

# 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.

## Department of Corrections and Community Supervision

### NOTICE OF ADOPTION

**Monterey Correctional Facility CF, Chateaugay CF, Mt. McGregor CF, Butler CF**

**I.D. No.** CCS-41-14-00007-A

**Filing No.** 55

**Filing Date:** 2015-01-23

**Effective Date:** 2015-02-11

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

**Action taken:** Repeal of sections 100.66, 100.69, 100.70 and 100.131 of Title 7 NYCRR.

**Statutory authority:** Correction Law, section 70

**Subject:** Monterey Correctional Facility CF, Chateaugay CF, Mt. McGregor CF, Butler CF.

**Purpose:** To remove references to Correctional Facilities that are no longer in operation.

**Text or summary was published** in the October 15, 2014 issue of the Register, I.D. No. CCS-41-14-00007-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Kevin Bruen, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Doccs.ny.gov

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

The agency received no public comment.

## Department of Environmental Conservation

### NOTICE OF ADOPTION

#### **Liquefied Natural Gas (LNG)**

**I.D. No.** ENV-37-13-00005-A

**Filing No.** 58

**Filing Date:** 2015-01-27

**Effective Date:** 30 days after filing

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

**Action taken:** Addition of Part 570 to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, art. 23, title 17, section 3-0301(2)(a) and (m)

**Subject:** Liquefied Natural Gas (LNG).

**Purpose:** To establish criteria for the siting of and to require DEC permits for LNG facilities per ECL Article 23, Title 17.

**Substance of final rule:** In this rulemaking the New York State Department of Environmental Conservation (DEC) adopts 6 NYCRR Part 570 to implement safe siting, operating, and transportation requirements in New York State (the State) for Liquefied Natural Gas (LNG) facilities, in accordance with Article 23, Title 17 of the Environmental Conservation Law (ECL). Adoption of Part 570 allows DEC to permit the siting, construction, and operation of LNG facilities in response to the renewed interest in locating LNG facilities (particularly heavy-duty truck fueling facilities) in the State. Part 570 also addresses the transportation of LNG and the statutory requirement that intrastate transportation occur only along approved routes. The following summarizes 6 NYCRR Part 570.

#### Section 570.1: INTRODUCTION

Section 570.1 sets out the general purpose, applicability, definitions, exemptions, severability, and enforcement provisions of Part 570. The purpose of this section is to ensure the orderly and efficient administration of ECL Article 23, Title 17 at LNG facilities throughout the State. Consistent with Title 17, this Part does not regulate compressed natural gas or liquefied petroleum gas. These regulations do not require permits for vehicles or vessels that are fueled by LNG but do regulate dispensing facilities (fueling stations) that store LNG.

#### Section 570.2: PERMIT REQUIREMENTS and APPLICATION PROCEDURES

Section 570.2 applies to the permit requirements and application procedures for LNG facilities, including an explanation of the permit application process; contents of an application; criteria for siting; permit issuance, duration and renewal; public participation guidelines; modification of permit and change of ownership; permit suspension or revocation; and permit application fees and costs. This section also outlines the required procedures to obtain a permit. This section includes an upper limit of 70,000 gallons on the total amount of LNG that will be allowed to be stored at a permitted facility.

#### Section 570.3: SITE INSPECTIONS, RECORDKEEPING, and TRAINING of LOCAL FIRE DEPARTMENT PERSONNEL

Section 570.3 applies to site inspections, recordkeeping, and training of local fire department personnel. Applicants for permits shall offer emergency training for local fire department staff, and such equipment and personnel as may be required. Compliance with these requirements can either be determined by DEC's personnel or third parties contracted by DEC

who are qualified to monitor compliance. This section also specifies which records must be maintained at all LNG facilities, and which must be either maintained at the facility or provided to DEC within three business days of DEC's request.

#### Section 570.4: TRANSPORTATION of LNG

Section 570.4 explains the intrastate and interstate transportation requirements of LNG within the State. The regulations prohibit the intrastate transportation of LNG unless the intrastate transportation route has been certified as set forth in subdivision 570.4(a). In reviewing the requirement within the ECL for certified routes (ECL section 23-1713), the State Department of Transportation has determined that since certified routes are not established for other hazardous materials, it would be impracticable to establish certified routes for LNG from sources within the State. For that reason, intrastate transportation of LNG would not be allowed under Part 570. Consistent with ECL Article 23, Title 17, these regulations do not require certification of routes from out-of-state sources of LNG.

#### Section 570.5: PRE-EXISTING FACILITIES

Section 570.5 sets forth the requirement for pre-existing facilities to comply with the rules and regulations of this Part and the procedures outlined in the ECL Article 23, Title 17. There are three facilities which fit this situation: National Grid's Holtville and Greenpoint facilities, and Con-Edison's Astoria plant. These facilities operate pursuant to DEC Orders issued in 1979.

#### Section 570.6: PERMANENT CLOSURE of OUT-OF-SERVICE LNG STORAGE TANKS

Section 570.6 establishes the requirements for the permanent closure of out-of-service LNG storage tanks, referring to engineering guidelines and procedures that must be complied with to ensure proper closure.

#### Section 570.7: FINANCIAL ASSURANCE

Section 570.7 states that financial assurance, the form and amount of which will be established by DEC, may be required to ensure proper closure of LNG facilities.

#### Section 570.8: REPORTING OF LNG SPILLS

Section 570.8 explains the requirements for reporting a spill of LNG at a permitted facility. Spills of one gallon or more, or lesser amounts that result in a fire or explosion, must be reported.

#### Section 570.9: EFFECT ON MORATORIUM

Section 570.9 pertains to the existence of a moratorium on the siting of LNG facilities in cities with populations of one million or more. It emphasizes that the LNG regulations will not affect any statutory moratorium. In May 2013, the moratorium was extended to April 1, 2015.

#### Section 570.10: REFERENCES

Section 570.10 provides a listing of reference materials that are cited in 6 NYCRR Part 570, including those that are incorporated by reference, and explains how they can be obtained for inspection and/or purchasing.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 570.1(c)(9), (d)(5), 570.2(d)(1), 570.3(a) and 570.5.

**Revised rule making(s) were previously published in the State Register on November 12, 2014.**

**Text of rule and any required statements and analyses may be obtained from:** Andrew English, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7020, (518) 402-9553, email: derweb@dec.ny.gov

**Additional matter required by statute:** Negative Declaration, Coastal Assessment Form, and Short Environmental Assessment Form have been completed for this rule making.

#### Revised Regulatory Impact Statement

Changes made to the Express Terms published with the Notice of Adoption do not require revisions to the Revised Summary of Regulatory Impact Statement that was previously published in the November 12, 2014 issue of the State Register.

#### Revised Regulatory Flexibility Analysis

##### 1. Effect of Rule

The LNG regulations will apply statewide except where new facilities are prohibited by law (currently in New York City). They provide opportunities for small businesses and local governments to construct and operate LNG facilities. The result will be to allow LNG to be stored and used across New York State (the State) at a time when economic conditions are creating significant demand for this alternative fuel. The primary anticipated uses of LNG are in the transportation sector (long-haul trucks) and as a source of heating fuel (space heating, steam production, and industrial uses). Construction and operation of new LNG facilities, without a permit provided by the revised proposed regulations, is prohibited under Environmental Conservation Law, Article 23, Title 17 (the LNG statute).

##### 2. Compliance Requirements

The implementation of these regulations will not adversely affect small businesses or local governments since there are no substantive reporting or record keeping requirements for small businesses or local governments

as a result of the proposed rule making. The reporting obligations contained in the regulations are derived from the LNG statute.

##### 3. Professional Services

Professional services will be required by applicants to prepare applications for facility permits, design facility structures, ensure that all aspects of the facility are in compliance with applicable building, fire, and safety requirements, maintain the facility, and eventually close the facility. Through outreach efforts, the New York State Department of Environmental Conservation (DEC) will make information available on DEC's web site, including answers to questions about the new regulations. Future public workshops (meetings) are anticipated to be scheduled as needed.

##### 4. Compliance Costs

Small businesses and local governments should not incur any additional costs, either initial capital costs or annual compliance costs to comply with the proposed rulemaking beyond what are required for obtaining a permit to construct/operate and normal business costs. It is estimated that the cost to obtain a permit under these regulations would be approximately \$10,000 in addition to the cost to provide specialized training to local fire departments, if needed. Permit application fees would range between \$100 and \$1,000. In addition DEC is authorized to recover costs from the facility to implement the program. Facilities with more than 70,000 gallons capacity would not be allowed under the revised proposed regulations.

##### 5. Economic and Technological Feasibility

The proposed rulemaking enacts into regulation State statutory requirements. It is expected to increase economic growth throughout the State. The proposed rulemaking causes no added economic burdens and requires no additional sophisticated environmental control technology, other than that which may be required by statute and for the facility to be in compliance with existing building and fire safety standards. Accordingly, implementation of these rules will be economically and technologically feasible for small businesses and local governments.

##### 6. Minimizing Adverse Impact

It is DEC's belief that the proposed regulations will not cause a significant economic burden to the small business community or local governments. Promulgating regulations that will establish criteria for the siting and storage of LNG facilities will enhance the State's ability to attract the LNG industry and corporations to provide the public and business communities with an alternative (clean) fueling source. This will provide an economic growth opportunity for the State. In addition, LNG is a cleaner burning fuel, providing significant environmental benefits, and is less expensive than other fuels for uses such as space heating and steam production.

The revised proposed rulemaking does not place any additional burdens on the small business community or local governments or increase the universe of regulatory requirements applicable to the small business community or local governments beyond that which is required by the LNG statute.

Safe production, storage, utilization and transportation of LNG throughout the State will very likely produce substantial economic, environmental, and energy benefits for the entire State with the implementation of statutory requirements of the LNG statute via the promulgation of 6 NYCRR Part 570.

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

DEC will continue to provide a statewide outreach program to regulated communities and interested parties, including small businesses and local governments. An invitation only Stakeholders Meeting was held on Wednesday, February 27, 2013 at the DEC office in Albany, New York. Persons invited to this meeting represented a broad cross section of industry representatives, public/environmental advocacy groups, utilities, and government personnel. Comments received were considered as the rulemaking documents were revised. DEC also made a presentation regarding the draft regulations at the May 22, 2013 "LNG-CNG-NGV Technical Conference," sponsored by the New York State Department of Public Service. The conference was attended by a variety of business representatives from large and small companies.

During the proposed rule making, outreach efforts included electronic mailings to environmental groups, statewide organizations, regulated community, and other interested parties, including small businesses and local governments. In October 2013, DEC held public meetings at two locations in the State and a public hearing in Albany. During the revised proposed rule making in November 2014, DEC received comments from the public during an additional 30-day public comment period and sent electronic mailings to environmental groups, statewide organizations, regulated community, and other interested parties. DEC also posted and will continue to post relevant information about the LNG regulations, as well as the permit application process, on its website. Future DEC outreach will include contacting fire emergency response personnel regarding their time associated with training for LNG facilities.

Subdivision 570.2(h), Public Participation, states: "Any hearings, comments, or participation by federal, State or local government bodies or

members of the public, relative to any permit proceedings, will be conducted in accordance with procedures established in Parts 621 and 624 of this Title.” This subdivision ensures that any hearings in connection with LNG permit applications will be conducted close to locations where proposed LNG facilities will be sited in the State.

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

##### **1. Types and Estimated Number of Rural Areas:**

This rule will apply statewide to all 44 rural counties and 71 additional rural towns.

##### **2. Reporting, Recordkeeping, Other Compliance Requirements, and Need for Professional Services:**

Professional services will be required by applicants to prepare applications for facility permits, design facility structures, ensure that all aspects of the facility are in compliance with applicable building, fire, and safety requirements, maintain the facility, and eventually close the facility. Reporting and recordkeeping requirements of the regulations are minimal, and include reporting spills at the facility and maintaining documents produced in the normal course of business.

##### **3. Costs:**

The applicant for a permit is required to offer an emergency response training program for appropriate municipal response personnel. As needed, this training will be held annually and comply with guidance provided by the New York State Fire Administrator within the Office of Fire Prevention and Control of the New York State Division of Homeland Security and Emergency Services. Costs of the initial training of firefighters will range from \$1,000 to \$5,000 per firefighter, depending on the number and the level of experience of the firefighters. Subsequent yearly refresher classes or training costs will range from \$200 to \$500, depending on the number of participants. These costs include a trainer, room, supplies, etc. Releases (i.e., vapor clouds) are addressed with fire fighting techniques. Shorter training courses use simulations to illustrate the behaviors of LNG and explain how to respond to such releases.

The 2011 New York State Energy Research and Development Authority LNG report (available on New York State Department of Environmental Conservation’s (DEC) web site) estimates that the applicant’s cost to complete the application process to apply for and receive a facility permit would be approximately \$10,000. Permit application fees would range between \$100 and \$1,000. In addition DEC is authorized to recover costs from the facility to implement the program. Facilities with more than 70,000 gallons capacity would not be allowed under the revised proposed regulations.

##### **4. Minimizing Adverse Impact:**

It is DEC’s belief that the revised proposed regulations will not cause a significant economic burden, place any additional burdens on rural areas, or increase the universe of regulatory requirements applicable to such rural areas beyond those required by the LNG statute, Environmental Conservation Law Article 23 Title 17. In fact, safe transportation, storage and utilization of LNG throughout the State will most likely result in substantial economic, environmental, and energy benefits for the entire New York State.

##### **5. Rural Area Participation:**

DEC will continue to provide a statewide outreach program to regulated communities and interested parties, including public and private interests in rural areas. An invitation only Stakeholders Meeting was held on Wednesday, February 27, 2013 at the DEC office in Albany, New York. Persons invited to this meeting represented a broad cross section of industry representatives, public/environmental advocacy groups, utilities, and government personnel. Comments received were considered as the rulemaking documents were revised. DEC also made a presentation regarding the draft regulations at the May 22, 2013 “LNG-CNG-NGV Technical Conference,” which was sponsored by the New York State Department of Public Service. The conference was attended by a variety of business representatives from large and small companies.

During the proposed rule making, outreach efforts included electronic mailings to environmental groups, statewide organizations, regulated community, and other interested parties, including those located in rural areas. In October 2013, DEC held public meetings at two locations in the State and a public hearing in Albany. During the revised proposed rule making in November 2014, DEC received comments from the public during an additional 30-day public comment period and sent electronic mailings to environmental groups, statewide organizations, regulated community, and other interested parties, including those located in rural areas. DEC also posted and will continue to post relevant information about the LNG regulations, as well as the permit application process, on its website. Future DEC outreach will include contacting fire emergency response personnel regarding their time associated with training for LNG facilities.

Subdivision 570.2(h), Public Participation, states: “Any hearings, comments, or participation by federal, State or local government bodies or members of the public, relative to any permit proceedings, will be conducted in accordance with procedures established in Parts 621 and 624

of this Title.” This subdivision ensures that any hearings in connection with LNG permit applications will be conducted close to locations where proposed LNG facilities will be sited in the State, including any sited in rural areas.

#### **Revised Job Impact Statement**

Changes made to the Express Terms published with the Notice of Adoption do not require revisions to the Revised Job Impact Exemption Statement that was previously published in the November 12, 2014 issue of the State Register.

#### **Initial Review of Rule**

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

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

##### **Introduction**

On September 11, 2013, the New York State Department of Environmental Conservation (DEC) proposed the adoption of a new regulation (Part 570, “Liquefied Natural Gas,” in Title 6 of the New York Codes, Rules and Regulations (NYCRR)) to establish a permitting program for the safe siting, construction, and operation of liquefied natural gas (LNG) facilities and transportation of LNG in New York State (State). On November 12, 2014, DEC issued a revised proposed Part 570, and responses to comments received on the initial proposal. This assessment of public comments addresses comments received regarding the revisions made to the proposed regulation. Comments were also received on other general issues similar to comments received regarding the first proposal. These are not included in this assessment since they were addressed previously. Approximately 60 comment submittals were received by DEC on the revised proposal. Similar comments were combined and are addressed below. The promulgation of this regulation by DEC is authorized and required by Article 23, Title 17 of the Environmental Conservation Law (herein referred to as the “LNG law”).

##### **Background**

One of the most frequent comments received during the initial public comment period was that an upper limit should be set on the volume of LNG that can be stored at facilities. After careful consideration of the issue, DEC revised the proposed regulation to include an upper limit of 70,000 gallons as an allowable total facility capacity. As DEC gains experience with the permitting of LNG facilities, DEC may reconsider the capacity limit in subsequent revisions to Part 570.

##### **Comments and Responses on Revisions to the Proposed Regulation**

1. Multiple commenters offered support for DEC’s revised proposed regulations, which now includes a limit on total facility storage capacity of 70,000 gallons. Commenters stated their opinion that the revised regulation would put in place appropriate health and environmental safety criteria for LNG, and would enable those entities looking to build and operate LNG dispensing facilities in New York State to do so.

Response: Comment noted.

2. Multiple commenters stated their opinion that a facility storage capacity limit of 70,000 gallons is a reasonable limit for refueling stations.

Response: Comment noted.

3. Some commenters stated their opinion that there is no justification for limiting the size of the facilities and urged DEC to fulfill its obligations under Article 23, Title 17 of the Environmental Conservation Law by initiating a new rulemaking applicable to all LNG facilities including those designed to store more than 70,000 gallons.

Response: While DEC believes LNG facilities of any size can be operated safely, the revised regulation imposes a 70,000 gallon limit to recognize this volume as the point at which different requirements for large tanks/facilities are set forth in the national standard. DEC will consider modification to the facility capacity limit in a future rule making.

4. Commenters stated that the 70,000 gallon regulatory limit would be an exceedingly conservative approach representing, for example, just one day’s worth of storage to meet the energy needs of a large paper mill or a cogeneration facility. One commenter pointed out that NFPA 59A provides for a 280,000 gallon maximum aggregate storage capacity for American Society of Mechanical Engineers (ASME) containers. DEC was urged to reconsider the limit so as not to hinder the development of a level playing field for diverse energy options, through which LNG can provide yet another powerful tool to help New York businesses thrive.

Response: Based on currently available information, the facilities likely to be proposed in the first five years will generally be LNG storage facilities used for vehicle fueling. Capacities of up to 70,000 gallons would be sufficient for this type of application. DEC will consider modification of the facility capacity limit in a future rule making.

5. Commenters stated that the revised proposed regulation fails to comply with the LNG statute because the 70,000 gallon facility capacity cap does not establish criteria to meet the maximum safety standard.

Response: To comply with the statutory requirement to develop a

regulation for the storage of LNG, DEC has taken into account the various hazards presented by LNG, reasonable worst case scenarios, the need to establish clear and feasible permitting and operational requirements for those seeking permits, and the various options for balancing each of these sometimes competing factors. DEC believes that the NFPA standards in conjunction DEC's permitting program and the facility capacity limit allows for facilities to safely store LNG and meet the maximum safety standard.

6. A commenter stated that the exemption in § 570.1(d)(5) should be clarified to eliminate confusing references. The commenter recommends that the exemption in § 570.1(d)(5) be rewritten as follows:

(5) A pre-existing facility may continue to operate, without the need to obtain a permit, provided that:

i. there are no design changes or operational modifications that lead to an increase in the on-site LNG facility capacity within the boundaries of the facility;

ii. a corporate officer of the owner with overall responsibility for the operation of the facility signs and submits part two of a statement of compliance (as defined in § 570.1(c)(21)) to the Department within one year of the effective date of this Part, and every five years thereafter; and

iii. the Department receives copies of any reports filed by the owner under the provisions of 16 NYCRR 259.5.

Response: DEC agrees generally with these concerns and has made appropriate modifications in the final regulation.

7. A commenter stated that the revised § 570.2(b)(13) requires applicants to submit information pertaining to property boundaries, land use, flood and population data, and current zoning classification to ensure consistency with local land-use laws. The commenter suggested that the amount, quality, and relevance of land-use data vary by municipality, county, and region. Many municipalities do not have zoning regulations, lack baseline land-use data, and/or lack the technical expertise associated with conducting the adequate level of review that the siting of a new LNG facility would entail. Therefore, the commenter recommended that DEC establish accompanying technical resources and siting criteria to allow municipalities to perform a thorough, rigorous review of proposed LNG facilities.

Response: DEC's evaluation of whether a proposed location would be suitable for a specific LNG facility will not be dependent upon the quality or quantity of land-use data available from a municipality. DEC will determine if the siting of a proposed LNG facility would be consistent with any existing land-use requirements established by the municipality and will review any input from the municipality.

8. A commenter noted that although the revised wording of revised § 570.1(c)(4) seems to clarify that a tank trailer used for the dispensing of LNG at a refueling station would in fact constitute an LNG facility, it is not clear from DEC's response that this applies to tank trailers that are temporarily immobile. For example, in Response 3.5.2 of the DEC's assessment of public comment from the initial proposal, DEC seems to suggest that LNG operations that liquefy and then immediately transport LNG would not require a Part 570 permit. This ambiguity should be resolved and this potential loophole closed.

Response: Consistent with the LNG law, Part 570 distinguishes between "storage" and "LNG transportation activities." The LNG law makes it clear that the transportation of LNG does not require a Part 570 permit but the storage of LNG or conversion back to a gas does. The revision makes it clear that a tank trailer normally used for transportation cannot be used as a de facto storage tank without a permit. This would occur if a trailer were parked ("temporarily immobile") but used to periodically dispense LNG, rather than to continuously load or unload. If natural gas is liquefied and continuously loaded onto a trailer which is subsequently transported, an LNG facility permit is not needed, even if the loading process takes a relatively long time (e.g., more than a day). If, however, LNG was intermittently dispensed from the trailer to vehicles, a permit would be required because the trailer is being used for storage.

9. A commenter stated that the use of the words "permit" and "permittee" in § 570.3 creates confusion for owners of pre-existing facilities. To avoid this confusion, the commenter recommends a new sentence numbered as 570.3(f): "The provisions outlined in 570.3(a) through 570.3(e) do not apply to facilities that meet the definition of "pre-existing facilities" in 570.1(d)(5)."

Response: Pre-existing facilities are not permitted facilities and hence the requirements in §§ 570.3(a) through 570.3(e) do not directly apply. However, several of the substantive requirements of these provisions do currently apply to the pre-existing facilities. DEC will continue to work with pre-existing facilities to ensure that there is no duplication or conflicts between regulatory requirements and those in current or subsequent orders.

10. A commenter stated that § 570.5 ("pre-existing facilities") should be consistent with the permitting exemption in § 570.1(d)(5) for pre-existing facilities or deleted as redundant. It appears that the provisions of

570.5 may be duplicative of the language in 570.1(d)(5); however, if DEC is intending to convey the message that DEC will consider an expansion of a pre-existing facility as long as that facility applies for a permit in advance, the commenter recommends the following modifications to the text:

§ 570.5 Pre-existing Facilities.

All pre-existing LNG facilities may continue to operate without a permit so long as the facility remains in compliance with the three provisions of § 570.1(d)(5). Any proposed design changes or operational modifications that could lead to an increase in the on-site LNG facility capacity must be authorized in advance by a permit applied for and issued pursuant to this Part.

Response: DEC has made an appropriate change in the final regulation.

11. A commenter stated that the revised draft definition of "LNG facility" should be strengthened to prevent industry attempts to avoid the 70,000 gallon storage volume limit by modifying the proposed regulation in the following manner:

"Liquefied natural gas facility" or "LNG facility" means any structure or facility group [sic] of structures that are located on one or more contiguous or adjacent properties under common control that is used to store LNG in a tank system, or other storage device or group of storage devices or to convert LNG into natural gas."

Response: DEC has clarified the definition of LNG facility to address this concern in the final regulations.

12. A commenter recommended that § 570.1(d)(1) and § 570.1(d)(4) be further revised to state that only on-board LNG fuel tanks "used solely to power" or "used exclusively to power" an LNG-fueled vehicle or vessel are exempt. The concern was raised that DEC states in Response 4.1.2 in the initial response to comments that the exemptions provided by § 570.1(d)(1) cover the special case of vehicles or vessels that use boiled-off gas or LNG for propulsion from tanks that are otherwise intended for storage. Using boil-off gas to fuel a vessel or vehicle to transport LNG should require a permit.

Response: DEC has not made this suggested change, because the activity described would be, if ever developed and used, a transportation activity, which is excluded from permitting under the law.

13. A commenter stated that without a sufficient and reliable funding source to administer a new LNG program, and in light of findings by Comptroller DiNapoli that the DEC is already seriously underfunded, it is apparent that DEC will not be equipped to regulate the expanded development of LNG facilities in New York State. Until significant additional staff and funding is provided through fees imposed on the industry or through the State, the LNG regulatory program is illusory. In the absence of funding for enforcement, the public cannot be protected.

Response: In accordance with § 570.2(k), DEC will be able to recover all costs associated with the administration and enforcement of this Part.

14. A commenter recommends that DEC revise the current proposal's reference to the NFPA 59A standards. While the NFPA 52 standards apply to LNG vehicle fueling systems, the NFPA 59A standards do not. As currently drafted, the proposed regulations state that all LNG facilities would be subject to applicable provisions of both the NFPA 52 and the NFPA 59A standards. This may create confusion as to which standards apply to LNG vehicle fueling systems, including potential rail and maritime fueling infrastructure.

Response: In order to eliminate any confusion, DEC has clarified the requirements of this provision in the final regulation.

15. A commenter suggests that confusion is caused for pre-existing facilities by DEC's reference to the 2013 edition NFPA 59A. The revised proposed § 570.2(d)(1) states that "All LNG facilities must comply with all applicable provisions of the August 29, 2012 (2013 edition) of NFPA 59A, "Standard for the Production, Storage, and Handling of Liquefied Natural Gas." This statement appears within revised proposed § 570.2 which is entitled "Permit Requirements and Application Procedures" - if DEC does not intend to include pre-existing facilities in this statement then the sentence should be rewritten, "All LNG facilities (except pre-existing facilities) must comply with... " to eliminate any confusion. If DEC intends that all facilities, including pre-existing facilities, must comply with the 2013 edition of the NFPA 59A standard, it must resolve the conflicts that the revised proposed rule sets up with Federal regulations. In fact, 49 CFR 1932 - the standard which the commenter's facility is audited against by the annual Department of Public Service inspection, requires operators to comply with portions of two specific editions of NFPA 59A: 2001 and 2006. If DEC fails to include a mechanism for resolving any differences that may arise in these various versions of NFPA standards, it may be almost impossible for an owner to file an accurate "statement of compliance" attesting that the facility will be operated in accordance with all applicable law, regulations, standards, and requirements.

Response: DEC has clarified in the final rule that the requirement to comply with the 2013 edition of the NFPA standard does not apply to pre-

existing facilities. DEC will evaluate the differences between the NFPA editions to determine if there are any substantive changes that should be applied to the pre-existing facilities. If so, these changes will be addressed in modifications of the existing orders that authorize these facilities to operate.

16. A commenter stated that with respect to emergency preparedness, DEC has added a requirement that records of training be maintained. However no clarity has been provided as to the scope of training, whether it is mandatory, or what measures must be in place to ensure that local responders actually have the training, equipment, and staff needed to effectively respond to emergencies. The commenter goes on to state that in Response 4.3.2 from the initial response to comments, DEC elaborates on various measures that it claims would be employed by OFPC and DEC, but none of those measures are actually identified in the Regulations. As such there is no assurance that they would in fact be carried out. These necessary details should be included in any final regulations.

Response: It would be inappropriate to provide this level of detail in the regulation. DEC will be issuing guidance to address these issues. DEC is consulting with NYS Office of Fire Prevention and Control (OFPC) to define the personnel, training, and equipment necessary for each LNG facility.

17. A commenter stated that only limited improvements have been made with respect to record keeping. No requirements for maintaining records relating to equipment monitoring and replacement, safety inspections, accident reports or other aspects of operations are identified. Improvements have been made to ensure that LNG spills in excess of one gallon are reported. However the requirement for submitting a written report has been inappropriately extended from 48 hours to ten days, and the exempting phrase "or as otherwise directed by the Department" has been inserted which suggests this requirement could in fact be waived.

Response: Records relating to the issues identified in the comment are required by the NFPA standards and the revised proposed regulation requires that these records be kept. DEC modified the requirement for the written report to allow up to 10 days to ensure that the report is thorough and complete which is not always possible within 48 hours. In addition, the phrase "or otherwise as directed by the Department" allows the DEC to require submission of the report in less time, if appropriate.

18. A commenter noted that DEC should retain authority to perform unannounced inspections.

Response: The final regulation includes a clear statement that DEC may conduct inspections at LNG facilities without prior notice to the operator.

## NOTICE OF ADOPTION

### To Amend Part 189 Related to the Discovery of Chronic Wasting Disease in Deer in Ohio

**I.D. No.** ENV-46-14-00002-A

**Filing No.** 54

**Filing Date:** 2015-01-22

**Effective Date:** 2015-02-11

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

**Action taken:** Amendment of Part 189 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 3-0301, 11-0325, 11-1905 and 27-0703

**Subject:** To amend Part 189 related to the discovery of chronic wasting disease in deer in Ohio.

**Purpose:** To prevent importation of chronic wasting disease infectious material from the State of Ohio into New York.

**Text or summary was published in** the November 19, 2014 issue of the Register, I.D. No. ENV-46-14-00002-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** Patrick P. Martin, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-4754, (518) 402-9001, email: Patrick.Martin@dec.ny.gov

#### Revised Regulatory Impact Statement

The original Regulatory Impact Statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended to reflect the changes made to the text of the regulation.

#### Revised Regulatory Flexibility Analysis

##### 1. Effect of Rule:

The proposed regulation is necessary to protect the wild white-tailed deer and moose populations in New York State from Chronic Wasting

Disease (CWD). The white-tailed deer is a very important natural resource to small businesses and local governments in New York. The purpose of the new regulation is to protect this resource so that New Yorkers may continue to enjoy viewing deer, and benefit from deer hunting, and the positive economic and social effects of deer and deer hunting.

Under the proposed regulations, Ohio will be dropped from the list of states that are exempt from the importation requirement to remove certain parts of the carcass known to harbor the CWD infectious material. All CWD positive states are subject to the same importation requirements. Although this will impact New York residents who may hunt in Ohio and plan to return to New York with field dressed carcasses of the deer, elk or moose they harvested in Ohio, it is anticipated that this will affect relatively few hunters and, with advanced planning, hunters can easily comply with these regulations without losing the opportunity to hunt in Ohio or without the ability to bring back the meat of the animal they harvested.

No local governments will be affected by this rule.

##### 2. Compliance Requirements:

Resident hunters who harvest a deer in Ohio will be required to remove specific parts from the animal taken in Ohio before bringing it back into New York.

##### 3. Professional Services:

The rule will not require local governments or small businesses to engage professional services to comply with this rule.

##### 4. Compliance Costs:

Successful hunters in Ohio will be required to either pay for the processing of their harvested deer before returning to the State or process the harvested deer themselves. Most hunters who hunt in the CWD restricted states have their harvested game processed before they return as a matter of course.

##### 5. Economic and Technological Feasibility:

There is no economic or technological effect on local governments or small businesses. The rule will not require any technological changes or capital expenditures to comply with the new regulation.

##### 6. Minimizing Adverse Impact:

CWD has been confirmed in a number of states and measures to prevent the movement of the disease are in place in all states that have wild CWD susceptible cervids. The affected public (deer, elk and moose hunters) are aware of the CWD restrictions and have accepted them as reasonable and balanced. The Department of Environmental Conservation (department) strongly supports continued research on CWD to understand the modes of transmission, and associated risk variables. As new information becomes available, the department will amend regulations in response to new data or findings to ensure that the best prevention measures are in place to protect the wild deer herd.

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

When CWD was first confirmed in New York in 2005, the department held public meetings to explain the nature of the disease, the threat that CWD posed to the wild deer herd and the department's initial response. Since early April 2005, the department has issued press releases and posted CWD information to the department's website to continue to inform the public of developments and findings relative to the department's CWD surveillance program. Similarly, as the department establishes appropriate and necessary regulations to prevent the disease from entering New York, outreach to affected stakeholders (businesses and local governments) will be done so that the importance of the new regulations is understood.

##### 8. Cure Period or Other Opportunity for Ameliorative Action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact that CWD would have on the health of New York's wild deer herd and moose population. Immediate compliance with this rule is necessary to prevent the introduction of this disease into New York State from Ohio. Compliance is also required to ensure that the general welfare of the public is protected.

#### Revised Rural Area Flexibility Analysis

The original Rural Area Flexibility Analysis statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended to reflect the changes made to the text of the regulation.

#### Revised Job Impact Statement

The original Job Impact Statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended to reflect the changes made to the text of the regulation.

#### Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 5th year after the year in which this rule is being adopted.

#### Assessment of Public Comment

The agency received no public comment.

## New York State Gaming Commission

### NOTICE OF EXPIRATION

The following notices have expired and cannot be reconsidered unless the New York State Gaming Commission publishes new notices of proposed rule making in the *NYS Register*.

#### Per Se Regulatory Standardbred Threshold Limited to 24 Drugs, Special Corticosteroid Rules

I.D. No.	Proposed	Expiration Date
SGC-49-13-00010-P	December 4, 2013	January 21, 2015

#### Per Se Regulatory Standardbred Threshold and Restricted Time Period for Betamethasone and Triamcinolone Acetonide

I.D. No.	Proposed	Expiration Date
SGC-49-13-00012-P	December 4, 2013	January 21, 2015

#### Per Se Regulatory Standardbred Threshold and Restricted Time Period for Dexamethasone and Prednisolone

I.D. No.	Proposed	Expiration Date
SGC-49-13-00013-P	December 4, 2013	January 21, 2015

#### Per Se Regulatory Standardbred Threshold and Restricted Time Period for Various Drugs

I.D. No.	Proposed	Expiration Date
SGC-49-13-00016-P	December 4, 2013	January 21, 2015

#### Restricted Time Period for Administrations of Unspecified Corticosteroids to Thoroughbred Horses

I.D. No.	Proposed	Expiration Date
SGC-49-13-00023-P	December 4, 2013	January 21, 2015

## Department of Health

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

#### Emergency Medical Services

I.D. No. HLT-37-14-00003-RP

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

**Proposed Action:** Amendment of Part 800 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 3002

**Subject:** Emergency Medical Services.

**Purpose:** To clarify terminology, eliminate vagueness, address legal statutes/crimes and incorporate modern professional, ethical and moral standards.

**Substance of revised rule:** This proposal amends Sections 800.3, 800.6, 800.8, 800.9, 800.15 and 800.16 of Part 800 (Emergency Medical Services) of Title 10 of the Official Code of Rules and Regulations of the State of New York (10 NYCRR) particularly as they relate to certification, recertification and continuing medical education recertification requirements, required conduct of every person certified under Part 800 and the suspension or revocation of certification.

Section 800.3 of 10 NYCRR contains all the definitions that apply to Part 800 (Emergency Medical Services). Definitions amended in this proposal are “emergency medical technician”, “primary territory”, “course sponsor”, and “learning contract”. New definitions added are “continuous practice”, “criminal offense”, “incompetence”, “negligence”, “non-criminal offense”, “patient abandonment”, “patient abuse”, “patient contact”, “regulatory violation”, “scope of practice”, “state approved protocols”, and “treatment”.

Section 800.6 of 10 NYCRR sets forth the Initial Certification Requirements and has been revised to remove the emergency medical technician-

defibrillation (EMT-D) category as a level for which certification is available. This section is also revised to reflect the policy of this state to encourage the licensure and employment of person previously convicted of one or more criminal offenses and incorporate Article 23-A of the Corrections Law into the review of applicants’ criminal offenses.

Section 800.8 of 10 NYCRR outlines the Recertification requirements for applicants. This section adds that an applicant must enroll in a recertification course provided by an approved course sponsor as set forth in Section 800.20 (Course Sponsors) and complete the requirements for recertification at the level at which recertification is sought. Also added is that, within one year after passing the practical skills examination, the applicant must pass the State written certification examination for the level at which the certification is sought except at the certified instructor coordinator level and certified lab instructor level. It incorporates Article 23-A of the Corrections Law into the review when people seeking renewals of their certifications have had criminal convictions as defined in Section 800.3.

Section 800.9 of 10 NYCRR contains the Continuing Medical Education Recertification provisions previously titled Continuing Education. This section authorizes candidates who have demonstrated competence in applicable behavioral and performance objectives, and who have demonstrated completion of appropriate continuing medical education may be entitled to have their certification renewed without being required to successfully complete a state practical skills and written examination. It then sets forth the parameters for recertification using continuing medical education and once again applies the provisions of Article 23-A when reviewing the criminal offenses defined in Section 800.3, of those seeking recertification.

Section 800.15 of 10 NYCRR outlines the Required Conduct for every person certified at any level pursuant to Part 800 of 10 NYCRR or Article 30 of the Public Health Law, adhering to currently acceptable prehospital practice standards, maintenance of confidentiality at all times with certain exceptions, and compliance with the terms of a Medical Order of Life Sustaining Treatment (MOLST) form or a non-hospital Do Not Resuscitate (DNR) form, or a patient’s DNR bracelet or necklace with certain exceptions.

Section 800.16 of 10 NYCRR sets forth the Suspension or Revocation of Certification provisions. This section refines the criteria for which a suspension or revocation of certification will apply incorporating the new definitions contained in Section 800.3 and failure to meet the requirements contained in Sections 800.6, 800.8, 800.9 and 800.15.

**Revised rule compared with proposed rule:** Substantial revisions were made in sections 800.3, 800.6, 800.8, 800.9, 800.15 and 800.16.

**Text of revised proposed 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.ny.gov

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

**Public comment will be received until:** 30 days after publication of this notice.

#### Revised Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Article 30 (Emergency Medical Services), Section 3002. Section 3002 sets forth the provisions creating the New York State Emergency Medical Services Council and specifies that it shall have the power, by an affirmative vote of a majority of those present, subject to approval by the Commissioner, to enact, and from time to time, amend and repeal, rules and regulations establishing minimum standards for ambulance services, ambulance service certification, advanced life support first response services, the provision of prehospital emergency medical care, public education, the development of a statewide emergency medical services system, the provision of ambulance services outside of the primary territory specified in the ambulance services’ certificate and the training, examination, and certification of certified first responders, emergency medical technicians, and advanced emergency medical technicians; provided, however that such minimum standards must be consistent with the staffing standards established by the staffing standards, ambulance services and advanced life support first response services provisions outlined in PHL Section 3005-a.

Legislative Objectives:

The purpose of PHL Article 30 is to promote the public health, safety and welfare by providing certification for pre-hospital care providers and all advanced life support first response and ambulance services.

Needs and Benefits:

The Department’s Bureau of Emergency Medical Services (BEMS) is charged with enforcement of 10 NYCRR Part 800 (State Emergency Medical Services Code). When the NYS EMS system was founded, the original PHL Article 30 and Title 10 New York Codes Rules and Regula-

tions (NYCRR) Part 800 provisions addressed the provision of emergency medical services at the time; incorporating the practices, standards, ethics, morals, crimes and punishments of the day. In the early 1990's, PHL Article 30 and 10 NYCRR Part 800 underwent major revisions so as to reflect changes that had occurred over the previous 20 years in EMS and health care and society as a whole. Moreover, these significant changes were enacted so as the Department could maintain the standard of an essential public health service (EMS) provided in the most responsible manner.

Now again, another 20 years later, the Department is faced with trying to apply outdated rules to a modern system. It is impractical and difficult for the Department to try to update what was long ago determined an essential public health service under rules that no longer apply, as well as try to apply rules from two decades ago to situations that did not exist two decades ago.

Of greatest concern is that the current rules make it difficult for the Department to adequately regulate an essential public health service, and for the Commissioner to adequately protect the health and welfare of patients of that service. Just as the Commissioner relies on clear and specific regulations and standards to monitor and discipline physicians in the course of protecting the public, so too must the Commissioner have clear and specific regulations to monitor and discipline EMS providers in order to protect the public.

Section 800.3 contains the definitions used throughout Part 800. Section 800.6 outlines initial certification requirements, and Sections 800.8 and 800.9 outline recertification requirements and continuing medical education recertification requirements respectively. Section 800.15 specifies the required conduct of every person certified under Part 800 and Section 800.16 sets forth the suspension or revocation of certification provisions. These provisions must be updated and replaced with regulatory language that encompasses the various categories of EMS providers and their authorized scope of practice; clarifies terminology and other provisions; identifies inappropriate conduct by EMS providers; ensures that Corrections Law Article 23-A's balancing test will be used when reviewing applicants and existing providers who have criminal convictions; enhances enforcement of regulatory compliance and discipline of violators; as well as incorporates modern professional standards.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

Costs to the regulated parties (EMS providers) will be none; unless the Department finds cause to take action against an EMS provider under the provisions of Sections 800.15 and/or 800.16, at which time (depending on the severity of the case) the EMS provider may be administratively sanctioned including monetary fines, probation, and/or suspension or loss of certification.

Cost to State and Local Government:

Costs to the general public, state and local government will be none. These regulations are directed at the individual EMS provider, not the EMS agency for which the provider works. In that, even if the EMS agency is part of a local municipal government, Department actions taken with respect to Sections 800.15 and or 800.16 will still be upon the individual EMS provider and not the municipality.

Cost to the Department of Health:

Costs to the Department of Health will be none. As stated above these regulations are directed to the individual EMS provider. Department actions taken with respect to Sections 800.15 and or 800.16 will still be upon the individual EMS provider. The Department will not incur any additional costs.

Local Government Mandates:

None. These provisions do not add any additional mandates to local governments.

Paperwork:

No additional new paperwork will be required.

Duplication:

This measure does not duplicate, overlap or conflict with a State or federal statute or rule.

Alternative Approaches:

There are no other viable alternative approaches. Current provisions are outdated and must be updated to reflect appropriate EMS standards and practice.

Federal Requirements:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas. This proposal is intended to update outdated Part 800 provisions with language appropriate and applicable to the modern EMS system of today.

Compliance Schedule:

This proposal will go into effect upon a Notice of Adoption in the New York State Register.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

**Assessment of Public Comment**

Public comments were submitted to the NYS Department of Health (DOH) in response to the proposed changes to Title 10 NYCRR Part 800. Many of the comments were the same or similar. These comments and the Department of Health's responses are summarized below:

1. COMMENT: Concerns were expressed about the broadness of the definition of "non-criminal offenses."

RESPONSE: Comments and concerns have been addressed by the substantial narrowing of this definition and the exclusion of the language objected to in many of the comments.

2. COMMENT: Concerns that the definition of patient abandonment would include multiple patient triage situations.

RESPONSE: This concern was addressed by adding language that excludes the medical triage of multiple patients in mass casualty situations.

3. COMMENT: Received suggested language for the inclusion of Medical Orders for Life Sustaining Treatment (MOLST).

RESPONSE: Issues were addressed in the revision.

4. COMMENT: "Continuous Practice" as defined does not include EMS personnel that serve in non-patient care functions. The comments indicated that the definition should include certified EMS providers that serve as administrators, emergency managers, planners, educators, quality assurance officers and other like positions.

RESPONSE: Article 30, section 3002 -2B of the NYS Public Health Law enables those certified EMS providers in continuous practice providing direct patient care to recertify through a continuing medical education process. While there is no dispute that "non patient care providing personnel" are essential to the EMS system, those that are not actively providing direct patient care may not be maintaining the skill and didactic acuity necessary for this method of recertification. There are other recertification options available. Therefore, no change has been made to this section based on the comment.

5. COMMENT: Comment wished to confirm that an EMS provider with a lapsed certification beyond one year will continue to have the ability to recertify by completing and passing the requirements of an appropriate refresher training program.

RESPONSE: This section was clarified to insure that any individual previously certified in NYS will continue to be allowed to recertify their EMS certification by completing and passing the requirements of an appropriate refresher training program.

6. COMMENT: There were many comments and concerns regarding the definition of "criminal offenses".

RESPONSE: The definition of "criminal offenses" has been entirely re-written to address these comments and to track closely the listed offenses in the underlying statute, Public Health Law Section 3005(8)(ii)(a) and Section 3012(1)(i).

7. COMMENT: There were many comments and concerns about the review process for an individual with criminal convictions described in the proposed Sections 800.6, 8, 9 and 16.

RESPONSE: These sections have been entirely re-written to require that the review process and consideration is in compliance with Article 23-A of the Corrections Law. Additionally, disqualification from certification must be based on a determination that there is a direct relationship between one or more of the criminal offenses and the duties required of this certificate, or that the applicant's hiring would create an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these issues, the agency will look at the eight factors listed under New York State Correctional Law Section 753.

8. COMMENT: There are a number of comments indicating concern about a requirement of proposed Section 800.15(b)(1) that each EMS care provider involved in the care of a specific patient or a response to an individual incident would be required to complete a separate prehospital patient record.

RESPONSE: This section has been clarified to state the when a certificate holder is acting as part of an organized pre-hospital emergency medical service, the certificate holder responsible for patient care shall accurately complete a pre-hospital care report. This clarification means that every certified provider does not have to complete a separate patient record.

9. COMMENT: Comments regarding definitions for provider certification levels was submitted with suggested specific language.

RESPONSE: While the comments have some validity, the terminology is not supported by Article 30 of the Public Health Law, therefore no changes were made based on the suggested comments.

10. COMMENT: A number of comments identified typographical errors or requested terminology changes.

RESPONSE: We have made the changes as identified.

11. COMMENT: Several comments expressed a sentiment that "stakeholders" were not included in the proposed rule making process. Some specifically mentioned the perceived exclusion of the NYS EMS Council (SEMSCO), and the Regional EMS Councils. There are eighteen (18) of the latter.

RESPONSE: Stakeholders were included in the process. To wit:

1) SEMSCO was included in the process, and in fact, unanimously approved the proposed changes at its January 14, 2015 meeting. SEMSCO is comprised of thirty-one (31) members [PHL 3002(1)]. Eighteen (18) of these members, a majority of the body, represent the various REMSCOs.

2) Comments were received from various EMS trade organizations, REMSCOs, EMS agencies, and even individual EMS providers.

## Division of Homeland Security and Emergency Services

### EMERGENCY RULE MAKING

#### Registration of Manufacturers, Distributors, Wholesalers, Various Retailers of Sparkling Devices

**I.D. No.** HES-06-15-00001-E

**Filing No.** 53

**Filing Date:** 2015-01-21

**Effective Date:** 2015-01-21

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

**Action taken:** Addition of Part 225 to Title 9 NYCRR.

**Statutory authority:** Executive Law, sections 156(20) and 156-h; and L. 2014, ch. 477

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

**Specific reasons underlying the finding of necessity:** Executive Law section 156-h requires that the Office of Fire Prevention and Control promulgate rules regarding registration of manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices. Registration is required prior to the legal sale of such sparkling devices. This rule includes the registration processes, fees and reporting requirements. Accordingly, this rule must be adopted on an emergency basis in order to ensure that such procedures are in effect to assure the public's safety and general welfare.

**Subject:** Registration of manufacturers, distributors, wholesalers, various retailers of sparkling devices.

**Purpose:** Establish the registration process, fees and reporting requirements related to sparkling devices.

**Substance of emergency rule:** Section 225.1 Definitions

Establishes definitions of sparkling devices according to new statutory language. Establishes that "Sparkling Devices" are consumer fireworks for the purpose of the Uniform Fire Prevention and Building Code and National Fire Protection Association standard 1124 (2006).

Section 225.2 Registration

Requires every manufacturer, distributor, wholesaler, specialty retailer, or permanent retailer of sparkling devices to annually register with the Office of Fire Prevention and Control. Requires temporary (seasonal) retailers to register with the Office of Fire Prevention and Control each selling season. Establishes the registration process and related documentation required as part of the registration package.

Section 225.3 Fees

Establishes application fees; the revenue of which goes to the Office of Fire Prevention and Control to be used for firefighter safety and training programs as well as for the registration process, consistent with Executive Law § 156-h. A manufacturer, distributor, wholesaler must pay an annual registration fee of \$5,000; a specialty retailer must pay an annual registration fee of \$2,500; a permanent retailer must pay an annual registration fee of \$200 for each location; and a temporary seasonal retailer must pay a registration fee of \$250 per season for each location.

Section 225.4 Certification

The Office of Fire Prevention and Control is responsible to issue a certification valid for one year to manufacturers, distributors, wholesalers. Certificates issued to temporary seasonal retailers will be valid for 30 day prior to through 30 day after the dates of the selling season specified in General Business Law § 392-j. Non-compliance with any of the requirements set forth may result in a revocation of the certificate of registration, as determined by the Office of Fire Prevention and Control. Revocation shall remain in effect until the manufacturer, distributor, wholesaler, specialty retailer, permanent retailer, or temporary seasonal retailer

provides evidence of compliance acceptable to the Office of Fire Prevention and Control.

Section 225.5 Records and Reports

Manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers shall maintain, and make available to the Office of Fire Prevention and Control, records regarding the name and quantity of any sparkling devices produced in, imported to, exported from, or sold in New York. Establishes the Office of Fire Prevention and Control's authority to inspect to assure compliance with the terms of registration/certification.

Section 225.6 Reporting of incidents

Requires manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers to report basic information incidents of fires or explosions, including accidental discharge of sparkling devices that occurs on premises to the Office of Fire Prevention and Control: within 24 hours if no injury or death; within 1 hour, or as soon as practicable if injury or death is involved. The Office of Fire Prevention and Control is responsible to share information with local code enforcement officials, as appropriate.

Section 225.7 General Requirements

Requires posting of documentation in each location of business, to include: copy of the Office of Fire Prevention and Control certification for such location; the list, as most recently published by the New York State Police, of counties and cities that have opted by local law to legalize the use of sparkling devices; copy of any Federal Permit(s) (if applicable); copy of the Insurance Certificate; and copy of a sparkling device safety pamphlet produced by the Office of Fire Prevention and Control.

**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 April 20, 2015.

**Text of rule and any required statements and analyses may be obtained from:** Elisha S. Tomko, Division of Homeland Security and Emergency Services, 1220 Washington Avenue, State Office Campus, Bldg. 7A, Albany, NY, (518) 474-6746, email: elisha.tomko@dhses.ny.gov

#### Regulatory Impact Statement

1. Statutory Authority

Section 156(20) of the Executive Law authorizes the Office of Fire Prevention and Control to register the manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices who wish to do business in New York State. Section 156-h of the Executive Law requires that the Office of Fire Prevention and Control promulgate rules regarding registration of manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices.

2. Legislative Objectives

The legislative objective behind section 156(20) and section 156-h are to assure that the proper processes are in place prior to the sale of sparkling devices. Registration with the Office of Fire Prevention and Control is required prior to the sale of such sparkling devices, pursuant to General Business Law 392-j.

3. Needs and Benefits

Section 156-h of the Executive Law requires that the Office of Fire Prevention and Control promulgate rules regarding registration of manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices, to include the registration process and requirements, fees and reporting requirements.

4. Costs

The rule establishes application fees, consistent with section 156-h of the Executive Law. A manufacturer, distributor, wholesaler must pay an annual registration fee of \$5,000; Specialty retailer must pay an annual registration fee of \$2,500; Permanent retailer must pay an annual registration fee of \$200 for each location; and Temporary seasonal retailer must pay a registration fee of \$250 per season to the Office of Fire Prevention and Control for each location.

The cost to the Office of Fire Prevention and Control for the implementation of the rule is approximately \$850,000 per year for administration, inspection and investigative costs. Section 156-h requires that revenue generated from registration fee payments must be used for firefighter safety and training programs as well as for the registration process.

In developing its cost estimates associated with the implementation and execute the registration, inspection and investigations aspects of this new responsibility, the Office of Fire Prevention and Control consulted with state fire marshal offices in other states that have recently legalized sparkling devices and/or consumer fireworks in an effort to learn what their work load experiences have been. OFPC extrapolated the data and applied it to its specific costs (IE: personnel and equipment).

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

#### 5. Local Government Mandates

This rule making will not impose any program, service, duty or responsibility upon counties, cities, towns, villages, school districts, fire districts or other special districts. This rule regulates the manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices.

#### 6. Paperwork

The Office of Fire Prevention and Control will be required to develop and make available registration forms, certification forms and a sparkling device safety pamphlet. Manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers shall maintain, and make available to the Office of Fire Prevention and Control, records regarding the name and quantity of any sparkling devices produced in, imported to, exported from, or sold in this State. Retailers will be required to post documentation in each location of business, to include: copy of the Office of Fire Prevention and Control certification for such location; the list, as most recently published by the New York State Police, of counties and cities that have opted by local law to legalize the use of sparkling devices; copy of any Federal Permit(s) (if applicable); copy of the Insurance Certificate; and copy of a sparkling device safety pamphlet produced by the Office of Fire Prevention and Control.

#### 7. Duplication

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

#### 8. Alternatives

The Office of Fire Prevention and Control does not have statutory authority to consider any alternative other than to adopt a rule addressing these issues, no other significant alternatives were considered.

#### 9. Federal Standards

Any person importing, manufacturing for commercial use, dealing in, transporting or causing to be transported, or otherwise receiving certain fireworks must obtain an ATF Federal explosives license or permit for the specific activity. Federal explosives licensees and permittees must comply with all applicable regulations under 27 CFR, Part 555. Any person manufacturing consumer fireworks for commercial use must obtain a Federal explosives manufacturers license. This rule does not exceed or conflict with such requirements.

#### 10. Compliance Schedule

Manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices can comply with the requirements of the rule once a city or county opts to legalize the sale and use of sparkling devices within its municipality.

### **Regulatory Flexibility Analysis**

#### 1. Effect of rule

The rule does not affect local governments. The rule affects small businesses, including manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices.

#### 2. Compliance requirements

This rule making will not impose any reporting, recordkeeping or other affirmative acts on local governments.

Small business manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers will be required to meet registration requirements and maintain, and make available to the Office of Fire Prevention and Control OFPC, records regarding the name and quantity of any sparkling devices produced in, imported to, exported from, or sold in New York. Small business specialty retailers, permanent retailers and temporary seasonal retailers will be required to post documentation in each location of business, to include: copy of the Office of Fire Prevention and Control certification for such location; the list, as most recently published by the New York State Police, of counties and cities that have opted by local law to legalize the use of sparkling devices; copy of any Federal Permit(s) (if applicable); copy of the Insurance Certificate; and copy of a sparkling device safety pamphlet produced by the Office of Fire Prevention and Control.

Small business manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers also need to report to the Office of Fire Prevention and Control, any fire or explosion that results in injury or death within one hour of its occurrence or as soon as practicable.

#### 3. Professional services

Neither local governments or small business affected by this rule will require professional services in order to comply with the rule.

#### 4. Compliance costs

There would be no initial capital costs associated with compliance with the rule. The annual costs for continuing compliance are the required fees: a manufacturer, distributor, wholesaler must pay an annual registration fee of \$5,000; Specialty retailer must pay an annual registration fee of \$2,500; Permanent retailer must pay an annual registration fee of \$200 for each lo-

cation; and Temporary seasonal retailer must pay a registration fee of \$250 per season to the Office of Fire Prevention and Control for each location.

#### 5. Economic and technological feasibility

The rule sets forth the registration and reporting requirements for small business manufacturers, distributors, wholesalers, and retailers of sparkling devices, both of which are economically and technologically feasible.

#### 6. Minimizing adverse impact

The rule establishes the registration process for including manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices. The fees, contained in the rule, are created by statute and therefore, the rule does not impose any adverse economic impact and no alternatives were considered.

#### 7. Small business and local government participation

Small business and local government did not participate in this emergency rulemaking process. Small business and local governments, through their respective associations, will be invited to participate in the proposed rulemaking process.

### **Rural Area Flexibility Analysis**

#### 1. Types and estimated numbers of rural areas

The rule would apply to counties and cities, outside of New York City, that opted to legalize the sale and use of sparkling devices, including those located in rural areas as that term is defined in section 102(10) of the State Administrative Procedure Act ("SAPA").

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

This rule making will not impose any reporting, recordkeeping or other affirmative acts on local governments in rural areas.

In counties and cities, in rural areas, that opted to legalize the sale and use of sparkling devices, manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers will be required to meet registration requirements and maintain, and make available to the Office of Fire Prevention and Control OFPC, records regarding the name and quantity of any sparkling devices produced in, imported to, exported from, or sold in New York. Specialty retailers, permanent retailers and temporary seasonal retailers will be required to post documentation in each location of business, to include: copy of the Office of Fire Prevention and Control certification for such location; the list, as most recently published by the New York State Police, of counties and cities that have opted by local law to legalize the use of sparkling devices; copy of any Federal Permit(s) (if applicable); copy of the Insurance Certificate; and copy of a sparkling device safety pamphlet produced by the Office of Fire Prevention and Control.

Manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers also need to report to the Office of Fire Prevention and Control, any fire or explosion that results in injury or death within one hour of its occurrence or as soon as practicable.

In rural areas, professional services are not required to comply with the rule.

#### 3. Costs

In rural areas, there would be no initial capital costs associated with compliance with the rule. The annual costs for continuing compliance are the required fees: a manufacturer, distributor, wholesaler must pay an annual registration fee of \$5,000; Specialty retailer must pay an annual registration fee of \$2,500; Permanent retailer must pay an annual registration fee of \$200 for each location; and Temporary seasonal retailer must pay a registration fee of \$250 per season to the Office of Fire Prevention and Control for each location.

#### 4. Minimizing adverse impact

The rule establishes the registration process for including manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices. The fees, contained in the rule, are created by statute and therefore, the rule does not impose any adverse economic impact and no alternatives were considered.

#### 5. Rural area participation

Representatives of rural areas did not participate in this emergency rulemaking process. Businesses and local governments, in rural areas, through their respective associations, will be invited to participate in the proposed rulemaking process.

### **Job Impact Statement**

#### 1. Nature of impact

The nature of the impact that the rule will have on jobs and employment opportunities is expected to be minimal based on the seasonal/limited selling season of June first and July fifth and December twenty-sixth through January second of each year.

#### 2. Categories and numbers affected

The rule may result in part-time seasonal/temporary retail jobs in those counties and cities that have opted to legalize the sale and use of sparkling

devices during the limited selling season of June first and July fifth and December twenty-sixth through January second of each year.

3. Regions of adverse impact

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

4. Minimizing adverse impact

The rule would not have any adverse impact on existing jobs.

## Office of Mental Health

### NOTICE OF ADOPTION

#### Telepsychiatry Services in OMH-Licensed Clinics

**I.D. No.** OMH-38-14-00001-A

**Filing No.** 59

**Filing Date:** 2015-01-27

**Effective Date:** 2015-02-11

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

**Action taken:** Addition of section 599.17 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.07, 7.09 and 31.04

**Subject:** Telepsychiatry services in OMH-licensed clinics.

**Purpose:** Establish basic standards and parameters to approve telepsychiatry in OMH-licensed clinic programs choosing to offer service.

**Text of final rule:** A new Section 599.17 is added to Title 14 NYCRR to read as follows:

§ 599.17 Telepsychiatry services.

(a) Definition of Telepsychiatry. For purposes of this Section, "telepsychiatry" means the use of two-way real-time interactive audio and video to provide and support clinical psychiatric care at a distance. Such services do not include a telephone conversation, electronic mail message, or facsimile transmission between a clinic and a recipient or a consultation between two professional or clinical staff (as such terms are defined in this Part), although these activities may support telepsychiatry services.

(b) Approval to Offer Telepsychiatry Services.

(1) Telepsychiatry services may be authorized by the Office for assessment and treatment services provided by physicians who are board certified or board eligible in psychiatry, or nurse practitioners qualified in psychiatry, from a site distant from the location of a recipient, where both the recipient and such physician or nurse practitioner are physically located at clinic sites licensed by the Office.

(2) Requests for approval to offer telepsychiatry services shall be submitted to the Field Office serving the area in which either licensed clinic is located. Such Field Office may make an on-site visit prior to issuing approval.

(3) Approval of the Office will be based on submission and review of a written plan to provide telepsychiatry services that addresses the following standards and procedures:

(i) All telepsychiatry services must be performed on dedicated secure transmission linkages that meet minimum federal and state requirements, including but not limited to 45 C.F.R. Parts 160 and 164 (HIPAA Security Rules), and which are consistent with guidelines of the Office. Transmissions must employ acceptable authentication and identification procedures by both the sender and the receiver.

(ii) Confidentiality must be maintained as required by Mental Hygiene Law Section 33.13 and 45 C.F.R. Parts 160 and 164 (HIPAA Privacy Rules).

(a) All existing confidentiality requirements that apply to written medical records shall apply to services delivered by telecommunications, including the actual transmission of the service, any recordings made during the time of transmission, and any other electronic records.

(b) The spaces occupied by the recipient and the distant physician or nurse practitioner both must meet the minimum standards for privacy expected for recipient-clinician interaction at a single licensed clinic location.

(iii) Culturally competent translation services shall be provided when the recipient and distant physician or nurse practitioner do not speak the same language.

(iv) Telepsychiatry services provided to recipients under age 18 may include clinical staff, as such term is defined in this Part, in the room with the recipient. Such determinations shall be clinically based, consistent with clinical guidelines issued by the Office.

(v) All telepsychiatry sites must have a written procedure detailing the availability of face-to-face assessments by a physician or nurse practitioner in an emergency situation.

(vi) Procedures for prescribing medications shall be identified.

(vii) The recipient shall be enrolled at only one of the two sites.

(a) If the recipient is enrolled at the site away from the physician or nurse practitioner, such physician or nurse practitioner shall prepare appropriate progress notes and securely forward them to the clinic as a condition of reimbursement.

(b) If the telepsychiatry services for a particular recipient are a regular part of the recipient's treatment plan, the physician or nurse practitioner must coordinate with the responsible professional at the clinic of enrollment, and prepare and update the treatment plan in accordance with applicable provisions of this Part to permit the clinic to be reimbursed for continuing services.

(viii) The recipient shall be provided with basic information about telepsychiatry and shall provide his or her consent to participate in services utilizing this technology. The recipient has the right to refuse to participate in telepsychiatry services and must be made aware of the alternatives including any delays in service, need to travel, risks associated with not having the services provided by telepsychiatry, or right to select another provider.

(ix) There must be a written procedure detailing the contingency plan when there is a failure of the transmission or other technical difficulties that render the service undeliverable.

(x) A review of telepsychiatry services shall be included in the provider's quality management process.

(4) Clinics approved to offer telepsychiatry services shall be provided with written authorization to do so by the Field Office. Upon such approval, telepsychiatry services will be identified as an optional service on a clinic provider's operating certificate.

(c) Reimbursement standards.

(1) Telepsychiatry services must be provided by a physician or nurse practitioner who possesses a current, valid license to practice in New York State.

(2) For the purposes of this Section, telepsychiatry services shall be considered face-to-face contacts.

(3) To be eligible for Medicaid reimbursement, telepsychiatry services must meet all requirements of this Part applicable to assessment and treatment services, and must exercise the same standard of care as in-house delivered services.

(4) Telepsychiatry services will be reimbursed at the same rates for identical procedures provided by on-site physicians or nurse practitioners.

(d) Guidance. The Office shall post implementation guidance on its public website to assist in the provision of telepsychiatry services. Such guidance shall include:

(1) clinical guidelines; and

(2) technology guidelines, including:

(i) the minimum technology thresholds (i.e., equipment, bandwidth, videoconferencing software, network specifications, carrier selection, hub/bridge, and security specifications), which shall be updated as new technology is approved; and

(ii) the form or format regarding the technology and communications to be used.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 599.17(a), (b)(1), (2), (3), (4), (c)(2), (4) and (d).

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

#### Revised Regulatory Impact Statement

A revised Regulatory Impact Statement (RIS) is not included with this notice since the changes to the final adopted rule do not necessitate a change to the RIS. The revisions are non-substantive and serve to provide clarity with respect to the expectations of the Office of Mental Health. The changes include the following:

- clarification that telepsychiatry services may be provided by physicians who are board certified or board eligible in psychiatry or nurse practitioners qualified in psychiatry;

- clarification that culturally competent translation services shall be provided when the recipient and distant physician or nurse practitioner do not speak the same language, and removal of the requirement that a translator be physically located with the recipient;

- the term "telepsychiatric" has been changed to "telepsychiatry";
- inclusion of language stating that telepsychiatry will be listed as an optional service on operating certificates of clinics that have been granted approval to offer such services; and

- clarification with respect to the technology guidelines that will be posted on the OMH website.

#### Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis for Small Businesses and Local Governments is not included with this notice since the changes made to

the final adopted rule are non-substantive and serve to provide clarity with respect to the expectations of the Office of Mental Health. The amendments will not have an adverse economic impact upon small businesses or local governments.

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

A revised Rural Area Flexibility Analysis is not included with this notice since the changes made to the final adopted rule are non-substantive and serve to provide clarity with respect to the expectations of the Office of Mental Health. The amendments will not impose any adverse economic impact on rural areas.

#### **Revised Job Impact Statement**

A revised Job Impact Statement is not included with this notice since the changes made to the final adopted rule are non-substantive and serve to provide clarity with respect to the expectations of the Office of Mental Health. The amendments to 14 NYCRR Part 599 will not have a negative impact on jobs or employment opportunities.

#### **Initial Review of Rule**

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 5th year after the year in which this rule is being adopted.

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

The Office of Mental Health (OMH) received eight letters of comment in response to the proposed rule regarding the use of telepsychiatry in OMH-licensed clinics. The comments are addressed below:

**Comment:** A professional medical specialty organization submitted a letter of comment stating that only those health care professionals with appropriate training and expertise should be authorized to provide telepsychiatry services. Therefore, they believe the regulation should be amended to clarify that only a physician board certified or board eligible in psychiatry or a nurse practitioner qualified in psychiatry should provide telepsychiatry services.

**Response:** OMH agrees. The agency has rephrased the provision clarify this credentialing requirement in the final adopted rule.

**Comment:** A few commenters stated that OMH should allow telepsychiatry services to be expanded beyond physicians and nurse practitioners to include the full spectrum of providers, consistent with regulations of the Centers for Medicare and Medicaid Services (CMS). Another commenter stated that physician assistants should be included in the list of providers who are allowed to perform the service.

**Response:** This recommendation is beyond the scope of the proposed amendments, which are intended to address New York State's crucial shortage of prescribing providers. Therefore, the agency's first priority is to address treatment services delivered by these types of providers. However, OMH is not opposed to moving in this direction over time.

**Comment:** Several commenters stated that telepsychiatry services should be not limited to OMH-licensed clinics. They felt that the recipients' locations, as well as the originating sites, should be expanded to allow flexibility in the delivery of services. One commenter stated that the "hub" and "spoke" sites are inconsistent with current New York State initiatives including Health Homes, HARPS, and the intent of the 1915(i) waiver services.

**Response:** This recommendation is beyond the scope of this proposed amendment, the purpose of which is to facilitate the use of telepsychiatry to connect more patients to prescribing providers. Nonetheless, the agency has every intention to further expand into additional telehealth services in partnership with other healthcare agencies and providers and will continue to work in this direction.

**Comment:** Two commenters stated that the term "telepsychiatry" should be changed to "telebehavioral health". One commenter believes that OMH should work with the New York State Department of Health and the New York State Office of Alcoholism and Substance Abuse Services to promulgate regulations that permit telepsychiatry across all health settings. A healthcare association stated that OMH should allow for telepsychiatry services between differently licensed providers (e.g., Article 28 and 31 providers).

**Response:** The term "telepsychiatry" is consistent with the nomenclature in the field and does not in itself preclude the use of telemedicine across the spectrum of psychiatric and behavioral health care.

**Comment:** One commenter stated that Medicaid reimbursement under the regulation should be reconciled with New York's Medicaid policy.

**Response:** Reimbursement for telepsychiatry has already been addressed with the New York State Department of Health (DOH) and conforms to reimbursement criteria defined by the Centers for Medicare & Medicaid Services (CMS): the same as face-to-face encounters.

**Comment:** One commenter expressed concern regarding provisions related to the use of interpreters. The commenter believes that, due to the natural tendencies of recipients to direct communication toward interpreters rather than providers, the regulation should be amended so the

interpreter is present with the provider, rather than recipient. The commenter believes this is especially critical with providing telepsychiatry services to patients whose primary language is American Sign Language.

**Response:** OMH agrees. The agency has removed the language requiring the interpreter be physically present with the patient so greater communication versatility will allow for culturally competent treatment.

**Comment:** The above-referenced commenter stated that the regulation is written to address recipients who do not speak English, but in some cases, providers do speak their language. The commenter believes the regulation should be amended to clarify that culturally competent translation services be provided when the recipient and the provider do not speak the same language.

**Response:** OMH agrees. The agency has amended the language to simply read, "culturally competent translation services will be provided when the recipient and the provider do not speak the same language."

**Comment:** This same commenter suggested that due to the scarcity of interpreter services in many areas of the state, the regulations should allow for the use of "language-lines" by three-way calling or speaker phones. This commenter also believes that clarification should be provided with respect to the term "face-to-face".

**Response:** The term "face-to-face" has the same meaning as it has throughout the Part 599 regulations. The amendment indicates those encounters that require face-to-face contact in the Part 599 regulations can be accomplished through telepsychiatry, and will be sufficient for billing purposes. With respect to suggesting a reference to language-lines, they are one of many ways in which culturally competent treatment services can be provided, and as such are already implicit in this requirement.

---



---

## Department of Motor Vehicles

---



---

### NOTICE OF ADOPTION

#### **Relicensing After Revocation**

**I.D. No.** MTV-48-14-00006-A

**Filing No.** 52

**Filing Date:** 2015-01-21

**Effective Date:** 2015-02-11

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

**Action taken:** Amendment of sections 136.1, 136.4 and 136.5 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 501(2)(c), 510(6), 1193(2)(b)(12), (c)(1) and 1194(2)(d)(1)

**Subject:** Relicensing after revocation.

**Purpose:** To clarify and strengthen criteria relative to relicensing after revocation.

**Text or summary was published** in the December 3, 2014 issue of the Register, I.D. No. MTV-48-14-00006-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

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

The agency received no public comment.

---



---

## Office of Parks, Recreation and Historic Preservation

---



---

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

#### **Resident Curator Program**

**I.D. No.** PKR-06-15-00002-P

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

**Proposed Action:** Amendment of section 389.1; and addition of section 389.2 to Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, section 3.09(2-h)

**Subject:** Resident Curator Program.

**Purpose:** To rehabilitate vacant and unused buildings at no cost to the State by leasing the buildings to private individuals.

**Text of proposed rule:** Paragraphs (4) and (5) of subdivision (a) of § 389.1 of Title 9 NYCRR are amended and a new paragraph 6 is added to read as follows:

(4) facilities operated under concession agreements in accordance with subdivision 2-a of section 3.09 of the Parks, Recreation and Historic Preservation Law; [and]

(5) historic sites and recreational facilities operated on behalf of the office by not-for-profit corporations acting pursuant to license agreements entered into under subdivision 2 of section 3.09 of the Parks, Recreation and Historic Preservation Law[.]; and

(6) buildings operated under the resident curator program established by subdivision 2-h of section 3.09 of the Parks, Recreation and Historic Preservation Law.

A new section 389.2 is added to Part 389 of Title 9 NYCRR to read as follows:

*Section 389.2 Resident curator program.*

(a) Purpose of this section.

(1) There is established within the office a resident curator program to encourage investment, restoration and occupancy of certain buildings which currently serve no park-related purpose and which, if they remain unoccupied, are at risk of progressive deterioration. Buildings identified under the resident curator program have been determined by the office to be obsolete for purposes of advancing the core mission of the office and are better suited for rehabilitation and residential use.

(2) Pursuant to the provisions of this section, responsible individuals will be invited to rehabilitate buildings under the jurisdiction of the office for the purpose of residential occupancy.

(b) Definitions.

(1) "Resident curator" means an individual who enters into a lease with the office to rehabilitate and maintain certain property, which may include buildings or structures and surrounding land in exchange for occupancy of the property.

(2) "Responsible individual" means a person qualified as a responsible vendor under State procurement guidelines and who demonstrates the skills, knowledge, interest, and financial means to invest in, occupy, and improve the property; and who demonstrates interests compatible with the mission of the office as well as a desire to work in a partnership with the office.

(3) "Work plan" means the schedule for improvements to the subject property, estimated budget, sources of funding, a list of required approvals, and any similar information submitted by an applicant in response to the request for proposals (RFP) issued by the office.

(c) Criteria for selection of a resident curator.

(1) Evaluation criteria. The office shall evaluate proposals from responsible individuals using the criteria described in the RFP and the following:

(i) Compatibility of proposed rehabilitation concept. The proposed concept for rehabilitation and work plan for the improvements to the property shall be compatible with the office's mission and management of the state park where the property is located, the surrounding environment, and the historic character of the property, and shall consider the use of environmentally sustainable products and practices in rehabilitation, maintenance, and management.

(ii) Feasibility of work plan. The proposed work plan and concept for rehabilitation must be feasible in light of proposed capital investments and capable of being performed within the lease term as determined by the office.

(iii) Experience and qualifications. An applicant shall demonstrate the appropriate experience and qualifications and/or access to resources required to undertake, implement, and supervise the work plan as well as maintain the property and improvements for the duration of the lease as determined by the office.

(iv) Financial capability. The work plan shall demonstrate adequate sources of funding to finance the schedule of improvements, and to maintain adequate insurance coverage throughout the duration of the lease. Additionally, the applicant shall be capable of paying all fees or other costs, including any permit fees, maintenance costs, and utility charges, which may arise under the lease.

(d) Criteria for establishing length of lease term and amount of rent.

Length of lease term and Rent. The length of the lease shall take into account the financial investment proposed by the resident curator, and the amount of time required to complete the rehabilitation of the property.

The term of any lease shall not exceed forty years. Rent, which may be nominal, and length of term shall reflect estimated post-renovation market value and capital investments by the resident curator, and shall consider geographic location, future maintenance obligations and other considerations.

(e) Criteria for use and restrictions of the leased property.

(1) The only allowable use for the property shall be as a single family residence.

(2) Restrictions on use of the property:

(i) All work on historic structures shall comply with the Secretary of the Interior's Standards for Rehabilitation;

(ii) No work shall be performed on the property or a specific building or structure without the resident curator having first obtained or caused to be obtained all relevant permits and approvals from the office and state and/or federal agencies, as required by law;

(iii) No work shall be performed on the property until the resident curator has provided evidence of satisfactory insurance coverage to the office;

(iv) No occupancy of any building shall occur until a certificate of occupancy or other relevant approval is obtained and the resident curator has provided evidence of satisfactory insurance coverage to the office;

(v) The assignment, sub-lease, including any sub-lease via any for "rent by owner," transfer, conveyance, or disposal of the resident curator's lease interest in the property in whole or in part is prohibited, except where specifically approved in writing by the Commissioner;

(vi) The property shall not be used as security for any debt.

(3) The resident curator shall document the rehabilitation work and improvements to the property and make this information available to the public in a manner approved by the office.

(4) The office shall determine whether there shall be public access to the leased premises, and if so, such determination shall be documented in the lease.

(5) Upon termination of any lease executed pursuant to this section, full use and enjoyment of the property reverts automatically to the State.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kathleen L. Martens, Associate Attorney, OPRHP, Albany, NY 12238(USPS mail), 625 Broadway, Albany, NY 12207 (courier delivery), (518) 486-2921, email: rule.making@parks.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.

#### Regulatory Impact Statement

##### 1) Statutory Authority

Section 3.09(2-h) of the Parks, Recreation and Historic Preservation Law (PRHPL) authorizes OPRHP to establish the resident curator program in order to lease three specific buildings to private persons to be used as single family homes for terms of up to forty years. Also, Section 3.09(2-h) requires the Commissioner to adopt rules and regulations including: (i) criteria for selecting responsible resident curators; (ii) criteria for the length of the lease term; (iii) criteria for the amount of rent to be charged to resident curators which may be nominal factoring in the capital investment required to rehabilitate and maintain the leased premises; and (iv) criteria for determining appropriate residential uses and restrictions, including whether the public should be able to access the leased premises.

##### 2) Legislative Objectives

The legislative objective is to rehabilitate vacant and unused buildings at no cost to the State through a resident curator program that would provide private sector funding to buildings that currently serve no park related purpose. PRHPL section 3.09(2-h) currently authorizes this program at three specific properties.

##### 3) Needs and Benefits

OPRHP has an inventory of residential buildings within its park and historic sites that are not being used for park or historic site purposes and/or have deteriorated to the point that significant capital investment would be required for year-round use. The three buildings identified in section 3.09(2-h) of the PRHPL are part of this inventory of deteriorating buildings. These buildings are not integral to OPRHP's mission; therefore, providing capital funds to rehabilitate them is not an agency priority. In essence, the resident curator program is currently the only mechanism for placing these buildings back into productive use.

Similar to successful resident curator programs in other states, New York's resident curator program is intended to preserve these properties through a unique public-private partnership. The resident curator agrees to rehabilitate and maintain the property in return for a long-term residential lease from the State.

##### 4) Costs

Costs to curators will vary depending on the size and rehabilitation needs of the property, as well as the various fixtures used in the property. Prevailing wages must be paid by the resident curator. Depending on the

structure, OPRHP estimates that a resident curator could spend between \$150,000-\$400,000 for the rehabilitation plus additional unquantifiable costs. Curators will be responsible for all utilities, fees, and maintenance costs during the lease term. The amount of upfront investment in the property will determine the amount of annual rent, which could be nominal. The resident curator program is voluntary. No person is required to participate as a resident curator; however, responsible individuals who enter into a lease pursuant to the program must comply with these regulations, and, as applicable, the terms of the lease.

OPRHP is required to conduct a publicly announced competitive process in order to solicit resident curators. OPRHP will incur minimal costs to produce and issue the Request For Proposal (RFP), select resident curators, and negotiate the terms of the lease. In addition, there will be some costs associated with OPRHP oversight of the program.

5) Local Government Mandates

The proposed amendment would not impose any program service, duty, or other responsibility upon any county, city, town, village, school district or other special district.

6) Paperwork

This rule would create additional paperwork for the production, issuing, and processing of the RFPs to select resident curators in an open and competitive process. OPRHP serves as the code enforcement office and would issue all building permits and certificates of occupancy. Unnecessary paperwork will be kept at a minimum where interested parties have access to email. There are no reporting requirements related to the program other than the curator's schedule of improvements and this document is submitted one time when the curator submits the original application. As curators progress through the rehabilitation process, OPRHP will request updates via email. Additionally, resident curators will be required to document the rehabilitation work in a manner determined by the office.

7) Duplication

No other state or federal regulations govern the leasing of state buildings under OPRHP's jurisdiction for this purpose and thus the rule does not duplicate, overlap, or conflict with any other state and federal requirements.

8) Alternatives

The Legislature established the resident curator program and directed OPRHP to establish certain regulatory criteria. PRHPL currently authorizes the resident curator program to be used to rehabilitate three identified properties. The criteria in the regulation should enable OPRHP to maximize public participation in the RFP process despite the expense required to rehabilitate these deteriorating properties and other properties which may be added to the program in the future. When considering criteria for public access, OPRHP considered and rejected requiring annual physical public access to the buildings in a similar fashion to an "open house," as required by state grants for historic rehabilitation. The rule as written allows OPRHP to consider public access if appropriate, but the rule does not require public access in all cases because the buildings currently included in this program and most likely to be included in the future are not of major historical significance to justify imposing such a burden on the potential resident curator.

9) Federal Standards

The rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

10) Compliance Schedule

The rule would take effect on the day that the Notice of Adoption is published in the New York State Register.

**Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis is not submitted with this notice because the rule will not impose any adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses or local governments. The proposed rule allows OPRHP under the resident curator program to lease buildings and associated property to private persons for residential purposes for terms of up to forty years. The resident curator program does not impose any additional burdens on local government, nor does the program adversely impact small businesses. Conversely, the resident curator program may benefit small businesses and local government by attracting outside investment.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not submitted with this notice because the rule will not impose any adverse impact or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The proposed rule allows OPRHP through the resident curator program to lease buildings and associated property to private persons for residential purposes for terms of up to forty years. The specific properties currently eligible for participation in the program are located in Suffolk County.

**Job Impact Statement**

A Job Impact Statement is not submitted with this notice as the rule allows OPRHP to partner with a resident curator who agrees to rehabilitate and

maintain the property using private dollars, in return for a long-term lease of up to forty years. Through the program, OPRHP will lease buildings and associated property to private persons for residential purposes. Therefore, the rule will not have a substantial adverse impact on jobs and employment opportunities. In addition to attracting outside investment, however, the resident curator program should have a positive impact on jobs and employment opportunities as the resident curators hire local contractors to assist and manage in the construction and rehabilitation of the property.

---



---

## Public Service Commission

---



---

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

**Petition for Submetering of Electricity**

**I.D. No.** PSC-06-15-00003-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by City Point Residential LLC, to submeter electricity at 366 Flatbush Avenue Extension, Brooklyn, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

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

**Purpose:** To consider the request of City Point Residential LLC, to submeter electricity at 366 Flatbush Avenue Ext, Brooklyn, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by City Point Residential LLC, to submeter electricity at 366 Flatbush Avenue Extension, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc., and to take other actions necessary to address the petition.

**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.ny.gov/f96dir.htm>. For questions, contact:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

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

**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.

(15-E-0005SP1)

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

**Whether to Make Revisions to Rider S — Commercial System Relief Program and Rider U — Distribution Load Relief Program**

**I.D. No.** PSC-06-15-00004-P

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

**Proposed Action:** The Commission is considering whether to approve, modify or deny, in whole or in part, tariff revisions filed by Consolidated Edison Company of New York, Inc. concerning changes to its Demand Response Programs regarding pledge reductions.

**Statutory authority:** Public Service Law, section 66(1), (12)(a) and (b)

**Subject:** Whether to make revisions to Rider S — Commercial System Relief Program and Rider U — Distribution Load Relief Program.

**Purpose:** Whether to make revisions to Rider S — Commercial System Relief Program and Rider U — Distribution Load Relief Program.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) to make revisions to its electric tariff schedule, P.S.C. No.10. The Company proposes to make tariff revisions to Rider S — Commercial System Relief Program and Rider U — Distribution Load Relief Program in compliance with Order Clause 3 of Commission Order On Proposed Tariff Amendments, issued January 9, 2015 in Case 13-E-0573 regarding pledge reductions. The Company was directed to file tariff amendments describing the specific methodology to be used to determine the amount of demand associated with each electric efficiency project along with the process requirements and the process that participants must follow to request a pledge reduction and be allowed to comment. The amendments have an effective date of May 1, 2015. The Commission may consider any related matters.

**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.ny.gov/f96dir.htm>. For questions, contact:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: [elaine.agresta@dps.ny.gov](mailto:elaine.agresta@dps.ny.gov)

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

**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.

(13-E-0573SP5)