

# RULE MAKING ACTIVITIES

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

AAM -the abbreviation to identify the adopting agency  
01 -the *State Register* issue number  
96 -the year  
00001 -the Department of State number, assigned upon receipt of notice.  
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

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## Office of Children and Family Services

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### EMERGENCY RULE MAKING

#### Mandatory Disqualification of Foster and Adoptive Parents Based on Criminal History

**I.D. No.** CFS-27-09-00001-E

**Filing No.** 691

**Filing Date:** 2009-06-17

**Effective Date:** 2009-06-17

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

**Action taken:** Amendment of sections 421.27(d)(1), 443.8(e)(1); repeal of sections 421.27(k) and 443.8(k) of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f) and 378-a(2) as amended by L. 2008, ch. 623 and L. 1997, ch. 436

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

**Specific reasons underlying the finding of necessity:** The regulations must be filed on an emergency basis to protect the health and safety of children in foster boarding homes and adoptive placements. The regulations reflect newly enacted state statutory standards.

**Subject:** Mandatory disqualification of foster and adoptive parents based on criminal history.

**Purpose:** The regulations implement Chapter 623 of the Laws of 2008 relating to criminal history checks of foster and adoptive parents.

**Text of emergency rule:** Paragraph (1) of subdivision (d) of section 421.27 is amended to read as follows:

(d) (1) Except [as authorized herein and] as set forth in subdivision (h) of this section, the authorized agency must deny an application to be an approved adoptive parent or revoke the approval of an approved adoptive parent when a criminal history record of the prospective or approved adoptive parent reveals a conviction for:

(i) a felony conviction at any time involving;

(a) child abuse or neglect;

(b) spousal abuse;

(c) a crime against a child, including child pornography;

(d) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery[, unless the prospective adoptive parent or approved adoptive parent demonstrates that:

(1) such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and

(2) approval of the application or continuing approval will not place the child's safety in jeopardy and will be in the best interests of the child]; or

(ii) a felony conviction within five years for physical assault, battery, or a drug-related offense [, unless the prospective adoptive parent or approved adoptive parent demonstrates that:

(a) such denial will create an unreasonable risk of harm to the physical or mental health of the child; and

(b) approval of the applicant will not place the child's safety in jeopardy and will be in the best interests of the child].

*Notwithstanding any other provision to the contrary, with regard to an adoptive parent fully approved prior to October 1, 2008, the provisions of this paragraph only apply to mandatory disqualifying convictions that occur on or after October 1, 2008.*

Subdivision (k) of section 421.27 is repealed.

Paragraph (1) of subdivision (e) of section 443.8 is amended to read as follows:

(e)(1) Except as [authorized herein and as] set forth in this section, the authorized agency must deny an application for certification or approval as a certified or approved foster parent or deny an application for renewal of the certification or approval of an existing foster parent *submitted on or after October 1, 2008* or revoke the certification or approval of an existing foster parent when a criminal history record of the prospective or existing foster parent reveals a conviction for:

(1) a felony conviction at any time involving:

(a) child abuse or neglect;

(b) spousal abuse;

(c) a crime against a child, including child pornography; or

(d) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery; unless the applicant or approval or certification as a foster parent or the certified or approved foster parent demonstrates that;

(1) such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and

(2) continued certification, approval or renewal will not place the child's safety in jeopardy and will be in the best interests of the child]; or

(ii) a felony conviction within the past five years for physical assault, battery, or a drug-related offense; unless the applicant for certification or approval as a foster parent or the certified or approved foster parent demonstrates that:

(a) such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and

(b) continued certification, approval or renewal will not place the child's safety in jeopardy and will be in the best interests of the child].

*Notwithstanding any other provision to the contrary, with regard to a foster parent fully certified or approved prior to October 1, 2008, the provisions of this paragraph only apply to mandatory disqualifying convictions that occur on or after October 1, 2008.*

Subdivision (k) of section 443.8 is repealed.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 14, 2009.

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

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

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

Section 34(3)(f) of the SSL authorizes the commissioner of OCFS to establish regulations for the administration of public assistance and care within New York State, both by the State and by local government units.

Section 378-a(2) of the SSL requires criminal history record reviews of prospective foster and adoptive parents, as well as other persons over the age of 18 who reside in the home of such applicants.

Chapter 623 of the laws of 2008 amended the criminal history review standards set forth in section 378-a(2) of the SSL. Section 5 of Chapter 623 of the Laws of 2008 authorizes OCFS to promulgate rules and regulations on an emergency basis for the purpose of implementing the provision of the Chapter.

##### 2. Legislative objectives:

The regulations implement Chapter 623 of the Laws of 2008 relating to criminal history record reviews of applicants for certification or approval as foster or adoptive parents. The regulations reflect amendments to federal and state statutory standards relating to situations where such applicant has been convicted of a mandatory disqualifying crime. The regulations eliminate the category of presumptive disqualifying crimes and replace that category with the category of mandatory disqualifying crimes for applicants for certification or approval as foster or adoptive parents.

Chapter 623 of the Laws of 2008 and the regulations implement changes in federal statutes that had previously allowed states to opt out of federal criminal history record review requirements for prospective foster or adoptive parents and that required the application of mandatory disqualification for certain categories of felony convictions. The federal Adam Walsh Child Protection and Safety Act of 2006 (P.L.109-248) eliminated effective October 1, 2008 the ability of states to opt out of federal criminal history review standards and required states to comply in order to receive federal Title IV-E payments for foster care or adoption assistance.

##### 3. Needs and benefits:

The regulations are necessary for OCFS to conform to federal and state statutory changes to criminal history record review standards. The regulations reflect the federal requirement set forth in the federal Adam Walsh Child Protection and Safety Act of 2006 that states must adopt federal mandatory disqualification standards for prospective foster and adoptive parents who are convicted of certain categories of felonies. Compliance with the federal requirement is a condition for New York State to have a compliant Title IV-E State Plan which is a condition for New York State to receive federal funding for foster care and adoption assistance.

The regulations are also necessary to reflect amendments to section 378-a(2) of the SSL that eliminated the category of presumptive disqualifying crimes. The regulations reflect the mandatory disqualification of an applicant to be certified or approved as a foster or adoptive parent when such applicant has been convicted of a certain category of felony.

The regulations will not impact persons who were fully certified or approved as a foster or adoptive parent prior to October 1, 2008 for convictions that occurred prior to that date.

##### 4. Costs:

The regulations are necessary to comply with federal requirements that states perform background checks and review the criminal history of prospective foster and adoptive parents as a prerequisite for continuation of federal funding under Title IV-E of the Social Security Act effective October 1, 2008. New York State must implement provisions set forth in these regulations by October 1, 2008, or face significant losses of earned federal revenue. The enactment of Chapter 623 of the Laws of 2008 and these regulations will preserve approximately \$600 million in federal Title IV-E funding earned on an annual basis.

##### 5. Local government mandates:

The regulations adopt the standards that were in place in 1999 with the enactment of Chapter 7 of the Laws of 1999, but were amended by Chapter 145 of the Laws of 2000 that created the criteria of presumptive disqualifying crimes.

Social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe have been required to perform criminal history record reviews since 1999 in regard to New York State checks through the New York State Division of Criminal Justice Services and since 2007 in regard to a national criminal history record check through the Federal Bureau of

Investigation. The regulations do not expand who must have a criminal history record check in relation to foster care or adoption.

##### 6. Paperwork:

Authorized agencies are currently required to document their criminal history record review activities. The regulations do not impose additional paperwork requirements on social services districts or voluntary authorized agencies.

##### 7. Duplication:

The regulations do not duplicate other State requirements.

##### 8. Alternatives:

The proposed regulations are required to implement the state law, Chapter 623 of the Laws of 2008 and the federal Adam Walsh Child Protection and Safety Act of 2006.

##### 9. Federal standards:

The federal Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) eliminated the ability of states to opt out of the federal criminal history record review requirements set forth in section 471(a)(20) of the Social Security Act for prospective foster and adoptive parents. New York State had opted out of the federal requirements in 2000 through Chapter 145 of the Laws of 2000 that created the category of presumptive disqualifying crimes. Effective October 1, 2008, for a state to have a compliant Title IV-E State Plan, the state must apply the federal criminal history record review standards for applicants for certification or approval as foster or adoptive parents. Those standards prohibit the final certification or approval of a prospective foster or adoptive parent who has a felony conviction at any time for abuse or neglect, spousal abuse, or a crime against a child or for a crime involving violence. In addition, the federal statutes prohibit final certification or approval of a prospective foster or adoptive parent who has been convicted within 5 years of such application for assault or a drug related offense.

##### 10. Compliance schedule:

Chapter 623 of the Laws of 2008 provides for an October 1, 2008 effective date of the standards set forth in the regulations. OCFS is developing the necessary revised forms and instructions to authorized agencies to implement the revised standards.

#### **Regulatory Flexibility Analysis**

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

The regulations will affect social services districts, Indian tribes with an agreement with the State of New York to provide foster care and adoption services and voluntary authorized agencies that certify or approve prospective foster and adoptive parents. There are 58 social services districts and approximately 160 voluntary authorized agencies. The St. Regis Mohawk Tribe has an agreement with the State of New York to provide foster care and adoption services.

##### 2. Reporting, recordkeeping and compliance requirements:

The regulations are necessary to comply with federal and state statutory requirements relating to criminal history record reviews of persons applying for certification or approval as foster or adoptive parents. The regulations reflect the enactment by Chapter 623 of the Laws of 2008 regarding mandatory disqualifying crimes for applicants for certification or approval as foster or adoptive parents and the elimination of the category of presumptive disqualifying crimes for such applicants. The adoption of mandatory disqualifying crimes is required by the federal Adam Walsh Child Protection and Safety Act of 2006 in order to enable New York State to continue to receive federal funding for foster care and adoption assistance pursuant to Title IV-E of the Social Security Act. The 2006 federal Act requires implementation of this provision effective October 1, 2008.

Social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe will continue to process requests for criminal history record reviews as originally mandated by Chapter 7 of the Laws of 1999. The regulations reflect modifications to the standards for the certification or approval of prospective foster or adoptive parents when an applicant has been convicted of a mandatory disqualifying crime.

The regulations will not impose additional recordkeeping or reporting requirements on agencies. The regulations will eliminate a notification that is presently required in regard to presumptive disqualifying crimes.

##### 3. Professional services:

No new or additional professional services would be required by small businesses or local governments in order to comply with the regulations.

##### 4. Compliance costs:

The regulations are necessary to comply with federal requirements that states perform background checks and review the criminal history of prospective foster and adoptive parents as a prerequisite for continuation of federal funding under Title IV-E of the Social Security Act effective October 1, 2008. New York State must implement the provisions set forth in these regulations by October 1, 2008, or face significant losses of earned federal revenue. The enactment of Chapter 623 of the Laws of 2008 and these regulations will preserve approximately \$600 million in federal Title IV-E funding earned on an annual basis.

5. Economic and technological feasibility:

The social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe affected by the regulations have the economic and technological ability to comply with the regulations. The regulations do not expand the categories of persons for whom a criminal history record review must be completed. OCFS is making modifications to the statewide automated child welfare information system, CONNECTIONS and to its criminal history information system, CHRS to support and implement the regulations.

6. Minimizing adverse impact:

The regulations reflect specific amendments to state statute enacted by Chapter 623 of the Laws of 2008 and amendments to federal standards as enacted by the Adam Walsh Child Protection and Safety Act of 2006. The process for fingerprinting foster or adoptive parents and other persons over the age of 18 who reside in the home of the applicants has been the same since 1999 for in-state checks through the New York State Division of Criminal Justice Services and since 2007 for national checks through the Federal Bureau of Investigation. While the regulations will change the standards following the receipt of the result of the criminal history check, the regulations will not change the process for taking and reviewing of fingerprints. The regulations build on existing procedures.

7. Small business and local government participation:

OCFS advised social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe of the federal amendment to criminal history record checks in the federal Adam Walsh Child Protection and Safety Act of 2006 and the anticipated impact on New York State standards in an administrative directive (07-OCFS-ADM-01 State and National Criminal History Record Checks (for Foster/Adoptive Parents) issued on February 7, 2007. A reminder of the federal statutory change and related impact on New York State standards was sent to the same parties in an informational letter (08-OCFS-INF-07 Preparation for the Elimination of the "Out-Out" Provision for conducting Criminal History Record Checks) issued May 21, 2008. The federal statute was posted on the OCFS website and was discussed at a video conference held in October of 2006 at which agencies were invited to view and to ask questions. A tape of that conference is also available to all agencies that were not able to attend.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

The regulations will affect 44 social services districts that are defined as being rural counties and the seven social services districts that include significant rural areas within their borders. The regulations will also affect the St. Regis Mohawk Tribe that has an agreement with the State of New York to provide foster care and adoption services and which services a rural community. In addition, there are approximately 100 voluntary authorized agencies that service rural communities that will be affected by the regulations.

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

The regulations are necessary to comply with federal and state statutory requirements relating to criminal history record reviews of persons applying for certification or approval as foster or adoptive parents. The regulations reflect the enactment by Chapter 623 of the Laws of 2008 regarding mandatory disqualifying crimes for applicants for certification or approval as foster or adoptive parents and the elimination of the category of presumptive disqualifying crimes for such applicants. The adoption of mandatory disqualifying crimes is required by the federal Adam Walsh Child Protection and Safety Act of 2006 in order to enable New York State to continue to receive federal funding for foster care and adoption assistance pursuant to Title IV-E of the Social Security Act. The federal 2006 Act requires implementation of this provision effective October 1, 2008.

Social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe will continue to process requests for criminal history record reviews as originally mandated by Chapter 7 of the Laws of 1999. The regulations reflect modifications to the standards for the certification or approval of prospective foster or adoptive parents when an applicant has been convicted of a mandatory disqualifying crime.

The regulations will not impose additional recordkeeping or reporting requirements on agencies. The regulations will eliminate a notification that is presently required in regard to presumptive disqualifying crimes.

3. Costs:

The regulations are necessary to comply with federal requirements that states perform background checks and review the criminal history of prospective foster and adoptive parents as a prerequisite for continuation of federal funding under Title IV-E of the Social Security Act effective October 1, 2008. New York State must implement the provisions set forth in these regulations by October 1, 2008, or face significant losses of earned federal revenue. The enactment of Chapter 623 of the Laws of 2008 and these regulations will preserve approximately \$600 million in federal Title IV-E funding on an annual basis.

4. Minimizing adverse impact:

It is anticipated that the regulations will not have an adverse impacts on rural areas.

5. Rural area participation:

The Office of Children and Family Services (OCFS) advised social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe of the federal amendment to criminal history record checks by the Adam Walsh Child Protection and Safety Act of 2006 and the anticipated impact on New York State standards in an administrative directive (07-OCFS-ADM-01 State and National Criminal History Record Checks (for Foster/Adoptive Parents) issued on February 7, 2007. A reminder of the federal statutory change and related impact on New York State standards was sent to the same parties in an informational letter (08-OCF-INF-07 Preparation for the Elimination of the "Opt-Out" Provision for Conducting Criminal History Record Checks) issued on May 21, 2008. The federal statute was posted on the OCFS website and was discussed at a statewide video conference held in October of 2006 at which agencies were invited to view and to ask questions. A tape of the video conference is available for agencies not able to attend.

**Job Impact Statement**

A full job impact statement has not been prepared for the regulations which contain new requirements imposed by Chapter 623 of the Laws of 2008. The regulations will not have an impact on jobs and employment opportunities because they will not impact the number of staff authorized agencies must maintain to certify, approve or supervise foster or adoptive homes. The regulations impact persons who are not in an employment relationship with the agency.

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## Department of Civil Service

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

**Jurisdictional Classification**

**I.D. No.** CVS-27-09-00003-P

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Housing and Community Renewal," by increasing the number of positions of Special Assistant from 8 to 9.

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

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

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

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

**Jurisdictional Classification**

**I.D. No.** CVS-27-09-00004-P

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Correctional Services, by deleting therefrom the positions of Deputy Superintendent for Correctional Facility 3 (10); and, in the Executive Department under the subheading "Commission on Quality of Care and Advocacy for Persons with Disabilities," by deleting therefrom the position of Training and Staff Development Evaluation Specialist 1 (1).

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

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

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

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## Crime Victims Board

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

**Verification of Dependency and Financial Circumstances**

**I.D. No.** CVB-27-09-00006-P

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

**Proposed Action:** Amendment of section 525.12(e) and (f) of Title 9 NYCRR.

**Statutory authority:** Executive Law, sections 631(2), (3) and 632(1)

**Subject:** Verification of dependency and financial circumstances.

**Purpose:** To decrease the Board's periodic verification of the dependency and financial circumstances of certain claimants.

**Text of proposed rule:** Subdivisions (e) and (f) of section 525.12 are amended to read as follows:

(e) In death cases the board shall, at least every [six] *twelve* months, verify the dependency and financial circumstances of the claimants; and upon finding a change, the board may reduce or increase the proportion of the allowance and award to the claimants as the circumstances warrant.

(f) In protracted disability cases the board shall, at least every [six] *twelve* months, verify the disability of the claimant to determine whether he/she is entitled to continue to receive periodical payments either in the amount awarded or in a reduced amount.

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

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

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

**Regulatory Impact Statement**

1. Statutory authority: Article 22 of the New York State Executive Law creates the Crime Victims Board (the Board) and section 623(3) grants the Board the authority to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Article 22. Executive Law section 631(2) provides that the Board may make awards for out-of-pocket losses which may include loss of earnings or support. Section 631(3) further limits loss of earnings and support to the actual loss sustained, with weekly and cumulative caps of \$600 and \$30,000, respectively. Section 631(6) states that claims may be approved only if the board or board member, as the case may be, finds that unless the claimant's award is approved they will suffer financial difficulty, but no finding of financial difficulty is required for a claim for an emergency award or an award less than five thousand dollars. Section 632(1) relates to the periodic payments of loss of earnings and support to claimants (also referred to as "protracted payments"), based on the financial circumstances outlined under section 631(6). These changes are proposed in order for the Board to meet its statutory obligations while increasing agency efficiency and reducing the reporting obligations on its claimants.

2. Legislative objectives: By enacting the New York State Executive Law sections 631 and 632, the Legislature sought to ensure that the Board could reimburse certain out-of-pocket losses as a result of the injury or death upon which the claim is based, including loss of earnings and support, dependent upon the financial circumstances of the claimant both when the award is made and during the period of protracted payments to the claimant.

3. Needs and benefits: Current regulations (9 NYCRR 525.12) require the Board to verify the dependency and financial circumstances of the claimants receiving periodic payments for loss of support or earnings every six months. Under current staffing conditions, these requirements are significantly onerous and frequently found to be unnecessary. At any given time during the course of an average year, there are approximately 100 claimants receiving protracted payments, which under current regulations represent 200 reviews of their financial circumstances. The proposed changes would require this verification every twelve months, instead of the current six month requirement, cutting the number of these reviews during the course of an average year in half. This will result in greater efficiency and better use of limited state resources and staff time. They have the effect of streamlining the Board's internal processes by alleviating the self-imposed requirements while at the same time fulfilling the Board's fiduciary obligations. The proposed changes will have the additional benefit of reducing the reporting obligations on claimants, making the claim process less onerous for claimants as well.

4. Costs: a. Costs to the state. The proposed regulations would not impose any additional costs to the agency or state. The proposed regulatory additions should, in fact, result in fiscal savings to the agency and state by increasing staff efficiency.

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

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

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

6. Paperwork: These proposed regulations will decrease the paperwork requirements of both agency staff and claimants by reducing reporting obligations. They will lead to greater efficiency and better use of limited state resources and staff time.

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

8. Alternatives: Current regulations (9 NYCRR 525.12) require the Board to verify the dependency and financial circumstances of the claimants receiving periodic payments for loss of support or earnings every six months. These proposed changes have been offered as a way to alleviate the self-imposed requirements while at the same time fulfilling the Board's fiduciary obligations. The Board could have chosen an eight or ten month period, but a one year time period was chosen because it is similar to other reviews of claimant status. Additionally, other reviews of claimant status (e.g., insurance, medical, mental health) are done on an annual basis and the change proposed would allow for consolidation of those requests. Less frequent, periodic verification may result in increased overpayments to otherwise ineligible claimants.

9. Federal standards: These proposed regulations are not forbidden or duplicated by any federal requirements.

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

#### **Regulatory Flexibility Analysis**

The New York State Crime Victims Board (the Board) projects there will be no adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments in the State of New York as a result of this proposed rule change. This proposed rule change simply decreases the Board's periodic verification of the dependency and financial circumstances of claimants receiving payments for loss of earnings or support from every six months to every twelve months. Since nothing in this proposed rule change will create any adverse impacts on any small businesses or local governments in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Regulatory Flexibility Analysis is not required and therefore one has not been prepared.

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

The New York State Crime Victims Board (the Board) projects there will be no adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas in the State of New York as a result of this proposed rule change. This proposed rule change simply decreases the Board's periodic verification of the dependency and financial circumstances of claimants receiving payments for loss of earnings or support from every six months to every twelve months. Since nothing in this proposed rule change will create any adverse impacts on any public or private entities in rural areas in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Rural Area Flexibility Analysis is not required and therefore one has not been prepared.

#### **Job Impact Statement**

The New York State Crime Victims Board (the Board) projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this proposed rule change. This proposed rule change simply decreases the Board's periodic verification of the dependency and financial circumstances of claimants receiving payments for loss of earnings or support from every six months to every twelve months. Since nothing in this proposed rule change will create any adverse impacts on jobs or employment opportunities in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Job Impact Statement is not required and therefore one has not been prepared.

## Insurance Department

### EMERGENCY RULE MAKING

#### Standards for the Management of the New York State Retirement Systems

**I.D. No.** INS-27-09-00002-E

**Filing No.** 692

**Filing Date:** 2009-06-18

**Effective Date:** 2009-06-18

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

**Action taken:** Amendment of Part 136 (Regulation No. 85) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 314, 7401(a) and 7402(n)

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

**Specific reasons underlying the finding of necessity:** The Second Amendment to Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards of behavior with regard to investment of the Common Retirement Fund's assets, conflicts of interest, and procurement. In addition, it created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Insurance Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. Rather, only an immediate ban on the use of placement agents will ensure sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments. Accordingly, emergency adoption of the regulation is necessary for the general welfare.

**Subject:** Standards for the management of the New York State Retirement Systems.

**Purpose:** To ban the use of placement agents by investment advisors engaged by the state employees retirement system.

**Text of emergency rule:** Section 136-2.2 is amended to read as follows:  
§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

[(a) Retirement system shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.]

[(c)](a) Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the fund.

[(d) OSC shall mean the Office of the State Comptroller.]

[(e)](b) Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the [fund] Fund to provide technical or professional services to the [fund] Fund relating to investments by the [fund] Fund, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of money managers, securities, or other investments, or monitor investment performance.

(c) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.

(d) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law ("RSSL"), which holds the assets of the retirement system.

[f](e) Investment manager shall mean any person (other than an OSC employee) or entity engaged by the [fund] Fund in the management of part or all of an investment portfolio of the [fund] Fund. "Management" shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the [fund] Fund pursuant to RSSL § 177(7) shall be deemed to be the investment of the [fund] Fund in such investment entity (rather than in the assets of such investment entity).

(f) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.

(g) OSC shall mean the Office of the State Comptroller.

[(g)](h) Placement agent or intermediary shall mean any person or entity, including registered lobbyists, directly or indirectly engaged and compensated by an investment manager (other than [an] a regular employee of the investment manager) to promote investments to or solicit investment by [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] Fund, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of securing or influencing the decision to secure a particular transaction or investment by the Fund. [obtaining investments or providing other intermediary services with respect to the fund.] For purpose of this paragraph, the term "employee" shall include any person who would qualify as an employee under the federal Internal Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to secure or influence the decision to secure a particular transaction or investment by the Fund.

[(h)] Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.]

[(i)] Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.]

(i) Retirement System shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

(j) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. "Administrative services" do not include services provided to the Fund relating to Fund investments.

[(j)](k) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] Fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] Fund. For the purpose of this paragraph, the term "substantial financial interest" shall mean the control of the entity, whereby "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

[(k)] Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

Section 136-2.4(d) is amended to read as follows:

(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] Fund, to [address] preclude potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] Fund, [the Comptroller shall maintain a reporting and review system that must be followed whenever the fund] the Fund shall not [engages, hires, invests with, or commits] engage, hire, invest with or commit to[,] an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the [fund] Fund. [, or otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting

and review system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5(g) is amended to read as follows:

(g) The Comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system's] Retirement System's financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the fund to investment managers, consultants or advisors, and third party administrators;

[(4)] disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;]

[(5)](4) disclose on the OSC public website the fund's investment policies and procedures; and

[(6)](5) require fiduciary and conflict of interest reviews of the fund every three years by a qualified unaffiliated person.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 15, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Andrew Mais, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-2285, email: amais@ins.state.ny.us

#### Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 201, 301, 314, 7401(a), and 7402(n) of the Insurance Law.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, and to prescribe regulations interpreting the Insurance Law.

Section 314 requires every public retirement and pension system to file an annual report pursuant to section 307 of the Insurance Law. Section 314 also vests the Superintendent with the authority to promulgate standards with respect to the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every five years in accordance with sections 310, 311 and 312 of the Insurance Law. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in *Matter of Dinallo v. DiNapoli*, 9 N.Y. 3d 94 (2007), the Superintendent functions in two distinct capacities. The first is as regulator of the insurance industry. The second is as a statutory receiver of financially distressed insurance entities. Article 74 of the Insurance Law sets forth the Superintendent's role and responsibilities in this latter capacity.

Section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies.

Section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. Legislative objectives: Section 314 of the Insurance Law authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, standards with respect to the public retirement and pension systems of the State of New York.

This amendment is consistent with the public policy objectives that the Legislature sought to advance in enacting Section 314, which provides the Superintendent with the powers to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies, and financial soundness of the Fund.

3. Needs and benefits: The Second Amendment to Regulation 85, effective November 19, 2008, established new standards with regard to investment of the assets of the New York State Common Retirement Fund ("the Fund"), conflicts of interest, and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Insurance Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Su-

perintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Regulation 85 enacts an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the amendment defines "placement agent" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

4. Costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this amendment. There are no costs to the Insurance Department or other state government agencies or local governments.

5. Local government mandates: The amendment imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: No additional paperwork should result from the prohibition imposed by the amendment.

7. Duplication: This amendment will not duplicate any existing state or federal rule.

8. Alternatives: The Superintendent considered other ways to limit the influence of placement agents, including something less than an outright ban. But in the end, the Superintendent concluded that only an immediate ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department. The standards set forth in the amendment rule will be subject to comment and discussion at the public hearing required by Section 314 of the Insurance Law.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The emergency action requires immediate compliance with the ban on the use of placement agents by the Fund.

#### **Regulatory Flexibility Analysis**

1. Small businesses: This amendment sets standards for the management of the New York State and Local Employees' Retirement System and New York State and Local Police and Fire Retirement System (collectively, "the Retirement System"), and the New York State Common Retirement Fund ("the Fund"). These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Most among all affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened, is impacted by the amendment. The State Comptroller is not a "small business" as defined in section 102(8) of the State Administrative Procedure Act.

This amendment is also directed to placement agents that may be engaged by investment managers that do business with the Fund. Some placement agents may come within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The amendment bans the use of placement agents in connection with investments by the Fund. This may adversely affect the business of placement agents, who may lose opportunities to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries and to safeguard the integrity of the Fund's investments.

2. Local governments: This amendment should not impose any adverse compliance requirements or adverse impacts on local governments. The basis for this finding is that this amendment is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultant or advisors - none of which are local governments.

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

1. Types and estimated numbers of rural areas: Among the entities affected by this amendment, the Comptroller of the State of New York, investment managers, placement agents, consultants or advisors, and em-

ployees of Office of the State Comptroller - only investment managers, placement agents, consultants or advisors do business in various counties in the State, including rural areas as defined under State Administrative Procedure Act Section 102(13). The amendment bans the use of placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"), which may adversely affect the business of placement agents.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This amendment is not expected to impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.

4. Minimizing adverse impact: The amendment does not impose any impact unique to rural areas.

5. Rural area participation: Affected parties, including those doing business in rural areas of the State, will have the opportunity to comment upon and discuss the rule at the public hearing required by Section 314 of the Insurance Law.

#### **Job Impact Statement**

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. The amendment bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"). The amendment may adversely affect the business of placement agents, who could lose the opportunity to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries, and to safeguard the integrity of the Fund's investments.

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## Office of Mental Health

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### EMERGENCY RULE MAKING

#### **Certificate of Relief from Disabilities Related to Firearms Possession**

**I.D. No.** OMH-27-09-00005-E

**Filing No.** 693

**Filing Date:** 2009-06-17

**Effective Date:** 2009-06-17

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

**Action taken:** Addition of Part 543 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, section 7.09(b) and (j)

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

**Specific reasons:** The NICS Improvement Amendments Act of 2007 (Public Law 110-180, Section 105, enacted on January 8, 2008) requires that states have a relief from disabilities program that meets the requirements of the Act. In order to apply for the grant funding provided for under the NICS Improvement Amendments Act of 2007, the U.S. Department of Justice has required that all states must certify by June 22, 2009, that the state has implemented a relief from disabilities program.

**Subject:** Certificate of Relief from Disabilities Related to Firearms Possession.

**Purpose:** To establish an administrative "certificate of relief from disabilities" process pursuant to Federal law.

**Text of emergency rule:** A new Part 543 is added to read as follows:

§ 543.1 *Background and intent.*

(a) *The federal Brady Handgun Violence Prevention Act of 1993 prohibits any person from selling or otherwise disposing of any firearm or ammunition to any person who has been involuntarily "committed to a mental institution" (18 U.S.C. Section 922(d)(4)) and further prohibits any person who has been involuntarily "committed to a mental institution" from shipping or transporting in interstate or foreign commerce, or possessing in or affecting commerce, any firearm or ammunition; or receiving any firearm or ammunition which has been shipped or transported in interstate or foreign commerce (18 U.S.C. Section 922(g)(4)).*

(b) Under the federal NICS Improvement Amendments Act of 2007, Public Law 110-180, Section 105, the Brady Act was amended to establish the National Instant Criminal Background Check System (NICS). Upon being contacted by a federal firearm licensee prior to transferring a firearm to an unlicensed person, NICS will provide information on whether a person is prohibited from receiving or possessing a firearm under state or federal law. NICS contains records concerning certain events, such as criminal convictions and mental health adjudications and findings that may disqualify a person from purchasing a firearm. The 2007 amendments also require the establishment of a "certificate of relief from disabilities" process to permit a person who has been or may be disqualified from possessing a firearm pursuant to 18 U.S.C. Sections 922(d)(4) and (g)(4) to petition for relief from that disability.

(c) Section 7.09 of the Mental Hygiene Law authorizes the Office of Mental Health to collect, retain, modify or transmit data or records for inclusion in the NICS system for the purpose of responding to NICS queries regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 U.S.C. 921(a)(3). The records which the Office of Mental Health is authorized by law to collect, retain, modify, or transmit are expressly limited to persons who have been involuntarily committed pursuant to Articles 9 or 10 of the Mental Hygiene Law, Article 730 or Section 330.20 of the Criminal Procedure Law, Sections 402 or 508 of the Correction Law or Sections 322.2 or 353.4 of the Family Court Act. Mental Hygiene Law Section 7.09 also requires the Office to promulgate regulations establishing a "certificate of relief from disabilities" process for those persons whose records were provided to the Division of Criminal Justice Services or the Federal Bureau of Investigation by the Office pursuant to Mental Hygiene Law Section 7.09, and who have been or may be disqualified from possessing a firearm pursuant to 18 U.S.C. Sections 922(d)(4) and (g)(4).

(d) The purpose of these regulations is to establish the required administrative "certificate of relief from disabilities" process for persons whose records were submitted to the NICS system by the Office of Mental Health in accordance with Section 7.09 of the Mental Hygiene Law. (The Office of Mental Health has the authority under Section 7.09 of the MHL to transmit the records either directly to the NICS system or through the Division of Criminal Justice Services). Such relief will be based on a determination of whether the person's record and reputation are such that he/she will not be likely to act in a manner dangerous to public safety and where granting the relief would not be contrary to the public interest.

#### § 543.2 Legal Base.

(a) Section 7.09(b) of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

(b) Section 7.09(j) of the Mental Hygiene Law gives the Commissioner of Mental Health the power and responsibility to establish within the Office of Mental Health an administrative process to permit a person who has been or may be disqualified pursuant to an adjudication under New York State law from possessing a firearm to petition for relief from that disability, and to promulgate regulations for this purpose.

#### § 543.3 Applicability.

This Part applies to any person who has been or may be disqualified from possessing a firearm pursuant to 18 USC Sections 922(d)(4) and (g)(4), due to being committed to a mental institution or adjudicated as having a mental disability, as such terms are defined in this Part and whose records were submitted to the NICS system by the Office of Mental Health in accordance with Section 7.09 of the Mental Hygiene Law.

#### § 543.4 Definitions. For the purposes of only this Part:

(a) Adjudicated as having a mental disability or adjudication as having a mental disability means, and shall have the same meaning as the term "adjudicated as a mental defective" is defined in federal regulations at 27 C.F.R. 478.11, a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease is a danger to himself or to others or lacks the mental capacity to contract or manage his own affairs. Such term includes a finding of insanity by a court in a criminal case; and those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

(b) Committed to a mental institution means, as such term is defined in federal regulations at 27 C.F.R. 478.11, a formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. Such term includes a commitment to a mental institution involuntarily; commitment for mental defectiveness or mental illness; and commitments for other reasons, such as for drug use, provided, however, that such term does not include a person in a mental institution for observation or a voluntary admission to a mental institution. For purposes of this Part, committed to a mental institution shall include persons who have been in-

voluntarily committed or confined pursuant to Articles 9 or 10 of the Mental Hygiene Law, Article 730 or Section 330.20 of the Criminal Procedure Law, Section 402 or 508 of the Correction Law, or Section 322.2 or 353.4 of the Family Court Act.

(c) Mental Institution means and includes hospitals, as defined in Section 1.03 of the Mental Hygiene Law, that are licensed or operated by the Office of Mental Health and secure treatment facilities operated by such Office.

(d) Qualified psychiatrist means, as that term is defined in Section 9.01 of the Mental Hygiene Law, a physician licensed to practice medicine in New York state who:

(1) is a diplomate of the American board of psychiatry and neurology or is eligible to be certified by that board; or

(2) is certified by the American osteopathic board of neurology and psychiatry or is eligible to be certified by that board.

#### § 543.5 Process.

##### (a) Request for relief.

(1) An individual who has been or may be disqualified from attempting to purchase or otherwise possess a firearm in accordance with the provisions of subdivision (j) of Section 7.09 of the Mental Hygiene Law and whose records were submitted to the NICS system by the Office of Mental Health, may request administrative review by the Office to have his or her civil rights restored for such limited purpose.

(2) A request for relief shall be made on forms developed by the Office, which shall be available on the Office's public website. At a minimum, the forms shall require the applicant to answer all of the following questions under penalty of perjury:

(i) Is the applicant under indictment for, or has he/she been convicted of, a crime punishable by imprisonment for more than one year?

(ii) Is the applicant a fugitive from justice?

(iii) Is the applicant an unlawful user of, or is addicted to, any controlled substance?

(iv) Has the applicant been adjudicated as having a mental disability or committed to a mental institution in New York State?

(v) Is the applicant an illegal alien, or has he/she been admitted to the United States under a nonimmigrant visa?

(vi) Was the applicant discharged from the U.S. Armed Forces under dishonorable conditions?

(vii) Has the applicant renounced U.S. citizenship?

(viii) Is the applicant subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child?

(ix) Has the applicant been convicted in any court of a misdemeanor crime of domestic violence?

(3) In addition to the forms provided, the applicant shall be required to submit further information in support of the certificate of relief. The information must include, but is not limited to:

(i) true and certified copies of medical records detailing the applicant's psychiatric history, which shall include the records pertaining to the commitment to a mental health facility, or adjudication as having a mental disability (as defined in this Part), which is the subject of the request for relief;

(ii) true and certified copies of medical records from all of the applicant's current treatment providers, if the applicant is receiving treatment;

(iii) a true and certified copy of all criminal history information maintained on file at the New York State Division of Criminal Justice Services pertaining to the applicant, or a copy of a response from such Division indicating that there is no criminal history information on file;

(iv) evidence of the applicant's reputation, which may include notarized letters of reference from current and past employers, family members or personal friends, affidavits from the applicant or other character evidence;

(v) any further information specifically requested by the Office. Such documents requested by the Office shall be certified copies of original documents.

(4) The applicant may provide a psychiatric evaluation performed no earlier than 90 calendar days from the date the request for the certificate of relief was submitted to the Office, conducted by a qualified psychiatrist. The evaluation should include an opinion as to whether or not the applicant's record and reputation are such that the applicant will or will not be likely to act in a manner dangerous to public safety and whether or not the granting of the relief would be contrary to the public interest.

(5) The Office reserves the right to request that the applicant undergo a clinical evaluation and risk assessment as determined by the Commissioner or his/her designee(s). The evaluation must be performed 45 calendar days from the date the Office requests the evaluation, unless the Office allows an extension of time.

(6) The request for relief must include an authorization form permitting the Office to obtain and/or review health information from any health, mental health, or alcohol/substance abuse providers with respect to care

provided prior to the date of the application, for the purposes of reviewing the application for relief. Such authorization must comply with applicable federal or state laws governing the privacy of health information, including but not limited to, as relevant, 45 CFR Parts 160 and 164, 42 CFR Part 2, Public Health Law Section 17 and Article 27-F, and Mental Hygiene Law Section 33.13.

(7) It is the responsibility of the applicant to ensure that all required information accompanies the request for relief at the time it is submitted to the Office. Unless specifically requested by the Office, information provided after receipt by the Office of the initial request for relief will not be considered. Information specifically requested by the Office must be received by the Office within 60 days of the date requested in order for it to be considered. Failure to meet this time frame will result in a denial of the certificate of relief.

(b) Scope of review.

(1) The Commissioner or his/her designee(s) shall perform an administrative review of the request for relief, which shall consist of a review of all information submitted by the applicant that was required or requested by the Office, in accordance with paragraph (a)(3) of this Section. The person(s) who conducts the review will not be the individual(s) who gathered the evidence for the administrative request for relief.

(2) Failure of the applicant to provide required or requested information may be the sole basis for denial of the certificate of relief.

(3) The scope of the review shall be to determine, from the materials submitted, whether the applicant will not be likely to act in a manner dangerous to public safety and granting the relief will not be contrary to the public interest.

(c) Decision.

(1) After review of the application in accordance with subdivision (b) of this Section, the Commissioner or his/her designee(s) shall prepare a written determination, which shall include:

(i) a summary of the information utilized in reaching the decision;

(ii) a summary of the applicant's criminal history (if any);

(iii) a summary of the psychiatric evaluation prepared to support the request for relief (if any);

(iv) a summary of the applicant's mental health history;

(v) a summary of the circumstances surrounding the firearms disability imposed by 18 USC Sections 922(d)(4) and (g)(4);

(vi) an opinion as to whether or not the applicant's record and reputation are such that the applicant will or will not be likely to act in a manner dangerous to public safety and whether or not the granting of the relief would be contrary to the public interest; and

(vii) a determination as to whether or not the relief is granted.

(2) The Office shall provide a copy of the written determination to the applicant without undue delay. In addition to a copy of the written determination:

(i) if the relief is granted:

(A) the applicant must be provided with written notice that while the certificate of relief removes the disability from Federal firearms prohibitions (disabilities) imposed under 18 U.S.C. §§ 922(d)(4) and (g)(4), the determination does not otherwise qualify the applicant to purchase or possess a firearm, and does not fulfill the requirements of the background check pursuant to The Brady Handgun Violence Prevention Act of 1993 (Pub. L. 103-159); and

(B) the Office must submit a copy of the decision to the National Instant Criminal Background Check System (NICS) for the purpose of updating of the applicant's record; or

(ii) if the relief is denied:

(A) the applicant must be notified of the right to have the decision reviewed in accordance with applicable State law; and

(B) the Office must further advise that the applicant cannot apply again for a request for relief until a year after the date of the written determination to deny the relief requested.

§ 543.6 Records.

The Office of Mental Health, on being made aware that the basis under which a record was made available by the Office to the National Instant Criminal Background Check System does not apply or no longer applies, shall, as soon as practicable:

(a) update, correct, modify or remove the record from any database that the Federal or State government maintains and makes available to the National Instant Criminal Background Check System, consistent with the rules pertaining to that database; and

(b) notify the United States Attorney General that such basis no longer applies so that the record system in which the record is maintained is kept up to date.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 14, 2009.

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

### Regulatory Impact Statement

1. Statutory authority: Subdivision (b) of Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his jurisdiction.

Subdivision (j) of Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the power to adopt regulations to establish the relief from disabilities program.

2. Legislative objectives: The implementation of this administrative "certificate of relief from disabilities" process is required under the federal NICS Improvement Amendments Act of 2007 and Public Law 110-180, Section 105, which amended the federal Brady Handgun Violence Prevention Act of 1993, as well as Subdivision (j) of Section 7.09 of the Mental Hygiene Law.

3. Needs and benefits: These regulations will establish within the Office of Mental Health a process whereby a person who has been or may be disqualified pursuant to an adjudication under New York State law, as articulated in Mental Hygiene Law Section 7.09(j), from possessing a firearm to petition for relief from that disability. The implementation of this administrative "certificate of relief from disabilities" process is required under the federal NICS Improvement Amendments Act of 2007 and Public Law 110-180, Section 105, which amended the federal Brady Handgun Violence Prevention Act of 1993 to establish the National Instant Criminal Background Check system (NICS). Upon being contacted by a federal firearm licensee prior to transferring a firearm to an unlicensed person, NICS will provide information on whether a person is prohibited from receiving or possessing a firearm under state or federal law. These regulations establish a process for individuals who have been or may be disqualified pursuant to New York law, as articulated in Mental Hygiene Law Section 7.09 (j), from possessing a firearm to petition for relief from disabilities by demonstrating that their gun ownership would not be dangerous to public safety or contrary to public interest. Failure to implement this administrative process could result in loss of future federal funds under the federal legislation.

4. Costs:

(a) Cost to regulated persons: This regulation will impact members of the public who have been or may be disqualified pursuant to an adjudication under New York State law, as articulated in Mental Hygiene Law Section 7.09(j), from possessing a firearm and who choose to petition for relief from that disability. To date, over 100,000 records have been submitted for this purpose, and record submission is ongoing. The Office has no experiential data from which to estimate the number of persons from the variable number of total records submitted who will voluntarily elect to petition for relief, nor is it known to what extent they will undergo costs in obtaining the documentation necessary for the regulatory process. Thus, although there may be some costs incurred by individuals who wish to avail themselves of the certificate of relief process in gathering the required materials, there are no mandatory fees required of applicants, except the cost of retrieving a certified copy of their criminal history information from the New York State Division of Criminal Justice Services. There will be no costs to providers regulated by the Office of Mental Health as a result of this regulatory amendment.

(b) Cost to State and local government: There will be no costs to local government. The 2009-2010 enacted State budget has included an appropriation of \$272,000 to support the costs associated with the hiring of new employees to implement the administrative program.

5. Paperwork: This rule should not substantially increase the paperwork requirements of regulated parties.

6. Local government mandates: This regulatory amendment will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

7. Duplication: There are no duplicate, overlapping or conflicting mandates which may affect this rule.

8. Alternatives: The only alternative to this regulatory amendment would be inaction. The development of an administrative relief process is mandated by Section 7.09 of the Mental Hygiene Law. A failure to promulgate these regulations would be contrary to the legislation. Therefore, that alternative was necessarily rejected.

9. Federal standards: The regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The regulatory amendment would be effective immediately upon adoption.

### Regulatory Flexibility Analysis

The rulemaking serves to establish a "certificate of relief from disabilities" process as required under the federal NICS Improvement Amendments Act of 2007 and Public Law 110-180, Section 105, which amended the federal Brady Handgun Violence Prevention Act of 1993. There will be no adverse economic impact on small businesses or local governments; therefore, a regulatory flexibility analysis is not submitted with this notice.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not submitted with this notice because the rulemaking, which serves to establish a "certificate of relief from disabilities" process, will not impose any adverse economic impact on rural areas. The implementation of this process is required under the federal NICS Improvement Amendments Act of 2007 and Public Law 110-180, Section 105, which amended the federal Brady Handgun Violence Prevention Act of 1993.

**Job Impact Statement**

A Job Impact Statement is not submitted with this notice because there will be no adverse impact on jobs and employment opportunities. The rulemaking establishes a certificate of relief from disabilities process. Implementation of this administrative process is required under the federal NICS Improvement Amendments Act of 2007 and Public Law 110-180, Section 105, which amended the federal Brady Handgun Violence Prevention Act of 1993.

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## Office of Mental Retardation and Developmental Disabilities

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### EMERGENCY RULE MAKING

**Notification of Incidents and Access to Records**

**I.D. No.** MRD-27-09-00007-E

**Filing No.** 694

**Filing Date:** 2009-06-18

**Effective Date:** 2009-06-18

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

**Action taken:** Addition of section 624.8 and amendment of sections 624.1, 624.2, 624.3, 624.4, 624.5, 624.6 and 624.20 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.07, 13.09(b), 33.23 and 33.25; L. 2007, ch. 24

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

**Specific reasons underlying the finding of necessity:** Additional notifications will result in better monitoring, regarding whether the health and safety needs of the individuals are properly addressed and whether appropriate steps are being taken to address potentially harmful situations.

**Subject:** Notification of incidents and access to records.

**Purpose:** To conform regulations governing incidents to Jonathan's Law notification requirements and access to records provisions.

**Substance of emergency rule:**

- Effective June 18, 2009. Replaces similar emergency regulations that were effective October 1 and December 30, 2007, and March 27, June 25, September 23, and December 22, 2008, and March 22, 2009.

- No changes were made in the June 18, 2009 regulations compared to the March 22, 2009 regulations.

**General:**

- The regulations amend existing OMRDD regulations on incidents and abuse (Part 624).

- The regulations apply to all facilities and services operated, certified, authorized or funded through contract by OMRDD. This includes residential facilities, day programs, HCBS waiver services, and Medicaid Service Coordination.

- New notification and disclosure requirements do not apply to events or situations which are not under the auspices of the agency, such as allegations of abuse by family members in private residences. Requirements that agencies intervene and take appropriate action in these events or situations are unchanged.

- The OMR 147(I) and OMR 147(A) are removed from the regulation. OMRDD is replacing these forms with a single revised form.

- The OMR 147 must be used for all reportable incidents, serious reportable incidents and allegations of abuse.

- Full documentation of compliance is required.
- Existing requirements are unchanged for notification to CQCAPD, law enforcement officials, Statewide Central Register of Child Abuse and Maltreatment, etc.

- For the Willowbrook class, agencies must continue to comply with the incident reporting requirements of the Willowbrook Permanent Injunction.

- An old requirement for a "written preliminary finding" within 24 hours of the occurrence or discovery has been eliminated. The OMR 148 or equivalent report on actions taken takes the place of the written preliminary finding.

- The use of a diagnostic procedure (e.g. x-ray) when the results are negative (nothing broken) is no longer considered a reportable injury.

- Service coordinators must be notified of all reportable incidents, serious reportable incidents and allegations of abuse whether or not the event or situation is "under the auspices" of the agency or sponsoring agency.

Regulations to implement Section 33.23 MHL:

- The regulations build on notification requirements in pre-existing OMRDD regulations, which required notification of serious reportable incidents and allegations of abuse to guardians, parents and advocates/correspondents.

- The following types of events/situations are subject to the new requirements:

- Reportable incidents in the categories of injury, medication error and death.

- Serious reportable incidents in the categories of injury, missing person, medication error and death.

- All allegations of abuse.

- Current notification requirements are maintained for serious reportable incidents which are in the other categories (restraint, possible criminal act, and sensitive situation). Notification must occur within 24 hours of completion of the OMR 147.

- Neither notification nor disclosure is required for reportable incidents in the category of sensitive situation or for events/situations which do not rise to the level of reportable incidents (e.g. "agency reportable incidents").

- The new requirements require notification to one of the following: guardian, parent, spouse or adult child.

- Exceptions:

- The guardian, parent, spouse or adult child objects to notification to himself or herself.

- The person receiving services is a capable adult who objects to the notification being made to someone else.

- The person who would otherwise be notified is the alleged abuser.

- If there is no guardian, parent, spouse or adult child (or they are unavailable), but the person has an advocate or correspondent, notification should be made to that individual in the same manner. Advocates/correspondents must also be offered a meeting and must be sent the report on actions taken. Upon request, advocates/correspondents must be sent the redacted OMR 147. (Note: the advocate or correspondent is not eligible to request disclosure of the investigation report and other investigation documents).

- If there is no guardian, parent, spouse or adult child (or they are unavailable), and the person receiving services is a "capable adult" as defined in the regulations, the person receiving services must be notified. In addition, the person receiving services must be offered a meeting and must receive the report on actions taken.

- The notification must be by telephone or in person, or by other methods at the request of the recipient of the notice.

- The notification must be made within 24 hours of the completion of the OMR 147.

- The notice must include:

- A description of the event or situation and a description of initial actions taken to address the incident or alleged abuse, if any,

- An offer to meet with the chief executive officer or designee, and

- For allegations of abuse, an offer to provide information on the status and resolution of the allegation (this is a pre-existing requirement).

- Upon request, a copy of the OMR 147 reporting form must be provided to the person receiving services, guardian, parent, spouse, adult child, or advocate/correspondent. Records must be redacted.

- The agency must provide a written report on actions taken to address the incident or alleged abuse for every incident and allegation subject to the new notification process.

- The report must be provided to the individual that was notified.

- The report must include: any immediate steps taken in response to the incident or alleged abuse to safeguard the health or safety of the person receiving services, and a general description of any initial medical or dental treatment or counseling provided to the person in response to the incident or alleged abuse.

- The report must be on a form developed by OMRDD or a similar agency form.

- The report must be provided within 10 days of the completion of the OMR 147.

- The report on actions taken cannot include names of others involved in the incident/allegation or investigation or information tending to identify them.

Regulations to implement Section 33.25 MHL:

- The regulations require the release of records and documents pertaining to allegations and investigations into abuse under the auspices of the agency.

- Only guardians, parents, spouses and adult children who are considered to be a “qualified person” according to the definition in the Mental Hygiene Law, are eligible to receive records.

- If the otherwise eligible requestor is the alleged abuser he or she is not eligible to receive records.

- If the consumer is a capable adult and objects to the release of records, the otherwise eligible requestor is not eligible to receive records.

- Requests must be in writing.

- Documents and records must be released 21 days after the closure of the alleged abuse case or 21 days after the request, if the request is made after closure.

For purposes of determining when the 21 day clock begins, closure is considered the time when the standing committee has ascertained that no further investigation is necessary and a conclusion is reached whether the allegation is substantiated, disconfirmed or inconclusive.

- Records must be redacted.

- Agencies are required to release records pertaining to allegations of abuse which occurred or were discovered on or after May 5, 2007.

- Agencies are also required to release records pertaining to allegations of abuse covering the period Jan. 1, 2003 to May 5, 2007. Qualified persons have until Dec. 31, 2010 to make these requests.

- Records may not be disseminated by recipients.

Redaction (applicable to the release of documents and records pursuant to Section 33.25 MHL and the OMR 147). The following should be redacted:

- Names or other information tending to identify people receiving services and employees. Redaction shall be waived if the employee or person receiving services authorizes disclosure (unless redaction is needed because the information would tend to identify a different person whose identity is shielded by the regulations). The definition of employee is very inclusive, but only for the purposes of redaction of these records in compliance with the new law and the implementing regulations. It includes consultants, contractors, volunteers, family care providers and family care respite/substitute providers, and individuals who live in home of the provider.

- Names or other information tending to identify anyone who made a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and

will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 15, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Barbara Brundage, Director, Regulatory Affairs Unit, OMRDD, 44 Holland Avenue, Albany, NY 12229, (518) 474-1830, email: barbara.brundage@omr.state.ny.us

**Additional matter required by statute:** Pursuant to the requirements of SEQRA and 14 NYCRR Part 620, OMRDD has on file a Negative Declaration with respect to this Action. OMRDD has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

#### **Regulatory Impact Statement**

Statutory Authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities’ (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in Section 13.07 of the New York State Mental Hygiene Law.

b. OMRDD’s authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in Section 13.09(b) of the Mental Hygiene Law.

c. Section 33.23 of the Mental Hygiene Law, which requires specific incident notifications and the release of specified reports.

d. Section 33.25 of the Mental Hygiene Law, which requires the release of records and documents pertaining to allegations and investigations of abuse.

2. Legislative Objectives: These amendments further the legislative objectives embodied in sections 13.07, 13.09(b), 33.23 and 33.25 of the Mental Hygiene Law. The promulgation of these amendments will provide a more extensive notification process for certain incidents and allegations of abuse. In addition, the amendments provide greater access by specified individuals to records and documents pertaining to allegations and investigations of abuse.

3. Needs and Benefits: Chapter 24 of the Laws of 2007 (MHL Sections 33.23 and 33.25), otherwise known as “Jonathan’s Law,” was signed by the Governor on May 5, 2007 and was effective immediately.

The regulatory amendments are necessary to implement the new laws and to make longstanding OMRDD regulations related to incidents and abuse consistent with the statutory requirements. In addition, these amendments clarify ambiguities in the law, as well as provide more specific direction and guidance to providers so that implementation is more effective and consistent statewide. Further, the regulations build on the notification process requirements established by statute to extend certain provisions to advocates and correspondents who are not “qualified persons” and to require compliance by all providers in the OMRDD system, not just “facilities” as specified in the law.

The new law and the associated regulations require providers to implement a more extensive notification process for certain incidents and all allegations of abuse. This notification process will provide timely information about incidents that affect the health or safety of a person receiving services to the following: a person’s guardian, parent, spouse, adult child or advocate/correspondent. In addition to an initial telephone notification, the individual will have access to the initial incident/allegation of abuse report, will be provided a report on initial actions taken and will be offered the opportunity to meet with the agency Chief Executive Officer/DDS Director (or a designee) to discuss the incident or allegation of abuse.

The law and implementing regulations also provide a qualified person with access to records and documents pertaining to allegations and investigations of abuse. For this purpose a qualified person is defined in Mental Hygiene Law 33.16 and may include: persons receiving services or who formerly received services; and guardians, parents, spouses and adult children of such persons. The regulations extend applicability of the new requirements from only events occurring “at a facility” as specified by statute to allegations of abuse occurring while individuals are receiving facility-based services at a location away from the facility. In addition, the regulations extend

applicability to services in the OMRDD system which are not facility-based, such as at-home residential habilitation and supported employment. OMRDD considers that allegations of abuse by employees should be treated the same regardless of the type of service received or location of service delivery.

4. Costs:

a. The amendments impose minor additional costs beyond the cost of complying with the new laws. Compliance with the new laws will likely require additional expenditures for personnel, paperwork, phone charges and postage. Although pre-existing OMRDD regulations already required notification of some types of incidents and allegations of abuse, the law requires notification (with its attendant costs) of additional incidents. In addition, the law requires that a report on actions taken be provided for each incident and allegation of abuse subject to the new notification requirements. Additional meetings may occur as a result of the mandated offer to hold a meeting. Lastly, documents and records must be provided upon request and must be redacted in accordance with the law.

While the statute limited the individuals being notified to “qualified persons,” the regulations extended the new notification process requirements to include advocates and correspondents. While advocates and correspondents were required to be notified of some incidents by the pre-existing OMRDD regulations, minor additional costs will be incurred through both notification of additional incidents and through the additional features of the notification process imposed by Jonathan’s Law, such as the provision of the report on actions taken.

In addition, the statute only applied to allegations of abuse occurring at a facility. However, providers in the OMRDD system operate many services which are not “facilities,” such as service coordination, supported employment, and at-home residential habilitation. The OMRDD regulations extended the requirements of Jonathan’s Law to include all services in the OMRDD system, as well as allegations of abuse when individuals are receiving facility-based services at a location away from the facility. This extension applies to both the notification process and the eligibility to request records and documents pertaining to allegations and investigations of abuse.

OMRDD is unable to quantify the modest additional costs that will be incurred by these extensions of the statutory requirements.

b. OMRDD will incur additional costs as a provider of state-operated services as noted above. These additional costs cannot be quantified.

OMRDD will use existing staff to administer this rule and does not anticipate any significant expenditure related to its administration. There are minimal additional expenditures related to informing and training providers of both Jonathan’s Law and the implementing regulations.

c. There will be no additional costs to local governments.

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

6. Paperwork: Compliance with the new laws entails an increase in paperwork. The new law requires that a written report on actions taken be provided for every incident that is subject to the new requirements. OMRDD has developed a new form to assist agencies in providing this report. Agencies are also required to provide redacted incident reports upon request as a part of the notification process. Further, agencies are required to provide redacted records and documents pertaining to allegations and investigations into abuse. The regulations add minimal new paperwork requirements to the statutory requirements by extending provisions related to the notification process to include advocates and correspondents, and extending requirements to encompass all services in the OMRDD system and incidents related to facility-based programs which occur in community settings with staff.

7. Duplication: The regulatory amendment does not duplicate existing state or federal requirements.

8. Alternatives: The law only requires the notification requirements to be made to a qualified person as defined in MHL 33.16. “Qualified persons” include only guardians, parents, spouse or adult child.

OMRDD had considered limiting the applicability of the notification requirements to “qualified persons.” However, OMRDD recognizes the valuable role played by siblings, family members, friends and others who are advocates and correspondents but who are not “qualified persons.” OMRDD considers that individuals without a “qualified person” who have an advocate or correspondent should also be able to benefit from the additional notification process requirements. OMRDD consequently extended the new notification process requirements to include advocates/correspondents.

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

10. Compliance schedule: OMRDD filed similar emergency regulations effective on October 1 and December 30, 2007, and March 27, June 25, September 23, and December 22, 2008, and March 22, 2009.

OMRDD intends to finalize regulations within the time frames provided for by the State Administrative Procedure Act (SAPA).

**Regulatory Flexibility Analysis**

1. Effect on small business: These regulatory amendments will apply to providers of services that operate all programs certified, authorized or approved by OMRDD.

While most services are provided by voluntary agencies which employ more than 100 people overall, many of the facilities and services operated by these agencies at discrete sites (e.g. small residences) employ fewer than 100 employees at each site and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees would themselves be classified as small businesses.

The amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements.

2. Compliance requirements: The new law required a variety of compliance activities. These activities include: providing telephone notice to a qualified person for certain incidents and allegations of abuse, offering a meeting with the agency’s Chief Executive Officer or DDSO Director or a designee, and offering to provide a written report on actions taken. In addition, upon the request of a qualified person, documents and records pertaining to allegations and investigations of abuse must be released. All the above referenced documents must have names and identifying information redacted. The implementing regulations extend the requirements to advocates and correspondents, to non-facility based services and to situations when facility-based services are delivered at a location away from the facility. Agencies will need to make the changes needed for implementation in these situations where the regulatory requirements exceed the statutory requirements.

OMRDD has carefully considered the desirability of a small business regulation guide to assist provider agencies with this rule, as provided for by new section 102-a of the State Administrative Procedure Act. However, OMRDD has already developed a regulatory handbook on the implementation of 14 NYCRR Part 624. This handbook will be updated to reflect the new requirements outlined in these amendments.

3. Professional services: Modest additional professional services are required as a result of these amendments, due to the need for the involvement of legal professionals in redaction and interpretation of the regulations, to the extent that the regulatory requirements exceed the statutory requirements. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no costs to local governments.

The amendments impose minor new compliance costs. There are minimal additional costs associated with implementation and compliance with the law. In the areas noted above where the regulatory requirements exceed the statutory requirements, these modest compliance costs will be increased as notification is required in new situations and in additional service types.

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

6. Minimizing adverse economic impact: As stated in the Regulatory Impact Statement, the proposed regulation will have no fiscal effect on State or local governments, and minimal fiscal impact on regulated parties (including the state as a provider). Modest additional costs are necessary to the extent regulatory requirements exceed statutory requirements. OMRDD has reviewed and considered the approaches for minimizing economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. In order to minimize adverse economic impact, OMRDD has developed a standardized form for the report on actions taken. The use of this form will minimize staff resources devoted to completing the form, instead of each agency developing its own form or not using a form for this purpose.

7. Small business and local government participation: OMRDD convened a Jonathan's Law implementation workgroup which included representatives from provider associations. The group met on June 1, June 20 and November 7, 2007. Presentations were made to various groups including committees of the Cerebral Palsy Associations of New York State and the New York State Association of Residential and Community Agencies (NYSACRA). OMRDD staff presented at training sessions with hundreds of provider representatives hosted by NYSACRA on June 28 and July 20, 2007. OMRDD staff also presented at a training session hosted by the Long Island Alliance on August 23, 2007. In addition, OMRDD staff made a presentation at a meeting of the Conference of Local Mental Hygiene Directors on August 17, 2007. OMRDD also conducted a series of internal training sessions on October 3, October 11, October 18 and October 29, 2007. Informational mailings were sent to affected providers regarding the implementation of the new law on May 11 and May 15, 2007. A detailed informational mailing specifically discussing the emergency regulations was sent to providers and other interested parties on August 31, 2007. OMRDD also solicited comments from the Self-Advocacy Association, the Statewide Family Support Services Committee and the NYSARC Adult Services Committee. OMRDD informed all provider agencies, provider associations, and other interested parties (including parents, family members and individuals receiving services) of the October 1 and December 30, 2007 and March 27, June 25, September 23, and December 22, 2008, and March 22, 2009 emergency regulations by mail. In addition, numerous questions and comments were received from voluntary providers, local government representatives and others at the events noted above and through individual contact.

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

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas because of the location of their operations (rural/urban). This finding is based on the fact that the proposed rule changes the way in which notifications are made regarding certain incidents and allegations of abuse. The proposed rule also provides greater access by qualified persons, including parents and legal guardians, to records and documents pertaining to allegations and investigations of abuse and mistreatment. OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties because of the location of their operations. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations. Specific effects of the rule on providers of services have been discussed in the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

#### **Job Impact Statement**

A Job Impact Statement for these amendments is not submitted because it is apparent from the nature and purposes of the amendments that they will not have an adverse impact on jobs and/or employment opportunities and they may have a slightly positive impact on employment opportunities due to new features in the rule. This finding is based on the fact that the regulatory requirements exceed the statutory requirements of Jonathan's Law to require modest additional notifications and access to records as noted in the Regulatory Impact Statement. It is anticipated that providers will generally utilize existing staff to accomplish these tasks. In unusual circumstances, providers may find it necessary to hire or contract for additional staff.

## EMERGENCY RULE MAKING

### **Appeals Process for Certain Disqualified Individuals with Developmental Disabilities Who Wish to Purchase or Possess a Firearm**

**I.D. No.** MRD-27-09-00008-E

**Filing No.** 700

**Filing Date:** 2009-06-22

**Effective Date:** 2009-06-22

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

**Action taken:** Addition of Part 643 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, section 13.09(b) and (f)

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

**Specific reasons underlying the finding of necessity:** The NICS Improvement Amendments Act of 2007 (Public Law 110-180, Section 105, enacted on January 8, 2008) requires that states have a relief from disabilities program that meets the requirements of the Act. In order to apply for the grant funding provided for under the NICS Improvement Amendments Act of 2007, the U.S. Department of Justice has required that all states must certify by June 22, 2009, that the state has implemented a relief from disabilities program.

The receipt of the grant money will enable New York State to more expeditiously perform the administrative functions necessary to assemble relevant records and transmit information about disqualified individuals to NICS. These disqualified individuals are then added to the list of persons who are not able to legally purchase or possess firearms anywhere in the United States. The underlying assumption of the NICS Improvement Amendments Act of 2007 is that keeping firearms out of the hands of these potentially dangerous individuals prevents violence and enhances the public health, safety and welfare.

**Subject:** Appeals process for certain disqualified individuals with developmental disabilities who wish to purchase or possess a firearm.

**Purpose:** To establish a process so a person who is disqualified from being able to purchase a firearm can appeal the disqualification.

**Text of emergency rule:** 14 NYCRR is amended by the addition of a new Part 643 as follows:

#### PART 643

#### CERTIFICATE OF RELIEF FROM DISABILITIES (PROHIBITIONS) RELATED TO FIREARMS POSSESSION

##### Section 643.1 Background and intent.

(a) *The federal Brady Handgun Violence Prevention Act of 1993, as amended, among other provisions, prohibits any person from selling or otherwise disposing of any firearm or ammunition to any person who has been involuntarily "committed to a mental institution" (18 U.S.C. Section 922(d)(4)) and further prohibits any person who has been involuntarily "committed to a mental institution" from shipping or transporting in interstate or foreign commerce, or possessing in or affecting commerce, any firearm or ammunition; or receiving any firearm or ammunition which has been shipped or transported in interstate or foreign commerce (18 U.S.C. Section 922(g)(4)).*

(b) *Under the federal NICS Improvement Amendments Act of 2007, Public Law 110-180, Section 105, the Brady Act was amended to mandate that states must report certain persons disqualified from receiving or possessing firearms to the National Instant Criminal Background Check System (NICS). Upon being contacted by a federal firearm licensee prior to transferring a firearm to an unlicensed person, NICS will provide information on whether a person is prohibited from receiving or possessing a firearm under state or federal law. NICS contains records concerning certain events, such as criminal convictions and mental health adjudications and findings that may disqualify a person from purchasing a firearm. The 2007 amendments also require the establishment of a "certificate of relief from disabilities" process on both the federal and state levels to permit a person who has been or may be disqualified from possessing a firearm pursuant to 18 U.S.C. Sections 922(d)(4) and (g)(4) to petition for relief from that disability.*

(c) *Section 13.09(f) of the Mental Hygiene Law authorizes the Office of Mental Retardation and Developmental Disabilities (OMRDD), in cooperation with the NYS Unified Court System and other state agencies, to collect, retain, modify or transmit data or records for inclusion in NICS*

for the purpose of responding to NICS queries regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 U.S.C. 921(a)(3). The records which OMRDD is authorized by law to collect, retain, modify, or transmit, include information identifying persons who have been involuntarily committed to an OMRDD facility pursuant to Article 15 of the Mental Hygiene Law, Article 730 or Section 330.20 of the Criminal Procedure Law, or Sections 322.2 or 353.4 of the Family Court Act. In accordance with the above-referenced federal law, Mental Hygiene Law Section 13.09(f) also requires OMRDD to promulgate regulations establishing a "certificate of relief from disabilities" process for those persons whose records were provided to the Division of Criminal Justice Services or the Federal Bureau of Investigation by OMRDD pursuant to Mental Hygiene Law Section 13.09(f), and who have been or may be disqualified from purchasing and/or possessing a firearm pursuant to 18 U.S.C. Sections 922 (d)(4) and (g)(4).

(d) The purpose of these regulations is to establish the required administrative "certificate of relief from disabilities" process for persons whose records were submitted to NICS by OMRDD in accordance with Section 13.09(f) of the Mental Hygiene Law. Such relief will be based on a determination of whether the person's record and reputation are such that he/she will not be likely to act in a manner dangerous to public safety and where granting the relief would not be contrary to the public interest.

#### Section 643.2 Applicability.

This Part applies to any person who has been or may be disqualified from possessing a firearm pursuant to 18 USC Sections 922 (d)(4) and (g)(4), due to being involuntarily committed to an OMRDD facility pursuant to Article 15 of the Mental Hygiene Law, or Article 730 or Section 330.20 of the Criminal Procedure Law, or Sections 322.2 or 353.4 of the Family Court Act and whose records were submitted to NICS by OMRDD in accordance with Section 13.09(f) of the Mental Hygiene Law.

#### Section 643.3 Process.

##### (a) Request for relief.

(1) An individual who has been or may be disqualified from attempting to purchase or otherwise possess a firearm in accordance with the provisions of Section 13.09(f) of the Mental Hygiene Law and whose records were submitted to NICS by OMRDD, may request administrative review by OMRDD to have his or her civil rights restored for such limited purpose.

(2) A request for relief shall be made on forms developed by OMRDD, which shall be available on OMRDD's public web site. At a minimum, the forms shall require the applicant to answer all of the following questions under penalty of perjury:

(i) Is the applicant under indictment for, or ever been convicted of, a crime punishable by imprisonment for more than one year?

(ii) Is the applicant a fugitive from justice?

(iii) Is the applicant an unlawful user of, or is addicted to, any controlled substance?

(iv) Has the applicant been involuntarily committed to an OMRDD facility (pursuant to Article 15 of the Mental Hygiene Law, or Article 730 or Section 330.20 of the Criminal Procedure Law, or Sections 322.2 or 353.4 of the Family Court Act)?

(v) Is the applicant an illegal alien, or has he/she been admitted to the United States under a nonimmigrant visa?

(vi) Was the applicant discharged from the U.S. Armed Forces under dishonorable conditions?

(vii) Has the applicant renounced U.S. citizenship?

(viii) Is the applicant subject or ever been subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child?

(ix) Has the applicant been convicted in any court of a misdemeanor crime of domestic violence?

(3) In addition to the forms provided, the applicant shall be required to submit further information in support of the request for relief. The information must include, but is not limited to:

(i) true and certified copies of medical/clinical records detailing the applicant's psychiatric and/or intellectual or developmental disability history, which shall include records pertaining to the involuntary commitment to an OMRDD facility, which is the subject of the request for relief;

(ii) true and certified copies of medical/clinical records from all of the applicant's current treatment and service providers, if the applicant is receiving treatment or services;

(iii) a true and certified copy of all criminal history information maintained on file at the New York State Division of Criminal Justice Services pertaining to the applicant, or a copy of a response from such Division indicating that there is no criminal history information on file;

(iv) notarized letters of reference from current and past employ-

ers, family members or personal friends, which may include affidavits from character witnesses or the applicant, or other character evidence;

(v) any further information specifically requested by OMRDD. Such documents requested by OMRDD shall be certified copies of original documents.

(4) The applicant must provide a psychiatric evaluation performed no earlier than 90 calendar days from the date the request for relief was submitted to OMRDD, conducted by a qualified psychiatrist as defined in Section 9.01 of the Mental Hygiene Law. The evaluation must include an opinion as to whether or not the applicant's record and reputation are such that the applicant will or will not be likely to act in a manner dangerous to public safety and whether or not the granting of the relief to allow for firearms possession would be contrary to the public interest.

(5) The applicant must also provide an evaluation by a licensed psychologist which includes current IQ and adaptive behavior assessment.

(6) OMRDD reserves the right to request that the applicant undergo a clinical evaluation and risk assessment as determined by the Commissioner or his/her designee(s). The evaluation must be performed 45 calendar days from the date OMRDD requests the evaluation, unless OMRDD allows an extension of time.

(7) The request for relief must include an authorization form permitting OMRDD to obtain and/or review health and other information from any health, mental health, alcohol/substance abuse providers, or providers of services for persons with developmental disabilities with respect to care and services provided prior to the date of the application, for the purposes of reviewing the application for relief. Such authorization must comply with applicable federal or state laws governing the privacy of health information, including but not limited to, as relevant, 45 CFR Parts 160 and 164, 42 CFR Part 2, Public Health Law Section 17 and Article 27-F, and Mental Hygiene Law Section 33.13.

(8) It is the responsibility of the applicant to ensure that all required information accompanies the request for relief at the time it is submitted to OMRDD. Unless specifically requested by OMRDD, information provided after receipt by OMRDD of the initial request for relief will not be considered. Information specifically requested by OMRDD must be received by OMRDD within 60 days of the date requested in order for it to be considered. Failure to meet this time frame will result in a denial of the certificate of relief.

##### (b) Scope of review.

(1) The Commissioner or his/her designee(s) shall perform an administrative review of the request for relief, which shall include a review of all information submitted by the applicant in accordance with subdivision (a) of this Section. The person(s) who conducts the review will not be the individual(s) who gathered the information for the administrative request for relief.

(2) Failure of the applicant to provide required or requested information may be the sole basis for denial of the certificate of relief.

(3) The scope of the review shall be to determine whether the applicant will not be likely to act in a manner dangerous to public safety and granting the relief will not be contrary to the public interest.

##### (c) Decision.

(1) After review of the application in accordance with subdivision (b) of this section, the Commissioner or his/her designee(s) shall prepare a written determination, which shall include:

(i) a summary of the information utilized in reaching the decision;

(ii) a summary of the applicant's criminal history (if any);

(iii) a summary of the psychiatric evaluation prepared to support the request for relief (if any);

(iv) a summary of the applicant's mental health and intellectual/developmental disabilities history;

(v) a summary of the circumstances surrounding the firearms disability imposed by 18 USC Sections 922(d)(4) and (g)(4);

(vi) an opinion as to whether or not the applicant's record and reputation are such that the applicant will or will not be likely to act in a manner dangerous to public safety and whether or not the granting of the relief would be contrary to the public interest; and

(vii) a determination as to whether or not the relief is granted.

(2) OMRDD shall provide a copy of the written determination to the applicant without undue delay. In addition to a copy of the written determination:

(i) if the relief is granted:

(a) the applicant must be provided with written notice that while the certificate of relief removes the disability from Federal firearms prohibitions (disabilities) imposed under 18 U.S.C. Sections 922(d)(4) and (g)(4), the determination does not otherwise qualify the applicant to purchase or possess a firearm, and does not fulfill the requirements of the

background check pursuant to the Brady Handgun Violence Prevention Act of 1993 (Pub. L. 103-159), as amended; and

(b) OMRDD must submit a copy of the decision to NICS for the purpose of updating of the applicant's record; or

(ii) if the relief is denied:

(a) the applicant must be notified of the right to have the decision reviewed in accordance with applicable State law; and

(b) OMRDD must further advise that the applicant cannot apply again for a request for relief until a year after the date of the written determination to deny the relief requested.

**Section 643.4 Records.**

OMRDD, on being made aware that the basis under which a record was made available by OMRDD to NICS does not apply or no longer applies, shall, as soon as practicable:

(a) update, correct, modify or remove the record from any database that the Federal or State government maintains and makes available to NICS, consistent with the rules pertaining to that database; and

(b) notify the United States Attorney General that such basis no longer applies so that the record system in which the record is maintained is kept up to date.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 19, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Barbara Brundage, Director of RAU, Office of Mental Retardation & Developmental Disabilities, 44 Holland Avenue, Albany, New York 12229, (518) 474-1830, email: barbara.brundage@omr.state.ny.us

**Additional matter required by statute:** Pursuant to the requirements of SEQRA and 14 NYCRR Part 602, OMRDD has on file a Negative Declaration with respect to this action. OMRDD has determined that the action described herein will have no effect on the environment and an E.I.S. is not needed.

**Regulatory Impact Statement**

1. Statutory authority:

a. Subdivision (b) of Section 13.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Retardation and Developmental Disabilities the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

b. Subdivision (f) of Section 13.09 of the Mental Hygiene Law requires the Commissioner of the Office of Mental Retardation and Developmental Disabilities to adopt regulations to establish the relief from disabilities program.

2. Legislative objectives: The regulations which are required by New York State Mental Hygiene Law further the legislative objectives embodied in subdivisions 13.09(b) and 13.09(f) of the New York State Mental Hygiene Law by establishing a process within OMRDD so that a person who is disqualified from being able to purchase a firearm can appeal the disqualification, in conformance with the statutory requirement.

3. Needs and benefits: Pursuant to federal and state law, OMRDD is required to submit information about individuals who have been involuntarily committed to an OMRDD facility to the National Instant Criminal Background Check System (NICS). These individuals will be disqualified (prohibited) from purchasing or possessing a firearm. Federal and state law also requires that OMRDD promulgate regulations to establish a process for these individuals to appeal this disqualification.

The implementation of this administrative "certificate of relief from disabilities" process is required under the federal NICS Improvement Amendments Act of 2007 and Public Law 110-180, Section 105, which amended the federal Brady Handgun Violence Prevention Act of 1993 to establish NICS, and by Chapter 491 of the Laws of 2008. The process established by these regulations applies to individuals who have been involuntarily committed to an OMRDD facility and whose names were provided by OMRDD to NICS. These individuals can petition for relief from disabilities by demonstrating that their gun ownership would not be dangerous to public safety or contrary to public interest through the provision of the required information and documentation to OMRDD.

Failure to implement this administrative "certificate of relief from disabilities" process could result in loss of future federal funds under the federal legislation.

4. Costs:

(a) Cost to regulated persons: Individuals who are disqualified can choose to apply to OMRDD if they want to be able to purchase or possess a firearm. These costs are therefore OPTIONAL. The regulations require applicants to submit the results of an evaluation by a psychologist and a psychiatrist. OMRDD estimates that if the individuals privately pay for these evaluations they will cost approximately \$800 - \$1,200 for the psychologist and approximately \$300 for the psychiatrist. Obtaining the required criminal history information will cost \$75. The individual may also incur costs which are difficult to quantify in obtaining required medical records and records from treatment and service providers.

(b) Cost to State and local government: There will be no new costs incurred by the State and local government as a result of the emergency regulations. OMRDD anticipates that few, if any, individuals will apply for relief from disabilities under these regulations, and will process any applications received within existing resources.

5. Paperwork: As noted above, disqualified individuals can choose to apply to OMRDD and therefore the associated paperwork is OPTIONAL. The applicant is required to complete a form developed by OMRDD and submit a variety of records and documents. These include copies of medical/clinical records pertaining to the involuntary commitment to an OMRDD facility, copies of medical/clinical records from all of the applicant's current treatment and service providers, copies of all criminal history information maintained on file at the New York State Division of Criminal Justice Services, notarized letters of recommendation, and copies of any further information requested by OMRDD.

6. Local government mandates: This regulatory amendment will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

7. Duplication: There are no duplicate, overlapping or conflicting mandates which may affect this rule.

8. Alternative approaches: OMRDD considered forgoing the promulgation of these regulations as an emergency at this time and using the regular rulemaking process, which would result in the promulgation of regulations at a later date. However, New York State would not be eligible to receive federal grant monies if it did not have a process in place within the required timeframe.

9. Federal standards: The regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The regulatory amendment is effective immediately upon adoption.

**Regulatory Flexibility Analysis**

The rulemaking serves to establish a "certificate of relief from disabilities" process as required under the federal NICS Improvement Amendments Act of 2007 and Public Law 110-180, Section 105, which amended the federal Brady Handgun Violence Prevention Act of 1993. There will be no adverse economic impact on small businesses or local governments; therefore, a regulatory flexibility analysis is not submitted with this notice.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis for the proposed amendments has not been submitted. OMRDD has determined that the amendments will not impose any adverse impact, reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The amendments establish a process so a person who is disqualified from being able to purchase a firearm can appeal the disqualification.

**Job Impact Statement**

A Job Impact Statement is not submitted because the amendment will not present an adverse impact on existing jobs or employment opportunities. The amendments establish a process so a person who is disqualified from being able to purchase a firearm can appeal the disqualification.

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## Public Service Commission

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**NOTICE OF ADOPTION**

**Deny the Request for an EFC Loan and Grant a Surcharge to Improve the Company Plant**

**I.D. No.** PSC-23-08-00012-A

**Filing Date:** 2009-06-19

**Effective Date:** 2009-06-19

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

**Action taken:** On 6/18/09, the PSC adopted an order denying the request of Forever Wild Water Company, Inc. for financing a New York State Environmental Facilities Corporation (EFC) loan, and approving the request for a surcharge to improve the company plant.

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

**Subject:** Deny the request for an EFC loan and grant a surcharge to improve the company plant.

**Purpose:** To deny the request for an EFC loan and grant a surcharge to improve the company plant.

**Substance of final rule:** The Commission, on June 18, 2009, adopted an order denying the request of Forever Wild Water Company, Inc. for financing a New York State Environmental Facilities Corporation (EFC) loan, and approving the request for a surcharge to improve the company plant, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(08-W-0555SA1)

### NOTICE OF ADOPTION

#### Recommendations of Collaborative Regarding KeySpan's Unbundled Service

**I.D. No.** PSC-46-08-00006-A

**Filing Date:** 2009-06-23

**Effective Date:** 2009-06-23

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

**Action taken:** On June 18, 2009, the PSC adopted an order approving, with modifications, the Report of KEDNY and KEDLI Concerning Transportation and Balancing Collaborative.

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

**Subject:** Recommendations of collaborative regarding KeySpan's unbundled service.

**Purpose:** To approve with modifications the Report of KEDNY and KEDLI Concerning Transportation and Balancing Collaborative.

**Substance of final rule:** The Commission, on June 18, 2009, adopted an order approving, with modifications The Brooklyn Union Gas Company d/b/a National Grid NY's (KEDNY) and the KeySpan Gas East Corp. d/b/a National Grid LI's (KEDLI) "Report of KEDNY and KEDLI Concerning Transportation and Balancing Collaborative" recommendations to modify and update the rules, regulations and charges for transportation and balancing in the KEDNY and KEDLI territories, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(06-G-1185SA8)

### NOTICE OF ADOPTION

#### Reallocation of Funds for the Solar Photovoltaic Program

**I.D. No.** PSC-50-08-00016-A

**Filing Date:** 2009-06-22

**Effective Date:** 2009-06-22

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

**Action taken:** On 6/18/09, the PSC adopted an order approving changes to the Renewable Portfolio Standard (RPS) Program by reallocating \$15.6 million of an approximate \$110 million cash flow balance to fund the solar photovoltaic program to respond to increased demand.

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

**Subject:** Reallocation of funds for the solar photovoltaic program.

**Purpose:** To approve changes to RPS for the reallocation of funds for the solar photovoltaic program.

**Substance of final rule:** The Commission, on June 18, 2009, adopted an order approving changes to the Renewable Portfolio Standard (RPS) Program by reallocating \$15.6 million of an approximate \$110 million cash flow balance. \$15 million to fund the solar photovoltaic program to respond to increased demand and changing market needs for this renewable energy technology and \$600,000 for increased evaluation, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(03-E-0188SA20)

### NOTICE OF ADOPTION

#### System Benefits Charge (SBC) Funding for a Workforce Development Program

**I.D. No.** PSC-53-08-00009-A

**Filing Date:** 2009-06-22

**Effective Date:** 2009-06-22

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

**Action taken:** On 6/18/09, the PSC adopted an order approving System Benefits Charge (SBC) funding for a Workforce Development Program to be administered by New York State Energy Research and Development Authority (NYSERDA).

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

**Subject:** System Benefits Charge (SBC) funding for a Workforce Development Program.

**Purpose:** To establish System Benefits Charge (SBC) funding for a Workforce Development Program.

**Substance of final rule:** The Commission, on June 18, 2009, adopted an order approving System Benefits Charge (SBC) funding for a Workforce Development Program to be administered by NYSERDA, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(07-M-0548SA14)

### NOTICE OF ADOPTION

#### Waiver of Particular Requirements of PSL Section 95(1) and Part 641 of the Commission's Rules and Regulations

**I.D. No.** PSC-12-09-00015-A

**Filing Date:** 2009-06-18

**Effective Date:** 2009-06-18

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

**Action taken:** On 6/18/09, the PSC adopted an order denying Verizon New York Inc.'s request for waiver of annual reporting requirements as in 16 NYCRR (Part 641) and Verizon's alternative proposal to streamline the Annual Report.

**Statutory authority:** Public Service Law, sections 4(1), 23(1) and 95(1)  
**Subject:** Waiver of particular requirements of PSL Section 95(1) and Part 641 of the Commission's Rules and Regulations.  
**Purpose:** To deny request for waiver of annual reporting requirements as in 16 NYCRR (Part 641).  
**Substance of final rule:** The Commission, on June 18, 2009, adopted an order denying Verizon New York Inc.'s request for waiver of annual reporting requirements as in 16 NYCRR (Part 641) and Verizon's alternative proposal to streamline the Annual Report, subject to the terms and conditions set forth in the order.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.  
**Assessment of Public Comment**  
 An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
 (09-C-0120SA1)

**NOTICE OF ADOPTION**

**Lightened Regulation of Electric Operations**

**I.D. No.** PSC-14-09-00018-A  
**Filing Date:** 2009-06-19  
**Effective Date:** 2009-06-19

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

**Action taken:** On 6/18/09, the PSC adopted an order approving Saranac Power Partners, L.P., wholesale electric operations for lightened regulation, and that Saranac will not be a steam corporation after it ceases to operate as a qualifying facility.

**Statutory authority:** Public Service Law, sections 2(13), 2(22), 5(1)(b), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 78, 79, 80, 81, 82, 82-a, 83, 84, 85, 88, 89, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

**Subject:** Lightened regulation of electric operations.  
**Purpose:** To approve lightened regulation of electric operations.  
**Substance of final rule:** The Commission, on June 18, 2009, adopted an order approving Saranac Power Partners, L.P. (Saranac), wholesale electric operations for lightened regulation, and that Saranac will not be a steam corporation after it ceases to operate as a qualifying facility under the Public Utility Regulatory Policies Act of 1978, subject to the terms and conditions set forth in the order.

**Final rule as compared with last published rule:** No changes.  
**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.  
**Assessment of Public Comment**  
 An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
 (09-M-0251SA1)

**NOTICE OF ADOPTION**

**Net Metering**

**I.D. No.** PSC-16-09-00012-A  
**Filing Date:** 2009-06-22  
**Effective Date:** 2009-06-22

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

**Action taken:** On June 18, 2009, the PSC adopted an order approving, with modifications, Rochester Gas and Electric Corporation request to

make various changes to its schedule for Electric Service PSC No. 19—Electricity, eff. 7/1/09.  
**Statutory authority:** Public Service Law, section 66(12)  
**Subject:** Net Metering.  
**Purpose:** To approve with modifications, amendments implementing changes to Public Service Law (PSL) § 66-l, regarding net metering.  
**Substance of final rule:** The Commission, on June 18, 2009, adopted an order approving, with modifications, amendments filed by Rochester Gas and Electric Corporation implementing changes to Public Service Law (PSL) § 66-l, regarding net metering for residential, farm service and non-residential wind electric generating systems, subject to the terms and conditions set forth in the order.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.  
**Assessment of Public Comment**  
 An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
 (09-E-0297SA1)

**NOTICE OF ADOPTION**

**Net Metering**

**I.D. No.** PSC-16-09-00015-A  
**Filing Date:** 2009-06-22  
**Effective Date:** 2009-06-22

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

**Action taken:** On June 18, 2009, the PSC adopted an order approving, with modifications, Niagara Mohawk Power Corporation d/b/a National Grid's request to make various changes to its schedule for Electric Service PSC No. 207—Electricity, eff. 7/1/09.

**Statutory authority:** Public Service Law, section 66(12)  
**Subject:** Net Metering.  
**Purpose:** To approve with modifications, amendments implementing changes to Public Service Law (PSL) § 66-l, regarding net metering.  
**Substance of final rule:** The Commission, on June 18, 2009, adopted an order approving, with modifications, amendments filed by Niagara Mohawk Power Corporation d/b/a National Grid implementing changes to Public Service Law (PSL) § 66-l, regarding net metering for residential, farm service and non-residential wind electric generating systems, and directing National Grid to tariff 12 kW as the size limit on a net metered wind facility that a non-residential customer may install, subject to the terms and conditions set forth in the order.

**Final rule as compared with last published rule:** No changes.  
**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.  
**Assessment of Public Comment**  
 An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
 (09-E-0284SA1)

**NOTICE OF ADOPTION**

**Net Metering**

**I.D. No.** PSC-16-09-00016-A  
**Filing Date:** 2009-06-22  
**Effective Date:** 2009-06-22

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

**Action taken:** On June 18, 2009, the PSC adopted an order approving, with modifications, New York State Electric & Gas Corporation's request to make various changes to its schedule for Electric Service PSC No. 120—Electricity, eff. 7/1/09.

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

**Subject:** Net Metering.

**Purpose:** To approve with modifications, amendments implementing changes to Public Service Law (PSL) § 66-l, regarding net metering.

**Substance of final rule:** The Commission, on June 18, 2009, adopted an order approving, with modifications, amendments filed by New York State Electric & Gas Corporation implementing changes to Public Service Law (PSL) § 66-l, regarding net metering for residential, farm service and non-residential wind electric generating systems, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(09-E-0296SA1)

### NOTICE OF ADOPTION

#### Net Metering

**I.D. No.** PSC-16-09-00017-A

**Filing Date:** 2009-06-22

**Effective Date:** 2009-06-22

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

**Action taken:** On June 18, 2009, the PSC adopted an order approving, with modifications, Central Hudson Gas & Electric Corporation request to make various changes to its schedule for Electric Service PSC No. 15—Electricity, eff. 7/1/09.

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

**Subject:** Net Metering.

**Purpose:** To approve with modifications, amendments implementing changes to Public Service Law (PSL) § 66-l, regarding net metering.

**Substance of final rule:** The Commission, on June 18, 2009, adopted an order approving, with modifications, amendments filed by Central Hudson Gas & Electric Corporation implementing changes to Public Service Law (PSL) § 66-l, regarding net metering for residential, farm service and non-residential wind electric generating systems, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(09-E-0298SA1)

### NOTICE OF ADOPTION

#### Issuance of Securities and to Enter into Derivative Contracts

**I.D. No.** PSC-16-09-00022-A

**Filing Date:** 2009-06-23

**Effective Date:** 2009-06-23

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

**Action taken:** On 6/18/09, the PSC adopted an order authorizing Rochester Gas and Electric Corporation to issue up to \$715.4 million of long-term debt, preferred stock, and hybrid securities not later than December 31, 2012 and to enter into derivative instruments.

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

**Subject:** Issuance of securities and to enter into derivative contracts.

**Purpose:** To authorize RG&E to issue up to \$715.4 million of long-term debt, preferred stock, and hybrid securities.

**Substance of final rule:** The Commission, on June 18, 2009, adopted an order authorizing Rochester Gas and Electric Corporation to issue up to \$715.4 million of long-term debt, preferred stock, and hybrid securities not later than December 31, 2012 and to enter into derivative instruments, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(09-M-0309SA1)

### NOTICE OF ADOPTION

#### Temporary Annual Assessment

**I.D. No.** PSC-16-09-00023-A

**Filing Date:** 2009-06-19

**Effective Date:** 2009-06-19

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

**Action taken:** On 6/18/09, the PSC adopted an order implementing the State established temporary assessment, effective April 1, 2009 through March 31, 2014, to raise funds for the support of the General Fund, through an amendment to Public Service Law § 18-a(6).

**Statutory authority:** Public Service Law, sections 66(1), 80(1), (10), 89-c(1) and (10)

**Subject:** Temporary Annual Assessment.

**Purpose:** To implement the annual temporary assessment.

**Substance of final rule:** The Commission, on June 18, 2009, adopted an order approving the State established temporary assessment, effective April 1, 2009 through March 31, 2014, to raise funds for the support of the General Fund, through an amendment to Public Service Law § 18-a(6), subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(09-M-0311SA1)

### NOTICE OF ADOPTION

#### Lightened Regulation of Retail Steam Operations

**I.D. No.** PSC-17-09-00017-A

**Filing Date:** 2009-06-19

**Effective Date:** 2009-06-19

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

**Action taken:** On 6/18/09, the PSC adopted an order granting Georgia-Pacific Consumer Operations LLC, a certificate to provide retail steam

service to Pactiv Corporation & Saranac Power Partners, L.P. and that the steam service will be subject to lightened regulation.

**Statutory authority:** Public Service Law, sections 2(22), 5(1)(b), 78, 79, 80, 81, 82, 82-a, 83, 84, 85, 88, 89, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

**Subject:** Lightened regulation of retail steam operations.

**Purpose:** To adopt the lightened regulation of retail steam operations.

**Substance of final rule:** The Commission, on June 18, 2009, adopted an order granting Georgia-Pacific Consumer Operations LLC, a certificate to provide retail steam service to Pactiv Corporation and Saranac Power Partners, L.P. and that the steam service will be subject to lightened and incidental regulation, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

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

(09-S-0315SA1)

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

#### Interconnection of the Networks between Vernon and tw telecom of new york l.p. for Local Exchange Service and Exchange Access

I.D. No. PSC-27-09-00011-P

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

**Proposed Action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Vernon Telephone Company (Vernon) and tw telecom of new york l.p.

**Statutory authority:** Public Service Law, section 94(2)

**Subject:** Interconnection of the networks between Vernon and tw telecom of new york l.p. for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Vernon and tw telecom of new york l.p.

**Substance of proposed rule:** Vernon Telephone Company, Inc. and tw telecom of new york l.p. have reached a negotiated agreement whereby Vernon Telephone Company, Inc. and tw telecom of new york l.p. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

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

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

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

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

(09-00889SP1)

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

#### Interconnection of the Networks between Berkshire Tel. and Sprint Spectrum and for Local Exchange Service and Exchange Access

I.D. No. PSC-27-09-00012-P

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

**Proposed Action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Berkshire Telephone Company, et al. (Berkshire Tel.) and Sprint Spectrum, LP, et al.

**Statutory authority:** Public Service Law, section 94(2)

**Subject:** Interconnection of the networks between Berkshire Tel. and Sprint Spectrum and for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Berkshire Tel. and Sprint Spectrum.

**Substance of proposed rule:** Berkshire Telephone Company/Taconic Telephone Corporation d/b/a FairPoint Communications, Inc. and Sprint Spectrum, LP d/b/a Sprint PCS; Nextel Communications of the Mid-Atlantic, Inc.; Nextel of New York, Inc.; Nextel West Corp. and NPCR, Inc. have reached a negotiated agreement whereby Berkshire Telephone Company/Taconic Telephone Corporation d/b/a FairPoint Communications, Inc. and Sprint Spectrum, LP d/b/a Sprint PCS; Nextel Communications of the Mid-Atlantic, Inc.; Nextel of New York, Inc.; Nextel West Corp. and NPCR, Inc. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

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

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

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

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

(09-00754SP1)

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

#### Interconnection of the Networks between Verizon and NOC, Inc. for Local Exchange Service and Exchange Access

I.D. No. PSC-27-09-00013-P

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

**Proposed Action:** The PSC is considering whether to approve or reject a proposal filed by Verizon New York Inc. (Verizon) for approval of an Interconnection Agreement with NOC, Inc. executed on May 6, 2009.

**Statutory authority:** Public Service Law, section 94(2)

**Subject:** Interconnection of the networks between Verizon and NOC, Inc. for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Verizon and NOC, Inc.

**Substance of proposed rule:** Verizon New York Inc. and NOC, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and NOC, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their network lasting until May 5, 2011, or as extended.

*Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:* Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

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

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

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

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

(09-00876SP1)

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

**Billing and Payment for Energy Efficiency Measures Through Utility Bill**

**I.D. No.** PSC-27-09-00014-P

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

*Proposed Action:* The Commission is considering a proposal for a pilot on-bill financing program for customers of The Brooklyn Union Gas Company d/b/a National Grid New York and KeySpan Gas East Corporation d/b/a National Grid Long Island.

*Statutory authority:* Public Service Law, sections 4(1), 5(2), 66(1) and (12-a)

*Subject:* Billing and payment for energy efficiency measures through utility bill.

*Purpose:* To promote energy conservation.

*Substance of proposed rule:* The Commission is considering whether to adopt, modify, or reject, in whole or in part, a Department of Public Service Staff proposal entitled "Proposal for an On-Bill Financing Gas Pilot," filed June 22, 2009, including attachments comprising a form of landlord approval for renter participation, a form for a utility - renter customer agreement, and a form for a utility - landowner customer agreement, for customers of The Brooklyn Union Gas Company d/b/a National Grid New York and KeySpan Gas East Corporation d/b/a National Grid Long Island.

*Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:* Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

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

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

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

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

(09-M-0465SP1)

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

**Interconnection of the Networks between Oriskany and tw telecom of new york l.p. for Local Exchange Service and Exchange Access**

**I.D. No.** PSC-27-09-00015-P

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

*Proposed Action:* The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Oriskany Falls Telephone Corporation (Oriskany) and tw telecom of new york l.p.

*Statutory authority:* Public Service Law, section 94(2)

*Subject:* Interconnection of the networks between Oriskany and tw telecom of new york l.p. for local exchange service and exchange access.

*Purpose:* To review the terms and conditions of the negotiated agreement between Oriskany and tw telecom of new york l.p.

*Substance of proposed rule:* Oriskany Falls Telephone Corporation and tw telecom of new york l.p. have reached a negotiated agreement whereby Oriskany Falls Telephone Corporation and tw telecom of new york l.p. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

*Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:* Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

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

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

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

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

(09-00890SP1)

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

**Con Edison's Proposed Demand Response Program**

**I.D. No.** PSC-27-09-00016-P

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

*Proposed Action:* The Commission is deciding whether to approve or modify, in whole or in part, Consolidated Edison Company of New York, Inc.'s proposed enhanced demand response program for the NYISO Zone J area.

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

*Subject:* Con Edison's proposed demand response program.

*Purpose:* To make a determination regarding Con Edison's proposed demand response program.

*Substance of proposed rule:* The Commission is considering the proposed enhanced demand response program submitted by Consolidated Edison Company of New York, Inc. (Con Edison) for New York Independent System Operator (NYISO) Zone J. The Commission may adopt, modify or reject, in whole or in part, the proposal.

*Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:* Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

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

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

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

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

(09-E-0115SP1)

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

**A Methodology for Performing Economic Deliverability Studies**

**I.D. No.** PSC-27-09-00017-P

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

**Proposed Action:** The Public Service Commission is considering whether to approve, reject or modify a proposed generator energy deliverability study methodology to be applied Statewide by electric utilities.

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

**Subject:** A methodology for performing economic deliverability studies.

**Purpose:** To ensure a proper balance between impacts and benefits from the siting of new generation facilities.

**Substance of proposed rule:** On June 19, 2008, in an order in Case 07-E-1343, the Commission stated: "Where new proposed renewable generation may result in displacement of other existing renewable generation, or in forcing a steam host to employ auxiliary steam production (with loss of the efficiency benefits of combined-cycle operation), then those effects should be reasonably qualified and quantified, and discussed in the context of the balancing of impacts and benefits resulting from siting the new generation facility." On September 9, 2009, in an order in Case 07-M-0906, the Commission required New York State Electric and Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E), among other things, to file documents that clearly define their methods for performing economic deliverability studies for interconnecting generators. Consistency in the information provided to the Commission will allow a more uniform evaluation of each proposed project's impacts and benefits. Therefore, the Commission is seeking comments on the NYSEG and RG&E compliance filing (dated November 7, 2008), which details a process and scope for Generator Energy Deliverability Studies. The Commission is considering whether to approve a study methodology not only for use by NYSEG and RG&E (in connection with generation projects proposed in their respective service territories) but also for use by developers proposing generation projects in other parts of the state that may come before the Commission. The Commission will evaluate the NYSEG-RG&E filing for three main purposes. The first purpose is to assist in determining the expected operating impacts of a proposed generation project as part of the decision whether to grant a certificate of public convenience and necessity. The second purpose is to obtain information as to where congestion is likely to develop in the future to help direct requests for transmission studies. The third purpose is to consider incorporating the study results into the evaluation of projects for Renewable Portfolio Standard (RPS) program payments for solicitations under the program.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: [leann\\_ayer@dps.state.ny.us](mailto:leann_ayer@dps.state.ny.us)

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

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

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

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

(09-E-0497SP1)

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

**Issuance of Long-term Indebtedness by Corning Natural Gas Corporation**

**I.D. No.** PSC-27-09-00018-P

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

**Proposed Action:** The Commission is considering a petition of Corning

Natural Gas Corporation authorizing the issuance of \$7 million of long-term indebtedness.

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

**Subject:** Issuance of long-term indebtedness by Corning Natural Gas Corporation.

**Purpose:** To permit Corning Natural Gas Corporation to finance transactions for purposes authorized under PSL Section 69.

**Substance of proposed rule:** The Commission is considering whether to approve or reject in whole or in part or modify a request sought in a petition filed by Corning Natural Gas Corporation regarding permission to issue \$7,000,000 of long-term debt.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: [leann\\_ayer@dps.state.ny.us](mailto:leann_ayer@dps.state.ny.us)

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

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

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

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

(09-G-0488SP1)

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

**Withdrawable Transportation Service and Withdrawable Sales Service**

**I.D. No.** PSC-27-09-00019-P

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

**Proposed Action:** The Commission is considering a proposal filed by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its Schedule for Gas Service — P.S.C. No. 4.

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

**Subject:** Withdrawable Transportation Service and Withdrawable Sales Service.

**Purpose:** To provide for withdrawable transportation service and withdrawable sales service under one service classification (S.C. No. 9).

**Text of proposed rule:** The Commission is considering a proposal filed by Orange and Rockland Utilities, Inc. (Orange and Rockland) to combine under Service Classification No. 9 both withdrawable transportation service and withdrawable sales service that are now provided separately under Service Classification No. 9 - Firm Withdrawable Transportation to Electric Generation Facilities and Service Classification No. 10 - Firm Withdrawable Sales to Electric Generation Facilities, respectively. Under the proposed changes, Service Classification No. 10 would be closed to new customers as of October 1, 2009. The Commission may adopt in whole or in part or reject terms set forth in Orange and Rockland's proposal.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: [leann\\_ayer@dps.state.ny.us](mailto:leann_ayer@dps.state.ny.us)

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

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

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

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

(09-G-0507SP1)

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

**Water Rates, Charges and Regulations****I.D. No.** PSC-27-09-00020-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 an investigation instituted by staff of the New York State Department of Public Service as to the rates, charges, rules and regulations of Birch Hill Water Company.

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

**Subject:** Water rates, charges and regulations.

**Purpose:** To approve findings with respect to the rates, charges, rules and regulation of Birch Hill Water Company.

**Text of proposed rule:** On May 9, 2009, a letter was received from 11 customers of Birch Hill Water Company (BHWC or company) complaining of several rate increases beginning in 2003, which they believe were not approved by the Commission. Department of Public Service Staff (Staff) reviewed Commission records and found no evidence of Commission approval of a rate increase for the company in the period in question. As a result, Staff initiated an investigation of the rates, charges, rules and regulations of BHWC. The company provides flat rate water service to approximately 17 residential customers in the Town of Brewster, Putnam County.

The Commission may approve or reject, in whole or in part, or modify the BHWC's rates and charges.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

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

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

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

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

(09-W-0402SP1)

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

**Water Rates and Charges****I.D. No.** PSC-27-09-00021-P

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

**Proposed Action:** The PSC is considering a request from The Callicoon Water Company, Inc. for a rate increase of 15.54% to produce \$17,881, and to increase the monthly surcharge from \$36.15 to \$44 per customer per quarter.

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

**Subject:** Water rates and charges.

**Purpose:** To approve an increase in rates of 15.54% to produce \$17,881, and increase the escrow account surcharge from \$36.15 to \$44.

**Text of proposed rule:** On June 16, 2009, The Callicoon Water Company, Inc. (Callicoon or the Company) filed tariff amendments (Rate Leaves 17, 19, 21, 22, 23, 24 - Revision 4, and Rate Leaf 25 - Revision 3) to become effective October 1, 2009. The company requests to increase its rates by 15.54% to produce additional annual revenues of \$17,881. The company is also requesting to modify its Escrow Account for Capital Improvements by increasing the allowance approved in the last rate case by \$29,395.62 or 17.84% to complete the replacement of a water tower, the company is

planning to do this by increasing the surcharge from \$36.15 to \$44 per quarter per customer.

The company provides water service to 162 flat rate customers, 5 metered customers, and 1 Public Fire Protection customer in the unincorporated Hamlet of Callicoon, Town of Delaware, Sullivan County.

The company's pending tariff and rate increase request is available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us)) located under Access to Commission Documents – Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's rates.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

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

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

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

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

(09-W-0496SP1)

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

**Approve Findings with Respect to Jurisdictional Issues****I.D. No.** PSC-27-09-00022-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 an investigation instituted by staff of the New York State Department of Public Service as to whether the Pierson Lakes Homeowners Association, Inc. is subject to Public Service Commission jurisdiction.

**Statutory authority:** Public Service Law, sections 2(26) and (27), 4(1), 5(1)(f), 89-b, 89-c(1) and 89-h

**Subject:** Approve findings with respect to jurisdictional issues.

**Purpose:** To approve findings with respect to jurisdictional issues.

**Text of proposed rule:** Staff of the NYS Department of Public Service is investigating whether the Pierson Lakes Homeowners Association, Inc. (Pierson), located in the Town of Ramapo, Rockland County, is subject to Public Service Commission jurisdiction. Pierson provides fire protection services and maintains the fire protection system located with the property known as Pierson Lakes Subdivision. The Commission may approve or reject, in whole or in part, or modify staff's recommendations.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

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

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

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

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

(09-W-0509SP1)

## Susquehanna River Basin Commission

### INFORMATION NOTICE

#### Notice of Proposed Rulemaking and Public Hearing

18 CFR Parts 806 and 808

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed rules that would amend project review regulations to include provisions specifically requiring Commission approval of projects undergoing Federal Energy Regulatory Commission (FERC) and Nuclear Regulatory Commission (NRC) licensing actions that affect the basin's water resources; restricting the use of docket reopening petitions to avoid abuses of process; amending the "Approval by Rule" (ABR) process to standardize ABR notice procedures and allow for project sponsors to utilize approved water sources at approved drilling pad sites without the need for modification of the ABR; clarifying that the public hearing requirement for rulemaking shall be applicable to the proposed rulemaking stage of that process; and further providing for the time period within which administrative appeals must be filed.

DATES: Comments on these proposed rules may be submitted to the SRBC on or before August 15, 2009. The Commission has scheduled two public hearings on the proposed rules, to be held August 4, 2009, in Harrisburg, Pennsylvania, and August 5, 2009, in Elmira, New York. The locations of the public hearings are listed in the addresses section of this document. Additionally, individuals wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

ADDRESSES: Comments may be mailed to: Mr. Richard A. Cairo, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391, or by email to [rcairo@srbc.net](mailto:rcairo@srbc.net).

The public hearings will be held on Tuesday, August 4, 2009, at 10:00 a.m., at the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA, 17101, and Wednesday, August 5, 2009, at 7:00 p.m., at the Holiday Inn – Elmira Riverview, 760 E. Water Street, Elmira, New York, 14901. Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: 717-238-0423, ext. 306; fax: 717-238-2436; e-mail: [rcairo@srbc.net](mailto:rcairo@srbc.net). Also, for further information on the proposed rulemaking, visit the Commission's web site at [www.srbc.net](http://www.srbc.net).

#### SUPPLEMENTARY INFORMATION:

##### Background and Purpose of Amendments

The SRBC adopted final rulemaking on December 5, 2006, published at 71 FR 78570, December 29, 2006, establishing: (1) the scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Pub. L. 91-575; 83 Stat. 1509 et seq. (the compact); (2) special standards under Section 3.4(2) of the compact governing water withdrawals, consumptive use of water; diversions of the basin's waters, water conservation, and water use registration; and (3) procedures for hearings, administrative appeals, and enforcement actions.

18 CFR § 806.4(a) contains broad authority for the review and approval of water resources projects by the Commission, including projects on or crossing the boundary between two member states, projects in a member state having a significant effect on the water resources in another member state, and projects affecting the SRBC comprehensive plan. Nevertheless, there is no express provision in § 806.4 specifically requiring that projects affecting the water resources of the basin and undergoing licensing actions by the FERC or the NRC be approved by the Commission, although that is its current practice. To remove any uncertainty regarding the need for approval of such projects, the Commission proposes to insert language covering certain projects involved in FERC and NRC licensing procedures.

18 CFR § 806.22(f), which was adopted by the Commission as a final rule on December 4, 2008, and published in the Federal Register on December 23, 2008, at p. 78618, provides an "Approval by Rule" (ABR) procedure for consumptive use related to natural gas well development that is separate from the pre-existing ABR process for projects supplied by public water systems, which is contained in 18 CFR § 806.22(e). The Commission proposes to modify the public notice provisions related to both ABR provisions to make them consistent, and simplify the administration of the natural gas ABR procedure to allow

project sponsors to utilize all approved sources at any approved drilling pad site without the need to register its own water source approvals or the need to modify each ABR issued for subsequently issued approvals. It also would allow for registration of other approved sources to allow for use at the project sponsor's approved drilling pad sites.

18 CFR § 806.32 allows for the reopening of a project approval upon the motion of the Commission, or upon application of the project sponsor or any interested party for the purpose of making additional orders that may be necessary to mitigate or avoid adverse impacts or otherwise protect the public health, safety, and welfare or water resources. In two recent cases, interested parties whose § 808.2 administrative appeals were denied, then attempted to use § 806.32 to obtain administrative review of the same matter. The Commission believes that one administrative proceeding seeking relief on a particular issue is sufficient. Therefore the Commission proposes to amend § 806.32 to limit the filing of a petition to reopen where the matter has already been considered by the Commission in an administrative appeal proceeding under § 808.2.

18 CFR § 808.1 sets forth the public hearing requirements for various commission actions, including rulemaking. It is the practice of the Commission to meet this public hearing requirement at the proposed rulemaking stage. However, the current regulation does not make this intent clear, referring only to "rulemaking." To clarify the rule and make it consistent with the Commission's current practice, new language is added to § 808.1(a)(2) and 808.1(c).

Finally, 18 CFR § 808.2 9(a) specifies that an administrative appeal shall be filed within 30 days of the action or decision of the Commission or Executive Director. In the case of appeals of project approvals, however, the Commission believes that due process safeguards require that the appeal period run from the time constructive notice of the action is given by the Commission for aggrieved persons other than the project sponsor. Therefore, the Commission proposes to amend this provision to allow an appeal period of 30 days from the date a notice of a project approval appears in the Federal Register. For project sponsors, the 30 day appeal period would run from the date of receipt of actual notice.

List of Subjects in 18 CFR Parts 806 and 808: Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR Parts 806 and 808 as follows:

#### PART 806—REVIEW AND APPROVAL OF PROJECTS

##### Subpart C – Standards for Review and Approval

1. The authority citation for Part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

2. In § 806.4, revise paragraph (a) to read as follows:

§ 806.4 – Projects requiring review and approval.

(a) \* \* \*

(7) Any hydroelectric project regulated by the United States Federal Energy Regulatory Commission and initiating a licensing or license amendment process pursuant to 18 CFR Part 4 that may affect the water resources of the basin.

(8) Any nuclear power project regulated by the United States Nuclear Regulatory Commission and initiating a licensing, renewal, license amendment or license uprate process pursuant to 10 CFR Part 55 that may affect the water resources of the basin.

(9) Any other project so determined by the Commissioners or Executive Director pursuant to § 806.5 or 18 CFR part 801. Such project sponsors shall be notified in writing by the Executive Director.

\* \* \* \* \*

2. In § 806.22, revise paragraphs (e) and (f) to read as follows:

§ 806.22 – Standards for consumptive use of water.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) \* \* \*

(B) Send a copy of the NOI to the appropriate agencies of the member state, and to each municipality and county in which the project is located. The project sponsor shall submit a copy of the United States Postal Service return receipt, or other proof of service acceptable to the Commission, for such notifications within 10 days of submittal of the NOI.

(ii) Within 10 days after submittal of an NOI under paragraph (e)(1)(i) of this section, the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a display ad notice of its intent to operate under an approval by rule, which contains a sufficient description of the project, its purpose, the proposed public water supply source(s), the

requested consumptive use amount and its location. This notice shall also contain the address, electronic mail address and telephone number of the Commission. The Commission may further prescribe the form and manner of such notice.

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(f)\*\*\*

(2) Notification of Intent: Prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the appropriate fee, along with any required attachments. The project sponsor shall send a copy of the NOI to the appropriate agencies of the member state, and to each municipality and county in which the project is located. The project sponsor shall submit a copy of the United States Postal Service return receipt, or other proof of service acceptable to the Commission, for such notifications within 10 days of submittal of the NOI.

(3) Within 10 days after submittal of an NOI under paragraph (f)(2) of this section, the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project of a display ad notice of its intent to operate under an approval by rule, which contains a sufficient description of the project, its purpose, any new proposed water source(s), the requested consumptive use amount and its location. This notice shall also contain the address, electronic mail address and telephone number of the Commission. The Commission may further prescribe the form and manner of such notice.

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(11) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any water source approved for use by the project sponsor for natural gas well development pursuant to §§ 806.4 or this section, at the applicable drilling pad site subject to any approval or authorization required by the member state to utilize such source(s).

(12) The following additional sources of water may be utilized by a project sponsor in conjunction with an approval by rule issued pursuant to paragraph (f)(9) of this section:

(i) Water withdrawals or diversions approved by the Commission pursuant to § 806.4(a) and issued to persons other than the project sponsor, provided any such source is approved for use in natural gas well development, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in a manner as prescribed by the Commission, and provides a copy of same to the appropriate agency of the member state.

(ii) Sources of water other than those subject to paragraph (f)(12)(i) of this section, including, but not limited to, public water supply, wastewater discharge or other reclaimed waters, provided such sources are first approved by the Executive Director pursuant to this section. Any request to utilize such source(s) shall be submitted on a form and in a manner as prescribed by the Commission, and shall be subject to review pursuant to the standards set forth in subpart C of this part. Any approval issued hereunder shall be further subject to any approval or authorization required by the member state to utilize such source(s). The notice requirements related to agencies of member states, municipalities and counties contained in paragraph (f)(2) of this section, and the notice requirements contained in paragraph (f)(3) of this section, shall likewise be applicable to any request submitted hereunder.

Subpart D – Terms and Conditions of Approval

3. In § 806.32, revise paragraph (a) to read as follows:

§ 806.32 – Reopening/modification.

(a) Once a project is approved, the Commission, upon its own motion, or upon petition of the project sponsor or any interested party, may at any time reopen any project approval and make additional orders or otherwise modify or impose such additional conditions that may be necessary to mitigate or avoid adverse impacts or to otherwise protect the public health, safety, and welfare or water resources. Whenever a petition for reopening is filed by an interested party, the burden shall be upon that interested party to show, by a preponderance of the evidence, that a significant adverse impact or a threat to the public health, safety and welfare or water resources exists that warrants reopening of the docket. Notwithstanding the foregoing, any petition filed by a party who previously sought the same or similar relief identified in the petition pursuant to the administrative appeals process under § 808.2 will not be eligible for consideration by the Commission absent new facts not known or readily discernible at the time of consideration of the petitioner's previous request for administrative appeal filed pursuant to § 808.2.

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PART 808—HEARINGS AND ENFORCEMENT ACTIONS

Subpart A – Conduct of Hearings

4. The authority citation for Part 808 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

5. In § 808.1, revise paragraphs (a) and (c) to read as follows:

§ 808.1 – Public hearings.

(a)\*\*\*

(2) Proposed rulemaking.

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(c) Notice of public hearing. At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper of general circulation in the area affected. Occasions when public hearings are required by the compact include, but are not limited to, amendments to the comprehensive plan, drought emergency declarations, and review and approval of diversions. In all other cases, at least 10 days prior to the hearing, notice shall be posted at the office of the Commission (or on the Commission web site), mailed by first class mail to the parties who, to the Commission's knowledge, will participate in the hearing, and mailed by first class mail to persons, organizations and news media who have made requests to the Commission for notices of hearings or of a particular hearing. With regard to rulemaking, the Commission shall convene at least one public hearing on any proposed rulemaking it approves for public review and comment. For any such hearing(s), notices need only be forwarded to the directors of the New York Register, the Pennsylvania bulletin, the Maryland Register and the Federal Register, and it is sufficient that this notice appear only in the Federal Register at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

6. In § 808.2, revise paragraph (a) to read as follows:

§ 808.2 – Administrative appeals.

(a) A project sponsor or other person aggrieved by any action or decision of the Commission or Executive Director may file a written appeal requesting a hearing. Except with respect to project approvals or denials, such appeal shall be filed with the Commission within 30 days of the action or decision. In the case of a project approval or denial, such appeal shall be filed by a project sponsor within 30 days of receipt of actual notice, and by all others within 30 days of publication of notice of the action taken on the project in the Federal Register.

Dated: June 18, 2009.

Paul O. Swartz,  
Executive Director.

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## Department of Taxation and Finance

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### NOTICE OF ADOPTION

#### New York State and City of Yonkers Withholding Tables and Other Methods

**I.D. No.** TAF-18-09-00002-A

**Filing No.** 704

**Filing Date:** 2009-06-23

**Effective Date:** 2009-07-08

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

**Action taken:** Amendment of sections 171.4(b)(1) and 251.1(b) and Appendixes 10 and 10-A of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subdivision First; 671(a)(1); 697(a); 1329(a); and 1332(a); Codes and Ordinances of the City of Yonkers, sections 15-105 and 15-108(a); L. 2009, ch. 57, part W-1, section 6 and part Z-1, section 5

**Subject:** New York State and City of Yonkers withholding tables and other methods.

**Purpose:** To provide current New York State and City of Yonkers withholding tables and other methods.

**Text or summary was published** in the May 6, 2009 issue of the Register, I.D. No. TAF-18-09-00002-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax\_regulations@tax.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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

**Automatic Extension of Time to File Partnership and Fiduciary Returns**

**I.D. No.** TAF-27-09-00009-P

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

**Proposed Action:** This is a consensus rule making to amend section 157.2(a) of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subdivision First, 657(a) and 697(a)

**Subject:** Automatic extension of time to file partnership and fiduciary returns.

**Purpose:** To conform to federal treatment concerning the automatic extension of time to file partnership and fiduciary returns.

**Text of proposed rule:** Section 1. Subdivision (a) of section 157.2 of such regulations is amended to read as follows:

(a) The department will grant an automatic [six-month] extension of time to file a New York State income tax return beyond the date prescribed for filing the return upon the proper application by the individual, partnership, or fiduciary required to file the return. *The length of time of the automatic extension for a New York State individual income tax return is six months. Except as to electing large partnerships allowed an automatic six-month extension for federal purposes, which shall be allowed an automatic six-month extension for filing their New York State partnership returns, the length of time of the automatic extension for a New York State partnership or fiduciary return is five months. Consistent with section 657 of the Tax Law, the automatic extension may be granted for a different length of time to conform to extensions for comparable federal forms.* The application for an automatic extension must be filed on or before the date prescribed for filing the appropriate return.

Section 2. These amendments shall take effect on the date the Notice of Adoption is published in the *State Register* and apply to New York State income tax returns for taxable years ending on or after December 31, 2009.

**Text of proposed rule and any required statements and analyses may be obtained from:** John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax\_regulations@tax.state.ny.us

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

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

**Consensus Rule Making Determination**

The Department of Taxation and Finance has considered the proposed amendments to section 157.2(a) of Title 20 NYCRR and has determined that no person is likely to object to the rule as written, because these amendments merely conform the provisions relating to automatic extensions of time to file income tax returns to reflect current federal treatment under the IRC and related regulations.

The amendments conform to federal treatment regarding the period of automatic extensions to file tax returns for partnerships, estates, and trusts by reducing the duration of the automatic extension of time to file for certain pass-through entities (partnerships, estates and trusts) from six months to five months. This shorter extension period for pass-through entities will give taxpayers time to receive information from those entities in order to file their own tax returns in a timely manner. These amendments provide for uniform treatment under New York State and federal law, avoiding the confusion that could result from disparate state and federal filing deadlines.

The following organizations were notified that the Department was considering developing a rule to conform with federal treatment and were given the opportunity to participate in its development: the National Federation of Independent Businesses; the Division for Small Business of Empire State Development; the New York State Association of Counties; the Association of Towns of New York State; the New York Association of Convenience Stores; the Small Business Council of the New York State Business Council; the Retail Council of New York State; the New York State Conference of Mayors and Municipal Officials; the Office of Local Government and Community Services of the New York State Department of State; the Tax Section of the New York State Bar Association; the National Tax Committee for the National Conference of CPA Practitioners (NCCPAP); and the New York State Society of CPAs. The NCCPAP urged the Department to adopt amendments to conform to the federal treatment. No other comments were received.

**Job Impact Statement**

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it could have no impact on jobs and employment opportunities.

The primary purpose of these amendments is to conform to a temporary and proposed Federal regulation (26 CFR 1.6081-2T) which reduces the period for an automatic extension of time to file for certain pass-through entities (partnerships, estates, and trusts) from six months to five months. This reduced time period is to allow taxpayers time to receive information from the pass-through entities in order to file their own tax returns in a timely manner.

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

**Registration Fees and Related Penalties for Retail Dealers of Cigarettes and Tobacco Products**

**I.D. No.** TAF-27-09-00010-P

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

**Proposed Action:** This is a consensus rule making to amend section 73.1; and repeal sections 73.2 and 73.3 of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subdivision First and 475 (not subdivided)

**Subject:** Registration fees and related penalties for retail dealers of cigarettes and tobacco products.

**Purpose:** To reference current statutory provisions, eliminate obsolete and unnecessary provisions, and make technical changes.

**Text of proposed rule:** Section 1. Paragraph (1) of subdivision (b) of section 73.1 is amended to read as follows:

(b) "Initial registration." (1) An application for registration of a retail dealer or of a vending machine must be made on a form prescribed by the Department of Taxation and Finance for such purpose and must fully disclose all of the information required therein. Every retail dealer and every vending machine owner or operator subject to the provisions of this section who:

- (i) [commence] *commences* business in this State;
- (ii) [commence] *commences* selling cigarettes or tobacco products at retail through new or different places of business in this State; or
- (iii) [commence] *commences* selling cigarettes or tobacco products through new or different vending machines in this State;

as the case may be, must file such an application with the department at least 30 days prior to the commencement of such business or the commencement of such sales. Provided, however, the department will accept as being timely filed such an application received at least 20 days prior to the commencement of such business or the commencement of such sales, in order to facilitate the joint administration of the registration procedures provided for under article 28 of the Tax Law and under article 20 of such law and this Part (see section 1134 of the Tax Law and Part 539 of this Title for the requirements for registering as a sales tax vendor and obtaining a certificate of authority). Each retail dealer must pay with the filing of an application for registration, an application fee [of \$100] as provided in section 480-a(2)(b) of the Tax Law, for each retail place of business or merchandising device through which the dealer will sell cigarettes or tobacco products in the State. Each vending machine owner or operator must pay with the filing of such an application, an application fee [of \$25]

as provided in section 480-a(2)(b) of the Tax Law, for each vending machine through which cigarettes or tobacco products will be sold in the State. The application fees should be [in the form of a] *paid by check* [or], money order, *or electronically*, [made payable to] *as prescribed by* the department. In no event shall the application fees [that are set forth in this subdivision] be prorated for a portion of a calendar year or for any other purpose.

Section 2. Sections 73.2 and 73.3 are repealed.

**Text of proposed rule and any required statements and analyses may be obtained from:** John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax\_regulations@tax.state.ny.us

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

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

#### **Consensus Rule Making Determination**

The Department of Taxation and Finance has determined that no person is likely to object to the adoption of this rule as written because the amendments merely reference statutory changes, eliminate obsolete and unnecessary provisions, and make technical changes that are not controversial in nature. Chapter 58 of the Laws of 2009, Part C, sections 125 and 125-a amended Tax Law section 480-a by increasing registration application fees and related penalties for cigarette and tobacco product retail dealers and vending machine owners and operators. The primary purpose of this rule is to reflect these statutory changes in the regulations.

#### **Job Impact Statement**

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities.

Chapter 58 of the Laws of 2009, Part C, sections 125 and 125-a amended Tax Law section 480-a by increasing registration application fees and related penalties for cigarette and tobacco product retail dealers and vending machine owners and operators. The purpose of this proposal is to amend Part 73 of the regulations to reference current statutory provisions and eliminate obsolete and unnecessary provisions.