

# 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; 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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## Office of Children and Family Services

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

#### Child Care Subsidy Fraud Prevention

**I.D. No.** CFS-18-11-00010-P

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

**Proposed Action:** Amendment of Parts 414, 415, 416, 417 and Subparts 418-1 and 418-2 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 390(2)(d), (3)(e)(ii), 410(1) and title 5-C

**Subject:** Child Care Subsidy Fraud Prevention.

**Purpose:** To clarify when child day care providers may be disqualified from receiving payments for child care subsidies due to fraud.

**Text of proposed rule:** A new subparagraph (18) is added to paragraph (a) of section 414.15 to read as follows:

(18) *All school-age child care programs that accept direct and indirect payments from a social services district, or a payment from a parent or caretaker, for providing subsidized child care must comply with all relevant requirements of the child care subsidy program and section 415.4(h) of this Title.*

A new subparagraph (9) of paragraph (c) of section 415.4 is added and reads as follows:

(9)(i) *The social services district shall allow, disallow, or defer a claim for reimbursement, submitted by an eligible provider to the*

*social services district, for the purpose of providing child care services pursuant to this Part within 30 days of receiving such claim.*

(ii) *The social services district may defer a claim for reimbursement only in the following circumstances:*

(a) *Upon the recommendation of a federal, state, or local agency, when the agency has informed the social services district that continued payments of such claims place the social service district at risk of making payments for services that were not provided in accordance with the applicable state regulations, or*

(b) *After an initial review of the claim by the social services district revealed inaccuracies in the claim that warrant a more detailed review, or*

(c) *Upon notification of the existence of a pending criminal charge involving fraud.*

(iii) *The social services district may disallow payment for claims for services provided to any and all children receiving a child care subsidy for the time period in which:*

(a) *an enrolled provider is found by the Office to be operating or have operated a child care program, required to be licensed or registered with the Office, without obtaining such license or registration, or*

(b) *a licensed or registered provider is found by the Office to be operating or have operated over its licensed or registered capacity, or*

(c) *an enrolled informal provider is found by the Office to be caring or have cared for more children than the limits defined in section 415.1(h).*

Paragraph (h) of section 415.4 is amended to read as follows:

(h)(1) *A social services district may refuse to allow a child care provider that is not in compliance with this section and regulations promulgated by the Office, or any approved additional requirements of the social services district, to provide subsidized child care services to a child.*

(2)(i) *A social services district may disqualify a provider from receiving payment for child care services provided under the child care subsidy program if a provider:*

(a) *is criminally convicted of fraud;*

(b) *is found to be civilly liable for fraud;*

(c) *has voluntarily admitted to filing a false claim for reimbursement for child care services;*

(d) *has been disqualified from the Child and Adult Care Food Program, by the New York State Department of Health and/or its sponsoring agency, for submission of false information on the application, submission of a false claim for reimbursement or failure to keep required records;*

(e) *has failed to comply with the terms of a repayment plan with the social services district, or*

(f) *has a conviction of any activity that occurred in the past seven (7) years that indicated a lack of business integrity; or*

(g) *has been found by a social services district, after the social services district has conducted an administrative review in accordance with clause (ii) of this subparagraph, to have submitted a false claim(s) to a social services district for reimbursement.*

(ii) *An administrative review by a social services district must include the following:*

(a) A review of the claims submitted to the social services district and any other information or documentation obtained by the social services district to determine the accuracy of the information contained in the claims; and if a social services district determines after such a review that a provider submitted inaccurate information in the claims, then a preliminary review report must be prepared by a social services district and sent to the child care provider that is the subject of the review for a response.

(b) A child care provider must be given 20 days, from the date the district sent the preliminary review report to respond to the report. A child care provider may respond in writing presenting evidence and arguments that the provider believes refute the findings of the preliminary review report, or may request a formal review by a social services district, which allows a provider, in person, to present evidence and arguments in support of his/her position.

(c) If no response from a provider is received by a social services district within 20 days from the date of the postmark of the preliminary review report, the report may be finalized by a social services district. A final report, issued under this subclause, may be the basis for a social services district to disqualify a provider from providing subsidized child care.

(d) If a response from a provider is received by a social services district within 20 days from the date of the postmark of the preliminary report, the social services district must review and evaluate the response and may make appropriate changes based on the response from the provider, before issuing a final review report. Upon completion of the review, the social services district shall issue a final review report, such report must be sent to the child care provider that is the subject of the review.

(e) A child care provider, upon receipt of a final review report, must be given 10 days from the date of the postmark of the final review report to respond, and to request a formal review by the social services district. A final review report issued under this subclause, where a provider does not request a formal review within the 10-day specified timeframe, or does not provide a response that disproves the findings of said report, may be the basis for a social services district to disqualify a provider from providing subsidized child care.

(f) A social services district, upon receipt of a request for a formal review by a provider found in a final review report to have submitted inaccurate claims, must conduct such a review within 30 days of receipt of the request.

(g) A social services district at a formal review must allow a provider, in person, to present evidence and arguments in support of the provider's position.

(h) A social services district, after a formal review and after reviewing the evidence and arguments supplied by a provider at a formal review must make a final determination of whether a provider submitted false claims. A final determination that a provider submitted false claims may be the basis for a social services district to disqualify a provider from providing subsidized child care.

(iii) A provider who has been disqualified from receiving payment for child care services provided under the child care subsidy program by a social services district under clause (i) of this subparagraph is ineligible to receive such payments through any social services district for five years from the date of the disqualification, if such a provider made full restitution of any and all falsely obtained funds to the social services district. If such a provider did not make full restitution to a social services district, then the provider will remain ineligible to provide subsidized child care.

(iv) A social services district that disqualifies a provider from receiving a payment for child care services provided under the child care subsidy program must provide appropriate information concerning the disqualification to the appropriate regional office of the Office's Division of Child Care Services if the provider is a licensed or registered day care provider, or to the appropriate legally-exempt caregiver enrollment agency if the provider is a legally-exempt child care provider.

(3) In accordance with a plan approved by the Office, a social services district will have the right to make announced or unannounced inspections of the records and premises of any provider that provides care for subsidized children, including the right to make inspections prior to subsidized children receiving care in a home where the inspection is for the purpose of determining whether the child care provider is in compliance with applicable laws and regulations and any additional requirements imposed on such a provider by the social services district. A social services district must notify the Office immediately of any violations of regulations and must provide the Office with an inspection report documenting the results of such inspection.

(4) Nothing contained in this Part will diminish the authority of the local social services district from referring a matter to the appropriate district attorney or law enforcement agency.

A new section 415.12 is added and reads as follows:

Section 415.12 Eligible Provider Responsibilities

(a) An eligible provider that provides child care services to families receiving child care subsidies must comply with the following requirements:

(1) An eligible provider must operate their child care program in compliance the applicable Office regulations. Failure to operate in compliance with the Office regulations may result in the Office taking enforcement action pursuant to section 413.3 of this Title.

(2) An eligible provider, on a daily basis, must maintain current and accurate attendance records for each child showing the date of attendance with the time of arrival and departure. Full day absences must also be noted.

(3) An eligible provider must certify that all documentation and information provided to a social services district is accurate and true. Any false or fraudulent claims for payments by a provider may result in the deferral or disallowance of payment for such claims with a social services district, a referral to the Office for the revocation of a provider's registration or license, and/or referral for criminal prosecution.

(4) An eligible provider must not charge more for subsidized child care than the provider charges for non-subsidized care.

A new subparagraph (21) of paragraph (a) of section 416.15 is added and reads as follows:

(21) All group family day care homes that accept direct and indirect payments from a social services district, or a payment from a parent or caretaker, for providing subsidized child care must comply with all relevant requirements of the child care subsidy program and section 415.4(h) of this Title.

A new subparagraph (21) of paragraph (a) of section 417.15 is added and reads as follows:

(21) All family day care homes that accept direct and indirect payments from a social services district, or a payment from a parent or caretaker, for providing subsidized child care must comply with all relevant requirements of the child care subsidy program and section 415.4(h) of this Title.

A new subparagraph (19) of paragraph (a) of section 418-1.15 is added and reads as follows:

(19) All day care centers that accept direct and indirect payments from a social services district, or a payment from a parent or caretaker, for providing subsidized child care must comply with all relevant requirements of the child care subsidy program and section 415.4(h) of this Title.

A new subparagraph (19) of paragraph (a) of section 418-2.15 is added and reads as follows:

(19) All small day care centers that accept direct and indirect payments from a social services district, or a payment from a parent or caretaker, for providing subsidized child care must comply with all relevant requirements of the child care subsidy program and section 415.4(h) of this Title.

**Text of proposed rule and any required statements and analyses may be obtained from:** Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793

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

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

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

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

Section 390(2)(d) of the SSL authorizes the Office to establish regulations for the licensure and registration of child day care providers.

Section 410(1) of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Title 5-C (sections 410-u through 410-z) of the SSL governs the New York State Child Care Block Grant. It includes provisions regarding the use of funds by social services districts, the types of families eligible for services, the amount of local funds that must be spent on child care services, and reporting requirements. Section 410-x(3) requires the Office to establish in regulation minimum health and safety requirements that must be met by providers providing child care assistance funded under the New York State Child Care Block Grant, which are not required to be licensed or registered under section 390 of the SSL. Section 410-x(5) of the SSL authorizes the Office to establish regulations under which provision for child care assistance may be made by providing child care directly, through contracts, or through reimbursement to child care providers or to the parent or caretaker.

Section 390(3)(e)(ii) provides that an authorized agency may refuse to allow a child day care provider, who is not in compliance with Section 390 of the SSL, regulations issued by the Office or any approved additional standards, to provide subsidized child care.

##### 2. Legislative objectives:

The legislative intent for the licensure and registration of child day care programs is to promote the development of the child in a safe, caring and healthy environment. The legislative intent of the child care subsidy program is to assist low income families in meeting the costs of child care services and to provide for the health and safety of children in care so that the parent or caretaker can engage in work, or other approved activities.

The regulations support the legislative objectives underlying the SSL by providing social services districts and child care providers with greater clarification on standards for promoting health and safe child care, and processes that need to be employed when determining whether a child care provider is in compliance with the requirements of the Office.

##### 3. Needs and benefits:

The regulations provide for the health and safety of children in care and the fiscal integrity of the New York State Child Care Block Grant subsidy program by defining when a child care provider is in compliance with the requirements of the Office, and the circumstances under which child care providers may be disqualified from receiving payment for child care services from a social services district.

##### 4. Costs:

The State will use existing resources to implement these regulations. Any costs to local social services districts, if any, are expected to be minimal.

##### 5. Local government mandates:

Social services districts will be required to establish a more formal process of engagement with a child care provider if a district alleges that the provider has submitted false claims for reimbursement to a social services district. However, districts are presently required to have child day care subsidy fraud control measures in place per section 415.4(f) of Title 18 of the Official Compilation of Codes, Rules

and Regulations of the State of New York. Since no new mandates are being imposed on local governments, there is no compliance issue with the requirements of Executive Order No. 17.

##### 6. Paperwork:

Social services districts will need to process any required payment adjustments after conducting the necessary case reviews. Social services districts will have to prepare written audit reports for those providers they suspect of receiving improper child care subsidy payments.

##### 7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

##### 8. Alternatives:

The present regulatory structure does not provide a clear means of disqualifying a provider of child care services who receives subsidy payments from continuing to receive such payments even where the provider has engaged in fraud. There is also no process established by regulation for addressing cases of suspected fraud. The alternative to these regulations is to leave the existing process in place, which would continue the existing problem of making child care fraud difficult to detect and combat. The regulatory approach in the proposed regulations is designed to rectify the problems of the existing lack of specific standards and procedures.

##### 9. Federal standards:

The regulations are consistent with applicable federal requirements to receive a grant of federal assistance for child care. Federal statute, section 658E(c)(2)(E) of the Social Security Act, requires that the State certify that it has in effect licensing requirements applicable to child care services. Further, in section 658E(c)(2)(F) of the Social Security Act the State must certify that there are in effect requirements designed to protect the health and safety of children that are receiving service under this subchapter of the statute.

##### 10. Compliance schedule:

These provisions must be implemented within 90 days from final adoption.

#### **Regulatory Flexibility Analysis**

##### 1. Effect on small businesses and local governments:

The proposed regulations will affect the 58 social services districts. There is a potential effect on over 20,000 licensed and registered child care providers and an estimated 70,000 informal providers that may provide child care services to families receiving a child care subsidy.

##### 2. Compliance requirements:

Social services districts will be required to establish a more formal process of engagement with a child care provider if a district has alleged that the provider has submitted false claims for reimbursement to a social services district. Social services districts will need to process any required payment adjustments after conducting the necessary case reviews.

##### 3. Professional services:

Neither social services districts, nor child care providers, should have to hire additional professional staff in order to implement these regulations.

##### 4. Compliance costs:

The State will use existing resources to implement these regulations. Costs to social services districts if any are expected to be minimal.

##### 5. Economic and technological feasibility:

The child care providers and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

##### 6. Minimizing adverse impact:

The regulations support the Social Services Law by providing social services districts with greater clarification on standards for promoting health and safe child care, and processes that need to be employed when determining whether a child care provider is in compliance with the requirements of the Office.

The Office will develop materials to assist the social services

districts in establishing a formal process of engagement with a child care provider when it is alleged that the provider has submitted false claims for reimbursement to a social services district.

7. Small business and local government participation:

The Office has met with social services district commissioners at New York Public Welfare Association conferences to help inform our thinking on these regulations.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

The regulations will affect the 44 social services districts located in rural areas of the State and the child care providers located in those districts.

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

Social services districts will be required to establish a more formal process of engagement with a child care provider when it is alleged that the provider has submitted false claims for reimbursement. Social services districts will need to process any required payment adjustments after conducting the necessary case reviews.

3. Costs:

The State will use existing resources to implement these regulations. Costs to social services districts, if any are expected to be minimal.

4. Minimizing adverse impact:

The regulations support the Social Services Law by providing social services districts with greater clarification on standards for promoting health and safe child care and processes that need to be employed when determining whether a child care provider is in compliance with the requirements of the Office.

The Office will develop materials to assist the social services districts in establishing a formal process of engagement with a child care provider when it is alleged that the provider has submitted false claims for reimbursement to a social services district.

5. Rural area participation:

The Office has met with social services district commissioners at New York Public Welfare Association conferences to help inform our thinking on these regulations.

**Job Impact Statement**

**Nature of Impact:** The proposed regulations provide for the health and safety of children in care and the fiscal integrity of the New York State Child Care Block Grant subsidy program. The proposed regulations take these actions by defining when a child care provider is in compliance with the requirements of the Office, and the circumstances under which child care providers may be disqualified from receiving payment for child care services from a social services district.

**Categories and Numbers Affected:** The number of providers that may be affected by the proposed regulations are unknown.

**Regions of Adverse Impact:** There are no regions where the regulations would have a disproportionate adverse impact on jobs or employment opportunities.

**Self-Employment Opportunities:** No measureable impact on opportunities for self-employment is expected.

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## Department of Civil Service

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

**Jurisdictional Classification**

**I.D. No.** CVS-18-11-00001-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by adding thereto the positions of Chief Investigations, Assistant Chief Investigations and Investigator.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

**Jurisdictional Classification**

**I.D. No.** CVS-18-11-00002-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Criminal Justice Services," by decreasing the number of positions of Associate Counsel from 2 to 1 and by adding thereto the position of Special Counsel.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was

previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

**Jurisdictional Classification**

**I.D. No.** CVS-18-11-00003-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To add a subheading and classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department, by adding thereto the subheading "Office of Indigent Legal Services," and the position of Counsel.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

**Jurisdictional Classification**

**I.D. No.** CVS-18-11-00004-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Taxation and Finance, by decreasing the number of positions of Assistant Counsel from 7 to 6 and by adding thereto the position of Legislative Liaison.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

**Jurisdictional Classification**

**I.D. No.** CVS-18-11-00005-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office for Technology," by deleting therefrom the position of Manager Information Services.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

**Jurisdictional Classification**

**I.D. No.** CVS-18-11-00006-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State, by deleting therefrom the position of Director of Public Information and by adding thereto the position of Deputy Secretary of State for Communications and Community Affairs.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

**Jurisdictional Classification**

**I.D. No.** CVS-18-11-00007-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by increasing the number of positions of Advocacy Specialist 2 from 4 to 5.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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**State Commission of  
Correction**

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**NOTICE OF ADOPTION**

**Lock and Securing Device Inspections**

**I.D. No.** CMC-06-11-00001-A

**Filing No.** 359

**Filing Date:** 2011-04-19

**Effective Date:** 2011-05-04

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

**Action taken:** Amendment of section 7003.10 of Title 9 NYCRR.

**Statutory authority:** Correction Law, section 45(6) and (15)

**Subject:** Lock and securing device inspections.

**Purpose:** To extend the intervals within which locks and securing devices must be inspected.

**Text or summary was published** in the February 9, 2011 issue of the Register, I.D. No. CMC-06-11-00001-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Brian M. Callahan, Associate Attorney, New York State Commission of Correction, 80 Wolf Road, 4th Floor, Albany, New York 12205, (518) 485-2346, email: Brian.Callahan@scoc.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Maintenance of Chemical Agents****I.D. No.** CMC-06-11-00002-A**Filing No.** 360**Filing Date:** 2011-04-19**Effective Date:** 2011-05-04

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

**Action taken:** Amendment of section 7063.6 of Title 9 NYCRR.

**Statutory authority:** Correction Law, section 45(6) and (15)

**Subject:** Maintenance of chemical agents.

**Purpose:** To extend the intervals within which certain chemical agents must be inspected.

**Text or summary was published** in the February 9, 2011 issue of the Register, I.D. No. CMC-06-11-00002-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Brian M. Callahan, Associate Attorney, New York State Commission of Correction, 80 Wolf Road, 4th Floor, Albany, New York 12205, (518) 485-2346, email: Brian.Callahan@scoc.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Environmental Conservation

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### EMERGENCY RULE MAKING

**Outdoor Wood Boilers Used to Heat Homes and Commercial Establishments****I.D. No.** ENV-18-11-00009-E**Filing No.** 356**Filing Date:** 2011-04-15**Effective Date:** 2011-04-15

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

**Action taken:** Amendment of Part 247 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105

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

**Specific reasons underlying the finding of necessity:** The Department's Division of Air Resources is amending 6 NYCRR Parts 247 to extend the sell-through period for distributors of OWBs from April 15, 2011 through July 14, 2011. Part 247 took effect on January 28, 2011. As adopted, distributors had 76 days to move existing inventory of non-compliant models. This 76-day sell-through period coincides with a period of time when the ground is frozen to a depth of three feet or more thus making it very difficult, if not impossible, to install an OWB. The piping and electrical lines need to be buried (or at least well insulated) between an OWB and the building it services. Since the rule requires that non-certified OWBs commence operation prior to April 15, 2011, distributors could not move existing inventory during the sell-through period.

**ADVERSE IMPACT ON THE GENERAL WELFARE**

Absent a concession by the manufacturers to take back non-compliant inventory from their distributors or the ability to sell non-compliant units elsewhere, the seasonally-related limitations occurring during the 76-day sell-through period results in an additional cost burden on distributors, negatively impacting businesses located throughout New York State. In one case, it came to the Department's attention that an OWB distributor located in New York had approximately \$200,000 worth of non-certified OWB inventory which

he could not sell or install due to seasonal conditions, negatively impacting his business and 20 employees. In addition, individuals wishing to purchase and install these units during the sell-through period may not have had an opportunity to do so due to the coinciding seasonal conditions.

Therefore, in order to preserve the general welfare of the State, this emergency rule will allow distributors a reasonable additional opportunity to sell their existing inventory of non-compliant OWBs, and individuals to install them, through July 14, 2011. During this extended sell-through period, all other provisions of Part 247 applicable to new OWBs shall remain in effect. This includes, but is not limited to, the setback, stack height and Notice to Buyers provisions as well as the fuel use provisions.

**CONCLUSIONS**

In the interest of the general welfare of the citizens of New York, the Department is adopting, through emergency rulemaking, a revision to Part 247 which will extend the sell-through period through July 14, 2011.

**Subject:** Outdoor wood boilers used to heat homes and commercial establishments.

**Purpose:** Provide for an extension to the sell-through provision for non-certified outdoor wood boilers.

**Text of emergency rule:** Sections 247.1 through 247.9 remain unchanged.

Section 247.10 is re-numbered as Section 247.11.

A new Section 247.10 is added as follows:

*Section 247.10 Sell-through Provision*

*Through July 14, 2011, distributors may continue to sell or lease existing inventory that was acquired by the distributor prior to April 15, 2011 and that does not meet the requirements for certification under Section 247.8 of this Part.*

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 13, 2011.

**Text of rule and any required statements and analyses may be obtained from:** John Barnes, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: 247owb@gw.dec.state.ny.us

**Regulatory Impact Statement****STATUTORY AUTHORITY**

The promulgation of Part 247 is authorized by the following sections of the Environmental Conservation Law (ECL):

Section 1-0101. This Section declares it to be the policy of New York State to conserve, improve and protect its natural resources and environment and control air pollution in order to enhance the health, safety and welfare of the people of New York State and their overall economic and social well being. Section 1-0101 further expresses, among other things, that it is the policy of New York State to coordinate the State's environmental plans, functions, powers and programs with those of the Federal government and other regions and manage air resources to the end that the State may fulfill its responsibility as trustee of the environment for present and future generations. This Section also provides that it is the policy of New York State to foster, promote, create and maintain conditions by which man and nature can thrive in harmony by providing that care is taken for air resources that are shared with other states.

Section 3-0301. This Section empowers the Department to promulgate regulations to carry out the environmental policy of New York State set forth in Section 1-0101 and specifically empowers the Department to cooperate with officials and representatives of the federal government, other states and interstate agencies regarding problems affecting the environment of New York State. Section 3-0301 specifically empowers the Department to provide for the prevention and abatement of air pollution.

Section 19-0103. This Section declares that it is the policy of New York State to maintain the purity of air resources and to require the use of all available practical and reasonable methods to prevent and control air pollution in the State.

Section 19-0105. This Section declares that it is the purpose of Article 19 of the ECL to safeguard the air resources of New York State under a program which is consistent with the policy expressed in

Section 19-0103 and in accordance with other provisions of Article 19.

Section 19-0301. This Section declares that the Department has the power to promulgate regulations for preventing, controlling or prohibiting air pollution.

Section 19-0303. This Section provides that the terms of any air pollution control regulation promulgated by the Department may differentiate between particular types and conditions of air pollution and air contamination sources.

Section 19-0305. This Section authorizes the Department to enforce the codes, rules and regulations established in accordance with Article 19.

Sections 71-2103 and 71-2105. These Sections include provisions for the civil and criminal enforcement of Article 19 of the ECL.

#### LEGISLATIVE OBJECTIVES

It is the declared policy of the State of New York, as pronounced by the Legislature in the Environmental Conservation Law, to maintain a reasonable degree of purity of the air resources of the state, consistent with the public health and welfare and the public enjoyment and the protection of physical property and other resources. That policy requires the use of all available practical and reasonable methods to prevent and control air pollution in the State of New York. The Department has the authority, as provided for in the Environmental Conservation Law, to formulate, adopt and promulgate, amend and repeal codes and rules and regulations for preventing, controlling or prohibiting air pollution in a manner consistent with that policy. In furtherance of that policy and the Legislature's objectives, the proposed emergency rule will provide a reasonable extension of the sell-through period for distributors and purchasers to address general welfare concerns.

#### NEEDS AND BENEFITS

Part 247 took effect on January 28, 2011. As adopted, distributors had 76 days to move existing inventory of non-certified models. This 76-day sell-through period coincides with a period of time when the ground is frozen to a depth of three feet or more thus making it very difficult, if not impossible, to install an OWB. The piping and electrical lines need to be buried (or at least well insulated) between an OWB and the building it services. Since the rule requires that non-certified OWBs commence operation prior to April 15, 2011, distributors could not move existing inventory during the sell-through period in the adopted rule.

Through this emergency rule making, the Department is extending the sell-through period through July 14, 2011. This will allow distributors the opportunity to sell and install their existing inventory of non-certified OWBs. Further, this extension will give distributors time to replenish their inventory with models compliant with the emission standards set forth in Part 247. During this extended sell-through period, all other provisions of Part 247 applicable to new OWBs shall remain in effect. This includes, but is not limited to, the setback, stack height and Notice to Buyers provisions as well as the fuel use provisions.

Due to the high cost of fuel oil, the Department anticipates that many New Yorkers will be considering the purchase of an OWB as a cost-saving measure. The extension of the sell-through provision of Part 247 will allow New Yorkers more OWB models to choose from. Those who buy or lease non-certified OWBs during the sell through period will be allowed to operate such boilers provided they comply with all other provisions of Part 247.

#### COSTS

This emergency rule making will not impose new costs on manufacturers or distributors. This emergency rule is expected to lead to reduced costs to buyers and lessees of OWBs since they will have more models to choose from during the sell-through period. In addition, this emergency rule will reduce costs for OWB distributors by allowing them more time to sell existing inventory which they could not otherwise return to the manufacturer or sell elsewhere.

#### PAPERWORK

This emergency rule making will not impose any new paperwork requirements on any entity.

#### LOCAL GOVERNMENT MANDATES

No additional record keeping, reporting or other requirements would be placed upon local governments.

#### DUPLICATION BETWEEN THIS REGULATION AND OTHER REGULATIONS AND LAWS

This emergency rule making will not be duplicative with any other law or regulation.

#### ALTERNATIVES

The Department evaluated the no action alternative in addition to the emergency rule. If this emergency rule is not adopted, distributors would be left with unsellable inventory and may be forced to lay off employees. Further, people who are considering the purchase of a new OWB in order to reduce heating costs will have very few OWB models to choose from.

#### FEDERAL STANDARDS

There are no federal regulations pertaining to OWBs. The EPA initiated a voluntary program in January 2007 designed to encourage manufacturers to develop cleaner OWBs. This program is being implemented in two phases. The maximum allowable particulate emission rate for a unit to be certified under Phase 2 of the EPA program is 0.32 lb per mmBtu heat output which is identical to the standards included in the adopted rule.

#### COMPLIANCE SCHEDULE

Through July 14, 2011, distributors may continue to sell or lease inventory not certified under Section 247.8 that was acquired prior to April 15, 2011. The Department will not enforce the certification provisions of 247.8 against OWB end users that acquire and commence operation of the OWB during the sell-through period of April 15, 2011 through July 14, 2011. This limited exception only applies to certification requirements under Section 247.8 for end users that buy, lease or operate new non-certified OWBs during the sell-through period and does not relieve any person from compliance with other provisions of Part 247, including but not limited to minimum setback and stack height requirements, fuel use restrictions, and Notice to Buyer requirements.

#### Regulatory Flexibility Analysis

The purpose of Part 247 was to establish regulatory requirements for outdoor wood boilers (OWBs). The rule was adopted on December 29, 2010 and took effect on January 28, 2011. The Department is amending Part 247 through an emergency rule making by adding a new Section 247.10 to extend the sell-through period through July 14, 2011 to allow distributors additional time to move inventory acquired prior to April 15, 2011.

#### EFFECTS ON SMALL BUSINESS AND LOCAL GOVERNMENTS

As per the adopted rule, distributors had 76 days to move existing inventory of non-certified models. This 76-day sell-through period coincides with a period of time when the ground is frozen to a depth of three feet or more thus making it very difficult, if not impossible, to install an OWB. The piping and electrical lines need to be buried (or at least well insulated) between an OWB and the building it services. Since the rule requires that non-certified OWBs commence operation prior to April 15, 2011, distributors could not move existing inventory during the sell-through period.

Through this emergency rule making, the Department is extending the sell-through period through July 14, 2011. This will allow distributors the opportunity to sell and install their existing inventory of non-certified OWBs. Further, this extension will give distributors time to replenish their inventory with models certified by the Department as meeting the emission standards set forth in Part 247. During this extended sell-through period, all other provisions of Part 247 applicable to new OWBs shall remain in effect. This includes, but is not limited to, the setback, stack height and Notice to Buyers provisions as well as the fuel use provisions.

#### COMPLIANCE REQUIREMENTS

Through July 14, 2011, distributors may continue to sell or lease inventory not certified under Section 247.8 acquired prior to April 15, 2011. Effective April 15, 2011, all other provisions of Part 247 ap-

plicable to new OWBs shall remain in effect. This includes, but is not limited to, the setback, stack height and Notice to Buyers provisions as well as the fuel use provisions.

#### Requirements for Manufacturers

No new requirements for manufacturers are included in this emergency rule making. Manufacturers must still apply for certification of the models they wish to sell in New York at the end of the sell-through period in the emergency rule. This requirement was included in the adopted rule.

#### Requirements for Distributors

This emergency rule provides distributors with an additional 90-day period to move existing inventories of non-certified OWB models. Distributors must comply with all other provisions of Part 247 including, but not limited to the Notice to Buyers provision (Section 247.9).

#### PROFESSIONAL SERVICES

No additional professional services would be required in order to comply with the provisions of this emergency rule.

#### COMPLIANCE COSTS

This emergency rule does not impose additional costs on manufacturers or distributors. This emergency rule is expected to lead to reduced costs to buyers or lessees of OWBs since they will have more models to choose from during the sell-through period. In addition, this emergency rule will reduce costs for OWB distributors by allowing them more time to sell existing inventory which they could not otherwise return to the manufacturer or sell elsewhere.

#### MINIMIZING ADVERSE IMPACT

This emergency rule making will allow distributors additional time to sell existing inventory and prevent layoffs in that business sector.

#### SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

This emergency rule making is in response to concerns raised by distributors since the adoption of Part 247 on December 29, 2010.

#### ECONOMIC AND TECHNOLOGICAL FEASIBILITY

As of April 2011, there are 23 models that have qualified under Phase 2 of the USEPA's voluntary program. It is expected that most of these models will be certified by the DEC for sale in New York State by July 15, 2011 provided manufacturers submit applications for certification in a timely manner.

#### *Rural Area Flexibility Analysis*

The purpose of Part 247 was to establish regulatory requirements for outdoor wood boilers (OWBs). The rule was adopted on December 29, 2010 and took effect on January 28, 2011. The Department is amending Part 247 through an emergency rule making by adding a new Section 247.10 to extend the sell-through period through July 14, 2011 to allow distributors additional time to move inventory acquired prior to April 15, 2011.

#### TYPES AND ESTIMATED NUMBER OF RURAL AREAS AFFECTED

The emergency rule will apply statewide, but will have the greatest impact in rural areas. The Department does not know how many OWB distributors service customers in New York.

#### COMPLIANCE REQUIREMENTS

Outdoor wood boilers commencing operation on or after July 15, 2011 must be certified for sale in New York by the Department. Effective April 15, 2011, all other provisions of Part 247 applicable to new OWBs shall remain in effect. This includes, but is not limited to, the setback, stack height and Notice to Buyers provisions as well as the fuel use provisions.

The Department will not enforce the certification provisions of 247.8 against OWB end users that acquire and commence operation of the OWB during the sell-through period of April 15, 2011 through July 14, 2011. This limited exception only applies to certification requirements under Section 247.8 for end users that buy, lease or operate new non-certified OWBs during the sell-through period and does not relieve any person from compliance with other provisions of Part 247, including but not limited to minimum setback and stack height requirements, fuel use restrictions, and Notice to Buyer requirements.

#### COSTS

No additional costs are imposed on manufacturers, distributors or buyers of OWBs as a result of this emergency rule. This emergency rule is expected to lead to reduced costs to buyers and lessees of OWBs since they will have more models to choose from during the sell-through period. In addition, this emergency rule will reduce costs for OWB distributors by allowing them more time to sell existing inventory which they could not otherwise return to the manufacturer or sell elsewhere.

#### MINIMIZING ADVERSE IMPACTS

Due to the high cost of fuel oil, the Department anticipates that many New Yorkers will be considering the purchase of an OWB as a cost-saving measure. The extension of the sell-through provision of Part 247 will allow New Yorkers more OWB models to choose from. Further, this extension will give distributors time to replenish their inventory with models compliant with the emission standards set forth in Part 247.

#### RURAL AREA PARTICIPATION

This emergency rule making is in response to concerns raised by distributors since the adoption of Part 247 on December 29, 2010.

#### *Job Impact Statement*

The purpose of Part 247 was to establish regulatory requirements for outdoor wood boilers (OWBs). The rule was adopted on December 29, 2010 and took effect on January 28, 2011. The Department is amending Part 247 through an emergency rule making by adding a new Section 247.10 to extend the sell-through period through July 14, 2011 to allow distributors additional time to move inventory acquired prior to April 15, 2011.

#### NATURE OF IMPACT

Part 247 took effect on January 28, 2011. As adopted, distributors had 76 days to move existing inventory of non-compliant models. This 76-day sell-through period coincides with a period of time when the ground is frozen to a depth of three feet or more thus making it very difficult, if not impossible, to install an OWB. The piping and electrical lines need to be buried (or at least well insulated) between an OWB and the building it services. Since the rule requires that non-certified OWBs commence operation prior to April 15, 2011, distributors could not move existing inventory during the sell-through period.

Through this emergency rule making, the Department is extending the sell-through period through July 14, 2011. This will allow distributors the opportunity to sell and install their existing inventory of non-certified OWBs.

#### CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED

The Department does not know how many OWB distributors service customers in New York.

#### REGIONS OF ADVERSE IMPACT

The emergency rule will apply state-wide, but the greatest impact will be in rural areas.

#### MINIMIZING ADVERSE IMPACT

This emergency rule making will allow distributors additional time to sell existing inventory and prevent layoffs in that business sector.

#### SELF-EMPLOYMENT OPPORTUNITIES

This emergency rule making will allow distributors additional time to sell existing inventory of non-certified OWBs thus reducing potential business losses.

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## Department of Health

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### EMERGENCY RULE MAKING

#### Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content

**I.D. No.** HLT-18-11-00012-E

**Filing No.** 358

**Filing Date:** 2011-04-18

**Effective Date:** 2011-04-18

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

**Action taken:** Amendment of Part 59 of Title 10 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 1194(4)(c) and 1198(6); and Environmental Conservation Law, section 11-1205(6)

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

**Specific reasons underlying the finding of necessity:** This amendment to Part 59 is being filed as an emergency action because immediate adoption is necessary to avoid a conflict between Part 59 as it currently exists and an emergency action filed by the Division of Probation and Correctional Alternatives (DPCA) to implement Chapter 496 of the Laws of 2009 (Leandra's Law). This law mandates use of ignition interlock devices for all individuals sentenced for Driving While Intoxicated (DWI) misdemeanor or felony offenses, and is expected to result in more widespread use of ignition interlock devices. Since the Department of Health will continue to set standards for and certify devices to make them eligible for use in NYS, the Department has a vested interest in ensuring success of this initiative. Leandra's Law also greatly expanded DPCA's role in ignition interlock oversight, and DPCA has incorporated certain regulatory provisions that are in existing Part 59 in its new Title 9 NYCCR Part 358, consistent with DPCA's mandate for oversight of the installation, use and servicing of ignition interlock devices. If this amendment to Part 59 does not become effective contemporaneously with DPCA's Part 358, a seamless transfer of responsibility would not take place, and regulated parties would be exposed to contradictory requirements, leading to confusion and non-compliance. It is also noteworthy that the timely transfer of responsibility between agencies ensures that statutory deadlines for implementing an important statewide public safety initiative are met.

In addition, this amendment would enable law enforcement agencies to use breath alcohol testing devices identified in the recently published March 11, 2010 list of devices approved by the federal National Highway Traffic Safety Administration. Existing Part 59 references a 2007 list and must be updated now that a new list is available. The federal and State lists of approved breath testing devices need be identical to avoid legal challenges and preclude inadmissibility of evidence, and to ensure effective enforcement of the law against driving while intoxicated.

**Subject:** Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content.

**Purpose:** Update technical standards for blood and breath alcohol testing conducted by law enforcement.

**Substance of emergency rule:** This proposed amendment to Part 59 updates standards, reflects changes in nomenclature and technology, and provides clarification of provisions pertinent to alcohol determinations of breath, blood and other body fluids, and certification of ignition interlock devices used for enforcement of Vehicle and Traffic Law.

The Section 59.1 definition for the term techniques and methods is amended to include saliva, which itself is defined in a new subdivision (k). The definition of testing laboratory is revised to clarify the Department's requirements. A definition for calibration is added. Section 59.2 is modified to introduce current terminology, specifically blood alcohol concentration (BAC). The rule clarifies that urine may be used as a specimen, and its analysis requires controls and blanks similar to those used for analyses of blood. This amendment removes the list of persons authorized to draw blood and eliminates technical specifications not required for analytical accuracy. Section 59.2 is further modified to revise the acceptable range for the alcohol reference

standard used for calibration verification of instruments for both breath and blood analysis. This section and others now provide for a 0.08 grams/100 ml (w/v) reference standard. This proposal also requires that units for alcohol determinations of blood and urine be expressed as blood alcohol concentration (BAC), meaning percent weight per volume, rather than the outdated terminology of grams percent.

Section 59.3 is modified in several places to address saliva as a potential specimen. The proficiency testing performance criteria for renewal of a permit for the chemical analysis of blood, urine and saliva are clarified. "Competence" is replaced with "proficiency" throughout the section. In Section 59.4, outdated NYS-specific criteria for breath testing instruments are replaced with documentation that the model has been accepted by the U.S. Department of Transportation/National Highway Traffic Safety Administration (NHTSA) as an evidential breath alcohol measurement device. The proposed amendment includes the list of NHTSA-approved breath measurement instruments published in the Federal Register on March 11, 2010 to remove any possible ambiguity about the fact that devices listed therein, including the Alcotest 9510 manufactured by Draeger Safety, Inc., are fully approved by the Department of Health. The training agencies' responsibilities for instrument maintenance, including the establishment of a calibration cycle, and records retention are clarified.

The Section 59.5 two-hour time frame for specimen collection is eliminated, and the requirement for certain techniques and methods to be a component of each training agency's curriculum and to be put to use by the analyst is clarified. The requirement for observation of a subject prior to collection of a breath sample has been clarified. Minor technical changes have been made to Section 59.6.

This proposal would reduce the hours spent in initial training for a breath analyst permit as specified in Section 59.7, from 32 hours required to 24 hours, and require training agencies to develop learning objectives. The minimum time for hands-on training with breath analysis instruments is reduced from ten to six hours. Revised Section 59.7 establishes an application window of 120 calendar days preceding the permit's expiration date. The Section also clarifies that a permit expires and is void when not renewed, but that the Commissioner of Health may extend the permit expiration date for 30 calendar days, during which period the permit remains valid. The amendment makes clear that failure to renew in accordance with time frames established in the regulation results in the permit becoming void, which then requires the analyst to participate in the 24-hour initial/comprehensive training course. Section 59.7, as revised, requires training agencies to submit information on training sessions and participant lists to the Department of Health in a format designated by the Commissioner.

Section 59.9, as amended, provides for an effective period of four years for technical supervisor certification, an increase of two years. The responsibilities of a technical supervisor have been modified to reflect current practice. Notably, the duty to conduct field inspections has been eliminated, as has the responsibility to provide expert testimony, since the recognition of expertise is a role of the court. Revised Section 59.9 clarifies that a technical supervisor may delegate certain tasks, including instrument maintenance and preparation of chemicals used in testing, to a person not qualified as a supervisor, provided the work product is reviewed and found acceptable. A new sentence at the end of the section codifies long-standing Department policy that suspension or revocation of an operator's permit held by a supervisor triggers suspension or revocation of the person's certification as a technical supervisor.

Existing Sections 59.10 and 59.11 are repealed, and replaced with two new sections that provide criteria, respectively, for certification for ignition interlock devices and for testing of such devices by independent laboratories. The existing reference to a seven-county pilot study of ignition interlock devices is removed, and outdated performance standards for devices are replaced with NHTSA standards. Existing provisions for the application process, manufacturer interaction with testing laboratories, and discontinuance of certification remain in effect. New Section 59.10 requires the manufacturer to provide contact information, including identification of a person to respond to Department inquiries, and requires the manufacturer to furnish a certificate stating that the company issuing the requisite li-

ability coverage will notify the Department at least 30 days prior to cancellation of the policy before the expiration date. Section 59.10 also makes clear the Department's requirement that the manufacturer must demonstrate, through arrangements with a testing laboratory, that the device meets the NHTSA model specifications when calibrated to a set point of 0.025% BAC; and stipulates that only devices that employ fuel cell technology or another technology with demonstrated comparable accuracy and specificity are eligible for certification.

New Section 59.11 specifies the minimal elements of a testing laboratory report and requires such report to be submitted directly to the Department. In both new sections, a reference to "circumvention" has been added with each occurrence of the word "tampering," to recognize that these are both prohibited in Vehicle and Traffic Law Section 1198.

Existing Section 59.12 is repealed. New Section 59.12 establishes requirements for continued ignition interlock certification. New Section 59.12 requires a manufacturer to notify the Department of any operational modification to a certified device, and to obtain express approval for its continued use, as modified, under the existing certification. The definition of operational modification and the process for reporting modifications has been moved from Section 59.10 to Section 59.12. A new requirement is added that the manufacturer notify the Department of each renewal of insurance coverage, each change of issuing company, and each change in liability limits. The section requires manufacturers to supply to installation/service providers a sufficient number of labels with text that conforms to the text mandated by statute. The vast majority of the section's other requirements, including reporting and labeling requirements and manufacturer-service provider interactions, have been eliminated from Section 59.12; most have been incorporated into a new 9 NYCRR Part 358 being promulgated by the Division of Probation and Correctional Alternatives (DPCA) contemporaneously with this regulation in response to the anticipated August 2010 implementation of the ignition interlock provisions of Leandra's Law (L. 2009, Ch. 496). New Section 59.12 establishes a process for periodic renewal to ensure that information on file with the Department is current. The application form has been removed from the regulation, as it will be available electronically.

**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 July 16, 2011.

**Text of rule and any required statements and analyses may be obtained from:** Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

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

##### Statutory Authority:

The New York State (NYS) Vehicle and Traffic Law, Section 1194(4)(c), and Department of Environmental Conservation Law, Section 11-1205(6), authorize the Commissioner of Health to adopt regulations concerning methods of testing breath and body fluids for alcohol content. NYS Vehicle and Traffic Law, Section 1198(6) authorizes the Commissioner of Health to promulgate regulations setting standards for use of ignition interlock devices.

##### Legislative Objectives:

This amendment is consistent with the legislative objective of ensuring effective enforcement of laws against driving while intoxicated (DWI). This proposal is consistent with Chapter 669 of the Laws of 2007, which authorized statewide use of ignition interlock devices, and Chapter 496 of the Laws of 2009 (Leandra's Law), which mandates that every person sentenced for any DWI offense, must have an ignition interlock device installed as a requirement for conditional discharge or probation.

##### Needs and Benefits:

Part 59 establishes standards for chemical tests on blood, breath, and urine for the presence of alcohol, for purposes of detecting unacceptable levels of alcohol in persons. Courts rely on Part 59 provisions daily in adjudicating alcohol-related offenses; the State's correctional

alternatives program relies on effective operation of ignition interlock devices to prevent repeat offenders from driving while impaired by alcohol. The existing regulation must be updated, as it is inconsistent with existing DWI statutes, as well as current and anticipated usage of ignition interlock devices.

The specificity of Section 59.2 standards for collecting, handling and analyzing a specimen for blood alcohol analysis has prevented convictions even though the defendant was driving while intoxicated. This amendment would delete the list of persons authorized to draw blood, as the listing could present a legal conflict with similar provisions in Vehicle and Traffic Law Section 1194(4)(a) and Public Health Law Section 3703. This amendment would eliminate technical specifications for the collection of blood within a two-hour timeframe, and use of a clean and sterile syringe and anticoagulant, and require that alcohol units be expressed as blood alcohol concentration, rather than the outdated terminology of grams percent. The reference standard for calibration verification of breath and blood analysis instruments has been changed to a standard greater than or equal to 0.08 grams/100 ml, consistent with the Vehicle and Traffic Law provision that sets 0.08% weight per volume (w/v) alcohol in blood as the threshold for certain DWI sanctions. The amendment describes criteria for revocation or nonrenewal of a blood alcohol analysis permit based on unsuccessful proficiency testing (PT) performance or failure to participate in PT challenges.

Section 59.4 affords training agencies the flexibility of establishing retention times for records, as these may vary by record type and potential use in a legal proceeding; delegation of recordkeeping activities is authorized. Section 59.4, as revised, stipulates the commissioner's approval of breath measurement devices for use in NYS provided the device has been accepted by the National Highway Traffic Safety Administration (NHTSA). The revised section includes the list of NHTSA-approved breath measurement instruments published in the Federal Register on March 11, 2010 to remove any possible ambiguity about the fact that devices listed therein, including the Alcotest 9510 manufactured by Draeger Safety Inc., are fully approved by the Department of Health. The requirement in Section 59.5 for conducting breath analysis within two hours of arrest or a positive breath alcohol screening test has been removed. The requisite for test subject observation prior to testing has been clarified, as the existing provision for continuous observation carries the risk of unintended and unnecessarily specific interpretation, thus jeopardizing successful DWI prosecution. The reference to operational checklists, which are no longer used, has been eliminated. The requirement for certain techniques and methods to be a component of each training agency's curriculum and to be put into use by analysts is clarified.

This proposal would reduce from 32 to 24 hours the time trainees must spend in initial training. The reduction from 10 to six hours in hands-on use of instruments is reasonable given the decreasing complexity of instrumentation overall, and the trend towards use of one device model within a jurisdiction. Training agencies would be required to identify learning objectives and design examinations in keeping with objectives. The outdated term equilibrators has been deleted, as breath analyzers no longer need to counter a matrix effect from use of simulator solutions. As modified, the rule requires retraining to renew a BTO permit take place via a course designed to refresh applicants' recall of formal training material, such as including mechanisms to assess proficiency and measure retained knowledge. The proposal stipulates that retraining must occur within the 120 days prior to permit expiration, to eliminate overlap within the two-year BTO cycle. This amendment would afford, at the Commissioner's discretion, a 30-day extension in permit expiration date, in an effort to avoid the potential legal dilemma of administrative permit lapses due to paperwork processing delays. Operators whose permits are voided are required to participate successfully in another initial certification course before a new BTO permit may be issued, to demonstrate that recall and competency have been maintained.

The effective period for a technical supervisor's certification has been increased from two to four years. Supervisor responsibilities have been detailed; and supervisors are permitted to delegate certain tasks, provided they review the work product to ensure the designee's performance meets expectations. A reference to field inspection of

instruments by supervisors has been modified to reflect the current practice of remote calibration checks. Provision of expert testimony has also been deleted from the list of supervisor's responsibilities, since the process of qualifying subject matter experts rests with the court.

Existing Section 59.10 is repealed. New Section 59.10 retains many existing ignition interlock certification criteria, rearranged for ease of comprehension. The reference to a seven-county pilot study for ignition interlock devices has been eliminated, as Chapter 669 of the Laws of 2007 amended the Vehicle and Traffic Law to expand the study into a statewide program. New Section 59.10 requires the manufacturer to identify a person to respond to Department inquiries, and requires the manufacturer to furnish a certificate stating that the company issuing the requisite liability coverage will notify the Department at least 30 days prior to cancelling a policy before the expiration date. New Section 59.10 also makes clear that the manufacturer must demonstrate, through arrangements with a testing laboratory, that the device meets the NHTSA model specifications when calibrated to a set point of 0.025% BAC; and stipulates that only devices that employ fuel cell technology or another technology with demonstrated comparable accuracy and specificity are eligible for certification, thus ensuring deployment of state-of-the-art equipment.

Existing Section 59.11 is repealed. New Section 59.11 replaces New York State-specific criteria for certification of interlock devices with NHTSA standards, as the NYS standards, codified in 1990, are less encompassing than federal standards. Submission of testing agency credentials with each application for device approval is no longer required. New Section 59.11 details requirements for certification of the testing laboratory, the laboratory's responsibilities in the device approval process, and the minimum components of a testing laboratory report. In both new Section 59.10 and 59.11 a reference to "circumvention" has been added with each occurrence of the word "tampering," to recognize that these are distinct Vehicle and Traffic Law violations.

Existing Section 59.12 is repealed. New Section 59.12 establishes requirements for continued ignition interlock certification. New Section 59.12 requires a manufacturer to notify the Department of any operational modification to a certified device, and to obtain approval for continued use, as modified, under the existing certification. The definition of operational modification and the process for reporting modifications has been moved to Section 59.12. The amendment codifies a currently implicit requirement that manufacturers notify the Department of changes to insurance coverage. The text required for the warning label is revised to conform to the text mandated by statute. The section requires the manufacturers to supply a sufficient number of labels to installation/service providers. The vast majority of the section's other requirements, including reporting and labeling requirements and manufacturer-service provider interactions, have been eliminated from Section 59.12; most have been incorporated into a new 9 NYCRR Part 358 being promulgated by the Division of Probation and Correctional Alternatives (DPCA) to implement the ignition interlock provisions of Leandra's Law. New Section 59.12 establishes a process for periodic renewal to ensure that information on file with the Department is current. The application form for device certification has been removed from the regulation, and will be available electronically.

#### COSTS:

##### Costs to Private Regulated Parties:

The requirements of this regulation applicable to ignition interlock manufacturers and installation/service providers impose no new costs on these private regulated parties. The newly codified requirement that manufacturers notify the Department of changes to insurance coverage may be accomplished electronically at no cost to the manufacturer. The renewal of certification form/attestation may be electronically submitted.

##### Costs to State Government:

Affected State agencies other than the Department of Health, i.e., the State Police, the Division of Criminal Justice Services (DCJS), and DPCA, would incur minimal additional costs as a result of adoption of this amendment, as the amendment relaxes, clarifies or codi-

fies practices already implemented. The State Police and DCJS, as training agencies, may realize cost savings from the proposed reduced duration of the breath analyst certification course, from 32 to 24 hours.

##### Costs to Local Government:

The Nassau County, Suffolk County and New York City Police Departments, which are local-government training agencies, would incur either no to minimal additional costs as a result of this amendment's adoption, as the amendment relaxes, clarifies or codifies processes already in place. These training agencies may realize cost savings from the proposed reduced duration of the breath analyst certification course, from 32 to 24 hours, which represents one full day that officers need not be absent from the work pool.

Prosecutorial units of local government may experience cost savings resulting from this amendment's deletion of specific requirements for specimen collection that, historically, have been challenged successfully by defense attorneys.

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

Adoption of this regulation would impose minimal additional costs on the Department. Implementation of a renewal process for the six manufacturers that currently hold ignition interlock certifications will use existing resources and result in minimal additional work load. Regulated parties will be provided with the text of the final adopted rule by electronic mail.

##### Local Government Mandates:

This regulation does not impose any new mandate on any county, city, town, village, school district, fire district or other special district.

##### Paperwork:

The proposal to extend, from two to four years, the effective period of breath analyzer supervisor permits will reduce paperwork, as will deletion of the requirement for quarterly reporting to multiple agencies of ignition interlock use data. This amendment's emphasis on learning goals rather than course structure would allow for paperwork reduction, as recertification courses would be adaptable to online distance learning modules. Manufacturers are encouraged to utilize electronic means of communication for required notifications and certificate renewals.

##### Duplication:

Part 59 as amended would be consistent with, but not duplicate, federal standards for approval of breath alcohol evidentiary devices as promulgated by the NHTSA.

##### Alternative Approaches:

At the present time, there are no acceptable alternatives to pursuing adoption of the amendment as written. The major stakeholders have reached agreement that inability to move forward with the changes as proposed would likely impede DWI enforcement and prosecutorial activities in NYS. The clarifications and updates in this amendment are required to keep the regulation current with law enforcement practices and changes to laws governing ignition interlock programs and evidence-gathering protocols related to DWI prosecutions, as well as technological advances in the devices themselves.

##### Federal Standards:

The proposed rule does not exceed any minimum standards of the federal government; it references sources for information on federally approved devices, and is consistent with federal standards for ignition interlock and breathalyzer device approval.

##### Compliance Schedule:

Regulated parties should be able to comply with these regulations effective upon filing with the Secretary of State.

##### *Regulatory Flexibility Analysis*

No Regulatory Flexibility Analysis is required pursuant to Section 202-b (3)(b) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse economic impact on small businesses or local governments, and does not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments.

##### *Rural Area Flexibility Analysis*

No Rural Area Flexibility Analysis is required pursuant to Section 202-bb (4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse impact on facilities in rural areas, and

does not impose any reporting, recordkeeping or other compliance requirements on regulated parties in rural areas.

#### Job Impact Statement

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities.

## Insurance Department

### NOTICE OF ADOPTION

#### Excess Line Placements Governing Standards

**I.D. No.** INS-40-10-00009-A

**Filing No.** 357

**Filing Date:** 2011-04-18

**Effective Date:** 2011-05-04

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

**Action taken:** Amendment of Part 27 (Regulation 41) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 2105, 2118 and art. 21

**Subject:** Excess Line Placements Governing Standards.

**Purpose:** This will increase the minimum surplus to policyholders required to be maintained by new and current excess line insurers.

**Text of final rule:** Section 27.1 is amended by adding a new subdivision (s), to read as follows:

(s) *Eligible means that an insurer not authorized in this state has satisfied the requirements of this Part, including establishing the requisite trust fund and maintaining the minimum surplus.*

Section 27.13(b) and (c) are amended to read as follows:

(b) No excess line broker shall place coverage with an unauthorized insurer, unless [its] *the insurer's* financial statements or other evidence demonstrate that [such] *the* insurer:

(1) is solvent and otherwise substantially complies with solvency requirements for authorized insurers;

(2) has surplus to policyholders sufficient to support its writings, reasonable in relation to its outstanding liabilities, adequate to its financial needs and[, in no event, less than]:

(i) [in the case of individual incorporated insurers, US\$15,000,000;] *for an individual incorporated excess line insurer that:*

(a) *is eligible prior to January 1, 2011, the insurer maintains surplus to policyholders of not less than US\$25,000,000 as of July 1, 2011, US\$35,000,000 as of January 1, 2012, and US\$45,000,000 as of January 1, 2013; or*

(b) *becomes eligible on or after January 1, 2011, the insurer maintains surplus to policyholders of not less than US\$45,000,000;*

(ii) [in the case of an] *for an association of insurance underwriters consisting of individual incorporated excess line insurers located outside the United States, each insurer maintains surplus to policyholders of not less than [US\$25,000,000]US\$45,000,000 and the association maintains an aggregate surplus to policyholders of not less than US\$10,000,000,000; or*

(iii) [in the case of a] *for a partnership of unlicensed insurers, each licensed in its domicile and which partnership is duly authorized by its domiciliary jurisdiction to insure risks on a joint and several basis[,] that:*

(a) *is eligible prior to January 1, 2011, each insurer maintains surplus to policyholders of not less than [US\$15,000,000; and] US\$25,000,000 as July 1, 2011, US\$35,000,000 as of January 1, 2012, US\$45,000,000 as of January 1, 2013; or*

(b) *becomes eligible on or after January 1, 2011; each insurer maintains surplus to policyholders of not less than US\$45,000,000;*

(3) *as of January 1, 2016 and every three years thereafter, the minimum surplus to policyholders requirements in subparagraphs (i), (ii), and (iii) of paragraph (2) of this subdivision shall be increased by US\$1,000,000; and*

(4) maintains a trust fund in compliance with section 27.14 of this Part.

(c) For purposes of subdivision (b) of this section, in the case of an insurance exchange created by the laws of a state other than this State, no excess line broker shall procure coverage from that exchange or any of its syndicates, unless:

(1) the insurance exchange maintains funds in trust or custodial accounts, under terms acceptable to the superintendent, in an amount no less than US\$75,000,000, in the aggregate, provided that an amount at least equal to the greater of US\$30,000,000 or one-third of the aggregate, is maintained on a joint and several basis for the protection of all insurance exchange policyholders;

(2) the syndicates of such insurance exchange maintain total capital and surplus, or their substantial equivalent, not less than US\$100,000,000 in the aggregate; and

(3) each syndicate with which excess line insurance is placed [maintains] *has surplus to policyholders sufficient to support its writings, reasonable in relation to its outstanding liabilities, adequate to its financial needs; and if the syndicate:*

(i) *is eligible prior to January 1, 2011, the syndicate maintain minimum capital and surplus, or their substantial equivalent, of not less than [US\$15,000,000] US\$25,000,000 as of July 1, 2011, US\$35,000,000 as of January 1, 2012, US\$45,000,000 as of January 1, 2013, or*

(ii) *becomes eligible on or after January 1, 2011 and the syndicate maintains minimum capital and surplus, or their substantial equivalent, of not less than US\$45,000,000; and*

(4) *as of January 1, 2016 and every three years thereafter, the minimum capital and surplus requirements in subparagraphs (i) and (ii) of paragraph (3) of this subdivision shall be increased by US\$1,000,000.*

Section 27.13(1)(3) is amended to read as follows:

(1)(3) In no event shall the superintendent make an affirmative finding of acceptability when the unauthorized insurer's surplus to policyholders is less than [US\$4,500,000] *US\$25,000,000; provided, that as of January 1, 2016, and every three years thereafter, the minimum surplus to policyholders requirement amount shall be increased by US\$1,000,000.*

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 27.13(b)(2), (3), (c)(3), (4) and (1)(3).

**Text of rule and any required statements and analyses may be obtained from:** David Neustadt, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5265, email: dneustad@ins.state.ny.us

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

Although changes were made to the proposed 11 NYCRR 27 (Regulation No. 41), they do not necessitate changes to the Regulatory Flexibility Statement, Regulatory Flexibility Analysis for Small Business and Local Government, Rural Area Flexibility Analysis, or Job Impact Statement.

#### Assessment of Public Comment

The proposed rule was published in the State Register on October 6, 2010, and the 45-day public comment period expired on November 22, 2010. The Department received comments from 5 entities.

The Department conducted extensive outreach to entities representing authorized ceding insurers, and to assuming insurers both authorized and unauthorized to do business in New York. A complete review of the comments submitted can be found at the Department's website (<http://www.ins.state.ny.us>).

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## Department of Labor

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### NOTICE OF ADOPTION

#### Public Employees Occupational Safety and Health Standards

**I.D. No.** LAB-09-11-00013-A

**Filing No.** 362

**Filing Date:** 2011-04-19

**Effective Date:** 2011-05-04

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

**Action taken:** Amendment of section 800.3 of Title 12 NYCRR.

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

**Subject:** Public Employees Occupational Safety and Health Standards.

**Purpose:** To incorporate by reference updates to OSHA standards into the State Public Employee Occupational Safety and Health Standards.

**Text or summary was published** in the March 2, 2011 issue of the Register, I.D. No. LAB-09-11-00013-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Michael Paglialonga, Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY 12240, (518) 457-1938, email: michael.paglialonga@labor.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

**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 rulemaking is filed as a Consensus rule on the grounds that its purpose is to make technical corrections to an existing rule, and no person is likely to object to the amendment as written. 14 NYCRR Part 585 was recently promulgated to repeal and replace 14 NYCRR Part 87. The new regulation updated the significantly outdated standards set forth in Part 87, and was intended to codify current practices and expectations of family care homes.

After promulgation of the updated standards, an error was discovered in Section 585.9(b)(2), which sets forth standards for an appropriate admission to a family care home. The current practice and expectation has been that a person appropriate for such an admission must be able to demonstrate that he or she is compliant with medication. Because an Assisted Outpatient Treatment (AOT) order is generally pursued when a person is not compliant with his/her medication, the drafter erroneously "shorthanded" this standard to preclude admission to an individual who is enrolled in AOT. However, currently, enrollment in AOT does not necessarily preclude an individual from admission to a family care home. Although enrollment in AOT may create a presumption that a person is not compliant with his/her medication, that presumption can be overcome, depending on the individual circumstances. Therefore, the current language reflects a misunderstanding of the concept, is not an accurate reflection of current practice and, in fact, unintentionally narrows this standard. The revised language accurately codifies current practice and preserves the standard that an individual appropriate for admission to a family care home must be medication compliant. Correction of this technical error is not expected to raise an objection by any person.

The other technical amendment that is included in this rulemaking concerns Section 585.5(d)(7)(i). Current language requires functioning night lights of a minimum of 1 ½ watts be utilized in hallways and bathrooms adjacent to sleeping areas. This specificity of a 1 ½ watt minimum inadvertently prohibits providers from using newer light-emitting diode (LED) night lights which operate on a much lower wattage yet provide the same amount of illumination. As this restriction was never the intent, the regulation has been modified to clarify that functioning night lights must be equivalent to at least the illumination of a 1 ½ watt incandescent light bulb. This clarification is not expected to raise any objection by any person.

Statutory Authority:

Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his/her jurisdiction.

Sections 31.03 and 31.04 of the Mental Hygiene Law authorize the Commissioner of Mental Health to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services, including family care homes, for persons diagnosed with mental illness, pursuant to an operating certificate.

#### Job Impact Statement

A Job Impact statement is not being submitted with this notice because it is evident from the subject matter of the amendments that they will have no impact on jobs and employment opportunities.

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## Office of Mental Health

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

#### Family Care Homes

**I.D. No.** OMH-18-11-00014-P

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

**Proposed Action:** This is a consensus rule making to amend Part 585 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09, 31.03 and 31.04

**Subject:** Family Care Homes.

**Purpose:** To correct an error in current regulation and provide clearer direction in another section of the regulation.

**Text of proposed rule:** 1. Paragraph (2) of subdivision (b) of Section 585.9 of Title 14 NYCRR is amended to read as follows:

(2) To be appropriate for admission to a Family care home, an individual shall:

- (i) have a principal psychiatric disorder (not organic);
- (ii) not be immediately dangerous to self or others; [and]
- (iii) not be in need of skilled nursing care as indicated on a Patient Review Instrument (PRI); *and*

(iv) [not] be [enrolled in the Assisted Outpatient Treatment Program established pursuant to Section 9.60 of the Mental Hygiene Law] *willing and able to self administer medication.*

2. Subdivision (i) of paragraph (7) of subdivision (d) of Section 585.5 of Title 14 NYCRR is amended to read as follows:

(i) Functioning night lights *equivalent to at least the illumination of a 1 1/2 [watts minimum] watt incandescent light bulb* shall be utilized in all hallways and bathrooms adjacent to sleeping areas.

**Text of proposed rule and any required statements and analyses may be obtained from:** Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: cocbjdd@omh.state.ny.us

## Office of Parks, Recreation and Historic Preservation

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

#### Navigation of Vessels, Conduct of Regattas and Placement of Navigation Aids and Floating Objects on Navigable Waters

I.D. No. PKR-18-11-00008-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 Parts 380, 445, section 448.7 and Appendix I-1; add new Part 445 and sections 448.1(h), 448.4(d), 448.8(b)(2); and amend sections 377.1, 447.1, 447.2, 447.3(b)(4)-(6), 448.8 and 448.9 of Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, section 3.09(8); Navigation Law, sections 34, 34-a, 35, 35-a, 35-b, 36, 37, 41, 41(6), 43, 43(3), 45, 46, 46-aaaa and L. 2000, ch. 342

**Subject:** Navigation of vessels, conduct of regattas and placement of navigation aids and floating objects on navigable waters.

**Purpose:** To update obsolete State navigation rules or conform them to the U.S. Coast Guard Inland Navigation Rules.

**Substance of proposed rule (Full text is posted at the following State website: [www.nysparks.com](http://www.nysparks.com)):** The Office of Parks, Recreation and Historic Preservation (OPRHP or State Parks) is amending Title 9 NYCRR to update rules that address activities of its Bureau of Marine Services as follows:

Section 377.1(j) Regulated activities.

This subdivision pertains to the operation of vessels on Cuba Lake in Allegany County. It is being repealed since OPRHP no longer has jurisdiction over this Lake. The remaining subdivisions in this section are renumbered.

Part 380 and Section 380.1 Lease Holders and Tenants of Cuba Reservation within the Second Park Region.

This Part heading and Section 380.1 pertain to leases and tenants on Cuba Lake and are being repealed since OPRHP no longer has jurisdiction over this Lake.

Part 445 and Section 445.1 Navigation of Vessels on the Navigable Waters of New York State and on the Tidewaters Bordering on or Lying within the Boundaries of Nassau and Suffolk Counties.

This outdated Part is repealed and a new Section 445.1 is added that incorporates by reference the Inland Navigation Rules of the U.S. Coast Guard at 33 CFR Parts 83-88 and 90. The Inland Navigation Rules pertain to the following topics: navigation lights; day shapes; whistle signals; conduct of vessels in restricted visibility; conduct of vessels in sight of each other; positioning and technical details of lights and shapes; additional signals for fishing vessels fishing in close proximity; technical details of sound and signal appliances; distress signals and pilot rules.

Section 445.2 Aid in distress.

This section (former Section 445.3) tracks the language in Subdivision 3 of Section 41 of the Navigation Law and requires pilots to assist other vessels in distress where possible. It has been renumbered and updated with gender neutral language.

Part 447 Conduct of Regattas.

Amendments to this section provide an updated definition for "regatta" and a definition for "racing shell" and clarify that:

1. proof of insurance is not required;
2. the sponsor of a regatta must also notify the appropriate law enforcement entity that has jurisdiction over the water body;
3. a sponsor of a racing shell regatta must notify State Parks of the event at least 30 days in advance on forms supplied by the Bureau of Marine Services; and
4. navigation inspectors must escort commercial and recreational traffic through the course.

Section 448.1 Definitions.

The archaic reference to and definition of "fishing buoy" is deleted since placement of these buoys is not regulated. The definition of "divers flag" is expanded to also encompass the international code flag "A." A new definition of "bathing beach area" is added that clarifies bathing beach markers are issued to entities that charge a fee or consideration for use of the water adjacent to a bathing beach area or allow the public to swim there.

Section 448.2 Aids to Navigation.

The colors, shapes, numbering and lettering for aids to navigation are updated to conform to the U.S. Coast Guard's requirements.

Section 448.3 Special Anchorage Areas.

This section is updated to clarify that white flashing lights must be installed on buoys in special anchorage areas.

Section 448.4 Floating Objects.

Gender neutral language is inserted in this section and the commissioner's discretion to require that floating objects (mooring buoys, bathing beach markers, swimming floats, speed zone markers or other objects with no navigational significance) be placed according to one of the methods described by the New York State Office of General Services in its regulation at 9 NYCRR Section 274.5 is clarified. Also, the floating objects must bear the State Parks decal. State Parks' discretion to require that floating objects placed 100 feet from shore bear a white light is clarified. Finally, a new subdivision clarifies that bathing beach markers may only be placed in the waters adjacent to a bathing beach area.

Section 448.5 Special Markers.

Lettering and diamond symbols for special markers are clarified.

Section 448.7 Fishing Buoys.

This section is repealed because these buoys are not regulated by State Parks. Sections 448.8 and 448.9 are renumbered to 448.7 and 448.8. The diver's flag described in new Section 448.8 is expanded to encompass a rigid replica of the international code flag "A" not less than 1 meter in height that is visible all around.

Appendix I-1 Designated Agents.

Appendix I-1 created in 1997 contains outdated names and addresses of county sheriffs and local law enforcement entities and establishes them as agents of State Parks for purposes of enforcing Navigation Law Section 33-c. The controlling statute for this Appendix, however, pertains to regulation of sewage disposal and littering on waterways. It is enforced by the New York State Department of Environmental Conservation, not State Parks. The obsolete Appendix, therefore, is being repealed.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kathleen L. Martens, Associate Counsel, OPRHP, ESP, Agency Bldg. 1, Albany, NY 12238, (518) 486-2921, email: [rulemaking@oprhp.state.ny.us](mailto:rulemaking@oprhp.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.

**Additional matter required by statute:** The rule incorporates by reference the U.S. Coast Guard Inland Navigation Rule at 33 CFR 83-88 and 90.

#### Consensus Rule Making Determination

The Office of Parks, Recreation and Historic Preservation (OPRHP) is proposing to update its marine regulations adopted under the Navigation Law, incorporate the U.S. Coast Guard Inland Navigation Rules where appropriate, and codify existing policy. The topics covered by the regulations at 9 NYCRR Parts 377, 380, 445, 447 and 448 include navigation of vessels, conduct of regattas and placement of navigation aids and floating objects on navigable waters. No one, therefore, is likely to object to the proposed rule changes.

#### Job Impact Statement

A Job Impact Statement is not submitted with this notice because the rule is a technical amendment that updates navigation regulations or conforms them to U.S. Coast Guard Inland Navigation Rules. It will not impact jobs and employment opportunities.

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

#### Consumption of Alcoholic Beverages at State Parks and Historic Sites

I.D. No. PKR-18-11-00011-P

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

**Proposed Action:** Repeal of sections 397.7, 398.6, 399.7, 400.5, 401.5, 402.5, 415.2, 416.6, 417.6, 418.2; amendment of sections 398.7, 398.8, 400.6, 410.1, 415.3 through 415.7, 418.3, 418.4; and addition of Part 385 to Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, section 3.09(5) and (8)

**Subject:** Consumption of alcoholic beverages at state parks and historic sites.

**Purpose:** To update and standardize statewide the rule on consumption of alcoholic beverages at state parks and historic sites.

**Text of proposed rule:** Title 9 NYCRR Sections 397.7, 399.7, 401.5, 402.5, 416.6, 417.6 are repealed; Section 398.6 is repealed and Sections 398.7 and 398.8 are renumbered 398.6 and 398.7; Section 400.5 is repealed and Section 400.6 is renumbered 400.5; subdivision (n) of Section 410.1 is repealed and subdivisions (o) and (p) are renumbered (n) and (o); Section 415.2 is repealed and Sections 415.3 to 415.7 are renumbered 415.2 to 415.6; Section 418.2 is repealed and Sections 418.3 and 418.4 are renumbered 418.2 and 418.3; and a new Part 385 is added to Subchapter A as follows:

Subchapter A - Part 385. Alcoholic beverages.

(a) Prohibition. It is prohibited for any person to consume, possess with intent to consume, transport in an open container or sell any alcoholic beverage on property under the jurisdiction of the office.

(b) Exceptions. The prohibition in subdivision (a) shall not apply to an alcoholic beverage:

(1) sold by or purchased from a concessionaire or a lessee under the terms and conditions of a concession license, lease, or permit issued by the office, provided that the alcoholic beverage is consumed in the area delineated in the agreement;

(2) consumed or possessed by an individual or member of a group pursuant to terms and conditions of a standard permit issued by the office after receipt of an application; or

(3) consumed or possessed within an area of a state park, historic site, or other property that the commissioner has designated as exempt from the requirement for a standard permit under paragraph 2 of this subdivision. The designations may be limited to specific temporary periods of time. The exception in this paragraph does not extend to an alcoholic beverage in a container that holds more than one gallon. The commissioner shall approve a statewide list of the designated areas and update it at least annually. The list shall be published on the office's public website. Notice of the designated areas shall be posted in the appropriate regional, park and historic site offices and entrances.

(4) Upon recommendation of the director of law enforcement or a regional director and when necessary to protect public health, safety and welfare during any special event or incident on property under the office's jurisdiction, the commissioner may temporarily suspend any of the exceptions listed in this subdivision and shall provide public notice of the suspension by appropriate signage.

(c) Minimum age. It is prohibited for any person under the age of twenty one years to possess, possess with intent to consume, consume, or transport in an open container any alcoholic beverage on property under the jurisdiction of the office. No person shall provide, sell to, give, or otherwise transfer an alcoholic beverage to a person under the age of twenty one.

(d) Enforcement. (1) On property under the office's jurisdiction a police officer or peace officer, as defined in section 1.20 of the criminal procedure law, may confiscate an alcoholic beverage from any person if the alcoholic beverage is not authorized under this part to be possessed, possessed with intent to consume, consumed, transported in an open container or sold. Any alcoholic beverage confiscated shall be deemed a nuisance and shall be disposed of in accordance with the established procedures of the law enforcement agency that confiscates it.

(2) Failure to comply with this Part may result in revocation of any standard permit issued under paragraph 2 of subdivision b of this section.

(3) Failure to comply with this Part is also a violation under Section 27.11 of the parks, recreation and historic preservation law and Sections 10.00(3) and 80.05(4) of the penal law, and a petty offense under Section 1.20(39) of the criminal procedure law. The uniform ticket issued to a violator is adjudicated in the local court that has jurisdiction over the geographic area where the state park, historic site or other OPRHP property is located. Upon conviction the local court may impose a sentence of up to 15 days in jail or a fine of up to \$250 and payment of any additional local surcharge required by Section 27.12 of the parks, recreation and historic preservation law.

(e) Severability. If a court of competent jurisdiction determines that any provision of this Part or its application to any person or circumstance is contrary to law that determination shall not affect or impair the validity of the other provisions of this Part or the application to other persons and circumstances.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, Empire State Plaza, Agency Building 1, Albany, NY 12238, (518) 486-2921, email: rulemaking@oprhp.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**

This Regulatory Impact Statement (RIS) describes and analyzes the Office of Parks, Recreation and Historic Preservation's (OPRHP) housekeeping rulemaking proposal to update its old and varied regional regulations and adopt a uniform statewide regulation governing consumption of alcoholic beverages in state parks and historic sites under the agency's jurisdiction.

Statutory authority: Subdivisions 5 and 8 of section 3.09 of the Parks, Recreation and Historic Preservation Law require OPRHP to provide for the health, safety and welfare of the public through regulation.

Legislative objectives: By updating archaic rules that presently restrict and control consumption of alcoholic beverages through adoption of a uniform statewide prohibition with exceptions, the quality of life and health, safety, and well being of visitors and employees at OPRHP's facilities will be enhanced in furtherance of the agency's statutory mission and the general public will be better protected. Excessive alcohol intoxication and binge and underage drinking are underlying causes of a majority of the public disturbances and incidents requiring the intervention of the Park Police at OPRHP's facilities.

Needs and benefits: OPRHP was created in 1970; prior to that time the State Park System was administered by eleven independent Regional Parks Commissions. As a result of this history, there are varying alcoholic beverage regulations in each of OPRHP's eleven parks regions. The existing regional regulations generally either prohibit consumption of alcoholic beverages except under limited circumstances or permit it with extensive conditions. Inconsistencies among regional regulations create confusion for the public and undermine law enforcement capability. Moreover, many of the regional regulations contain conflicting or overlapping provisions.

OPRHP is reviewing its older regulations in an effort to streamline services and consolidate and modernize enforcement capability as it continues to grapple with budget constraints. The proposed statewide rule would replace the eleven varied and outdated regional regulations that presently control alcohol consumption. The goal is to preclude excessive alcohol consumption and binge and underage drinking so the health safety and welfare of patrons and visitors is protected and user conflicts are avoided. Support for the approach taken here comes from information provided by government public health sources.

The existing regional regulations for the most part do not adequately reflect changed social mores that now consider excessive consumption of alcohol, especially from binge and underage drinking as a major public health concern. The alcohol regulation that was amended most recently - albeit more than ten years ago in 1996 - is the Long Island regional rule. It contains a blanket prohibition on consumption with specific exceptions and provides a partial model for the proposed new uniform statewide rule. The exceptions in the proposal retain substantive concepts from the other regional rules but the language is clearer and more direct.

The Park Police indicate OPRHP's current alcohol regulations are outdated and difficult to understand and, consequently, they hinder effective law enforcement. Also, they are not comprehensive or flexible enough to address the diverse and large public events taking place today at state parks. For example, it has been twenty years since most of the regional regulations were adopted. Today, mass gatherings for concerts attended by thousands of people are held more frequently at state parks than they were in the 1980s. Unclear regional standards make enforcement at these gatherings more difficult for law enforcement.

In addition, in response to workforce reductions, the Park Police are increasingly deploying officers across the State from one region to

another. A clear, concise statewide rule on alcohol consumption is required so enforcement capability is enhanced and not stymied by requiring the Park Police to understand and apply eleven different sets of rules. Also, OPRHP should begin transitioning all of its different regional rules into uniform statewide rules so the Park Police can eventually issue computer generated tickets for violations. Statewide rules are a prerequisite to employing this technology.

OPRHP's proposal repeals the eleven different regional regulations and replaces them with a single statewide regulation that prohibits the consumption of alcoholic beverages in state parks and historic sites, except under the following controlled situations:

- sales by concessionaires, lessees, or permittees;
- approvals for individuals or groups that receive a standard permit issued by the agency; and
- advance designation and public notice of specific areas where alcoholic beverages may be consumed without a standard permit (for example, the agency will designate certain campgrounds where alcoholic beverages may be consumed without the need for campers to secure a standard alcoholic beverage permit).

The proposed rule benefits the general public in many ways, including: limiting the operation of motor vehicles on state park roads and adjacent public highways by intoxicated individuals; protecting visitors, employees, and public and private property from the disorderly, disruptive, and antisocial behavior that can accompany uncontrolled consumption of alcoholic beverages; and fostering a relaxing and healthy recreational atmosphere that is appropriate to the unique settings under OPRHP's jurisdiction.

The regulation of alcoholic beverages within state parks and historic sites is not new. To the contrary, for many decades OPRHP has controlled excessive alcoholic beverage consumption at state parks. The purpose of this rule is to continue OPRHP's long-standing approach under a modernized and uniform statewide regulatory framework.

Costs: There are no additional costs to OPRHP or regulated entities from the proposed rule. Concession and license fees are negotiated individually and standard permit application fees will continue. Failure to comply with OPRHP's rules on alcohol consumption or other non-traffic infractions continues to be a violation that usually includes a fine up to \$250 and may also require payment of a mandatory local surcharge. See, Parks, Recreation and Historic Preservation Law Sections 27.11 and 27.12; Penal Law Sections 10.00(3) and 80.05(4); see also, Criminal Procedure Law Section 1.20(39) definition of a "petty offense."

Local government mandates: The proposed rule does not affect local governments.

Paperwork: There is no additional reporting or paperwork requirements for the proposed rule.

Duplication: None.

Alternatives: OPRHP considered three different alternatives: a complete prohibition on alcohol consumption without exceptions; a complete repeal of the existing archaic regional rules without adopting a uniform statewide regulation; and leaving the existing outdated regulations in place. None of these alternatives would provide for the public health, safety and welfare for the majority of visitors to our facilities or assist law enforcement in controlling excessive consumption of alcohol or underage drinking. Therefore, OPRHP concluded instead that it is appropriate to allow the controlled public consumption of alcoholic beverages at our facilities through concession licenses, leases or permits; conditional approvals to individuals or groups that apply for standard permits; and advance designation of specific sites, dates or times where alcohol is allowed without a standard permit.

Federal standards: There are no federal standards affecting alcohol consumption within OPRHP facilities.

Compliance schedule: The rule can be complied with immediately upon adoption.

#### **Regulatory Flexibility Analysis**

This rule making repeals and updates the different rules in 9 NYCRR that regulate alcohol consumption in the various 11 state parks regions within the Office of Parks, Recreation and Historic Preservation. It would adopt

one rule and exceptions at 9 NYCRR Part 385 that apply statewide. The repeal of outdated and inconsistent regulations and adoption of one statewide rule will not affect small businesses or local governments or recordkeeping requirements.

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

This rule making repeals and updates the different rules in 9 NYCRR that regulate alcohol consumption in the various 11 state parks regions within the Office of Parks, Recreation and Historic Preservation. It would adopt one rule with exceptions at 9 NYCRR Part 385 that apply statewide. The repeal of outdated and inconsistent regulations and adoption of one statewide rule will not affect small businesses or local governments or recordkeeping requirements.

#### **Job Impact Statement**

The existing rules at 9 NYCRR that regulate consumption of alcoholic beverages in the state park regions do not affect jobs or employment opportunities and their repeal and addition of a new Part 385 that applies statewide would not affect jobs or employment opportunities.

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

### **Presence of Level 2 or 3 Sex Offenders at State Parks' Campsites and Cabins**

**I.D. No.** PKR-18-11-00013-P

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

**Proposed Action:** Addition of section 372.7(g)(16) to Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, section 3.09(5) and (8)

**Subject:** Presence of Level 2 or 3 sex offenders at State Parks' campsites and cabins.

**Purpose:** Authorize OPRHP to direct a Level 2 or Level 3 sex offender who is occupying a campsite or cabin to leave the campground.

**Text of proposed rule:** Add a new paragraph (16) to Section 372.7(g) of 9 NYCRR to read as follows:

(16) Upon discovering that an occupant of a campsite or cabin is registered as a Level 2 or Level 3 sex offender under Article 6-C of the Correction Law, the office is authorized to direct such occupant to leave the campground and may revoke the camping permit for the campsite or cabin.

**Text of proposed rule and any required statements and analyses may be obtained from:** Karen R. Kaufmann, General Counsel, OPRHP, Empire State Plaza, Agency Building 1, Albany, NY 12238, (518) 474-0430, email: rulemaking@oprhp.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**

This Regulatory Impact Statement (RIS) describes and analyzes the Office of Parks, Recreation, and Historic Preservation's (OPRHP) proposal to adopt a statewide regulation authorizing the Office to direct a Level 2 or Level 3 sex offender who is occupying a campsite or cabin in a State Park to leave the campground.

Statutory authority: Subdivisions 5 and 8 of Section 3.09 of the Parks, Recreation and Historic Preservation Law direct OPRHP to "provide for the health, safety and welfare of the public using facilities under its jurisdiction" and to adopt rules and regulations necessary to exercise the agency's powers and duties. Article 6-C of the Correction Law establishes a Sex Offender Registry within the New York State Division of Criminal Justice Services (DCJS).

Legislative objectives: Existing OPRHP regulations (9 NYCRR § 372.7(g)) establish rules and requirements for the public's use of State Park campsites and cabins under the agency's jurisdiction. The proposed rule would add a new paragraph (16) to 9 NYCRR § 372.7(g) stating that "Upon discovering that an occupant of a campsite or cabin is registered as a Level 2 or Level 3 sex offender under Article 6-C of the Correction Law, the office is authorized to direct such occupant to leave the campground and may revoke the camping permit for the campsite or cabin." Removing Level 2 and Level 3 sex offenders

from State Park campgrounds will protect the public health, safety, and well-being in furtherance of OPRHP's statutory mission.

**Needs and benefits:** New York's Sex Offender Registration Act (SORA) establishes a Sex Offender Registry within DCJS. SORA, which took effect in January, 1996, requires the registration of individuals convicted of certain sex offenses in New York State (as well as the registration of individuals convicted in another state or federal jurisdiction if the offense is equivalent to a New York State registerable offense).

Upon conviction of a sex offense, the court assigns the individual one of three risk levels, based on the court's assessment regarding whether a particular offender is likely to repeat the same or similar registerable sex offense and the danger the offender poses to the community:

Level 1 (low risk of repeat offense);

Level 2 (moderate risk of repeat offense); or

Level 3 (high risk of repeat offense and a threat to public safety exists).

SORA reflects the distinction made by the Legislature between the risk to the public posed by Level 1 offenders as opposed to those designated Level 2 and Level 3. DCJS is required by SORA to maintain a publicly-accessible directory on its website containing detailed identifying information about Level 2 and Level 3 offenders and their convictions. By contrast, information about Level 1 offenders is required to be provided by law enforcement to entities with "vulnerable populations" such as schools, but is not otherwise readily available to the public.

OPRHP operates 66 State Park campgrounds encompassing 8,586 campsites and 790 rental cabins that host more than 700,000 campers annually. State law directs OPRHP to provide for the health, safety and welfare of the public using facilities under its jurisdiction, including its public campgrounds.

Campsites and cabins are modestly developed and sites may be in remote locations. At a campground, members of the public cannot take security measures that they would implement in their home to protect themselves, their family members, or their children. They cannot lock their pup-tents. They do not have security systems or hard-wired telephone lines. Cell phone service is spotty or non-existent in some campgrounds. There is relatively little lighting, meaning that campsites, roads, and paths are dark during nighttime hours.

In the past three years, there have been several incidents where OPRHP has become aware that individuals on the Sex Offender Registry are staying in State Park campsites. These incidents have typically occurred when a member of the public informs park staff of an individual's SORA status. Currently, OPRHP does not have any regulation governing the presence of sex offenders in State Park facilities.

The agency has concluded that - due to the unique nature of campground facilities - individuals listed as Level 2 or Level 3 sex offenders present an unacceptable risk to the health, safety, and welfare of members of the public staying in State Park campsites and cabins. The proposed regulation would authorize the Office to direct a Level 2 or Level 3 sex offender who is occupying a campsite or cabin to leave the campground.

The proposed regulation takes the narrowest approach necessary to provide for public health and safety:

- It would apply only to Level 2 and Level 3 offenders, whom SORA identifies as posing a qualitatively higher risk to public safety than those designated Level 1. The regulation would not apply to Level 1 offenders (who are defined as individuals with a low risk of repeat offense).

- The regulation would not preclude Sex Offender Registry individuals from visiting State Parks and Historic Sites outside of campgrounds. These individuals would continue to be allowed to visit and enjoy New York's 213 State Parks and Historic Sites in the same manner available to all members of the public. Rather, the regulation recognizes the unique public health, safety and welfare concerns in campgrounds.

To inform the public, OPRHP would publish the sex offender

regulation on the agency's website and in materials made available to members of the public reserving campsites and cabins (including internet, telephone, and walk-up reservations). OPRHP would not attempt to implement a Sex Offender Registry "prescreening" process at the time individuals reserve a campsite or cabin. OPRHP does not have the capacity to do so, and prescreening presents a number of technical issues. For example, campsites are reserved in one person's name but the agency allows multiple people to stay on each site (typically 6 or more people are allowed per site), meaning pre-screening often would not identify SORA individuals. Once OPRHP became aware that a Level 2 or Level 3 sex offender was staying in a campsite or rental cabin, the agency would be authorized to direct that individual to leave the campground.

**Costs:** The proposed rule does not impose any additional costs to OPRHP or regulated entities.

**Local government mandates:** The proposed rule does not affect local governments.

**Paperwork:** The proposed rule does not create any additional reporting or paperwork requirements.

**Duplication:** None.

**Alternatives:** OPRHP considered two alternatives to this proposal: a) including Level 1 sex offenders in the regulation; and b) including a broader range of OPRHP day-use facilities (in addition to campgrounds) in the authorization. The agency concluded that the proposed regulation presents the narrowest possible approach to achieve OPRHP's statutory mandate of providing for the health, safety, and welfare of the public using facilities under its jurisdiction.

**Federal standards:** There are no federal standards applicable to the proposed regulation.

**Compliance schedule:** This rule will take effect upon publication of the Notice of Adoption in the State Register.

#### **Regulatory Flexibility Analysis**

This regulation adds a new paragraph (16) to subdivision (g) of Section 372.7 that pertains to rules at campgrounds. It authorizes OPRHP to direct a Level 2 or Level 3 sex offender who is occupying a campsite or cabin to leave the campground. It pertains to internal operations at parks and will not affect small businesses or local governments or recordkeeping requirements.

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

This rule making adds a new paragraph (16) to Section 372.7(g) of OPRHP's camping rules and authorizes OPRHP to direct a Level 2 or Level 3 sex offender who is occupying a campsite or cabin to leave the campground. The proposed rule will not affect small businesses or local governments or recordkeeping requirements in rural areas.

#### **Job Impact Statement**

The existing regulation at 9 NYCRR subdivision g of Section 372.7 pertaining to camping rules does not affect jobs or employment opportunities and the addition of a new paragraph (16) would not affect jobs or employment opportunities.

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## Office for People with Developmental Disabilities

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

#### **Changes to Prescribed Uses of Health Care Adjustment/Health Care Enhancement Funds**

**I.D. No.** PDD-18-11-00018-P

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

**Proposed Action:** Amendment of sections 635-10.5, 671.7, 679.6, 681.14, 686.13 and 690.7 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.09(b) and 43.02

**Subject:** Changes to prescribed uses of Health Care Adjustment/Health Care Enhancement funds.

**Purpose:** To allow providers to exercise broader discretion in the allocation of these funds.

**Substance of proposed rule (Full text is posted at the following State website: [www.opwdd.ny.gov](http://www.opwdd.ny.gov)):** Beginning in 2006, OPWDD developed a series of six initiatives to support provider agencies in addressing the health care needs of their staff and promulgated regulations to effectuate the initiatives. These initiatives were known as Health Care Enhancements (HCE) or Health Care Adjustments (HCA).

The regulations stipulated that providers which received the HCE/HCA funds based on approved applications had to agree to conform to specific requirements for the use of funds. In fee-based services, regulatory language suggested that the funds be used for specified purposes.

Services which were required to conform to specific requirements for the use of the funds included Residential Habilitation, Day Habilitation, Prevocational Services, Respite, Community Residences, ICF/DDs, and Day Treatment. For these services, the proposed regulations would modify the original stipulations regarding the use of the funds attributable to the various HCA/HCE initiatives. They would give non-benchmark providers broader discretion to determine how best to allocate these funds. Non-benchmark providers shall use these funds for purposes currently described in regulation and/or for any other options that continue and/or enhance existing health care benefits and/or improve the recruitment and/or retention of the provider's lower paid employees. Moreover, providers may establish which priorities serve the needs of such employees in the selection of the funding allocations. For fee-based programs (Plan of Care Support Services, Family Education and Training, and Supported Employment), the regulatory language that suggested that the funds be used for specific purposes would be removed by the proposed regulations.

The proposed regulations would apply to non-benchmark providers and the revenue derived from the initiatives attributable to reimbursement of services delivered on or after the effective date. For revenues derived from the initiatives received on or after the effective date, in payment for earlier billing periods, the original requirements remain in force.

The proposed regulations also specify that HCA/HCE funding shall be included in the reimbursable cost category of fringe benefits in the prices and rates of the specific services.

**Text of proposed rule and any required statements and analyses may be obtained from:** Barbara Brundage, Director, Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, Albany, New York 12229, (518) 474-1830, email: [barbara.brundage@opwdd.ny.gov](mailto:barbara.brundage@opwdd.ny.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.

**Additional matter required by statute:** Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

a. OPWDD has the statutory authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

b. OPWDD has the statutory responsibility for setting Medicaid rates and fees for other services in facilities licensed or operated by OPWDD, as stated in section 43.02 of the Mental Hygiene Law.

2. Legislative objectives: These proposed amendments further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The proposed amendments concern provisions for the utilization of health care adjustment/health care enhancement funds by providers.

3. Needs and benefits: The Health Care Enhancements (HCE)/Health Care Adjustments (HCA) were comprised of a series of six distinct initiatives which were designed to assist providers in enhancing health care related benefits of their employees. To ensure that the funds were used appropriately, regulations generally imposed stringent requirements regarding the use of the funds on those providers which applied for them. In order to document compliance with the requirements, providers continue to track revenues and related expenses separately for each initiative. In some instances, providers document expenses incurred on behalf of specific employees. Because the initiatives were open-ended, each successive one increased and compounded the benefits derived from the initiatives which were already in place and which carried forward. This further complicated the administrative tracking necessary to document the expenditures in accordance with regulatory requirements.

The proposed regulations would place greater control in the hands of providers by allowing them to exercise broader discretion in the allocation of these funds although continuing to constrain the use of funds for health care benefits and for purposes that support providers' efforts at recruitment and retention of the provider's lower paid employees. Providers are

empowered to choose wisely regarding the expenditures of these funds and to achieve increased effectiveness and operational efficiencies. Providers should realize relief from the administrative burden of the increasingly complex recordkeeping that was required by the mandates.

The proposed regulations would apply to non-benchmark providers and revenue derived from the initiatives attributable to reimbursement of services delivered on or after the effective date. For revenues derived from the initiatives received on or after the effective date, in payment for earlier billing periods, the original requirements remain in force.

##### 4. Costs:

a. Costs to the Agency and to the State and its local governments: New York State and OPWDD will not incur any new costs as a result of these amendments. There will be no additional costs to local governments as a result of these specific amendments.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. The proposed amendments will result in modest savings for providers of services by reducing existing documentation requirements and thereby also reducing the amount of paperwork for providers. OPWDD is unable to quantify these savings.

5. Local government mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: The proposed regulations do not require any additional paperwork to be completed by providers. Conversely, the amendments will reduce existing documentation requirements and thereby also reduce the amount of paperwork for providers.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities.

8. Alternatives: OPWDD initially considered the continuation of existing requirements that providers allocate funds derived from the HCE/HCA initiatives exclusively to the health care benefits of their employees. However, OPWDD considered that it would be beneficial to offer the flexibility of allowing providers to exercise broader discretion in the allocation of these funds. Providers would also benefit from the relief resulting from the elimination of the increasingly complex documentation requirements.

9. Federal standards: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: OPWDD expects to finalize the proposed amendments at the earliest possible date consistent with the timeframes in the State Administrative Procedure Act. There are no additional compliance activities associated with these amendments.

#### **Regulatory Flexibility Analysis**

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that most OPWDD-funded services are provided by non-profit agencies which employ more than 100 people overall. However, some smaller agencies which employ fewer than 100 employees overall would be classified as small businesses. Currently, there are approximately 400 agencies that will be affected by the proposed regulations. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The proposed amendments have been reviewed by OPWDD in light of their impact on small businesses. These amendments concern provisions for the utilization of Health Care Enhancement and Health Care Adjustment funds by providers. OPWDD has determined that these amendments will not result in increased costs for additional services or increased compliance requirements. Conversely, these amendments may result in a minor savings for providers since they will reduce existing documentation requirements and thereby also reduce the amount of staff time devoted to tracking expenditures and associated paperwork.

2. Compliance requirements: The proposed amendments do not impose any additional compliance requirements on providers. The proposed regulations instead reduce existing documentation requirements.

The amendments will have no effect on local governments.

3. Professional services: There are no additional professional services required as a result of these amendments, and the amendments will not add to the professional service needs of local governments.

4. Compliance costs: There are no compliance costs since the proposed amendments will not impose any additional compliance requirements on providers. The amendments will reduce documentation requirements which will result in a reduction of compliance costs for providers.

5. Economic and technological feasibility: The proposed amendments do not impose on regulated parties, the use of any new technological processes.

6. Minimizing adverse economic impact: There will not be any adverse impacts on small business providers and local governments as a result of

the proposed regulations. The proposed regulations will reduce paperwork costs and compliance activities which will provide minor economic relief for providers.

7. Small business participation: The proposed regulations were discussed originally with representatives of providers, including the New York State Association of Community and Residential Agencies (NYSACRA), on February 23 and March 8, 2011. In addition, the proposed regulations were discussed at a meeting of the Fiscal Sustainability Team, also on March 8. NYSACRA was part of the Fiscal Sustainability Team. Some of the members of NYSACRA have fewer than 100 employees. Since the February and March meetings, the proposal has been modified. Although it contains many of the same provisions, it does not convey unfettered license to providers regarding the use of the funds. It does represent a compromise that retains the intent of the HCE/HCA incentives but still significantly broadens and eases the approaches for distributing the funding allowed to providers. Finally, OWPDD will be mailing these proposed amendments to all affected providers, including small business providers.

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

A rural area flexibility analysis for these proposed amendments is not being submitted because the amendments will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. There will be no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

The proposed amendments provide mandate relief concerning the utilization of Health Care Adjustment/Health Care Enhancement funds by providers. The proposal relaxes existing restrictions pertaining to the utilization of health care adjustment/health care enhancement funds by providers and will allow providers to exercise broader discretion in the allocation of these funds.

#### **Job Impact Statement**

A Job Impact Statement for these proposed amendments is not being submitted because OPWDD does not anticipate a substantial adverse impact on jobs and employment opportunities. The proposed amendments provide mandate relief concerning the utilization of health care adjustment/health care enhancement funds by providers. The proposal relaxes existing restrictions pertaining to the utilization of health care adjustment/health care enhancement funds by providers and will allow providers to exercise broader discretion in the allocation of these funds.

There is a possibility that providers may choose to use these funds for the recruitment and retention of employees. In these instances, the proposed amendments may have a favorable impact on jobs.

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## Public Service Commission

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### NOTICE OF ADOPTION

#### **Deferred Accounting Treatment and Rate Recovery for LAUF**

**I.D. No.** PSC-25-08-00006-A

**Filing Date:** 2011-04-15

**Effective Date:** 2011-04-15

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

**Action taken:** On 4/14/11, the PSC adopted an order denying the petition of the Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York to defer and recover past unrecovered lost and unaccounted for gas incentives (LAUF).

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

**Subject:** Deferred accounting treatment and rate recovery for LAUF.

**Purpose:** To deny deferred accounting treatment and rate recovery for LAUF.

**Substance of final rule:** The Commission, on April 14, 2011 adopted an order denying the petition of the Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York to defer and recover past unrecovered lost and unaccounted for gas incentives, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or

social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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

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

(06-G-1185SA4)

### NOTICE OF ADOPTION

#### **Lightened Rate Making Regulation in Connection with an Electric Transmission Facility**

**I.D. No.** PSC-38-10-00007-A

**Filing Date:** 2011-04-14

**Effective Date:** 2011-04-14

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

**Action taken:** On 4/14/11, the PSC adopted an order approving the petition of Hudson Transmission Partners, LLC for lightened rate making regulation in connection with its proposed electric transmission facility between Ridgefield, NJ & West 49th Street in Manhattan, NY.

**Statutory authority:** Public Service Law, sections 2(13), 5(1)(b), 18-a, 19, 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-a, 119-b and 119-c

**Subject:** Lightened rate making regulation in connection with an electric transmission facility.

**Purpose:** To approve a lightened rate making regulation in connection with construction and operation of an electric transmission facility.

**Substance of final rule:** The Commission, on April 14, 2011 adopted an order approving the petition of Hudson Transmission Partners, LLC for lightened rate making regulation in connection with its proposed electric transmission facility between Ridgefield, New Jersey and West 49th Street in Manhattan, New York, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(10-E-0339SA1)

### NOTICE OF ADOPTION

#### **Authorization to Defer Certain Incremental Expenses and Offset These Expenses Against Tax Benefits**

**I.D. No.** PSC-42-10-00009-A

**Filing Date:** 2011-04-14

**Effective Date:** 2011-04-14

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

**Action taken:** On 4/14/11, the PSC adopted an order authorizing Central Hudson Gas & Electric Corporation to defer certain incremental expenses and offset these expenses against tax benefits.

**Statutory authority:** Public Service Law, section 66(9)

**Subject:** Authorization to defer certain incremental expenses and offset these expenses against tax benefits. (10-M-0473SA1)

**Purpose:** To authorize deferral of certain incremental expenses and offset these expenses against tax benefits.

**Substance of final rule:** The Commission, on April 14, 2011 adopted an order authorizing Central Hudson Gas & Electric Corporation (company) to defer \$18,822,375 of incremental electric storm restoration expense and \$2,604,861 of incremental electric bad debt net write-off expense and denied authority to defer \$2,545,330 of incremental electric and gas prop-

erty tax expense for the twelve months ended June 30, 2010, and granted the company's request to offset the approved deferred expenses against certain federal income tax benefits arising from a change in accounting related to repair and maintenance expenses, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(10-M-0473SA1)

**NOTICE OF ADOPTION**

**Approving an Alternate Approach for a Pipeline Upgrade and Interconnection Project**

**I.D. No.** PSC-51-10-00017-A

**Filing Date:** 2011-04-14

**Effective Date:** 2011-04-14

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

**Action taken:** On 4/14/11, the PSC adopted an order approving Corning Natural Gas Corporation's request to adopt an alternate approach to complete the interconnection between the Thomas Corners storage facility and Line 15 with completion of upgrades by 11/1/12.

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

**Subject:** Approving an alternate approach for a pipeline upgrade and interconnection project.

**Purpose:** To approve an alternate approach for a pipeline upgrade and interconnection project.

**Substance of final rule:** The Commission, on April 14, 2011 adopted an order approving Corning Natural Gas Corporation's request to adopt an alternate approach to complete the interconnection between the Thomas Corners storage facility and Line 15 and the remainder of the Line 15 upgrades and directed the company to complete the upgrades by November 1, 2012, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(08-G-1137SA6)

**NOTICE OF ADOPTION**

**Reconsider and Modify the Two-Prong Test Established in the Order Establishing Recovery Mechanisms**

**I.D. No.** PSC-52-10-00008-A

**Filing Date:** 2011-04-19

**Effective Date:** 2011-04-19

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

**Action taken:** On 4/14/11, the PSC adopted an order granting Consolidated Edison Company of New York, Inc.'s petition for reconsideration and modified the two-prong test established in the Order Establishing Recovery Mechanisms for Smart Grid Projects.

**Statutory authority:** Public Service Law, sections 22, 65, 66(1), (4) and (9)

**Subject:** Reconsider and modify the two-prong test established in the Order Establishing Recovery Mechanisms.

**Purpose:** To grant the petition to reconsider and modify the two-prong test established in the Order Establishing Recovery Mechanisms.

**Substance of final rule:** The Commission, on April 14, 2011 adopted an order granting Consolidated Edison Company of New York, Inc.'s petition for reconsideration and modified the two-prong test established in the Order Establishing Recovery Mechanisms for Smart Grid Projects, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(09-E-0310SA9)

**NOTICE OF ADOPTION**

**NYISO To Enter into No More Than \$45 Million of Indebtedness for a Period of 20 Years**

**I.D. No.** PSC-02-11-00006-A

**Filing Date:** 2011-04-19

**Effective Date:** 2011-04-19

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

**Action taken:** On 4/14/11, the PSC adopted an order approving, with conditions, the New York Independent System Operator, Inc. (NYISO) to enter into no more than \$45 million of indebtedness for a period of 20 years for the renovation and construction of NYISO facilities.

**Statutory authority:** Public Service Law, sections 4(1), 5(2), 65(1), 66(1), (2), (4), (5) and 69

**Subject:** NYISO to enter into no more than \$45 million of indebtedness for a period of 20 years.

**Purpose:** To approve NYISO to enter into no more than \$45 million of indebtedness for a period of 20 years.

**Substance of final rule:** The Commission, on April 14, 2011 adopted an order approving, with conditions, the New York Independent System Operator, Inc. (NYISO) to enter into no more than \$45 million of indebtedness for a period of 20 years for the renovation and construction of NYISO facilities, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(10-E-0640SA1)

**NOTICE OF ADOPTION**

**Demand and Non-Demand Customer Qualifications**

**I.D. No.** PSC-05-11-00004-A

**Filing Date:** 2011-04-14

**Effective Date:** 2011-04-14

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

**Action taken:** On 4/14/11, the PSC approved Green Island Power Authority's amendments to PSC 1 — Electricity, to Specify Demand and Non-Demand Customer Qualifications in Service Classification Nos. 2 and 2A — General Service to go into effect on May 1, 2011.

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

**Subject:** Demand and Non-Demand Customer Qualifications.

**Purpose:** To approve amendments to PSC 1 — Electricity, effective May 1, 2011, to Specify Demand and Non-Demand Customer Qualifications.

**Substance of final rule:** The Commission, on April 14, 2011 approved Green Island Power Authority's amendments to PSC 1 — Electricity to Specify Demand and Non-Demand Customer Qualifications in Service Classification Nos. 2 and 2A — General Service to go into effect on May 1, 2011.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(11-E-0020SA1)

### NOTICE OF ADOPTION

#### Waiver of 16 NYCRR Sections 894.1 to 894.4 and 894.9

**I.D. No.** PSC-07-11-00002-A

**Filing Date:** 2011-04-18

**Effective Date:** 2011-04-18

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

**Action taken:** On 4/14/11, the PSC adopted an order approving the Town of Bolivar's request for a waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 and 894.9 for a cable television franchise with Time Warner Entertainment - Advance/Newhouse Partnership.

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

**Subject:** Waiver of 16 NYCRR sections 894.1 to 894.4 and 894.9.

**Purpose:** To approve waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 and 894.9 for an initial cable television franchise.

**Substance of final rule:** The Commission, on April 14, 2011 adopted an order approving the Town of Bolivar's request for a waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 and 894.9 for a cable television franchise with Time Warner Entertainment - Advance/Newhouse Partnership, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(10-V-0617SA1)

### NOTICE OF ADOPTION

#### Waiver of 16 NYCRR Sections 894.1 to 894.4 and 894.9

**I.D. No.** PSC-07-11-00004-A

**Filing Date:** 2011-04-18

**Effective Date:** 2011-04-18

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

**Action taken:** On 4/14/11, the PSC adopted an order approving the Town of Wirt's request for a waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 and 894.9 for a cable television franchise with Time Warner Entertainment - Advance/Newhouse Partnership.

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

**Subject:** Waiver of 16 NYCRR sections 894.1 to 894.4 and 894.9.

**Purpose:** To approve waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 and 894.9 for an initial cable television franchise.

**Substance of final rule:** The Commission, on April 14, 2011 adopted an order approving the Town of Wirt's request for a waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 and 894.9 for a cable television franchise with Time Warner Entertainment - Advance/Newhouse Partnership, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(10-V-0616SA1)

### NOTICE OF ADOPTION

#### Waiver of 16 NYCRR Sections 894.1 to 894.4 and 894.9

**I.D. No.** PSC-07-11-00007-A

**Filing Date:** 2011-04-18

**Effective Date:** 2011-04-18

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

**Action taken:** On 4/14/11, the PSC adopted an order approving the Town of Burn's request for a waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 and 894.9 for a cable television franchise with Time Warner Entertainment - Advance/Newhouse Partnership.

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

**Subject:** Waiver of 16 NYCRR sections 894.1 to 894.4 and 894.9.

**Purpose:** To approve waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 and 894.9 for an initial cable television franchise.

**Substance of final rule:** The Commission, on April 14, 2011 adopted an order approving the Town of Burn's request for a waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 and 894.9 for a cable television franchise with Time Warner Entertainment - Advance/Newhouse Partnership, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us 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.

(10-V-0646SA1)

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

#### Minor Rate Filing

**I.D. No.** PSC-18-11-00015-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 a proposed filing by Chautauqua Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its Schedule for Gas Service, P.S.C. No. 1—Gas.

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

**Subject:** Minor Rate Filing.

**Purpose:** To increase annual gas delivery revenues by approximately \$105,353 or 76.3%.

**Substance of proposed rule:** The Commission is considering a proposal filed by Chautauqua Utilities, Inc. (CUI) which would increase its annual gas delivery revenues by about \$105,353 or 76.3% (36.3% on total revenues). CUI is also requesting that the Commission amend its "Order Granting Certificate of Public Convenience and Necessity and Approving Financing" issued and effective January 12, 2005 in Cases 04-G-0537 and 04-G-0576 as necessary to consider CUI's proposed filing, including the "as fully constructed" clause, which states that "CUI's future rates will be set assuming a full level of conversions, or 518 customers". The proposed filing has an effective date of September 1, 2011. The Commission may adopt in whole or in part, modify or reject CUI's proposal.

**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:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

**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.

(11-G-0142SP1)

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

**Eligibility to Participate in RPS Main Tier Solicitations and to Receive Financial Incentives Funded by the RPS Charge**

**I.D. No.** PSC-18-11-00016-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 a petition by Covanta Energy Corporation requesting modification to the Renewable Portfolio Standard (RPS) program to make electricity generated from the direct combustion of municipal solid waste an eligible resource.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** Eligibility to participate in RPS Main Tier solicitations and to receive financial incentives funded by the RPS charge.

**Purpose:** To encourage electric energy generation for the State's consumers from renewable resources.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, potential modifications to the Renewable Portfolio Standard (RPS) program proposed by Covanta Energy Corporation (Covanta) in a petition entitled "Verified Petition of Covanta Energy Corporation Requesting Inclusion of Energy from Waste (EfW) as an Eligible Technology in the Main Tier of New York's Renewable Portfolio Standard Program" dated February 11, 2011. Covanta requests that electricity generated from the direct combustion of municipal solid waste be made eligible to participate in RPS Main Tier solicitations for renewable resources. Currently, eligibility in the RPS Main Tier is limited to electricity generated from biogas, biomass, liquid biofuel, fuel cells, hydropower, photovoltaics, ocean or tidal power, and wind power. A determination granting "eligibility" would make new or newly-expanded waste-to-energy facilities potentially eligible to receive financial incentives funded by the RPS charge paid by electric utility company ratepayers throughout New York State. Public authority customers do not pay the RPS charge. Covanta states that it currently operates seven of the ten waste-to-energy generation facilities located in New York State, including facilities located in Onondaga, Niagara, Dutchess, Nassau and Suffolk Counties.

In addition to other comments, parties are invited to comment on whether the Generic Final Environmental Impact Statement dated August 26, 2004 (available at <http://www.dps.state.ny.us/03e0188.htm>) previously prepared in Case 03-E-0188 adequately addresses the potential adverse environmental impacts that may occur

due to the changes in the RPS Program proposed by Covanta [Note: See 6 NYCRR Section 617.9(a)(7) for the State Environmental Quality Review Act regulations regarding supplemental environmental impact statements].

**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:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.state.ny.us

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

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

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

(03-E-0188SP29)

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

**Energy Efficiency Programs Administered by New York State Electric & Gas Corp. and Rochester Gas and Electric Corp.**

**I.D. No.** PSC-18-11-00017-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 an April 15, 2011 petition filed by New York State Electric & Gas Corp. and Rochester Gas and Electric Corp. in Case 07-M-0548 et al. for waiver of requirements to implement, and to file plans for, energy efficiency programs.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** Energy efficiency programs administered by New York State Electric & Gas Corp. and Rochester Gas and Electric Corp.

**Purpose:** To waive requirements regarding approved energy efficiency programs.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a petition submitted on April 15, 2011 by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation in the Energy Efficiency Portfolio Standard (EEPS) proceeding, Cases 07-M-0548 et al. The petition seeks a waiver from requirements to implement Home Energy Reports Demonstration programs and to file an implementation plan for such programs. The Commission is also considering whether to make additional modifications to EEPS programs administered by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation. A Commission decision here may be applied to other utilities.

**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:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

**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-0548SP38)

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## Department of State

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### NOTICE OF EXPIRATION

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

#### Security Guard Registration for Bouncers

<b>I.D. No.</b>	<b>Proposed</b>	<b>Expiration Date</b>
DOS-15-10-00010-P	April 14, 2010	April 14, 2011