February 13, 2008
Vol. XXX
Issue 7

DEPARTMENT OF STATE
Division of Administrative Rules

NEW YORK STATE REGISTER

INSIDE THIS ISSUE:

- Confirmation of a Victim of Human Trafficking
- Operation and Maintenance of Dams
- DRGs, SIWs, Trimpoints and the Mean LOS
- Rights of Patients

Guidance Documents
Notice of Availability of State and Federal Funds

State agencies must specify in each notice which proposes a rule the last date on which they will accept public comment. Agencies must always accept public comment: for a minimum of 45 days following publication in the *Register* of a Notice of Proposed Rule Making or a Notice of Emergency Adoption and Proposed Rule Making for which full text was included in the Notice or posted on a state web site, or which is a consensus rule or a rule defined in SAPA §102(2)(a)(ii); or for a minimum of 60 days following publication in the *Register* of a Notice of Proposed Rule Making or a Notice of Emergency Adoption and Proposed Rule Making for which a summary of the text of the rule was included in the Notice and the full text of which was not published on a state web site; and for 30 days after publication of a Notice of Revised Rule Making in the *Register*. When a public hearing is required by statute, the hearing cannot be held until 45 days after publication of the notice, and comments must be accepted for at least 5 days after the last required hearing. When the public comment period ends on a Saturday, Sunday or legal holiday, agencies must accept comment through the close of business on the next succeeding workday.

For notices published in this issue:

– the 60-day period expires on Sunday, April 13, 2008
– the 45-day period expires on Saturday, March 29, 2008
– the 30-day period expires on Friday, March 14, 2008

ELIOT SPITZER
GOVERNOR

LORRAINE CORTÉS-VÁZQUEZ
SECRETARY OF STATE

NEW YORK STATE DEPARTMENT OF STATE

Daniel E. Shapiro, First Deputy Secretary of State

Eamon Moynihan, Deputy Secretary of State for Public Affairs

Rosemarie Longo, Deputy Secretary of Business and Licensing Services

Lauren Rivera, Director of Public Information

For press and media inquiries call:
(518) 474-0050

DIVISION OF ADMINISTRATIVE RULES
Deborah Ritzko, Publications Manager

For ***State Register*** production, scheduling and subscription information
call: (518) 474-6785
E-mail: adminrules@dos.state.ny.us

For legal assistance with ***State Register*** filing requirements
call: (518) 474-6740
E-mail: dos.dl.inetcounsel@dos.state.ny.us

The ***New York State Register*** is now available on-line at:
www.dos.state.ny.us/info/register.htm

*The **New York State Register** (ISSN 0197 2472) is published weekly. Subscriptions are $80 per year for first class mailing and $40 per year for periodical mailing. The **New York State Register** is published by the New York State Department of State, Albany, NY 12231-0001. Periodical postage is paid at Albany, New York and at additional mailing offices.*

POSTMASTER: Send address changes to the Department of State, Division of Administrative Rules, One Commerce Plaza, 99 Washington Ave., Suite 650, Albany, NY 12231-0001.

printed on recycled paper

NOTICE!

WE MOVED!

Effective Monday, February 11, 2008, the Division of Administrative Rules will be located at:

One Commerce Plaza
99 Washington Ave., Suite 650
Albany, NY 12231

All hand-delivered submissions should be delivered to this address as of February 11, 2008.

Department of State mailing address will continue to be 41 State St., Albany, NY 12231 until February 29, 2008.

Please call our office to verify our location when submitting material to be published in the State Register.

All phone numbers will remain the same.

REVIEW REQUIREMENTS FOR NEW AND REVISED REGULATIONS

Executive Order No. 20 established a system of executive branch review of proposed state agency regulations by the Governor's Office of Regulatory Reform (GORR). The following is a brief description of the review requirements imposed by Executive Order 20 for new and revised rules.

Prior to submitting a proposed or revised rule for publication in the *State Register*, an agency must submit it to GORR along with any required regulatory impact statement; regulatory flexibility analysis for small businesses; rural area flexibility analysis; any cost-benefit, risk assessment and job retention analysis; or the results of any negotiated rule making or policy dialogue.

GORR reviews agency material for compliance with the following criteria:

1. The rule:
   a) is clearly within the authority delegated by law;
   b) is consistent with and necessary to achieve a specific legislative purpose;
   c) is clearly written so that its meaning will be easily understood by those persons affected by it;
   d) does not unnecessarily duplicate or exceed existing federal or state statutes or rules;
   e) is consistent with existing state statutes and rules;
   f) consistent with state statutory requirements, will produce public benefits which will outweigh the costs, if any, imposed on affected parties;
   g) does not impose a mandate on local governments or school districts which is not fully funded, except as specifically required by state statute;
   h) prescribes methodologies or requirements that allow regulated parties flexibility and encourage innovation in meeting the legislative or administrative requirements and objectives underlying the rule;
   i) is based on credible assessments, using recognized standards, of the degree and nature of the risks which may be regulated, including a comparison with every-day risks familiar to the public;
   j) gives preference to the least costly, least burdensome regulatory and paperwork requirements needed to accomplish legislative and administrative objectives;
   k) is based upon the best scientific, technical and economic information that can reasonably and affordably be obtained; and
   l) if possible and practical, favors market-oriented solutions and performance standards over command-and-control regulation.

2. The agency has complied with SAPA §§202-a, 202-b and 202-bb, relating to regulatory impact statement, regulatory flexibility analysis for small businesses and rural area flexibility analysis.

If GORR concludes that any of the criteria is not met, it may require the agency to undertake additional analyses, including a cost-benefit analysis or risk assessment.

Once the information provided to GORR is complete, GORR recommends to the Secretary to the Governor, Counsel to the Governor, Deputy Secretary to the Governor and Director of the Division of the Budget whether the agency may submit the rule making for publication in the *State Register*.

After publication, GORR again reviews the rule for any new information or factors. If GORR concludes that any such new factors exist, the agency is notified of any deficiencies within 45 days of publication of the proposed rule (30 days of publication of a revised rule).

GORR reviews the agency response to determine whether it adequately addresses the deficiencies. If the response is adequate, the agency may proceed with the rule making. If the agency response is inadequate, GORR may notify the agency that it may not adopt the rule. This notification may then be confirmed or modified by the Governor's Senior Advisors.

Agencies should submit proposed and substantially revised rules in MSWord format via E-mail, together with their required statements and analyses, in their entirety, to:

Regs@GORR.State.NY.US

Questions and comments may be directed to Counsel's Office at the address and telephone number below:

Amelia F. Stern, Counsel
Governor's Office of Regulatory Reform
P.O. Box 2107
Empire State Plaza, Bldg. 1
Albany, NY 12220-0107
(518) 473-0620

NEW YORK STATE
REGISTER

Be a part of the rule making process!

The public is encouraged to comment on any of the proposed rules appearing in this issue. Comments must be made in writing and must be submitted to the agency that is proposing the rule. Address your comments to the agency representative whose name and address are printed in the notice of rule making. No special form is required; a handwritten letter will do. Individuals who access the on line *Register* (www.dos.state.ny.us) may send public comment via electronic mail to those recipients who provide an e-mail address in Notices of Proposed Rule Making. This includes Proposed, Emergency Proposed, Revised Proposed and Emergency Revised Proposed rule makings.

To be considered, comments must reach the agency before the proposed rule is adopted. The law provides for a minimum 45-day public comment period after publication in the *Register* of every Notice of Proposed Rule Making for which full text was included or posted on a state web site, or which is a consensus rule or a rule defined in SAPA §102(2)(a)(ii); a minimum 60-day public comment period after publication in the *Register* of a Notice of Proposed Rule Making for which a summary of the text of the rule was included in the Notice and the full text of which was not published on a state web site; and a 30-day public comment period for every Notice of Revised Rule Making. If a public hearing is required by statute, public comments are accepted for at least five days after the last such hearing. Agencies are also required to specify in each notice the last date on which they will accept public comment.

When a time frame calculation ends on a Saturday or Sunday, the agency accepts public comment through the following Monday; when calculation ends on a holiday, public comment will be accepted through the following workday. Agencies cannot take action to adopt until the day after public comments are due.

The Administrative Regulations Review Commission (ARRC) is charged with the task of reviewing newly proposed regulations to examine the issues of compliance with legislative intent, impact on the economy, and impact on affected parties. In addition to sending comments or recommendations to the agency, please do not hesitate to transmit your views to ARRC:

Administrative Regulations Review Commission
State Capitol
Albany, NY 12247
Telephone: (518) 455-5091 or 455-2731

Each paid subscription to the New York *State Register* includes one weekly issue for a full year and four "Quarterly Index" issues. The Quarterly is a cumulative list of actions that shows the status of every rule making action in progress or initiated within a calendar year.

The *Register* costs $80 a year for a subscription mailed first class and $40 for periodical (second) class. Prepayment is required. To order, send a check or money order payable to the NYS Department of State to the following address:

NYS Department of State
One Commerce Plaza
99 Washington Avenue
Suite 650
Albany, NY 12231-0001
Telephone: (518) 474-6785

KEY: (P) Proposal; (RP) Revised Proposal; (RC) Revised Proposal/Continuation; (E) Emergency; (EP) Emergency and Proposal; (A) Adoption; (AA) Amended Adoption; (W) Withdrawal

Effective with the October 25, 2006 issue of the *Register*, in compliance with Chapter 230 of the Laws of 2006, individuals may send public comment via electronic mail to those recipients who provided an e-mail address in Notices of Proposed Rule Making. This includes Proposed, Emergency Proposed, Revised Proposed and Emergency Revised Proposed rule makings. Choose pertinent issue of the *Register* and follow the procedures on the website (www.dos.state.ny.us)

Rule Making Activities

Children and Family Services, Office of
1 / Child care subsidies for employed public assistance recipients (A)
1 / Supervised independent living programs (A)
Civil Service, Department of
2 / Jurisdictional classifications (P)
Criminal Justice Services, Division of
3 / Confirmation of a victim of human trafficking (EP)
Environmental Conservation, Department of
6 / Operation and maintenance of dams (P)
Health, Department of
9 / Non-prescription emergency contraceptive drugs (E)
10 / DRGs, SIWs, trimpoints and the mean LOS (E)
Housing and Community Renewal, Division of
13 / Qualified allocation plan for the allocation of low-income housing credits (A)
Housing Finance Agency
18 / Qualified allocation plan (A)
Mental Health, Office of
18 / Rights of patients (E)
Public Service Commission
19 / Submetering of electricity by Energy Investment Systems, Inc. (A)
20 / Issue of stock, bonds and other forms of indebtedness by Chaffee Water Works Cormpany (A)
20 / Submetering of electricity by Stellar Morrison, LLC (A)
20 / Petition for the submetering of electricity by RCP-East, LLC (A)
20 / Submetering of electricity by Atlantic Court, LLC (A)
21 / Submetering of electricity by 735 Avenue of the Americas LLC (A)
21 / Investigation and remediation of the Coney Island and the Citizens former manufactured gas plant sites by National Grid plc, *et al.* (P)
21 / Annual reconciliation of gas expenses and gas cost recoveries by Central Hudson Gas & Electric Corporation and KeySpan Energy Delivery Companies (P)
22 / Temporary rates and charges by Four Seasons Water Corp. (P)
22 / Temporary rates and charges by Sagamor Water Corp. (P)
Racing and Wagering Board
22 / Games of chance (P)
23 / Internet and telephone account wagering on horseracing (RP)
Transportation, Department of
24 / Access of over-dimensional vehicles on the thruway (A)
Hearings Scheduled for Proposed Rule Makings / 26
Action Pending Index / 27

Guidance Documents

73 / Correctional Services, Department of

Advertisements for Bidders/Contractors

75 / Notice to Bidders
75 / Sealed Bids

Notice of Availability of State and Federal Funds

81 / Education Department
81 / Health, Department of
82 / Labor, Department of
82 / Quality of Care and Advocacy for Persons with Disabilities, Commission on

Miscellaneous Notices/Hearings

83 / Notice of Abandoned Property Received by the State Comptroller
83 / Public Hearings
83 / Public Notices
85 / Sale of Forest Products