 9, enacted the fifth day of March, two thousand and seven.

Statutory Authority

Section 851 (2) of Correction Law authorizes the Governor by executive order to exclude or limit the participation of any class or otherwise eligible inmates from participation in a temporary release program. Additionally, Correction Law 112 grants the commissioner of the Department

of Correctional Services (DOCS) the superintendence, management and control of the correctional facilities in the department and the inmates confined therein.

Legislative Objectives

By vesting the Governor and Commissioner of DOCS with the above authority, the Legislature intended the Commissioner of DOCS, acting under the Governor's direction, to promulgate rules that will provide for temporary release programs that are in the best interests and overall safety of the community, as well as the inmate participants.

Needs and Benefits

Temporary release programs provide inmates with an opportunity to transition back into their home communities under supervision, and to facilitate their ability to lead law abiding lives. As such, temporary release programs should be focused most on those inmates who are most likely to live and work within the community in a law abiding manner. There are certain classes of inmates who have committed crimes of particular violence, depravity or victimization, and less likely to succeed in temporary release programs. The temporary release of such inmates would also likely cause alarm and concern in the surrounding community and diminish the general acceptance of temporary release programs. This proposed rule ensures that these classes of inmates are not transferred to any program of temporary release.

Costs

- To agency, the state and local governments: no discernible cost.
- Costs to private regulated parties: none. The proposed amendments do not appear to apply to private regulated parties.
- This cost analysis is based upon the fact that this proposal merely amends the Department's temporary release program as required by Governor's Executive Order #9.

Local Government Mandates

There are no new mandates imposed upon local governments by this proposal. The proposed amendments do not apply to local governments as DOCS is a state funded operation.

Paperwork

There are no new reports, forms, or paperwork that would be required as a result of these amendments.

Duplication

These proposed amendments do not duplicate any existing State or Federal requirement.

Alternatives

No alternatives are apparent and none have been considered. Due to the Governor's Executive Order the Commissioner of DOCS was required to amend the appropriate sections of 7 NYCRR accordingly.

Federal Standards

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

Compliance Schedule

The department of Correctional Services will achieve compliance with the proposed amendments immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This proposal merely adds to the list of penal law offenses that would render an inmate ineligible to participate in the Department's Temporary Release Program.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on rural areas. This proposal merely adds to list of penal law offenses that would render an inmate ineligible to participate in the Department's Temporary Release Program.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely adds to the list of penal offenses that would render an inmate ineligible to participate in the Department's Temporary Release Program.

Office of General Services

NOTICE OF ADOPTION

Facility Use

I.D. No. GNS-09-07-00005-A

Filing No. 554

Filing date: May 30, 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: Amendment of section 200-1.2(r) of Title 9 NYCRR.

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

Subject: Facility use.

Purpose: To clarify that the New York State Executive Mansion, as established under article IV of the New York State Constitution, is a residence and shall not be considered a "State facility" for purposes of 9 NYCRR Part 300.

Text or summary was published in the notice of proposed rule making, I.D. No. GNS-09-07-00005-P, Issue of February 28, 2007.

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

Text of rule and any required statements and analyses may be

obtained from: Paula B. Hanlon, Office of General Services, 41st Fl., Corning Tower, Empire State Plaza, Albany, NY 12242, (518) 474-0571, e-mail: paula.hanlon@ogs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Public Access to Records

I.D. No. GNS-13-07-00017-A

Filing No. 555

Filing date: May 30, 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: Amendment of Subpart 330-1 of Title 9 NYCRR.

Statutory authority: Executive Law, section 200; Public Officers Law, section 87; and L. 2006, ch. 182, section 1

Subject: Public access to records of the Office of General Services.

Purpose: To implement the provisions of chapter 182 of the Laws of 2006.

Text or summary was published in the notice of proposed rule making, I.D. No. GNS-13-07-00017-P, Issue of March 28, 2007.

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

Text of rule and any required statements and analyses may be

obtained from: Paula B. Hanlon, Office of General Services, 41st Fl., Corning Tower, Empire State Plaza, Albany, NY 12242, (518) 474-0571, e-mail: paula.hanlon@ogs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Discretionary Thresholds in State Procurement

I.D. No. GNS-25-07-00002-P

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

Proposed action: This is a consensus rule making to amend section 250.6 of Title 9 NYCRR.

Statutory authority: State Finance Law, section 163(6) and (6-a); and L. 2006, ch. 56, part D, section 4

Subject: Discretionary thresholds in State procurement.

Purpose: To amend the discretionary buying thresholds and remain consistent with section 4 of part D of ch. 56 of the Laws of 2006.

Text of proposed rule: § 250.6 Discretionary buying thresholds.

(a) The commissioner may purchase services and commodities in an amount not exceeding [\$50,000] \$85,000 without a formal competitive process; State agencies may purchase services and commodities in an amount not exceeding [\$15,000] \$50,000 without a formal competitive process; and with respect to purchases of commodities of services from small business concerns or those certified pursuant to article 15-A of the Executive Law, or that are recycled or remanufactured commodities or technology, in an amount not exceeding [\$50,000] \$100,000 without a formal competitive process.

(b) Notwithstanding subdivision two of section 112 of the State Finance Law relating to the dollar threshold requiring the state comptroller's approval of contracts, [or article 4-C of the Economic Development Law] the commissioner of general services may make purchases or enter into contracts for the acquisition of commodities and services having a value not exceeding [\$30,000] \$85,000 without prior approval by any other [State office] state officer or agency in accordance with procedures and requirements set forth in this Part.

(c) Notwithstanding the provisions of article 4-C of the economic development law, the commissioner of general services may make purchases or enter into contracts for the acquisition of commodities and services having a value not exceeding \$30,000 without prior approval by any other state officer or agency in accordance with procedures and requirements set forth in this Part and Article 11 of the State Finance Law.

Text of proposed rule and any required statements and analyses may

be obtained from: Paula Hanlon, Office of General Services, 41st Fl., Corning Tower, Empire State Plaza, Albany, NY 12242, (518) 474-0571, e-mail: paula.hanlon@ogs.state.ny.us

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

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

Consensus Rule Making Determination

This rule is being proposed as a consensus rule because, in accordance with State Administrative Procedure Act § 102 (11) (b), it implements or confirms to non-discretionary statutory provisions. Among other things, Chapter 56 of the Laws of 2006 amended State Finance Law § 163(6), and repealed and added a new § 163(6-a).

Chapter 56 of the Laws of 2006 amended State Finance Law § 163(6) (Discretionary Buying Thresholds) to increase the discretionary buying thresholds of the commissioner and state agencies. The increased amounts are reflected in the proposed regulations. As New York State's primary procurement agency, it is important that OGS regulations reflect and include the statutory amendments regarding discretionary buying thresholds as they pertain to the Commissioner of General Services and State Agencies.

Chapter 56 of the Laws of 2006 also repealed and added a new State Finance Law § 162(6-a) (Discretionary purchases). This section provides that the Commissioner of General Services can make purchases not exceeding eighty-five thousand dollars notwithstanding the provisions of State Finance Law § 112; and purchases not exceeding thirty thousand dollars notwithstanding the provisions of Article 4-C of the Economic Development Law. 9 NYCRR § 250(6) must reflect the repeal and replacement provisions of State Finance Law § 163(6-a). As a result, the proposed rule amends 250(b) and adds 250(c).

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 amended language from Chapter 56 of the Laws of 2006 and ensures that the Commissioner of General Services and State Agencies will have higher discretionary thresholds in state procurement that is free from the competitive bidding process, in accordance with State Finance Law § 112, § 163(6), and 163(6-a). 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.

Higher Education Services Corporation

NOTICE OF ADOPTION

General and Academic Performance Awards

I.D. No. ESC-15-07-00001-A

Filing No. 556

Filing date: May 31, 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: Amendment of section 2206.3 of Title 8 NYCRR.

Statutory authority: Educational Law, sections 652(2), 653(9), 654(4), and 665(3)

Subject: Prepayment methods of general and academic performance awards administered by HESC.

Purpose: To update and improve the existing regulation to more accurately reflect the prepayment method.

Text or summary was published in the notice of proposed rule making, I.D. No. ESC-15-07-00001-P, Issue of April 11, 2007.

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

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

Assessment of Public Comment

The agency received no public comment.

(05-V-1493SA1)

NOTICE OF ADOPTION

Water Rates and Charges by Robinn Meadows Development Corporation

I.D. No. PSC-10-07-00010-A

Filing date: June 4, 2007

Effective date: June 4, 2007

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

Action taken: The commission, on May 16, 2007, adopted an order approving Robinn Meadows Development Corporation's request to make various changes in the rates, charges, rules and regulations contained in its schedule for water service, P.S.C. No. 3.

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

Subject: Water rates and charges.

Purpose: To approve Robinn Meadows Development Corporation's request to increase annual revenues by \$16,736 or 38.2 percent effective July 1, 2007.

Substance of final rule: The Commission adopted an order approving Robinn Meadows Development Corporation's request to increase annual revenues by \$16,736 or 38.2% effective July 1, 2007, 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-W-1454SA1)

Public Service Commission

NOTICE OF ADOPTION

Franchising Procedures by the Town of Eagle

I.D. No. PSC-02-06-00012-A

Filing date: June 1, 2007

Effective date: June 1, 2007

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

Action taken: The commission, on April 18, 2007, adopted an order, in Case 05-V-1493, approving the Town of Eagle's request for a waiver of 16 NYCRR sections 894.1 through 894.4(b)(2) pertaining to the franchising process.

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

Subject: Request for waiver of 16 NYCRR sections 894.1 through 894.4(b)(2).

Purpose: To allow the Town of Eagle to waive certain preliminary franchising procedures.

Substance of final rule: The Commission granted the Town of Eagle (Wyoming County) a waiver of 16 NYCRR, Part 894.1 through 894.4(b)(2) to expedite the franchising process.

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.

NOTICE OF ADOPTION

Transfer of Certain Real Property Located in Mount Pleasant, New York by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-12-07-00007-A

Filing date: June 4, 2007

Effective date: June 4, 2007

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

Action taken: The commission, on May 16, 2007, adopted and order in Case 07-E-0106 approving a petition filed by Consolidated Edison Company of New York, Inc. for the transfer of certain real property located in the Town of Mount Pleasant, Westchester County, New York to Hardscrabble Hill Development Group, L.L.C.

Statutory authority: Public Service Law, section 70

Subject: Transfer of certain real property located in Mount Pleasant, New York.

Purpose: To approve the transfer of certain real property located in Mount Pleasant, New York, from Consolidated Edison Company of New York, Inc. to Hardscrabble Hill Development Group, L.L.C.

Substance of final rule: The Commission adopted an order approving a Petition filed by Consolidated Edison Company of New York, Inc. for the transfer of certain real property located in the Town of Mount Pleasant, Westchester County, New York to Hardscrabble Hill Development Group, L.L.C., 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. (07-E-0106SA1)

NOTICE OF ADOPTION

Installed Reserve Margin

I.D. No. PSC-14-07-00001-A
Filing date: May 30, 2007
Effective date: May 30, 2007

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

Action taken: The commission, on My 25, 2007, adopted as a permanent rule its prior order issued March 8, 2007 adopting an installed reserve margin for the New York control area.

Statutory authority: Public Service Law, sections 4, 5, 65 and 66

Subject: To adopt as a permanent rule an installed reserve margin of 16.5 percent for the New York control area for the capability period beginning on May 1, 2007 and ending on April 30, 2008.

Purpose: To ensure continued safety, adequacy and reliability of New York's electric system.

Substance of final rule: The Public Service Commission adopted as a permanent rule its prior order issued March 8, 2007 adopting an installed reserve margin for the New York control area.

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-0088SA1)

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

Fixed Supply Service for 2008 by New York State Electric & Gas Corporation

I.D. No. PSC-25-07-00001-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 New York State Electric & Gas Corporation (NYSEG) to make various changes in the rates, charges, rules and regulations contained in its schedules for electric service, P.S.C. Nos. 120 and 121 — Electricity, to become effective Jan. 1, 2008.

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

Subject: Fixed supply service for 2008.

Purpose: To provide a simplified supply program whereby NYSEG will offer customers a single fixed supply service.

Substance of proposed rule: The Commission is considering New York State Electric & Gas Corporation's (NYSEG) request to update its electric tariffs, P.S.C. Nos. 120 and 121, to provide a simplified supply program whereby NYSEG will offer customers a single fixed supply service. The proposed filing has an effective date of January 1, 2008. The Commission may approve, reject or modify, in whole or in part, NYSEG's request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-0479SA1)

Department of State

**EMERGENCY
 RULE MAKING**

Notice of Hearing for Disciplinary Action Against a Registered Security Guard

I.D. No. DOS-25-07-00003-E
Filing No. 559
Filing date: June 5, 2007
Effective date: June 5, 2007

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

Action taken: Amendment of section 400.4(a) of Title 19 NYCRR.

Statutory authority: General Business Law, section 89-o

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

Specific reasons underlying the finding of necessity: This rule was adopted on an emergency basis to preserve the public safety and welfare. Security guards are employed for the protection of individuals and property, as well as the prevention and reporting of unlawful or unauthorized activity. Adoption of this rule permits the Department of State to serve the notice of hearing and complaint in administrative proceedings on security guards by certified mail, rather than pursuant to the CPLR as currently provided by 19 NYCRR Part 400. Especially in cases where the department is seeking to revoke or suspend a guard registration where a security guard has been charged with, or convicted of, a serious crime, this expedited service, which is similar to that required by other regulatory statutes, provides a greater measure of safety to the general public.

Subject: Authorization of a method of service of a notice of hearing for disciplinary action against a registered security guard.

Purpose: To expedite hearings involving disciplinary action against registered security guards.

Text of emergency rule: An Amendment to 19 NYCRR Section 400.4(a) is adopted to read as follows:

Section 400.4 Commencement of disciplinary proceedings.

(a) Every adjudicatory proceeding which may result in a determination to revoke or suspend a license or to fine or reprimand a licensee will be commenced by the service of a notice of hearing together with a statement of charges (also known as a complaint), which shall consist of plain and concise statement which shall sufficiently give the administrative law judge and the respondent notice of the alleged misconduct of incompetence. Notice of hearing and statement of charges (or complaint) shall be communicated in any manner permitted by the applicable regulatory statute, or if no specific manner is designated by the applicable statute, *by certified mail, or by any manner authorized by the Civil Practice Law and Rules*. Respondent may, at his option, serve an answer denying such charges and interposing affirmative defenses, if any. Absent an answer, all charges are deemed denied and all rights are reserved.

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 2, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Kenneth L. Golden, Department of State, Office of Counsel, 80 Swan St., 10th Fl., AESOB, Albany, NY 12201, (518) 486-4588

Regulatory Impact Statement

1. Statutory authority:

Article 7-A (Security Guard Act) of the General Business Law was enacted as Chapter 336 of the Laws of 1992. Section 89-g(1)(a) of Article 7-A prohibits employment of security guards unless it is established that they have obtained a valid registration card issued by the Department of State. Registration cards are issued only after the applicant has undergone an investigation and background check by the Division of Criminal Justice Services. Applicants charged or convicted of crimes are disqualified from being issued a registration card where the crime “bears a direct relationship to their employment” as a security guard. Applicants are notified of the proposed denial of their application by regular mail, and may request a hearing challenging the Department’s determination. Notice of the hearing is served by registered mail or in any manner authorized by the Civil Practice Law and Rules in accordance with General Business Law §§ 89-k and 79(2).

General Business Law § 89-1 provides that current holders of a registration card who are charged or convicted of a crime are subject to disciplinary action, such as revocation, suspension, or the imposition of a fine, but only after being afforded a hearing held pursuant to the State Administrative Procedure Act. In accordance with rules adopted by the Secretary of State for the adjudication of disciplinary hearings, notice of the hearing may be served “in any manner permitted by the applicable statute or the Civil Practice Law and Rules.” Since no specific method of service is provided by § 89-1 of the General Business Law, service must be made pursuant to the methods provided by the Civil Practice Law and Rules, resulting in delay and/or additional costs. General Business Law § 89-o authorizes the Secretary of State in consultation with the security guard advisory council to adopt rules and regulations implementing the provisions of Article 7-A. Accordingly, the Secretary of State has express authority to adopt this rule.

2. Legislative objectives:

In enacting Article 7-A of the General Business Law, the legislature described the increasing role of security guards in protecting individuals and property from “harm, theft and/or unlawful activity,” and found that the “proper screening, hiring and training of security guards is a matter of state concern and compelling state interest . . .”¹ and in the aftermath of the events of September 11, 2001, reinstated a federal fingerprint check on registered security guards to provide an additional measure of protection against potential harm from registrants who may have committed federal crimes or crimes in other jurisdictions that did not appear on the New York State records.² As a result, background checks have revealed an even greater number of holders of security guard registration cards who may be subject to disciplinary action for crimes committed in other jurisdictions, and who are entitled to hearings to determine whether they should continue to perform security guard functions. This rule re-enforces the stated objectives of the Legislature when it enacted Article 7-A.

3. Needs and benefits:

General Business Law § 89-1 provides that current holders of a registration card who are charged or convicted of a crime which “bears a direct relationship to their employment” are subject to disciplinary action, such as revocation, suspension, or the imposition of a fine, but only after being afforded a hearing held pursuant to the State Administrative Procedure Act. Notice of the hearing may be served “in any manner permitted by the applicable statute or the Civil Practice Law and Rules.” Since no specific method of service is provided by § 89-1 of the General Business Law, service must be made pursuant to the requirements of the Civil Practice Law and Rules, resulting in delay and/or additional costs. The public benefits from a timely and expedited determination of whether registered security guards charged or convicted of crimes pose an additional risk of harm to their safety or property.

4. Costs:

a. Costs to regulated parties:

The Department of State does not anticipate any additional costs to holders of registration cards by enactment of this rule.

b. Costs to the Department of State:

The Department of State anticipates that the cost and implementation and continued administration of this rule will be accomplished using existing resources.

c. Costs to State and local governments:

The rule does not otherwise impose any implementation or compliance costs on State or local governments.

5. Local government mandates:

The rule does not impose any program, service, duty or other responsibility on local governments.

6. Paperwork:

The rule does not require the securing, preparation, filing or maintenance of any additional papers or documents.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The current alternative to this rule requires that a holder of a registration card receive notice of a hearing seeking disciplinary action in any manner authorized by the Civil Practice Law and Rules. Those requirements necessitate either personal service or delivery and mailing of duplicate notices, which involves additional delays and costs in reaching a determination concerning the registrant’s fitness to continue performing the functions of a security guard. This rule expedites the procedure for reaching that determination while affording the registrant notice and an opportunity to be heard on any proposed disciplinary measures.

9. Federal standards:

This rule meets all federal and constitutional standards for due process.

10. Compliance schedule:

The Department of State anticipates that the Division of Licensing Services will be able to comply immediately with this rule.

¹ McKinney’s 1992 Session Laws of New York, Chapter 336, p. 1073

² McKinney’s 2004 Sessions Laws of New York, Chapter 699, p. 2147

Regulatory Flexibility Analysis

1. Effect of rule:

The rule affects security guard companies, and those persons wishing to become registered as security guards, to the extent that they are subject to the enforcement provisions contained in Article 7-A of the General Business Law. However, it does not place any financial or additional burdens on such businesses who are already required to exercise “due diligence” in determining whether employees have been convicted of any offense that “bears such a relationship to the performance of the duties of a security guard, as to constitute a bar to employment . . .” The rule does not apply to local governments.

2. Compliance requirements:

The reporting and recordkeeping requirements are currently mandated by General Business Law § 89-g, and are not altered by this rule.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

Small businesses will not need professional services in order to comply with this rule.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

It is not anticipated that small businesses will incur any additional costs of compliance as a result of this rule.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

It is not anticipated that small businesses will incur any additional costs or require technical expertise as a result of implementation of this rule.

The rule does not affect local governments.

6. Minimizing adverse economic impact:

It is not anticipated that small businesses will incur any additional costs as a result of implementation of this rule, requiring the adoption of alternative practices.

The rule does not affect local governments.

7. Small business and local government participation:

Since the impact on small businesses will be minimal, and the rule would not affect local governments, the Department did not solicit comment prior to the adoption of this rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies equally to holders of security guard registration cards in all areas of the state—urban, suburban and rural.

2. Reporting, recordkeeping and other compliance requirements:

Reporting and recordkeeping requirements are set forth fully in Section 2 of the Regulatory Flexibility Analysis for Small Business and Local Governments.

Holders of security guard registration cards in rural areas will not need to employ any additional professional services in order to comply with this rule.

3. Costs:

It is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any additional costs of compliance as a result of this rule.

4. Minimizing adverse impact:

It is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any additional costs of compliance requiring the adoption of alternative practices, as a result of this rule.

5. Rural area participation:

Since the impact on small businesses will be minimal and will apply equally throughout all areas of the state, whether urban, suburban or rural, the Department did not solicit comment prior to adoption of this rule.

Job Impact Statement

This rule will not have any substantial adverse impact on jobs and employment opportunities. Under existing law, applicants and current holders of a registration card charged or convicted of crimes are disqualified from being employed as security guards, where the crime "bears a direct relationship to their employment" as a security guard, and continued employment constitutes a danger to the health, safety or well-being of the public. Inasmuch as this rule affects only the method of notification of persons disqualified from employment as a security guard, or subject to disciplinary action, it promotes employment opportunities by ensuring that only those qualified for registration are employed in the protection of persons and their property.

**EMERGENCY
RULE MAKING**

Firefighter Training

I.D. No. DOS-25-07-00004-E

Filing No. 560

Filing date: June 5, 2007

Effective date: June 5, 2007

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

Action taken: Addition of Part 438 to Title 19 NYCRR.

Statutory authority: Executive Law, section 156(6); L. 2006, ch. 615

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

Specific reasons underlying the finding of necessity: Chapter 615 of the Laws of 2006 required that regulations concerning firefighter training be adopted by February 12, 2007. Regulations were adopted on an emergency basis and this rule keeps the regulations in effect until a permanent rule can be adopted.

Subject: Firefighter training.

Purpose: To set forth standards concerning firefighter training and describe the process whereby firefighter training hours and additional training hours will be allocated to counties.

Substance of emergency rule:

PART 438
OF TITLE 19 NYCRR

MINIMUM STANDARDS REGARDING OUTREACH FIRE TRAINING PROGRAM

Section 438.1 Purpose. The purpose of this rule is to implement the requirements of subdivision 6 of section 156 of the Executive Law, as enacted by Chapter 615 of the Laws of 2006. This subdivision empowers the State Fire Administrator to plan, coordinate, and provide training related to fire and arson prevention and control for paid and volunteer firefighters and governmental officers and employees. Subdivision 6 also directs the Office of Fire Prevention and Control (OFPC) to adopt rules and regulations relating to training, including training standards, the allocation of training hours to counties and the establishment of a uniform procedure for counties to request and OFPC to provide additional training hours.

Section 438.2 contains definitions of terms used in Part 438.

Section 438.3 describes training standards to guide OFPC in its implementation of the rule including instructor and student qualifications, live fire training requirements, and a listing of the standards, manuals, statutes, and regulations which will be used to provide the training authorized by subdivision 6 of section 156 of the Executive Law.

Section 438.4 deals with firefighter training hours, course allocations and scheduling procedures delivered through the Outreach Training Program.

Section 438.5 deals with additional firefighter training hours.

Section 438.6 deals with the supplemental firefighter training program.

Section 438.7 deals with firefighter training course allocations and scheduling procedures delivered through the Regional Training Program and Residential Training Program.

Section 438.8 deals with restrictions relating to OFPC's fire training programs.

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 2, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Elisha S. Tomko, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740

Regulatory Impact Statement

1. STATUTORY AUTHORITY

Section 156(6) of the Executive Law requires that the Office of Fire Prevention and Control of the Department of State (OFPC) provide fire and arson prevention and control training to firefighters and related governmental officers and employees. This section requires OFPC to adopt rules related to such training. These rules must include statements concerning training standards used by OFPC, the process by which OFPC allocates training hours to counties, and a uniform procedure for counties to request and OFPC to provide additional training hours.

2. LEGISLATIVE OBJECTIVES

The legislative objectives behind section 156(6) are to make more transparent the process by which OFPC allocates training hours to counties, to establish a uniform procedure for counties to request and OFPC to provide additional training hours, and to require that OFPC state the training standards which it will follow when it delivers training.

3. NEEDS AND BENEFITS

Section 156(6) of the Executive Law requires that OFPC adopt a rule which deals with firefighter training. Adoption of this rule would add transparency to the process by which firefighter training hours are allocated to counties, describe the training standards which will be followed by OFPC when it delivers training, and prescribe a uniform procedure for counties to request and OFPC to provide additional training hours.

4. COSTS

a. Cost to regulated parties for the implementation of and continuing compliance with the proposed rule.

Fire departments would experience no additional out-of-pocket costs if the rule is adopted. The equipment and facilities required by the training provided for in this rule are already in the possession of these departments.

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

The cost to the Office of Fire Prevention and Control for the implementation of the proposed rule is approximately \$1,500,000 per year. This amount is currently expended for training outreach programs; no additional costs beyond this amount would be required if this rule is adopted.

There would be no costs to local governments for the implementation and continuation of the proposed rule.

5. LOCAL GOVERNMENT MANDATES

This rule making will not impose any program, service, duty or responsibility upon counties, cities, towns, villages, school districts, fire districts or other special districts. Participation in the firefighter training provided for in this rule is at the option of each fire department.

6. PAPERWORK

Several new forms would be required as a result of the rule:

County fire coordinators desiring that training be provided to fire departments within their jurisdiction will be required to answer a survey related to such training and submit a proposed training schedule.

If this rule is adopted, state fire instructors, municipal fire instructors, and county fire instructors would be required to complete student attendance cards, and state fire instructors would be required to submit payroll vouchers.

7. DUPLICATION

No rules or other legal requirements of either the state or federal government exist at the present time which duplicate, overlap, or conflict with the proposed rule.

8. ALTERNATIVES

Section 156(6) of the Executive Law requires that OFPC adopt a rule which deals with firefighter training. This section requires that the rule describe the process by which firefighter training hours are allocated to counties, the training standards which will be followed by OFPC when it delivers such training, and prescribe a uniform procedure for counties to request and OFPC to provide additional training hours. Since OFPC does

not have statutory authority to consider any alternative other than to adopt a rule addressing these issues, no other significant alternatives were considered.

9. FEDERAL STANDARDS

No standards have been set by the federal government for the same or similar subject areas addressed by this proposed rule.

10. COMPLIANCE SCHEDULE

Fire departments interested in receiving the training which is provided for in this proposed rule can comply immediately with the requirements of the rule.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed rule potentially would affect all of the counties and all of the approximately 1850 fire departments located in New York State. The proposed rule would not affect small businesses located in New York State.

2. Compliance requirements:

Counties and fire departments wishing to avail themselves of the training offered by the proposed rule would be required to submit a proposed fire training schedule to the Office of Fire Prevention and Control of the Department of State.

3. Professional services:

Counties and fire departments will not need any additional professional services in order to comply with the proposed rule.

4. Compliance costs:

There would be no initial capital costs to counties or fire departments which would be associated with compliance with the rule, or annual costs to these entities for continuing compliance with the rule.

5. Economic and technological feasibility:

The proposed rule sets forth a voluntary process whereby counties and fire departments may make requests for firefighter training. The only requirement that the rule imposes on these counties and fire departments is that they make requests for this training. It is therefore economically and technologically feasible for these counties and fire departments to comply with this rule.

6. Minimizing adverse impact:

The proposed rule sets forth a voluntary process whereby counties and fire departments may make requests for firefighter training. Since the rule would regulate the administration of a state program rather than the activities of counties and fire departments, engaging in this voluntary process would not have any adverse economic impact on these entities.

7. Small business and local government participation:

Representatives of fire departments and local governments participated in legislative hearings at which they urged the implementation of a more transparent process for the allocation of firefighter training resources. This resulted in the passage of Chapter 615 of the Laws of 2006, which requires the promulgation of these rules.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rule would apply throughout New York State. All of the counties and all of the approximately 1850 fire departments in New York State, including those located in rural areas as that term is defined in section 102(10) of the State Administrative Procedure Act ("SAPA"), would potentially be affected by the rule.

The proposed rule would not regulate any activities of private entities in rural areas of the State.

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

Counties wishing to avail themselves of the training offered by the proposed rule would be required to submit a proposed fire training schedule to the Office of Fire Prevention and Control of the Department of State. Counties and fire departments located in rural areas will not need any additional professional services in order to comply with the proposed rule.

3. Costs:

There would be no initial capital costs to counties and fire companies located in rural areas associated with compliance with the rule, or annual cost for continuing compliance with the rule by these entities.

4. Minimizing adverse impact:

The proposed rule sets forth a voluntary process whereby counties may make requests for firefighter training. The rule would regulate the administration of a state program rather than the activities of public or private entities located in rural areas. Since this process is voluntary, it would not have any adverse economic impact on rural areas of New York State.

5. Rural area participation:

Representatives of rural areas participated in legislative hearings at which they urged the implementation of a more transparent process for the allocation of firefighter training resources. This resulted in the passage of Chapter 615 of the Laws of 2006.

Job Impact Statement

1. Nature of impact:

The nature of the impact that the rule will have on jobs and employment opportunities is minimal. The rule will result in the employment of several additional Office of Fire Prevention and Control (OFPC) fire protection specialists and may result in the employment of several temporary part time instructors by the Department of State.

2. Categories and numbers affected:

The rule will result in the employment of several additional fire protection specialists and may result in the employment of several temporary part time instructors by the Department of State.

3. Regions of adverse impact:

The minimal impact that the rule will have on jobs and employment opportunities will not result in an disproportionate impact on any region of the state.

4. Minimizing adverse impact:

The proposed rule would not have any adverse impact on existing jobs. The intent of Chapter 615 of the Laws of 2006 is to provide firefighter training, not to promote the development of new employment opportunities.

State University of New York

NOTICE OF ADOPTION

Freedom of Information Law

I.D. No. SUN-14-07-00013-A

Filing No. 557

Filing date: June 5, 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: Amendment of Part 311 of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b)

Subject: Freedom of Information Law (FOIL).

Purpose: To bring NYCRR into compliance with article 6 of Public Officers Law (Freedom of Information Law).

Text or summary was published in the notice of proposed rule making, I.D. No. SUN-14-07-00013-P, Issue of April 4, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Wendy L. Kowalczyk, Associate Counsel, State University of New York, Office of the University Counsel, University Plaza, S-313, (518) 443-5409, e-mail: Wendy.Kowalczyk@SUNY.edu

Assessment of Public Comment

The agency received no public comment.

Department of Transportation

NOTICE OF EXPIRATION

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

Vehicle and Driver Operational Requirements

I.D. No.	Proposed	Expiration Date
TRN-22-06-00009-P	May 31, 2006	May 31, 2007