

# 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 Alcoholism and Substance Abuse Services

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### EMERGENCY RULE MAKING

#### Administration of “Other Approved Agents” Such As Buprenorphine and the Ability to Also Prescribe Buprenorphine to Treat Addicts

**I.D. No.** ASA-49-08-00007-E

**Filing No.** 1096

**Filing Date:** 2009-09-17

**Effective Date:** 2009-09-17

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

**Action taken:** Amendment of Part 828 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 19.07(b), (e), 19.21(b), 19.40, 32.01, 32.05(b) and 32.07(a), (b)

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

**Specific reasons underlying the finding of necessity:** The proper administration, prescription and availability of buprenorphine along with the ability to administer any other approved agents to treat opioid addiction are necessary to ensure that those persons suffering from addiction can get the most advanced and most appropriate treatment for their disease.

**Subject:** Administration of “other approved agents” such as Buprenorphine and the ability to also prescribe Buprenorphine to treat addicts.

**Purpose:** To ensure that all persons will have equal access to the appropriate “approved agent” to treat their opioid addiction.

#### **Text of emergency rule:** REQUIRMENTS FOR THE OPERATION OF CHEMOTHERAPY SUBSTANCE ABUSE PROGRAMS.

##### § 828.1 Definitions.

(a) Methadone program means a substance abuse program using methadone *or other approved agents*, and offering a range of treatment protocols and services for the rehabilitation of persons dependent on opium, morphine, heroin or any derivative or synthetic drug of that group.

(1) Methadone maintenance means a treatment *protocol* using methadone or any of its derivatives, *or other approved agents*, administered, *and for purposes of prescribing Buprenorphine*, over a period of time to relieve withdrawal symptoms, reduce craving and permit normal functioning so that, in combination with rehabilitative services, patients can develop productive life styles.

(i) Methadone to abstinence means a treatment *protocol* using methadone, *or other approved agents*, administered, *and for purposes of prescribing Buprenorphine*, for a period exceeding 21 days, as part of a planned course of treatment involving reduction in dosage to the point of abstinence followed by drug-free treatment.

(ii) Methadone maintenance aftercare means a planned course of treatment for methadone, *or other approved agents* maintenance patients, directed toward the achievement of abstinence and, through the aid of supportive counseling, the continuance of a drug-free life style.

(2) Methadone detoxification means a treatment *protocol* using methadone, or any of its derivatives, *or other approved agents*, administered, *and for purposes of prescribing Buprenorphine*, in decreasing doses over a limited period of time for the purpose of detoxification from opiates.

(b) Methadone clinic means a single location at which a methadone program provides methadone, *or other approved agent* and rehabilitative services to patients.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. ASA-49-08-00007-P, Issue of December 3, 2008. The emergency rule will expire November 15, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Deborah Egel, OASAS, 1450 Western Ave., Albany, NY 12203, (518) 457-2312, email: DeborahEgel@oasas.state.ny.us

#### **Regulatory Impact Statement**

Part 828: Requirements for the operation of chemotherapy substance abuse programs will be amended to revise the definitions of methadone to include other approved agents to be administered or prescribed instead of, or in addition to, methadone.

##### 1. Statutory authority

Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services (“the Commissioner”) to ensure that persons who abuse or are dependent on alcohol and/or substances and their families are provided with care and treatment which is effective and of high quality.

Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

Section 19.15(a) of the Mental Hygiene Law bestows upon the Commissioner the responsibility of promoting, establishing, coordinating, and conducting programs for the prevention, diagnosis, treatment, aftercare, rehabilitation, and control in the field of chemical abuse or dependence.

Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue a single operating certificate for the provision of chemical dependence services.

Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32.

Section 32.07(a) of the Mental Hygiene Law gives the Commissioner the power to adopt regulations to effectuate the provisions and purposes of Article 32.

Section 32.09 of the Mental Hygiene Law gives the Commissioner the authority to issue operating certificates to providers of chemical dependence services.

#### 2. Legislative objectives

Chapter 558 of the Laws of 1999 requires the promulgation of rules and regulations to regulate and ensure the consistent high quality of services provided within the state to persons suffering from chemical abuse or dependence, their families and significant others, and those who are at risk of becoming chemical abusers. The amendment of Part 828 will allow methadone clinics to dispense, administer or prescribe buprenorphine to clients of the clinic as an alternative to methadone, thereby reducing the number of persons dependent on street drugs or illegally obtained prescription opioids.

#### 3. Needs and benefits

The use of additional agents to treat opioid addiction will decrease the number of addicted persons using street drugs such as heroin or illegally obtained prescription opioids. The need for additional and varied treatment methodologies to treat opioid addiction is apparent, and the benefit to the service to be able to offer choices to their patients is that they may be able to keep more people on a "maintenance" program than if they have only one option.

#### 4. Costs

##### a. Costs to regulated parties.

There may be a change in the reporting requirements or the documentation requirements which may have a fiscal impact on regulated parties.

##### b. Costs to the agency, state and local governments.

The state and local impact of the amendment of 828 will be minimal if at all. There is a difference between the reimbursement rates for methadone and buprenorphine. The weekly rates for buprenorphine are between \$170.78 and \$259.78, depending on the dose, and for methadone the weekly reimbursement rate is \$136.05. Therefore, it may cost the state, federal or local governments more money to provide buprenorphine. However, the number of persons receiving buprenorphine may not rise because the dispensing or prescribing of this approved agent is completely voluntary.

##### 5. Local government mandates

The proposed rule does not impose any new local government mandates.

##### 6. Paperwork

The proposed rule does not impose additional paperwork requirements.

##### 7. Duplication

The proposed rule does not duplicate of other state or federal regulations.

##### 8. Alternatives

The only alternative to the proposed regulation is to continue to use only methadone in clinics regulated under Part 828.

##### 9. Federal standards

The Centers for Substance Abuse Treatment (CSAT) federal regulations preserve States' authority to regulate Opioid Treatment Programs (OTP) and states are authorized to promulgate appropriate additional regulations. Federal regulations for dispensing or prescribing Buprenorphine in opioid treatment programs are more restrictive than minimal federal regulations for dispensing for physician based practices. In support of reducing opioid dependence, it is demonstrated that there are numerous benefits, including improved retention in treatment for patients, making OTP's more attractive to new patients, and giving patients more control over their treatment experience. In addition, patient quality of life may be improved through the reduction in daily attendance at an OTP clinic.

##### 10. Compliance schedule

It is expected that full implementation of these Part 828 amendments shall become effective immediately.

#### **Regulatory Flexibility Analysis**

**Effect of the Rule:** The proposed emergency revision to Part 828 will impact certified and/or funded providers. It is expected that the emergency revision will require providers to amend some of their policies and procedures in their treatment modality. These new services will result in better patient treatment outcomes. Local health care providers may see an increase in patients seeking medication assisted treatment for opioid addiction due to more treatment options. As a result of patients receiving these services, local governments may see a decrease in services associated with active illicit drug use such as arrests and emergency room visits. Also, local governments and districts may see a nominal increase in cost due to the weekly buprenorphine rate but this should be offset by better patient outcomes.

**Compliance Requirements:** It is expected that there will be no significant changes in compliance requirements. Since providers are already required to provide utilization review, it is not expected that this regulation, will have additional costs.

**Professional Services:** While it is expected that programs may require additional professional services when they choose to administer buprenorphine during the induction phase this will last only a few days. In addition,

providers will now have the option of prescribing instead of administering.

**Compliance Costs:** Some programs may need to formally train staff to understand the pharmacology of buprenorphine.

**Economic and Technological Feasibility:** Compliance with the record-keeping and reporting requirements of the emergency revision to Part 828 is not expected to have an economic impact or require any changes to technology for small businesses and government.

**Minimizing Adverse Impact:** This is an emergency adoption, no public comment is required, however, the subject matter experts within our agency, including the Medical Director, have concluded that, in line with federal standards, the addition of buprenorphine through emergency regulation is necessary for the health, safety and welfare of the public. Any impact this rule may have on small businesses and the administration of State or local governments and agencies will either be a positive or the nominal costs associated with compliance are small and will be absorbed into the already existing economic structure. The positive impact for our patients and our health care system outweigh any potential minimal costs.

**Small Business and Local Government Participation:** This is an emergency adoption, therefore even though there have been informal conversations with persons affected by this regulation and the subject matter experts within the agency have decided that this emergency is necessary to protect the health, safety and welfare of the public, a formal outreach to the business community was not performed. Small businesses should not be affected by this change, and local governments running methadone clinics are not required to provide buprenorphine.

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

A rural flexibility analysis is not provided since these proposed regulations would have no adverse impact on public or private entities in rural areas. The majority of Methadone providers are located in New York City. There are a few others upstate, but they are in cities, of various sizes. There are only three providers located in Ulster, Broome and Montgomery, which may be considered rural areas. However, these providers are located in towns where the density is greater than 150 people per square mile. The compliance, recordkeeping and paperwork requirements are the minimum needed to insure compliance with state and federal requirements and quality patient care.

#### **Job Impact Statement**

The implementation of emergency regulation Part 828 will have a minimal impact on jobs in that it may require some additional staffing, particularly during induction, if OTP's choose to administer Buprenorphine. This regulation will not adversely impact jobs outside of the agency.

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

The agency received no public comment since publication of the last assessment of public comment.

## **EMERGENCY RULE MAKING**

### **Detoxification of Substance and Stabilization Services**

**I.D. No.** ASA-49-08-00009-E

**Filing No.** 1111

**Filing Date:** 2009-09-21

**Effective Date:** 2009-09-21

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

**Action taken:** Repeal of Part 816 and addition of new Part 816 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 19.09, 19.15 and 19.40

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

**Specific reasons underlying the finding of necessity:** This emergency regulation must be promulgated for OASAS to be in compliance with Public Health Law Section 2708(c) and the rates Department of Health implemented upon approval of CMS in April with an effective date of 12/01/08.

**Subject:** Detoxification of substance and stabilization services.

**Purpose:** To repeal and add Part 816 services to allow for implementation of language in Part C of Chapter 58 of the Laws of 2008.

**Substance of emergency rule:** The emergency regulation would revise Part 816 of Title 14 of the New York Codes, Rules and Regulations (Chemical Dependence Crisis Services) to allow for implementation of language in Part C of Chapter 58 of the Laws of 2008 as and further

amended by Part C of Chapter 58 of the Laws of 2009 which amended section 2807-c(4)(I) of the Public Health law changing rates from a Diagnosis Related Group system to a per diem system.

The amendment adds definitions in section 816.5 for Detoxification, Medically Managed Withdrawal Services, Medically Supervised Withdrawal services-Inpatient, Medically Supervised Withdrawal Services-Outpatient, Medically Monitored, Observation Bed, Prescribing Professional, Program Sponsor, Recovery Care Plan, and updates Qualified Health Professionals to include Licensed Mental Health Counselors, in order to effectively integrate operation of the proposed regulation.

The emergency regulation updates section 816.7 (Standards applicable to medically managed withdrawal and stabilization services) defining inpatient services that can be offered by providers in this service. The emergency regulation establishes that providers of medically managed services could also provide medically supervised services within the same setting with no change to their OASAS certification. The regulation also defines the differences in the two services.

The emergency regulation was developed by OASAS staff and providers of withdrawal and stabilization services to allow for greater clinical flexibility; reduced paperwork requirements; increased patient-centered focus and a more targeted focus on crisis stabilization and linkage to treatment. Recommendations from the Detoxification Task Force convened by the Commissioner in the summer of 2007 included revising Part 816 regulations and “identify and modify, where appropriate the regulatory requirements that currently impede development of community-based medically supervised withdrawal programs”. The regulation has been revised to protect patient safety and quality of care while providing greater flexibility to the role of medical and clinical staff to exercise clinical judgment.

These changes are one means of encouraging communities to develop increased community-based withdrawal and stabilization programs to meet the overall goal of the Detoxification Task Force of reducing unnecessary hospital detoxifications and increasing access to community based care where safe and appropriate.

The emergency changes to Part 816 also update section 816.8 (Standards applicable to inpatient medically supervised withdrawal and stabilization services). The regulation changes the type of paperwork required and staffing configuration for outpatient settings. The proposed regulation provides a separate section, 816.9, applying to medically supervised outpatient withdrawal and stabilization services. Changes to the outpatient regulation allow for a face to face visit with a medical professional including a registered nurse and allow for the physician to schedule visits less than daily if deemed safe and appropriate. These changes address the biggest previous barrier to the provision of outpatient services: the need for daily physician contact.

The emergency regulation would reduce the amount of paperwork in both the inpatient and outpatient medically managed and medically supervised setting. The regulation no longer requires vocational and education assessments, changes the language from biopsychosocial assessment to a crisis assessment targeting only the information necessary to safely stabilize the patient, engage them in a change process and link them to appropriate treatment services. The emergency regulation requires targeted assessments aimed at crisis stabilization and linkages, thereby allowing more time for counseling services and providing more time to engage the client in the recovery process.

The emergency regulation expands clinical flexibility by providing individualized treatment when a patient is interested in withdrawal and stabilization services. By triaging the patient a more efficient and cost effective level of care determination can be made, allowing for more individualized crisis assessment and stabilization.

The emergency Part 816 regulation supports implementation of the enacted 2008-2009 Health and Mental Hygiene Budget, which amended section 2807-c of the Public Health Law to: reconfigure reimbursement for hospital based medically managed withdrawal / detoxification; and authorize the reimbursement methodology for a 48 hour detoxification observation period.

Section 816.9, entitled medically monitored withdrawal and stabilization services, remains the same.

In addition, the section entitled 816.12, savings and renewal clause has been added in order to provide continuity of the operating certificate during rule proposal and rule promulgation.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. ASA-49-08-00009-P, Issue of December 3, 2008. The emergency rule will expire November 19, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Deborah Egel, OASAS, 1450 Western Ave., Albany, NY 12203, (518) 485-6244, email: DeborahEgel@oasas.state.ny.us

#### **Regulatory Impact Statement**

The emergency Chemical Dependence Withdrawal and Stabilization Services regulations are being promulgated in order for OASAS to be in alignment with New York State statutory language of the enacted 2008-2009 Health and Mental Hygiene Budgets, and Part C of Chapter 58 of the Laws of 2008 as and further amended by Part C of Chapter 58 of the Laws of 2009. This chapter amended Section 2807-c of the Public Health Law to: reconfigure reimbursement for hospital based medically managed withdrawal / detoxification; and, authorizes the reimbursement methodology for a 48 hour detoxification observation period and had an effective date of December 1, 2008.

Chemical dependence is a chronic illness which can be treated effectively when medications are administered under conditions consistent with their pharmacological efficacy, and when withdrawal and stabilization services include necessary supportive services such as psychosocial counseling, treatment for co-occurring disorders, and medical services as needed. Chemical Dependence withdrawal and stabilization is the first step in facilitating recovery from addiction for many patients. The proposed regulations set forth standards to guide withdrawal services treatment.

#### **1. Statutory Authority:**

Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services (“the Commissioner”) to adopt standards including necessary rules and regulations pertaining to chemical dependence services.

Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

Section 19.21 (b) of the Mental Hygiene Law requires the Commissioner to establish and enforce certification, inspection, licensing and treatment standards for alcoholism, substance abuse, and chemical dependence facilities.

Section 19.21(d) of the Mental Hygiene Law requires the Commissioner to promulgate regulations which establish criteria to evaluate chemical dependence treatment effectiveness and to establish a procedure for reviewing and evaluating the performance of providers of services in a consistent and objective manner.

Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32.

Section 32.05 of the Mental Hygiene Law requires providers to obtain an operating certificate issued by the Commissioner in order to operate chemical dependence services.

Section 32.07(a) of the Mental Hygiene Law gives the Commissioner the power to adopt regulations to effectuate the provisions and purposes of Article 32.

The relevant sections of the Mental Hygiene Law cited above allow the Commissioner to regulate how chemical dependency services are administered. This regulation will alter the way those services are administered, providing greater flexibility within the State regulations and aligning the regulation with Statutory language. (Part C of Chapter 58 of the Laws of 2008 and as further amended by Part C of Chapter 58 of the Laws of 2009 which amended Public Health law § 2087-c (4)(I)). The objective is to be aligned with the legislative intent behind enactment of Sections 19, 22 and 32 of the Mental Hygiene Law, allowing the Commissioner to certify, inspect, license and establish treatment standards for all facilities that treat chemical dependency. Promulgating this emergency regulation will establish a new standard

for all facilities, which will assist withdrawal program in providing better health care services and withdrawal from chemical dependence.

## 2. Legislative Objectives:

Chapter 558 of the Laws of 1999 requires the promulgation of rules and regulations to regulate and assure the consistent high quality of services provided within the State to persons suffering from chemical abuse or dependence, their families and significant others, as well as those who are at risk of becoming chemical abusers. The legislature enacted Section 19 of the Mental Hygiene Law, enabling the Commissioner to establish best practices for treating chemical dependency.

## 3. Needs and Benefits:

Detoxification is a medical intervention that manages an individual safely through the process of withdrawal (McCorry et. al. 2000). The three successful components of detoxification have been identified in the Treatment Improvement Protocol (TIP) #45 as evaluation, stabilization and linkage to treatment (CSAT, 2006). In addition, the American Society of Addiction Medicine (ASAM) recognizes that patients should be placed in the least restrictive setting that provides safe and effective treatment.

Under the proposed Part 816 regulations, hospital based detoxification units will be able to operate two levels of care simultaneously: medically managed and medically supervised. Medically managed services are designed for patients who are acutely ill from alcohol-related and/or substance-related addictions or dependence, including the need for medical management of persons with severe withdrawal or risk of severe withdrawal symptoms, and may include individuals with or at risk of acute physical or psychiatric co-morbid conditions. This level of care includes the 48 hour observation bed. Inpatient medically supervised withdrawal and stabilization services are appropriate for persons who are intoxicated by alcohol and/or substances, who are suffering from mild to moderate withdrawal, coupled with situational crisis, or who are unable to abstain with an absence of past withdrawal complications. Medically supervised services may require less staff due to the decreased medical needs of patients who are appropriate for this level of care.

The proposed regulations provide more clinical expertise in the management of patients. The proposed regulations will encourage the appropriate use of a broader array of withdrawal and stabilization services. Hospitals will be required to more thoroughly assess patients for appropriate level of care and community providers have been provided more flexibility in providing community-based care. This approach to detoxification has been supported by consensus opinion (CSAT, 2006)

This is supported by OASAS statistics. In 2007, 72,099 patients, representing 24% of all patients admitted in addiction treatment, entered hospital and community based withdrawal and stabilization services in New York State. Among the 2007 admissions to Medically Managed detoxification services 10,029 patients representing 19% of all patients, arrived at another level of care within 14 days of discharge. Among the 2007 admissions to medically supervised withdrawal, 8,265 patients representing 40% of all patients arrived at another level of care within 14 days of discharge.

The purpose of this regulatory change is to capitalize on better linkage and engagement to prevent multiple admissions without sustained recovery. Patients are more likely to enter and remain in subsequent substance abuse treatment if they believe that the services will help them with life problems (Fiorentine et. Al 1999). Better linkages to inpatient or outpatient rehabilitation have been found when case managers are able to directly link patients through a warm-hand-off or provide incentives. (Chutuaape, et.al. 2001; CSAT 2006).

Furthermore, information disseminated in the process of rewriting, reorganizing, and promulgating the Part 816 regulations will provide both patients and withdrawal services clear understanding of the intent of the regulation. This will result in better implementation and homogeneous services, improving patient care and more efficient use of staff resources.

## 4. Costs:

Additional costs are expected to be minimal. Any costs incurred by providers or the State will be offset by better treatment outcomes and

healthier patients, which will result in lower costs for medical and other services.

### a. Costs to regulated parties:

There should be no additional outlay to regulated parties as a result of this regulation. The regulation changes the focus of withdrawal services from treatment to stabilization and discharge planning. The regulation is also necessary to support the enacted 2008-09 New York State Budget which:

- The current hospital detoxification reimbursement methodology will change from a Diagnostic Related Group (DRG) case payment to a per diem methodology effective December 1, 2008 (pending Centers for Medicare and Medicaid Services (CMS) approval).

- The transition to per diem rates, based on 100 percent on the prices (established with 2006 base year cost, trended to the rate year) will take place over a four year period.

- The Phase in period begins December 1, 2008, and will ultimately end in the complete transition from Diagnostic Related Groups to the reweighted and rebased per diem rate:

- o Effective December 1, 2008 thru December 31, 2009, the per diem rate will be based on 75 percent on the 2007 Diagnostic Related Groups rate converted to a per diem rate (trended to the rate year) and 25 percent on the regional prices (trended to the rate year).

- o In 2010 the per diem rate will be evenly split between these two components.

- o In 2011, the rate will be based 25 percent on the Diagnostic Related Groups rate (converted to a per diem and trended) and 75 percent regional prices trended).

- o By 2012, the rate will be at 100 percent based on the regional prices.

### Year One:

- All Part 816 hospital inpatient detoxification services: Observation period services; Medically Managed Detoxification; and Medically Supervised Inpatient Withdrawal Services, provided in an OASAS certified Part 816 bed will receive the same, hospital specific amount.

### Years Two through Four:

- The Part 816 Hospital Based Observation Period and Medically Managed Detoxification (MMD) Services will be reimbursed at the same amount. The Part 816 Hospital Based Medically Supervised Inpatient Withdrawal Period will be reimbursed at 75 percent of the prevailing hospital specific MMD rate in 2010.

### b. Costs to the agency, state and local governments:

OASAS is not expected to see increased costs related to administering the rule. OASAS will need to modify the program review instrument currently used to certify chemical dependence withdrawal services along with providing technical assistance; however, this is not expected to result in a undue burden on OASAS.

Additionally, there is an anticipated cost saving with the regulation changing from a DRG to a per diem rate. Diagnostic Related Groups are a system used to classify hospital cases into one of approximately 500 groups that are expected to have similar hospital resource use, developed for Medicare as part of the prospective payment system. Diagnostic Related Groups are assigned by a "grouper" program based on International Classification of Diseases (ICD) diagnoses, procedures, age, sex, and the presence of complications or co morbidities. Diagnostic Related Groups have been used since 1983 to determine how much Medicare pays a hospital, since patients within each category are similar clinically and are expected to use the same level of hospital resources.

Therefore, patients will be treated within a system that is designed to appropriately place patients and move them from more intensive services into other levels of care that are more less expensive and effective in treating the patient resulting in savings for the State and local government.

## 5. Local Government Mandates:

There are no new mandates or administrative requirements placed on local governments.

## 6. Paperwork:

The proposed Part 816 regulation will decrease the amount of individual patient assessments and treatment plans, saving providers considerable time and effort. Assessments will be targeted for this distinct population. Time previously spent on vocation and educational assessments will be eliminated. Services will be focused on crisis intervention, stabilization and discharge planning. On average, 60 percent of counselors' time is currently spent filling in required paperwork which will now be dedicated to serving the patient population.

The proposed regulations also include changes to allow more flexibility by reducing paperwork, targeting interventions to crisis stabilization and linkages, which will allow clinicians more time for individual contact.

#### 7. Duplications:

There is no duplication of other state or federal requirements.

#### 8. Alternatives:

A Task Force was convened by the Commissioner in June 2007 to review all options and make recommendations on chemical dependence crisis services. The Task Force published recommendations in January 2008. To the extent possible the emergency Part 816 regulations reflect the task force recommendations.

OASAS continues to elicit comments on the regulation. The regulation was shared with New York's treatment provider community, representing a cross-section of upstate and downstate, as well as urban and rural programs. Many comments were received, reviewed and changes were made. Additionally, these proposed regulations were shared with New York State Alcoholism and Substance Abuse Providers (NYSASAP).

Finally, the regulation was shared with New York State's Advisory Council at the August meeting. At this meeting there were no comments generated by the group because the providers appeared to be comfortable with the current proposal.

#### 9. Federal Standards:

Federal standards governing Medicaid requirements for these services are incorporated into the proposed changes to Part 816.

#### 10. Compliance Schedule:

It is expected that full implementation of Part 816 will be completed by December 1, 2008 in order to be complaint with statutory language.

#### References

Center for Substance Abuse Treatment. Detoxification and Substance Abuse Treatment. Treatment Improvement Protocol (TIP) Series 45. DHHS Publication no. (SMA) 06-4131. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2006.

Chutuape, M.A., Jasinski, D.R., Fingerhood, M.I., and Stitzer, M.I. One- Three- and Six- Month Outcomes After Brief Inpatient Opiate Detoxification. *American Journal of Drug and Alcohol Abuse* 27(1): 19-44, 2001

Florentine, R., Nakashima, J., and Anglin, M.D. Client Engagement in Drug Treatment. *Journal of Substance Abuse Treatment* 17(3): 199-206, 1999.

McCorry, F., Garnick, D.W., Bartlett, J., Cotter, F., and Chalk, M. Developing Performance Measures for Alcohol and Other Drug Services in Managed Care Plans. Washington Circle Group. *Joint Commission Journal on Quality Improvement* 26(11): 633-643, 2000.

#### **Regulatory Flexibility Analysis**

**Effect of the Rule:** The emergency Part 816 will impact certified and/or funded providers. It is expected that the development of Crisis Withdrawal and Stabilization services will require providers to amend some of their policies and procedures. The new service will result in greater clinical flexibility; reduced paperwork requirements; increased patient-centered focus and a more targeted focus on crisis stabilization and linkage to treatment. These new services will result in better patient treatment outcomes. Local health care providers may see an increase in patients seeking crisis withdrawal and stabilization services due to less restrictive procedures. As a result of patients receiving these services, local governments may see a decrease in services associated with active illicit drug use such as arrests and emergency room visits. Also, local governments and districts will not be affected

because any nominal increase in cost will be offset by better patient outcomes.

**Compliance Requirements:** There are some minor changes in compliance requirements. In addition, providers are already required to provide utilization review, therefore, it is not expected that the proposed regulation will have additional costs.

**Professional Services:** Additional professional services are not expected.

**Compliance Costs:** Some programs may need additional formally trained staff to meet the emergency requirements. Training will be made available to hospital providers by OASAS and Island Peer Review Organization (IPRO), an independent, not-for-profit corporation which specializes in health care evaluation and quality improvement.

**Economic and Technological Feasibility:** Compliance with the recordkeeping and reporting requirements of the emergency Part 816 is expected to have a nominal economic impact on small businesses and government.

**Minimizing Adverse Impact:** Part 816 has been carefully reviewed to ensure minimum adverse impact to providers by Alcoholism and Substance Abuse Providers of NYS, Inc., New York State's Council of Local Mental Hygiene Directors and the New York State Advisory Council on Alcoholism and Substance Abuse Services, Greater New York Hospital Association, Healthcare Association of New York, and a statewide representative coalition from hospital and community based organizations that provide Withdrawal and Stabilization services. All comments received were reviewed and numerous changes were made. Any impact this rule may have on small businesses and the administration of State or local governments and agencies will either be a positive impact or have nominal costs. Compliance requirements are small and will be absorbed into the already existing economic structure. The positive impact for patients and the state health care system outweigh any potential minimal costs.

**Small Business and Local Government Participation:** The regulations were shared with New York's treatment provider community including Alcoholism and Substance Abuse Providers of NYS, Inc., Greater New York Hospital Association, Healthcare Association of New York, the Council of Local Mental Hygiene Directors and the New York State Advisory Council on Alcoholism and Substance Abuse Services and a statewide representative coalition from hospital and community based organizations that provide Withdrawal and Stabilization services.

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

1. Types and estimated number of rural areas: There are six (6) certified providers of medically managed detoxification services that are located in rural areas of the State, five of which are public.

2. Reporting, recordkeeping and other compliance requirements; and professional services: There will be new documentation requirements to maintain clients in the higher level of care that will have some impact on providers.

3. Costs: There will be minimum impact for rural providers to implement Part 816. Under the emergency Part 816 hospital based units can now operate two levels of care simultaneously: medically managed and medically supervised. Medically supervised services may require less staffing.

4. Minimizing adverse impact: Regulatory reform of detoxification rates was driven by language in the enacted 2008-09 budget. In order to achieve optimal results, OASAS solicited input from over 40 providers of service representing each modality statewide. This group met for a period of six months and the hospitals agreed that it was important to align detoxification care with detoxification rates. Hospitals also realized this could increase opportunities for outpatient detoxification units with increased income.

5. Rural area participation: These amendments were shared with New York's treatment provider community and included a cross-section of upstate and downstate, as well as urban and rural programs.

#### **Job Impact Statement**

The implementation of an emergency Part 816 may have a minor impact on staffing at hospital based detoxification units. Hospital based units

under the current Part 816 solely operate as medically managed units which requires more staffing than any other withdrawal service. Under the emergency Part 816, hospital based units can now operate two levels of care simultaneously; medically managed and medically supervised. Staffing for medically supervised services may require less staffing. This regulation will not adversely impact jobs outside of the few hospital based detoxification units.

**Assessment of Public Comment**

The agency received no public comment.

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## Banking Department

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### EMERGENCY RULE MAKING

#### Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

**I.D. No.** BNK-40-09-00005-E

**Filing No.** 1110

**Filing Date:** 2009-09-24

**Effective Date:** 2009-09-23

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

**Action taken:** Addition of Part 418 and Supervisory Procedures MB 109 and MB 110 to Title 3 NYCRR.

**Statutory authority:** Banking Law, art. 12-D

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

**Specific reasons underlying the finding of necessity:** Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered with the Superintendent, goes into effect on July 1, 2009. These regulations implement the registration requirement. It is therefore necessary that servicers be informed of the details of the registration process sufficiently far in advance to permit applications for registrations to be prepared, submitted and reviewed by the effective date.

**Subject:** Registration and financial responsibility requirements for mortgage loan servicers.

**Purpose:** To implement provisions of Subprime Lending Reform Law (ch. 472, L. 2008).

**Substance of emergency rule:** Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers ("servicers") be registered with the Superintendent of Banks, while Sections 418.12 to 418.15 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. [Section 418.16 sets forth the transitional rules.]

Section 418.2 implements the provisions in Section 590(2)(b-1) of the Banking Law requiring registration of servicers and exempting mortgage bankers, mortgage brokers, and most banking and insurance companies, as well as their employees. The Superintendent is authorized to approve other exemptions.

Section 418.3 contains a number of definitions of terms that are used in Part 418, including "Mortgage loan", "Mortgage loan servicer" and "Exempted Person".

Section 418.4 describes the requirements for applying for registration as a servicer.

Section 418.5 describes the requirements for a servicer applying to open a branch office.

Section 418.6 covers the fees for application for registration as a servicer, including processing fees for applications and fingerprint processing fees.

Section 418.7 sets forth the findings that the Superintendent must make to register a servicer and the procedures to be followed upon approval of an application for registration. It also sets forth the grounds upon which the Superintendent may refuse to register an applicant and the procedure for giving notice of a denial.

Section 418.8 defines what constitutes a "change of control" of a servicer, sets forth the requirements for prior approval of a change of control, the application procedure for such approval and the standards for approval. The section also requires servicers to notify the Superintendent of changes in their directors or executive officers.

Section 418.9 sets forth the grounds for revocation of a servicer registration and authorizes the Superintendent, for good cause or where there is substantial risk of public harm, to suspend a registration for 90 days without a hearing. The section also provides for termination of a servicer registration upon non-payment of the required assessment. The Superintendent can also suspend a registration when a servicer fails to file a required report, when its surety bond is cancelled, or when it is the subject of a bankruptcy filing. If the registrant does not cure the deficiencies in 90 days, its registration terminates. The section further provides that in all other cases, suspension or revocation of a registration requires notice and a hearing.

The section also covers the power of the Superintendent to extend a suspension and the right of a registrant to surrender its registration, as well as the effect of revocation, termination, suspension or surrender of a registration on the obligations of the registrant. It provides that registrations will remain in effect until surrendered, revoked, terminated or suspended.

Section 418.10 describes the power of the Superintendent to impose fines and penalties on registered servicers.

Section 418.11 sets forth the requirement that applicants demonstrate five years of servicing experience as well as suitable character and fitness.

Section 418.12 covers the financial responsibility and other requirements that apply to applicants for servicer registration and to registered servicers. The financial responsibility requirements include (1) a required net worth of at least 1% of total loans serviced, with a minimum of \$250,000; (2) a ratio of net worth to total New York mortgage loans serviced of at least 5%; (3) a corporate surety bond of at least \$250,000 and a Fidelity and E&O bond in an amount that is based on the volume of New York mortgage loans serviced, with a minimum of \$300,000.

The Superintendent is empowered to waive, reduce or modify the financial responsibility requirements for certain servicers who service not more than 12 mortgage loans or an aggregate amount of loans not exceeding \$5,000,000, whichever is less.

Section 418.13 applies similar financial responsibility requirements to "Exempted Persons" who are not subject to the requirement to register as servicers. Such persons include mortgage bankers, mortgage brokers and most banking institutions and insurance companies.

Section 418.14 exempts from the otherwise applicable net worth and Fidelity and E&O and requirements entities subject to comparable requirements in connection with servicing mortgage loans for federal instrumentalities, and exempts from the otherwise applicable net worth requirement entities that are subject to the capital requirements applicable to insured depository institutions and that are considered at least adequately capitalized.

Section 418.15 covers the utilization of the proceeds of a servicer's surety bond in the event of the surrender or termination of its registration.

Section 418.16 provides a transitional period for registration of mortgage loan servicers. A servicer doing business in this state on June 30, 2009 which files an application for MLS registration by July 31, 2009 will be deemed in compliance with the registration requirement until notified that its application has been denied.

Section 109.1 defines a number of terms that are used in the Supervisory Procedure.

Section 109.2 contains a general description of the process for registering as a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 109.3 lists the documents to be included in an application for servicer registration, including the required fees. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent can require additional information or an in person conference, and that the applicant can submit additional pertinent information.

Section 109.4 describes the information and documents required to be submitted as part of an application for registration as a servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, and other documents, such as fingerprint cards and background reports.

Section 110.1 defines a number of terms that are used in the Supervisory Procedure.

Section 110.2 contains a general description of the process for applying for approval of a change of control of a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 110.3 lists the documents to be included in an application for approval of a change of control of a servicer, including the required fees. It sets forth the time within which the Superintendent must approve or disapprove an application. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superin-

tendent can require additional information or an in person conference, and that the applicant can submit additional pertinent information. Last, the section lists the types of changes in a servicer's operations resulting from a change of control which should be notified to the Banking Department.

Section 110.4 describes the information and documents required to be submitted as part of an application for approval of a change of control of servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating continuing compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, a description of the acquisition and other documents regarding the applicant, such as fingerprint cards and background reports.

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires December 22, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Sam L. Abram, Secretary of the Banking Board, New York State Banking Department, One State Street, New York, NY 10004-1417, (212) 709-1658, email: sam.abram@banking.state.ny.us

#### **Regulatory Impact Statement**

##### 1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Subprime Lending Reform Law (Ch. 472, Laws of 2008, hereinafter, the "Subprime Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers (MLS) are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Subprime Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent. The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations.

New Paragraph (d) was added to Subsection (5) of Section 590 by the Subprime Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be promulgated by the Banking Board or prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Subprime Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Subprime Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Subprime Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Subprime Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 cover-

ing licensees, registrants and exempt organizations were amended by the Subprime Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Subprime Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for MLS registration applications and for MLS branch applications are established in accordance with Banking Law Section 18-a.

##### 2. Legislative Objectives.

The Subprime Bill is intended to address various problems related to residential mortgage loans in this State. The Subprime Law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there has heretofore been no general regulation of servicers by the state or the Federal government.

The Subprime Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The new law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board and the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Banking Board and the superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

The regulations implement the first component of the mortgage servicing statute - the registration of mortgage servicers. (See Sections 418.4 to 418.7.) In doing so, the rule utilizes the authority provided to the Superintendent to set standards for the registration of such entities. For example, the rule requires that a potential loan servicer would have to provide, under Sections 418.10 and 418.11 to 418.14 of the proposed regulations, evidence of their character and fitness to engage in the servicing business and demonstrate to the Superintendent their financial responsibility. The rule also utilizes the authority provided by the Legislature to revoke, suspend or otherwise terminate a registration or to fine or penalize a registered mortgage loan servicer.

Consistent with this requirement, the rule authorizes the Superintendent to refuse to register an applicant if he/she shall find that the applicant lacks the requisite character and fitness, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant has been convicted of certain felonies. These are the same standards as are applicable to mortgage bankers and mortgage brokers in New York. (See Section 418.7.)

Further, in carrying out the Legislature's mandate to regulate the mortgage servicing business, Section 418.8 sets out certain application requirements for prior approval of a change in control of a registered mortgage loan servicer and notification requirements for changes in the entity's executive officers and directors. Collectively, these various provisions implement the intent of the Legislature to register and supervise mortgage loan servicers.

##### 3. Needs and Benefits.

Governor Paterson reported in early 2008 that there were more than 52,000 foreclosure actions filed in 2007, or approximately 1,000 per week. That number increased in 2008, averaging approximately 1,100 per week in the first quarter. This is a crisis and the problems that have affected so many have been found to affect not only the origination of

residential mortgage loans, but also their servicing and foreclosure. The Subprime Law adopted a multifaceted approach to the problem. It affected a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Currently, the Department regulates the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also may act as agents for owners of mortgages in negotiations relating to modifications. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; and erroneously force-placing insurance when borrowers already have insurance. While establishing minimum standards for the business conduct of servicers will be the subject of another regulation currently being developed by the Department, Section 418.2 makes it clear that persons exempted by from the registration requirement must notify the Department that they are servicing loans and must otherwise comply with the regulations.

As noted above, the proposed regulation relates to the first component of the mortgage servicing statute - the registration of mortgage loan servicers. It is intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers.

Further, consumers in this state will also benefit under these proposed regulations because in the event there is an allegation that a mortgage servicer is involved in wrongdoing and the Superintendent finds that there is good cause, or that there is a substantial risk of public harm, he or she can suspend such mortgage servicer for 90 days without a hearing. And in other cases, he or she can suspend or revoke such mortgage servicer's registration after notice and a hearing. Also, the requirement that servicers meet minimum financial standards and have performance and other bonds will act to ensure that consumers are protected.

As noted above, the MLS regulations are being divided into two parts in order to facilitate meeting the statutory requirement that all MLSs be registered by July 1, 2009. The Department will separately propose regulations dealing with business conduct and consumer protection requirements for MLSs.

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and will be required to comply with the conduct of business and consumer protection rules applicable to MLSs.

#### 4. Costs.

The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The amount of the application fee for MLS registration and for an MLS branch application is \$3,000.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System are set by that body. MLSs will also incur administrative costs associated with preparing applications for registration.

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers'

complaints, decrease unnecessary expenses borne by mortgagors, and, through the timely response to consumers' inquiries, should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Banking Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

#### 5. Local Government Mandates. None

#### 6. Paperwork.

An application process is being established for potential mortgage loan servicers to apply for registration electronically through the National Mortgage Licensing System and Registry (NMLSR) - a national system, which currently facilitates the application process for mortgage brokers, bankers and loan originators. Therefore, the application process would be virtually paperless; however, a limited number of documents, including fingerprints where necessary, would have to be submitted to the Department in paper form.

The specific procedures that are to be followed in order to apply for registration as a mortgage loan servicer are detailed in Supervisory Procedure MB 109.

#### 7. Duplication.

The proposed regulation does not duplicate, overlap or conflict with any other regulations.

Currently, the mortgage servicing industry is required to meet specific financial net worth requirements and to maintain certain surety bonds in order to service mortgage loans for federal instrumentalities. Those requirements have been considered and in drafting these proposed regulations an exemption was created under Section 418.13, from the otherwise applicable net worth and Fidelity and E&O bond requirements, for entities subject to comparable requirements in connection with servicing mortgage loans for federal instrumentalities, and entities that are subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

#### 8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to register mortgage loan servicers while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary burdens on the industry. The Department is not aware of any alternative that is available to the instant regulations. The Department also has been cognizant of the possible burdens of this regulation, and it has accordingly concluded that an exemption from the registration requirement for persons or entities that are involved in a de minimis amount of servicing would address the intent of the statute without imposing undue burdens those persons or entities.

The procedure for suspending servicers that violate certain financial responsibility or customer protection requirements, which provides a 90-day period for corrective action, during which there can be an investigation and hearing on the existence of other violations, provides flexibility to the process of enforcing compliance with the statutory requirements.

#### 9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies. However, although not a registration process, in order for any mortgage loan servicer to service loans on behalf of certain federal instrumentalities such servicers have to demonstrate that they have specific amounts of net worth and have in place Fidelity and E&O bonds.

These regulations exceed those minimum standards, in that, a mortgage loan servicer will now have to demonstrate character and general fitness in order to be registered as a mortgage loan servicer. In light of the important role of a servicer - collecting consumers' money and acting as agents for mortgagees in foreclosure transactions - the Department believes that it is imperative that servicers be required to meet this heightened standard.

#### 10. Compliance Schedule.

The emergency regulations will become effective on September 23,

2009. Substantially similar emergency regulations have been in effect since July 1, 2009.

The Department expects to approve or deny applications within 90 days of the Department's receipt (through NMLSR) of a completed application.

A transitional period is provided for mortgage loan servicers which were doing business in this state on June 30, 2009 and which filed an application for registration by July 31, 2009. Such servicers will be deemed in compliance with the registration requirement until notified by the Superintendent that their application has been denied.

#### **Regulatory Flexibility Analysis**

##### 1. Effect of the Rule:

The emergency rule will not have any impact on local governments. It is estimated that there are approximately 120 mortgage loan servicers in the state which are not mortgage bankers, mortgage brokers or exempt organizations, and which are therefore required to register under the Subprime Lending Reform Law (Ch. 472, Laws of 2008) (the "Subprime Law"). Of these, it is estimated that a very few of the remaining entities will be deemed to be small businesses.

##### 2. Compliance Requirements:

The provisions of the Subprime Law relating to mortgage loan servicers has two main components: it requires the registration by the Banking Department of servicers who are not mortgage bankers, mortgage brokers or exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Subprime Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Subprime Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. The emergency MLS Registration Regulations here adopted implement that statutory requirement by providing a procedure whereby MLSs can apply to be registered and standards and procedures for the Department to approve or deny such applications. The emergency regulations also set forth financial responsibility standards applicable to applicants for MLS registration, registered MLSs and servicers which are exempted from the registration requirement.

Additionally, the regulations set forth standards and procedures for Department action on applications for approval of change of control of an MLS. Finally, the emergency regulations set forth standards and procedures for, suspension, revocation, expiration, termination and surrender of MLS registrations, as well as for the imposition of fines and penalties on MLSs.

##### 3. Professional Services: None

##### 4. Compliance Costs:

Applicants for mortgage loan servicer registration will incur administrative costs associated with preparing applications for registration. Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations. Registration fees of \$3000, plus fees for fingerprint processing and participation in the National Mortgage Licensing System and Registry (NMLS) will be required of non-exempt servicers.

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

The emergency rule-making should impose no adverse economic or technological burden on mortgage loan servicers who are small businesses. The NMLS is now available. This technology will benefit registrants by saving time and paperwork in submitting applications, and will assist the Department by enabling immediate tracking, monitoring and searching of registration information; thereby protecting consumers.

##### 6. Minimizing Adverse Impact:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLS, developed by the Conference of State Bank Supervisors and the American Association

of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

As noted above, most servicers are not small businesses. Of the remaining servicers which are small businesses subject to the registration requirements of the regulation, a number are expected to be exempt from most of the financial responsibility requirements because they service mortgages for FNMA, GNMA, VA or other federal instrumentalities and comply with net worth and E&O bond requirements of those entities.

As regards servicers that are small businesses and not otherwise exempted, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

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

Industry representatives have participated in outreach programs during the month of April. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

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

Types and Estimated Numbers of Rural Areas. The New York State Banking Department anticipates that approximately 120 mortgage loan servicers may apply to become registered in 2009. It is expected that a very few of these entities will be operating in rural areas of New York State and would be impacted by the emergency regulation.

Compliance Requirements. Mortgage loan servicers in rural areas which are not mortgage bankers, mortgage brokers or exempt organizations must be registered with the Superintendent to engage in the business of mortgage loan servicing. An application process will be established requiring a MLS to apply for registration electronically and to submit additional background information and fingerprints to the Mortgage Banking Division of the Banking Department.

MLSs are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of MLSs which service not more than 12 mortgage loans or more than \$5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden which those requirements might otherwise impose on entities operating in rural areas.

Costs. The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The application fee for MLS registration will be \$3,000. The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry ("NMLSR") are set by that body. Applicants for mortgage loan servicer registration will also incur administrative costs associated with preparing applications for registration.

Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations.

Minimizing Adverse Impact. The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLSR, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations. Of the remainder, a number are expected to be exempt from most of the financial responsibility requirements because they service mortgages

for FNMA, GNMA, FHLMC, VA or other federal instrumentalities and comply with net worth and E&O bond requirements of those entities.

As regards servicers that operate in rural areas and are not otherwise exempted, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

Rural Area Participation. Industry representatives have participated in outreach programs during the month of April. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

#### Job Impact Statement

Article 12-D of the Banking Law, as amended by the Subprime Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. This emergency regulation sets forth the application, exemption and approval procedures for registration as a Mortgage Loan servicer (MLS), as well as financial responsibility requirements for applicants, registrants and exempted persons. The regulation also establishes requirements with respect to changes of officers, directors and/or control of MLSs and provisions with respect to suspension, revocation, termination, expiration and surrender of MLS registrations.

The requirement to comply with the emergency regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. Many of the larger entities engaged in the mortgage loan servicing business are already subject to oversight by the Banking Department and exempt from the new registration requirement. Many of the remaining servicers, while subject to the registration requirement, already service mortgages for FNMA, GNMA or VA and are thus expected to be exempt from the financial responsibility requirements in the regulation. Additionally, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

The registration process itself should not have an adverse effect on employment. The regulations require the use of the internet-based National Mortgage Licensing System and Registry, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common online application for servicer registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory registration requirement rather than the provisions of the emergency regulations.

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## Office of Children and Family Services

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### EMERGENCY RULE MAKING

#### Educational Stability of Foster Children, Transition Planning and Relative Involvement in Foster Care Cases

**I.D. No.** CFS-40-09-00006-E

**Filing No.** 1126

**Filing Date:** 2009-09-22

**Effective Date:** 2009-09-22

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

**Action taken:** Amendment of sections 421.24(c)(19), 428.3(b)(2)(iii) and

(iv), 428.5(c)(6), 428.5(c)(10)(viii), 430.11(c)(1) and (2) and 430.12 (c); renumbering of section 430.11(c)(2)(x) and addition of sections 428.3(b)(2)(v), 430.11(c)(2)(ix), 430.11(c)(4), 430.12(c)(4) and 430.12(j) to Title 18 NYCRR.

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

**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 prevent the loss of federal funding that supports the health, safety and welfare of the children in foster care, children receiving adoption assistance and families receiving child welfare services.

**Subject:** Educational stability of foster children, transition planning and relative involvement in foster care cases.

**Purpose:** The regulations implement the federal Foster Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

**Text of emergency rule:** Paragraph (19) of subdivision (c) of section 421.24 is amended to read as follows:

(19) The social services official on an annual [a biennial] basis in a written notification must remind the adoptive parents of their obligation to support the adopted child and to notify the social services official if the adoptive parents are no longer providing any support or are no longer legally responsible for the support of the child. *Where the adopted child is school age under the laws of the state in which the child resides, such notification must include a requirement that the adoptive parents must certify that the adopted child is a full-time elementary or secondary student or has completed secondary education. For the purposes of this paragraph, an elementary or secondary school student means an adopted child who is: (i) enrolled, or in the process of enrolling, in a school which provides elementary or secondary education, in accordance with the laws where the school is located; (ii) instructed in elementary or secondary education at home, in accordance with the laws in which the adopted child's home is located; (iii) in an independent study elementary or secondary education program, in accordance with the laws in which the adopted child's education program is located, which is administered by the local school or school district; or (iv) incapable of attending school on a full-time basis due to the adopted child's medical condition, which incapacity is supported by annual information submitted by the adoptive parents as part of this certification.*

Subparagraphs (iii) and (iv) of paragraph (2) of subdivision (b) of section 428.3 are amended and a new subparagraph (v) is added to read as follows:

(iii) educational and/or vocational training reports or evaluations indicating the educational goals and needs of each foster child, including school reports and Committee on Special Education evaluations and/or recommendations; [and]

(iv) if the child has been placed in foster care outside of the state, a report prepared every six months by a caseworker employed by either the authorized agency with case management and/or case planning responsibility for the child, the state in which the placement home or facility is located, or a private agency under contract with either the authorized agency or other state, documenting the caseworker's visit(s) with the child at his or her placement home or facility within the six-month period; and

(v) the child's transition plan prepared in accordance with the standards set forth in section 430.12(j) of this Part.

Paragraph (6) of subdivision (c) of section 428.5 is amended to read as follows:

(6) description of contacts with educational/vocational personnel on behalf of the child, including, but not limited to, contacts made with school personnel in accordance with sections 430.11(c)(1)(i) and 430.12(c)(4) of this Part;

Subparagraph (viii) of paragraph (10) of subdivision (c) of section 428.5 is amended to read as follows:

(viii) any information acquired about an absent or non-respondent parent that is in addition to information recorded pursuant to section 428.4(c)(1) of this Part, [and] the results of an investigation into the location of any relatives, including grandparents of a child subject to article 10 of the Family Court Act or section 384-a of the Social Services Law, and the efforts to identify and provide notification to grandparents and other adult relatives in accordance with the requirements of section 430.11(c)(4) of this Part;

Subparagraph (i) of paragraph (1) of subdivision (c) of section 430.11 is amended to read as follows:

(1)(i) Standard. Whenever possible, a child shall be placed in a foster care setting which permits the child to retain contact with the persons, groups and institutions with which the child was involved while living with his or her parents, or to which the child will be discharged. It shall be deemed inappropriate to place a child in a setting which conforms with this standard only if the child's service needs can only be met in another

available setting at the same or lesser level of care. *The placement of the child into foster care must take into account the appropriateness of the child's existing educational setting and the proximity of such setting to the child's placement location. When is it in the best interests of the foster child to continue to be enrolled in the same school in which the child was enrolled when placed into foster care, the agency with case management, case planning or casework responsibility for the foster child must coordinate with applicable local school authorities to ensure that the child remains in such school. When it is not in the best interests of the foster child to continue to be enrolled in the same school in which the child was enrolled when placed into foster care, the agency with case management, case planning or casework responsibility for the foster child must coordinate with applicable local school authorities where the foster child is placed in order that the foster child is provided with immediate and appropriate enrollment in a new school; and the agency with case management, case planning or casework responsibility for the foster child must coordinate with applicable local school authorities where the foster child previously attended in order that all of the applicable school records of the child are provided to the new school.*

Subparagraph (viii) of paragraph (2) of subdivision (c) of section 430.11 is amended, subparagraph (ix) is renumbered as subparagraph (x) and a new subparagraph (ix) is added to read as follows:

(viii) if the child has been placed in a foster care placement a substantial distance from the home of the parents of the child or in a state different from the state in which the parent's home is located, the uniform case record must contain documentation why such placement is in the best interests of the child; [and]

(ix) *show in the uniform case record that efforts were made to keep the child in his or her current school, or where distance was a factor or the educational setting was inappropriate, that efforts were made to seek immediate enrollment in a new school and to arrange for timely transfer of school records; and*

(x) if the child has been placed in foster care outside of the state in which the home of the parents of the child is located, the uniform case record must contain a report prepared every six months by a caseworker employed by the authorized agency with case management and/or case planning responsibility over the child, the state in which the home is or facility is located, or a private agency under contract with either the authorized agency or other state documenting the caseworker's visit to the child's placement within the six-month period.

Paragraph (4) of subdivision (c) of section 430.11 is added to read as follows:

(4) *Within 30 days after the removal of a child from the custody of the child's parent or parents, or earlier where directed by the court, or as required by section 384-a of the Social Services Law, the social services district must exercise due diligence in identifying all of the child's grandparents and other adult relatives, including adult relatives suggested by the child's parent or parents and, with the exception of grandparents and/or other identified relatives with a history of family or domestic violence. The social services district must provide the child's grandparents and other identified relatives with notification that the child has been or is being removed from the child's parents and which explains the options under which the grandparents or other relatives may provide care of the child, either through foster care or direct legal custody or guardianship, and any options that may be lost by the failure to respond to such notification in a timely manner. The identification and notification efforts made in accordance with the paragraph must be recorded in the child's uniform case record as required by section 428.5(c)(10)(viii) of this Part.*

Paragraph (4) of subdivision (c) of section 430.12 is amended and renumbered paragraph (5) and a new paragraph (4) is added to read as follows:

(4) *Education. (i) Standard. The social services district with care and custody or guardianship and custody of a foster child who has attained the minimum age for compulsory education under the Education Law is responsible for assuring that the foster child is a full-time elementary or secondary school student or has completed secondary education. For the purpose of this paragraph, an elementary or secondary school student means a child who is: (a) enrolled, or in the process of enrolling, in a school which provides elementary or secondary education, in accordance with the laws where the school is located; (b) instructed in elementary or secondary education at home, in accordance with the laws in which the foster child's home is located; (c) in an independent study elementary or secondary education program, in accordance with the laws in which the foster child's education program is located, which is administered by the local school or school district; or (d) incapable of attending school on a full-time basis due to the foster child's medical condition, which incapability is supported by regularly updated information in the child's uniform case record.*

(ii) *Documentation. The progress notes for each school age child*

*in foster care must reflect either the education program in which the foster child is presently enrolled or is enrolling; or the date the foster child completed his or her compulsory education; or where the child is not capable of attending school on a full-time basis, what the medical condition is and why such condition prevents full-time attendance. The social services district must update the progress notes on an annual basis to reflect why such medical condition continues to prevent the foster child's full-time attendance in an education program. On an annual basis, by the first day of each October, the education module in CONNECTIONS must be updated with education information about each school age foster child in the form and manner as required by the Office.*

(5) [(4)] *Discharge planning. (i) Standard. For any child age 18 or under who is discharged from foster care, the district [shall] must consider the need to provide preventive services to the child and his or her family subsequent to [his] the child's discharge.*

(ii) *Documentation. The uniform case record form to be completed upon discharge of the child [shall] must show either the recommended type of preventive services and the district's attempts to provide or arrange for these services, or the reasons why these services are deemed unnecessary.*

Subdivision (j) of section 430.12 is added to read as follows:

(j) *Transition plan. Whenever a child will remain in foster care on or after the child's eighteenth birthday, the agency with case management, case planning or casework responsibility for the foster child must begin developing a transition plan with the child 180 days prior to the child's eighteenth birthday or 180 days prior to the child's scheduled discharge date where the child is consenting to remain in foster care after the child's eighteenth birthday. The transition plan must be completed 90 days prior to the scheduled discharge. Such plan must be personalized at the direction of the child. The transition plan must include specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services. The transition plan must be as detailed as the foster child may elect.*

**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 December 20, 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, New York 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 and regulations to carry out its duties pursuant to the provisions of the SSL.

Section 34(3) (f) of the SSL requires the Commissioner of OCFS to promulgate regulations for the administration of public assistance and care within the state.

##### 2. Legislative objectives

The regulations implement standards required by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) that went into effect on October 7, 2008.

##### 3. Needs and benefits

The regulations will reduce disruption experienced by a child when removed from the child's home and placed into foster care and will enhance continuity in the child's environment.

Regarding the relationship of the child with his or her relatives, the regulations require that within 30 days of the removal of a foster child from his or her home, the social services district must exercise due diligence in identifying and notifying relatives of the child, including all grandparents and other relatives identified by the child's parents, that the child was removed, the options available to relatives to become the child's foster parent or to otherwise care for the child and any options that may be lost by the failure of the relative to respond to such notification in a timely manner. The regulations take into consideration the safety of the child by excluding the need to notify any relative who has a history of family or domestic violence.

The regulations address the need to minimize disruption by requiring the social services district to assess the proximity of the foster care placement to the school the child attended before placement into foster care and the appropriateness of the child remaining in that school upon entry into foster care. Where it is not in the best interests of the child to attend such school, the regulations require the social services district to work with the appropriate local school officials to see that the child is immediately enrolled in a new school.

The regulations also support the preparation of the foster child to transition out of foster care. One of the fundamental needs of any child is his or

her education. The regulations clarify that each foster child of school age must either be enrolled in an appropriate educational setting, unless the child is incapable of attending school, or has completed his or her secondary education. The regulations impose a similar requirement in regard to a child who is in receipt of an adoption subsidy and is of school age.

The regulations support the transition of older foster children out of foster care by requiring the authorized agency with case management responsibility to develop a transition plan for a foster child who is aging out of foster care. This plan must be developed to meet the needs of the particular foster child, with such child's input. Development of the transition plan must commence 180 days prior to the scheduled discharge date of the foster child, with the completion of the plan 90 days prior to the scheduled discharge. Such plan must address such basic post discharge issues as housing, health insurance, education, supports services and employment.

#### 4. Costs

The regulatory amendments are required by the federal Fostering Connections to Success and Increasing Adoption Act of 2008. There is no fiscal impact associated with implementing the regulations because current OCFS regulations require social services districts to carry out similar functions as those prescribed in these regulations. With the exception of the regulatory amendment associated with the transition plan, the regulatory changes are federally mandated under Title IV-E of the Social Security Act. Currently, New York must demonstrate that it has implemented these requirements in order to have a compliant Title IV-E State Plan. This is a condition for continuing to receive federal funds for foster care, adoption assistance and the administration of these programs.

The regulatory change regarding the transition plan for children who are aging out of foster care is a federal mandate under Title IV-B, Subpart 1 of the Social Security Act. In order to have a compliant Title IV-B State Plan and to continue to receive federal Child Welfare Services funding, New York State must demonstrate that it has implemented such standard.

There is no fiscal impact associated with the regulatory amendment to 18 NYCRR 421.19(c)(19). Currently, the New York City Administration for Children's Services notifies adoptive parents to verify that they are continuing to support their adoptive children and continue to be legally responsible for the support of their adoptive children. Acceptable documentation includes proof of school attendance. Documentation provided by the adoptive parent can be maintained in the social services district in the adoption subsidy case file. The regulatory amendments do not require any modification to CONNECTIONS. The requirements associated with documenting information in the child's uniform case record progress notes can be supported by CONNECTIONS.

#### 5. Local government mandates

The regulations require social services districts to carry out functions similar to those they already have been obligated by State statute and OCFS regulations to perform. Current OCFS regulation 18 NYCRR 430.11(c) requires the social services district placing a child into foster care, whenever possible, to place the child in a foster care setting that permits the child to retain contact with the persons, groups and institutions with which the child was involved while living with his or her parents. OCFS regulation 18 NYCRR 430.10(b) currently requires the social services district that is contemplating the placement of a child into foster care to attempt, prior to placement, to locate adequate alternative living arrangements with a relative or family friend which would enable the child to avoid placement into foster care. Section 1017 of the Family Court Act and section 384-a of the SSL currently provide that when a child is to be removed from his or her home, the social services district must identify and discuss with such relative, including grandparents, available options to function as the child's foster parent or to assume direct legal custody of the child. The social services district must also notify the relative that the child may be adopted by foster parents if attempts at reunification with the birth parent are not required or are unsuccessful.

Social services districts are obligated pursuant to section 409-e of the SSL and OCFS regulations 18 NYCRR Part 428 and 430.12 to develop for each foster child a family assessment and service plan that addresses the needs of the child, including those related to education and the preparation of the child for discharge from foster care. These standards also presently require that foster children over the age of 10 be invited to participate in such planning.

#### 6. Paperwork

The regulations require the recording of the actions taken by the social services district or voluntary authorized agency with case management responsibility in meeting the standards referenced above. Such documentation will be recorded in New York State's statewide automated child welfare information system, CONNECTIONS.

#### 7. Duplication

The regulations do not duplicate other state or federal requirements. The regulations build on related existing requirements.

#### 8. Alternative approaches

Given the mandates imposed by the federal Foster Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) and the adverse financial consequences for non-compliance, there is no viable alternative to implementing the regulations.

#### 9. Federal standards

Each of the regulatory amendments reflects requirements imposed by the federal Foster Connections to Success and Increasing Adoptions Act of 2008. The regulatory changes relating to relatives and education are federally mandated under Title IV-E of the Social Security Act. New York State must demonstrate that it has implemented such standards in order to have a compliant Title IV-E State Plan which is a condition for New York to continue to receive federal funding for foster care and adoption assistance. The regulatory change relating to the transition plan for aging out foster children is federally mandated under Title IV-B, Subpart 1 of the Social Security Act. New York must demonstrate that it has implemented such standard in order to have a compliant Title IV-B State Plan which is a condition for New York to continue to receive federal child welfare services funding.

#### 10. Compliance schedule

Compliance with the regulations would take effect upon adoption.

### *Regulatory Flexibility Analysis*

#### 1. Effect on Small Businesses and Local Governments

Social service districts, the St. Regis Mohawk Tribe and voluntary authorized agencies that have contracts with social service districts to provide foster care, will be affected by the regulations. There are 58 social service districts and approximately 160 voluntary authorized agencies.

#### 2. Compliance Requirements

The regulations implement standards required by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) that went into effect on October 7, 2008. Implementation of the regulations is necessary for the State of New York to maintain compliant Title IV-B and Title IV-E State Plans which are required for New York to continue to receive federal funding under Title IV-B and Title IV-E of the Social Security Act for foster care, adoption assistance, child welfare services and the administration of those programs.

The regulations require that within 30 days of the removal of a foster child from his or her home, the social services district must exercise due diligence in identifying and notifying relatives of the child, including all grandparents and other relatives identified by the child's parents, that the child was removed, the options available to the relatives to become the child's foster parent or to otherwise care for the child and any option that may be lost by the failure of the relatives to respond to such notification in a timely manner. Notification must be made earlier than 30 days of removal if directed by the court. Notification is not required in regard to relatives who have a history of family or domestic violence.

The regulations require the authorized agency with case management responsibility to develop a transition plan for a foster child who is aging out of foster care. Such plan must be personalized to the particular foster child and developed with the involvement of such child. Development of the transition plan must commence 180 days prior to the scheduled discharge date of the foster child, with the completion of the plan 90 days prior to the scheduled discharge. The transition plan must address housing, health insurance, education, local opportunities or mentors and continuing support services, and work force supports and employment services.

The regulations set forth standards social services districts must satisfy in relation to the educational stability of children when they are removed from their homes and placed into foster care. The regulations address the need to assess the proximity of foster care placements to the school the child attended at the time of removal and the appropriateness of the child remaining in that same school after entering foster care. Where the foster child can not remain in the same school, the agency with case management responsibility must coordinate with local school officials in order that the foster child will be provided with immediate and appropriate enrollment in a new school.

The regulations require that foster children of school age must either be enrolled in an appropriate educational setting, unless incapable of attending school or have completed secondary education. The regulations impose a similar requirement post discharge from foster care for a child who is school age and is in receipt of an adoption subsidy.

#### 3. Professional Services

It is anticipated that the requirements imposed by the regulations will be implemented by existing case work staff.

#### 4. Compliance Costs

The regulatory amendments are required by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. There is no fiscal impact associated with implementing the regulations because current OCFS regulations require social services districts to carry out similar functions as those prescribed in these regulations. With the exception of the regulatory amendment associated with the transition plan, the regulatory

changes are federally mandated under Title IV-E of the Social Security Act. Currently, New York must demonstrate that it has implemented these requirements in order to have a compliant Title IV-E State Plan. This is a condition for continuing to receive federal funds for foster care, adoption assistance and the administration of these programs.

The regulatory change regarding the transition plan for children who are aging out of foster care is a federal mandate under Title IV-B, Subpart 1 of the Social Security Act. In order to have a compliant Title IV-B State Plan and to continue to receive federal Child Welfare Services funding, New York State must demonstrate that it has implemented such standard.

There is no fiscal impact with the regulatory amendment to 18 NYCRR 421.24(c)(19). Currently, the New York City Administration for Children's Services notifies adoptive parents to verify that they are continuing to support their adopted children and continue to be legally responsible for the support of their adoptive children. Acceptable documentation includes proof of school attendance. Documentation provided by the adoptive parent can be maintained by the social services district in the adoption subsidy case file. The regulatory amendments do not require any modification to CONNECTIONS. The requirements associated with documenting information in the child's uniform case record progress notes can be supported by CONNECTIONS.

#### 5. Economic and Technological Feasibility

The regulations require the recording of the actions taken to comply with the regulatory standards noted above. Such information will be recorded in New York State's statewide automated child welfare information system, CONNECTIONS.

#### 6. Minimizing Adverse Impact

The standards set forth in the regulations reflect mandates imposed on the states by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. Implementation is necessary for New York to continue to be eligible to receive federal funding for foster care, adoption assistance child welfare services and the administration thereof, as required by Title IV-B and title IV-E of the Social Security Act. The regulations do not go beyond the scope of the federal mandates.

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

By letter dated, December 5, 2008, OCFS informed the commissioner of each of the local department of social services in the State of New York of the amendments to OCFS regulations that are necessitated by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. The letter included a brief summary of the new regulatory requirements. In addition, it informed local commissioners of the requirements enacted by the federal legislation that are already in effect in New York and that will not require any further regulatory amendments. OCFS advised the local commissioners that OCFS will provide any clarification received from the federal Department of Health and Human Services on these requirements. A copy of the OCFS regulations was provided along with a contact person if the local commissioners or their staff had any questions.

#### *Rural Area Flexibility Analysis*

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

Social services districts, the St. Regis Mohawk Tribe and voluntary authorized agencies that have contracts with social services districts to provide foster care will be affected by the regulations. There are 44 social services districts and the St. Regis Mohawk Tribe that are in rural areas. Currently, there are also approximately 100 voluntary authorized agencies in rural areas of New York State.

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

The regulations implement standards required by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) that went into effect on October 7, 2008. Implementation of the regulations is necessary for the State of New York to maintain compliant Title IV-B and Title IV-E State Plans which are required for New York to continue to receive federal funding under Title IV-B and Title IV-E of the Social Security Act for foster care, adoption assistance, child welfare services and the administration of those programs.

The regulations require that within 30 days of the removal of a foster child from his or her home, the social services district must exercise due diligence in identifying and notifying relatives of the child, including all grandparents and other relatives identified by the child's parents, that the child was removed, the option available to the relative to become the child's foster parent or to otherwise care for the child and any options that may be lost by the failure of the relative to respond to such notification in a timely manner. Notification must be made earlier than 30 days of removal if directed by the court. Notification is not required in regard to relatives with a history of family or domestic violence.

The regulations require the authorized agency with case management responsibility to develop a transition plan for a foster child who is aging out of foster care. Such plan must be personalized to the particular foster child and developed with the involvement of such child. Development of the transition plan must commence 180 days prior to the scheduled dis-

charge date of the foster child, with the completion of the plan 90 days prior to the scheduled discharge. The transition plan must address housing, health insurance, education, local opportunities for mentors and continuing support services and work force supports and employment services.

The regulations set forth standards social services districts must satisfy in relation to the educational stability of children when they are removed from their homes and placed into foster care. The regulations address the need to assess the proximity of foster care placements to the school the child attended at the time of removal and the appropriateness of the child remaining in that school after entering foster care. Where the foster child can not remain in the same school, the agency with case management responsibility must coordinate with local school officials in order that the foster child be provided with immediate and appropriate enrollment in a new school.

The regulations require that foster children of school age must either be enrolled in an appropriate educational setting, unless incapable of attending school, or have completed secondary education. The proposed regulations would impose a similar requirement post discharge from foster care in regard to a school age child who is in receipt of an adoption subsidy.

#### 3. Costs

Each of the regulatory amendments is required by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. There is no fiscal impact associated with implementing the regulations because current OCFS regulations require social services districts to carry out similar functions as those prescribed in these amendments. With the exception of the regulatory amendment associated with the transition plan, the regulatory changes are federally mandated under Title IV-E of the Social Security Act. Currently, New York must demonstrate that it has implemented these requirements in order to have a compliant Title IV-E State Plan. This is a condition for continuing to receive federal funds for foster care, adoption assistance and the administration of these programs.

The regulatory change regarding the transition plan for children who are aging out of foster care is a federal mandate under Title IV-B, Subpart 1 of the Social Security Act. In order to have a compliant Title IV-B State Plan, and to continue to receive federal Child Welfare Services funding, New York State must demonstrate that it has implemented such standard.

There is no fiscal impact associated with the regulatory amendment to 18 NYCRR 421.24(c)(19). Currently, the New York City Administration for Children's Services notifies adoptive parents to verify that they are continuing to support their adoptive children and continue to be legally responsible for the support of their adoptive children. Acceptable documentation includes proof of school attendance. Documentation provided by the adoptive parent can be maintained by the social services district in the adoption subsidy case file. The regulatory amendments do not require any modification to CONNECTIONS. The requirements associated with documenting information in the child's uniform case record progress notes can be supported in CONNECTIONS.

#### 4. Minimizing adverse impact

The regulations require the recording of the actions taken to comply with the regulatory standards noted above. Such information will be recorded in New York State's statewide automated child welfare information system, CONNECTIONS.

#### 5. Rural area participation

By letter dated, December 5, 2008, OCFS informed the commissioner of each local department of social services in the State of New York of the amendments to OCFS regulations necessitated by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. The letter included a brief summary of the new regulatory requirements. In addition, it informed local commissioners of the requirements enacted by the federal legislation that are already in effect in New York and that will not require any further regulatory amendments. OCFS advised the local commissioners that OCFS will provide any clarification received from the federal Department of Health and Human Services on these requirements. A copy of the regulations was provided along with a contact person if the local commissioners or their staff had any questions.

#### *Job Impact Statement*

A full job impact statement has not been prepared for the regulations. The amendments will not result in the loss or creation of any jobs.

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## Department of Civil Service

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### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-15-09-00008-A

**Filing No.** 1100

**Filing Date:** 2009-09-17

**Effective Date:** 2009-10-07

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text or summary was published** in the April 15, 2009 issue of the Register, I.D. No. CVS-15-09-00008-P.

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

**Text of 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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-15-09-00010-A

**Filing No.** 1101

**Filing Date:** 2009-09-17

**Effective Date:** 2009-10-07

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text or summary was published** in the April 15, 2009 issue of the Register, I.D. No. CVS-15-09-00010-P.

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

**Text of 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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-20-09-00002-A

**Filing No.** 1102

**Filing Date:** 2009-09-17

**Effective Date:** 2009-10-07

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text or summary was published** in the May 20, 2009 issue of the Register, I.D. No. CVS-20-09-00002-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-20-09-00003-A

**Filing No.** 1097

**Filing Date:** 2009-09-17

**Effective Date:** 2009-10-07

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text or summary was published** in the May 20, 2009 issue of the Register, I.D. No. CVS-20-09-00003-P.

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

**Text of 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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-20-09-00004-A

**Filing No.** 1103

**Filing Date:** 2009-09-17

**Effective Date:** 2009-10-07

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text or summary was published** in the May 20, 2009 issue of the Register, I.D. No. CVS-20-09-00004-P.

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

**Text of 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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-20-09-00005-A

**Filing No.** 1099

**Filing Date:** 2009-09-17

**Effective Date:** 2009-10-07

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text or summary was published** in the May 20, 2009 issue of the Register, I.D. No. CVS-20-09-00005-P.

**Final rule as compared with last published rule:** No changes.  
**Text of 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  
**Assessment of Public Comment**  
 The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-20-09-00006-A  
**Filing No.** 1098  
**Filing Date:** 2009-09-17  
**Effective Date:** 2009-10-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:  
**Action taken:** Amendment of Appendix 1 and Appendix 2 of Title 4 of NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)  
**Subject:** Jurisdictional Classification.  
**Purpose:** To delete and classify positions in the exempt class and to delete and classify positions in the non-competitive class.  
**Text or summary was published** in the May 20, 2009 issue of the Register, I.D. No. CVS-20-09-00006-P.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us  
**Assessment of Public Comment**  
 The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-25-09-00003-A  
**Filing No.** 1104  
**Filing Date:** 2009-09-17  
**Effective Date:** 2009-10-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:  
**Action taken:** Amendment of Appendix 2 of Title 4 of NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)  
**Subject:** Jurisdictional Classification.  
**Purpose:** To delete positions from the non-competitive class.  
**Text or summary was published** in the June 24, 2009 issue of the Register, I.D. No. CVS-25-09-00003-P.  
**Final rule as compared with last published rule:** No changes.  
**Text of 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  
**Assessment of Public Comment**  
 The agency received no public comment.

**Crime Victims Board**

**NOTICE OF ADOPTION**

**Financial Counseling**

**I.D. No.** CVB-30-09-00003-A  
**Filing No.** 1095  
**Filing Date:** 2009-09-16  
**Effective Date:** 2009-10-07

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

**Action taken:** Addition of section 525.1(q) to Title 9 NYCRR.  
**Statutory authority:** Executive Law, sections 621 and 631  
**Subject:** Financial counseling.  
**Purpose:** To establish the process through which claimants may be reimbursed by the Board for financial counseling.  
**Text or summary was published** in the July 29, 2009 issue of the Register, I.D. No. CVB-30-09-00003-P.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** John Watson, General Counsel, NYS Crime Victims Board, One Columbia Circle, Suite 200, Albany, New York 12203, (518) 457-8066, email: johnwatson@cvb.state.ny.us  
**Assessment of Public Comment**  
 The agency received no public comment.

**Education Department**

**NOTICE OF ADOPTION**

**Computation of Nonresident Pupil Tuition Rate**

**I.D. No.** EDU-18-09-00007-A  
**Filing No.** 1127  
**Filing Date:** 2009-09-22  
**Effective Date:** 2009-10-08

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

**Action taken:** Amendment of section 174.2 of Title 8 NYCRR.  
**Statutory authority:** Education Law, sections 207(not subdivided), 2040(1) and (2), 2041(not subdivided), 2042(not subdivided), 2045(1) and 3602  
**Subject:** Computation of nonresident pupil tuition rate.  
**Purpose:** To conform section 174.2 to the Foundation Aid provisions enacted by Chapter 57 of the Laws of 2007 and other statutory changes.  
**Text or summary was published** in the May 6, 2009 issue of the Register, I.D. No. EDU-18-09-00007-P.  
**Final rule as compared with last published rule:** No changes.  
**Revised rule making(s) were previously published in the State Register** on July 29, 2009.  
**Text of rule and any required statements and analyses may be obtained from:** Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov  
**Assessment of Public Comment**

A Notice of Proposed Rule Making was published in the State Register on May 6, 2009, and a Notice of Revised Rule Making was published on July 29, 2009. The State Education Department received the following comments in addition to those included in the Assessment of Public Comment published on July 29, 2009 with the revised rule making.

1. COMMENT:

A comment asked whether the tuition formula change in the proposed rule only applies prospectively.

DEPARTMENT RESPONSE:

The proposed rule became effective, as an emergency adoption, on May 1, 2009, and will take effect as a permanent rule on October 8, 2009. However, it is the Department's position that the tuition formula change included in the proposed rule is required by the Foundation Aid statutory provisions enacted by Chapter 57 of the Laws of 2007, and that the proposed rule is merely a conforming change to reflect the statutory requirements. Accordingly, the tuition formula change became effective on July 1, 2007, the effective date of the applicable provisions of Chapter 57 of the Laws of 2007, and applies to the 2007-2008 school year and afterwards. The tuition formula change was used to determine the final nonresident tuition charge for the 2007-2008 school year and to determine the estimated nonresident tuition calculation for the 2008-09 school year.

2. COMMENT:

The proposed rule should be amended to allow the receiving district to charge the Average Daily Membership (ADM) rate on an enrollment-based pupil count rather than on actual student attendance.

DEPARTMENT RESPONSE:

The Department believes an amendment is unnecessary because districts are allowed to use an enrollment-based pupil count under section 174.2. The regulation sets forth the methodology used to arrive at a per-pupil charge, but does not prescribe the pupil count used to charge a sending district. In the Department's experience, most districts agree to use a count based on enrollment as the comment suggests, and under the proposed regulation districts would be able to continue that practice.

### NOTICE OF ADOPTION

#### State Aid for High Needs Nursing Programs

**I.D. No.** EDU-23-09-00005-A

**Filing No.** 1131

**Filing Date:** 2009-09-22

**Effective Date:** 2009-10-08

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

**Action taken:** Amendment of section 150.4 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 and 6401-a; and L. 2008, ch. 57

**Subject:** State aid for high needs nursing programs.

**Purpose:** Extend the deadline for submission of annual reports from June 1 to Nov. 15 of each year.

**Text or summary was published** in the June 10, 2009 issue of the Register, I.D. No. EDU-23-09-00005-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Christine Moore, Office of Counsel, New York State Education Department, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

#### Assessment of Public Comment

The agency received no public comment.

The following is a summary of the amendments that the department is proposing for 6 NYCRR Subpart 43-2 in order to implement the management measures and harvest provisions to the Atlantic Ocean surfclam fishery which are contained in Amendment 1 to the FMP:

Add the new management measures and harvest controls to the description of the provisions of this Subpart.

Define "Individual Fishing Quota (IFQ)" as the annual allocation of surfclam quota that is assigned to each eligible surfclam vessel based on the annual harvest limit divided equally by the number of eligible vessels authorized to participate in the Atlantic Ocean surfclam fishery.

Define "cage tag" as a serially numbered and tamper-evident tag required to be affixed to all standard cages or industry standard bushel containers of surfclams, or a portion thereof, harvested by mechanical means from the NYS certified waters of the Atlantic Ocean which is obtained from the department or a vendor approved by the department.

Define "Vessel Monitoring System (VMS)" as a vessel monitoring system or unit that is installed on board a vessel for monitoring and transmitting the vessel's position as required by this Subpart.

Clarify and establish notification and permit requirements for any change in ownership, principal officers, members of the board of directors or shareholders of any corporation issued a surfclam/ocean quahog Atlantic Ocean owner's permit under this Subpart.

Establish eligibility and annual renewal requirements for issuance of surfclam/ocean quahog Atlantic Ocean owner's permits. This permit will be subject to annual renewal in order to maintain a vessel's eligibility to participate in the Atlantic Ocean surfclam fishery.

Identify criteria and procedures for establishment of an annual harvest limit that will control the maximum allowable harvest of surfclams that may be taken by mechanical means from the certified waters of the Atlantic Ocean for the period January 1 through December 31. The annual harvest limit will be established at no more than 5 percent of the fully recruited biomass based on the most recent surfclam population assessment survey for the Atlantic Ocean. The establishment of the annual harvest limit will also take into consideration other scientific and fishery related data available to the department. This change will establish a quantitative measure for setting the annual harvest limit which is more closely reflective of the fully recruited surfclam population estimate for the Atlantic Ocean fishery. The date for announcement of the annual harvest limit will remain unchanged and is no later than November 15 of the year preceding its effective date of January 1.

Eliminate the need for quarterly harvest allocations and maximum quantity of surfclams that may be taken in a calendar quarter in addition to the need to track quarterly harvest limits. Under the proposed regulations, the annual harvest limit will be regulated and monitored for the surfclam fishery through the establishment of an Individual Fishing Quota (IFQ) system.

Eliminate weekly vessel trip limits of no more than 28 standard cages of surfclams (equivalent to 896 industry standard bushels) to provide increased flexibility to fishermen to determine when they want to fish. This harvest provision will become effective January 1, 2010 under the IFQ system.

Establish an Individual Fishing Quota (IFQ) system in the Atlantic Ocean surfclam fishery, effective January 1, 2010, which will allocate to each eligible surfclam vessel an annual IFQ. The IFQ shall be determined based on the annual harvest limit divided equally by the number of eligible vessels authorized to participate in the Atlantic Ocean surfclam fishery. The IFQ assigned to an eligible surfclam vessel is nontransferable and each vessel can only be used to catch one quota allocation. The IFQ will expire on December 31 of each year and any unused quota not taken by the end of the year will not rollover into the next year but will remain uncaught.

Establish a daily limit of no more than 28 standard cages of surfclams (equivalent to 896 industry standard bushels) which represents the maximum carry capacity of the largest vessels in NYS's Atlantic Ocean surfclam fishery and will optimize economic efficiency of the surfclam fleet. This provision is designed to reduce overhead and fuel costs of surfclam vessels in this fishery.

Establish a cage tagging requirement for all vessels assigned an IFQ for the Atlantic Ocean surfclam fishery effective January 1, 2010. Cage tags may be purchased from the department or an authorized vendor.

Establish criteria and procedures for the use of cage tags for landing surfclams in standard cages or industry standard bushel containers and replacement of lost or stolen cage tags. Each cage tag represents either 32 bushels of surfclam allocation held in standard cages or 1 industry standard bushel of surfclam allocation, or a portion thereof.

Establish a provision that would make it unlawful for any vessel to possess or land surfclams taken from Federal waters or any other state waters by any vessel on the same day it was used to take surfclams from NYS waters of the Atlantic Ocean. This provision is intended to increase compliance with surfclam regulations and provide an effective tool for

## Department of Environmental Conservation

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

#### Atlantic Ocean Surfclam Management

**I.D. No.** ENV-40-09-00007-P

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

**Proposed Action:** Amendment of Subpart 43-2 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, section 13-0309, subdivision 12

**Subject:** Atlantic Ocean surfclam management.

**Purpose:** To adopt management measures necessary to ensure the long-term sustainability of the surfclam resource and fishery.

**Substance of proposed rule (Full text is posted at the following State website: [www.dec.ny.gov](http://www.dec.ny.gov)):** The purpose of this rule making is to amend the New York State Department of Environmental Conservation's regulations on Surfclam Management in the New York State (NYS) waters of the Atlantic Ocean (6 NYCRR Subpart 43-2). The proposed regulations are necessary to implement the provisions of Amendment 1 to the Fishery Management Plan (FMP) for the Mechanical Harvest of the Atlantic Surfclam in NYS waters of the Atlantic Ocean. The department, working in cooperation with the Surfclam/Ocean Quahog Management Advisory Board, has developed new management measures for the surfclam fishery which are contained in Amendment 1 to the FMP. The primary goals and objectives of Amendment 1 are designed to ensure the long-term sustainability of the surfclam resource and long-term predictability of resource yield, enhance the economic viability of the surfclam harvesting industry and processing capability, assure compliance with surfclam regulations, minimize the department's implementation and administrative costs, and increase surfclam vessel operating safety in the fishery.

law enforcement. This requirement is necessary as an additional enforcement tool to ensure compliance with harvest requirements, reduce the likelihood of illegal harvest and close up any loopholes for potential non-compliance with daily catch (trip) limits established for this fishery.

Establish a VMS requirement, effective January 1, 2010, mandatory for all vessels assigned an IFQ in the Atlantic Ocean surfclam fishery.

Establish criteria and provisions for VMS activation, operation, position transmission, exemption, trip declaration, and system replacement.

Establish VMS operation requirements that will require a vessel to transmit a signal indicating the vessel's accurate position at least every 15 minutes, 24 hours per day, throughout the year unless exempted by the department. A vessel owner must apply for a letter of exemption from the VMS transmitting requirements of this Subpart by sending a written request to the department.

Establish provisions for approved VMS vendors which are consistent with the federal list of approved VMS vendors maintained by the National Marine Fisheries Service for the surfclam Individual Transferable Quota program in the Exclusive Economic Zone.

Establish monthly surfclam vessel harvest reporting requirements for all vessels assigned an IFQ in the Atlantic Ocean surfclam fishery. Eliminate the weekly reporting requirement for this fishery which will be replaced by submission of monthly vessel trip reports to the department. This is intended to streamline the reporting requirements and be more consistent with other commercial fisheries data collected by the department from license and permit holders.

Establish requirements for suspension and/or denial of surfclam/ocean quahog Atlantic Ocean owner/lessee permits if the permit holder fails to comply with the reporting requirements of this section.

Establish daily logbook requirements for all captain/operator's of surfclam vessels to be maintained and immediately available for inspection upon request.

Establish criteria and procedures for confidentiality of fisheries data which includes information collected and submitted by individual permit holders through the vessel trip reporting requirements of this Subpart. This is consistent with regulations established for the collection of other fisheries data submitted to the department pursuant to 6 NYCRR Part 40.

**Text of proposed rule and any required statements and analyses may be obtained from:** Debra Barnes, NYSDEC, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-0483, email: dabarnes@gw.dec.state.ny.us

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

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

**Additional matter required by statute:** Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the department.

#### **Regulatory Impact Statement**

##### **1. Statutory authority:**

Environmental Conservation Law (ECL) section 13-0309 (12) authorizes the Department of Environmental Conservation (department) to fix by regulation open seasons, harvest areas, size limits, catch limits, manner of taking and possession, transportation, identification, sale and permit requirements for surf, sea, hen and skimmer clams. Environmental Conservation Law section 13-0308 created a Surf Clam/Ocean Quahog Management Advisory Board (the Surfclam Board) to assist the department with the development of a comprehensive long-term management plan for the protection of surf clams/ocean quahogs in New York State (NYS) waters.

##### **2. Legislative objectives:**

It is the objective of the above cited statutory authority that the department implements management measures necessary to protect the sustainability of the surfclam resource and assure the economic viability of the fishery by developing a comprehensive long-term management plan for this important resource.

##### **3. Needs and benefits:**

The NYS waters of the Atlantic Ocean have supported an important surfclam fishery for more than sixty years. The department adopted a Fishery Management Plan (FMP) for the Mechanical Harvest of the Atlantic Surfclam in NYS waters of the Atlantic Ocean in 2003. This FMP maintained the status quo on the fishery and did not address major problems affecting the economic viability of the fishery. The department has been working with the Surfclam Board since 2005 to develop an amendment to the FMP (referred to as Amendment 1) that is designed to promote sustainability of the surfclam resource, enhance economic viability of participants in the surfclam fishery, foster compliance with surfclam regulations, reduce the department's implementation and administrative costs and increase surfclam vessel operating safety in the fishery. The proposed rule making is necessary in order to implement the management measures and provisions contained in Amendment 1 to the FMP.

The department proposes to amend 6 NYCRR Subpart 43-2 to implement the following management measures:

The proposed rule making will allow the department to establish an annual harvest limit, which shall not exceed 5 percent of the fully recruited biomass (as measured in industry standard bushels), that will control the maximum quantity of surfclams that may be taken by mechanical means from the certified waters of the Atlantic Ocean for the period January 1 through December 31. The current regulatory program does not link the annual harvest limit with any specific fraction of the estimated surfclam population biomass as determined by surfclam population assessments (surveys) conducted by the department. The proposed regulations will establish a quantitative measure for setting the annual harvest limit in bushels which is more closely reflective of the fully recruited surfclam population estimate (given as biomass, measured in industry standard bushels) for the Atlantic Ocean fishery. The proposed rule making is considered to be more protective of the surfclam resource and intended to promote the long-term sustainability of New York's Atlantic Ocean surfclam fishery.

The proposed rule making will establish an Individual Fishing Quota system (IFQ) which will allocate to each eligible surfclam vessel an individual fishing quota that is determined based on the annual harvest limit divided equally by the number of eligible vessels. Implementation of an IFQ system will provide surfclam industry participants with greater flexibility to decide when they want to fish, reduce overhead costs, increase economic and harvesting efficiency and promote safety of fishing vessels.

The proposed rule making will eliminate weekly and quarterly catch limits and establish a daily catch limit of a maximum of 28 standard cages of surfclams (896 industry bushels) per day per vessel eligible to participate in the fishery. This provision will maximize economic efficiency, increase flexibility to the fishermen, reduce capital costs to the industry and promote safety to the fishery. In addition, the proposed rule making will allow fishermen to schedule harvest trips during the most favorable weather conditions and peak market demands rather than forcing each vessel to fish every week as required under the current regulatory program.

The proposed rule making will require surfclam/ocean quahog Atlantic Ocean - Owner's Permits issued under Subpart 43-2.4 to be renewed annually in order to maintain a vessel's eligibility to participate in the Atlantic Ocean surfclam fishery. This is necessary in order to maintain the economic viability of the established New York based participants in the harvesting sector of the industry, determine the IFQ assigned to each vessel, and to reduce the level of over-capitalization over the long-term in this fishery.

The proposed rule making will establish a mandatory Vessel Monitoring System (VMS) requirement for all vessels participating in New York's Atlantic Ocean surfclam fishery. This requirement is consistent with the VMS regulations adopted by the National Marine Fisheries Service for the federal surfclam and ocean quahog Individual Transferable Quota (ITQ) fishery and is intended to reduce or eliminate illegal harvest of surfclams within New York's Atlantic Ocean by both New York and Federally permitted surfclam harvesting vessels. Additionally, this system is expected to assist law enforcement and help promote compliance with rules and regulations controlling surfclam harvest in the Atlantic Ocean.

The proposed rule making will establish a cage tag requirement for all surfclams taken from the certified waters of the Atlantic Ocean which is consistent with the cage tag requirement implemented in the Federal Surfclam ITQ Fishery under Amendment 5 in 1985. This will allow increased tracking of individual quota allocations and is considered an effective law enforcement tool along with implementation of a mandatory VMS. It will also further reduce the potential for vessels to make illegal trips or attempt to harvest another vessel's allocation. The use of cage tags has been demonstrated to be an effective enforcement and management measure in the Federal Surfclam Fishery.

The proposed rule making will simplify the reporting requirements for surfclam industry participants by replacing the current filing of weekly trip reports with a monthly vessel logbook reporting requirement. This will reduce the administrative burden on surfclam industry participants and the department. It will also allow the surfclam catch data to be potentially incorporated into other Vessel Trip Reports (VTR's) required by the department in order to streamline the trip reporting requirements for permit holders involved in multiple fisheries. Additionally, the proposed rule making will add a provision to protect the confidentiality of fisheries data reported to the department. This will protect individual surfclam permit holder catch data from disclosure except under certain circumstances and be consistent with section 40.4 of 6 NYCRR which provides for confidentiality of fisheries data.

The proposed rule making will prohibit the possession or landing of surfclams taken from Federal waters on or from any vessel on any given day that has been used to harvest surfclams from NYS waters of the Atlantic Ocean. This requirement is necessary as an additional enforcement tool to ensure compliance with harvest requirements, reduce the likelihood of illegal harvest and close up any loopholes for potential non-

compliance with daily catch (trip) limits established for this fishery. Because a number of the vessels permitted to harvest in New York's Atlantic Ocean fishery are also permitted to harvest surfclams in Federal waters, the rule making will reduce any confusion or ambiguity with the enforcement of the allowable harvest limits for any vessel involved in both fisheries.

4. Costs:

(a) Cost to State government:

There are no new costs to state government resulting from this action.

(b) Cost to Local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

There will be minimal additional costs incurred by surfclam vessel owners who do not already have a VMS installed on their vessel. Additionally, the regulated industry will incur minimal costs for purchase of cage tags but overall, the rule making is designed to increase the economic efficiency and viability of the surfclam industry and should offset any costs imposed by this rule making.

(d) Costs to the regulating agency for implementation and continued administration of the rule:

There will be no costs to the regulating agency and is designed to reduce administrative costs to the department.

5. Local government mandates:

The proposed rule making does not impose any mandates on local government.

6. Paperwork:

The proposed rule making will reduce the reporting requirements for the surfclam industry by replacing weekly reporting with a monthly reporting requirement.

7. Duplication:

The proposed rule does not duplicate any State or Federal requirement.

8. Alternatives:

The no action alternative was considered and rejected because it would not address the immediate needs of the surfclam industry and resource which have been identified in the department's draft Amendment 1 to the FMP. The issues addressed in this rule making have been thoroughly reviewed by the Surfclam Board and surfclam industry participants. The Surfclam Board and surfclam industry are generally supportive of these issues. Additionally, the no action alternative would likely force vessels to drop out of the fishery due to economic hardship from the continuation of the current regulatory program.

9. Federal standards:

Although there are Federal government standards (regulations) for the surfclam and ocean quahog fisheries for the Federal waters of the Exclusive Economic Zone (3-200 miles off shore), there are no federal standards for the surfclam fishery in NYS waters (0-3 miles of the coastline).

10. Compliance schedule:

Compliance with the proposed regulation is required upon the effective date of the regulation.

**Regulatory Flexibility Analysis**

1. Effect of rule:

Small businesses that will be affected by the proposed rule making include shellfish harvesters involved with the mechanical harvest of surfclams from the New York State (NYS) waters of the Atlantic Ocean (within three miles of shore). New York's Atlantic Ocean surfclam fishery is subject to limited entry and there are currently 22 vessels eligible to participate in this fishery. These vessels typically harvest with three persons onboard the vessel (captain and two crew members). In 2009, there were 12 permits issued to captains involved with the mechanical harvest of surfclams in the Atlantic Ocean surfclam fishery. Of the 22 vessels, only about 16 vessels were actively fishing each week in 2008 and for 2009, only 18 vessels have valid permits to take surfclams by mechanical means from the Atlantic Ocean.

The proposed rule making is designed to increase the economic efficiency and viability of the harvesting sector of the surfclam industry by eliminating weekly and quarterly harvest limits and establishing an Individual Fishing Quota system (IFQ) for all eligible surfclam vessels. The provisions of this rule making provides surfclam industry participants with greater flexibility to decide when they want to fish, reduces overhead costs, increases economic and harvesting efficiency and promotes safety of fishing vessels. The IFQ, which will allocate to each eligible surfclam vessel an individual fishing quota based on the annual harvest limit divided equally by the number of eligible vessels authorized to participate in the Atlantic Ocean surfclam fishery, is the most equitable management measure that can be implemented in a highly complex and diverse fishery. The establishment of a daily harvest limit, of not more than 28 standard cages of surfclams per day per eligible vessel, will help to promote vessel operating safety and economic viability of the fishery by allowing vessels to maximize the carrying capacity of their vessel for each trip. This will

reduce fuel and overhead costs associated with each trip as compared to the current harvest restriction of 14 cages per week which is taken in one day's trip for most vessels in the fishery. This rule making is expected to have a positive impact on small businesses associated with this fishery by reducing overcapitalization in this fishery.

2. Compliance requirements:

The proposed rule making is designed to reduce the reporting requirements on small businesses by replacing the weekly trip reporting requirements with a monthly vessel logbook or equivalent reporting requirement. This will reduce the administrative burden on surfclam vessel owners and captains who are responsible for the completion and submission of surfclam harvest reports to the department. This rule making will also establish a mandatory Vessel Monitoring System (VMS) requirement for all vessels participating in New York's Atlantic Ocean surfclam fishery. The Federal surfclam fishery implemented a mandatory requirement for VMS on January 1, 2008 and a number of vessels participating in New York's surfclam fishery also participate in the Federal fishery. Therefore, this requirement will only add additional costs to a small fraction of New York's Atlantic Ocean surfclam fishery but should be offset by the reduced costs for implementation of other management measures contained in this rule making.

3. Professional services:

No professional services will be needed for small businesses to comply with the proposed rule making.

4. Compliance costs:

The proposed rule making will require the installation of a VMS on all surfclam harvesting vessels engaged in the mechanical harvest of surfclams from the NYS certified waters of the Atlantic Ocean. The initial purchase and installation costs for VMS are between \$1600.00 and \$2600.00 depending on the model and if a personal computer is also required. Vessels participating in the federal surfclam Individual Transferable Quota fishery have already purchased this equipment for compliance with federal regulations that became effective in 2008. The annual service fees for VMS range from approximately \$264 to \$468. The rule making will also require the purchase of cage tags which cost approximately \$.16 per tag or \$68.00 per year based on 426 cages per vessel (annual cost estimate assumed an annual harvest limit of 300,000 bushels). There will be no costs incurred by local government for this rule.

5. Economic and technological feasibility:

There are currently three companies that have been approved by National Oceanic and Atmospheric Administration's National Marine Fisheries Service, Northeast Region, and are recognized by the department as vendors for obtaining a VMS and service necessary for compliance with this rule making. The VMS technology is readily accessible and reasonably priced to allow small businesses to comply with this rule making. The rule making will not have any impact on local governments.

6. Minimizing adverse impact:

The proposed rule making will not have any adverse impact on small businesses involved in the Atlantic Ocean Surfclam fishery or local governments. The rule making is designed to implement the provisions of Amendment 1 to the FMP for the Mechanical Harvest of the Atlantic Surfclam from NYS waters of the Atlantic Ocean. The management provisions in Amendment 1 of the FMP will promote sustainability of the surfclam resource, enhance the economic viability of participants in the surfclam fishery, foster compliance with surfclam regulations, reduce the administrative burden on the department and surfclam fishery participants and increase surfclam vessel operating safety in the fishery. The proposed rule making will allow the New York surfclam fishery to operate more efficiently and likely reduce operating costs for all participants.

7. Small business and local government participation:

The Surfclam/Ocean Quahog Management Advisory Board (Surfclam Board) was established by the New York State Legislature by Chapter 512 of the Laws of 1994 under Environmental Conservation Law 13-0308, to assist the department with the development of a comprehensive long-term management plan for the protection of surfclams/ocean quahogs in NYS waters. The department has been working with the Surfclam Board, which consists of small business representatives involved in the Surfclam industry, since 2005 in order to develop an amendment to the FMP that is designed to address the long-term sustainability of the surfclam resource and economic viability of the Atlantic Ocean Surfclam fishery. This rule making represents the majority of the recommendations of the Surfclam Board and surfclam industry participants that attended the Board meetings. Small businesses involved in the surfclam industry have been able to attend Surfclam Board meetings and provide input in the management measures for the fishery prior to the development of this rule making. The rule making does not have any impact on local governments so their direct participation was not solicited by the department.

**Rural Area Flexibility Analysis**

The proposed rule involves the implementation of management provisions for the mechanical harvest of surfclams in the New York State (NYS)

waters of the Atlantic Ocean. The commercial harvest of surfclams in this fishery is entirely located within NYS waters of the Atlantic Ocean that border the counties of Suffolk, Nassau, Queens and Kings and is not located adjacent to any rural areas of the State. The majority of the surfclam resource harvested in this fishery is shipped out-of-state for processing and sale. The Department of Environmental Conservation has determined that there are no rural areas within the marine and coastal district. Therefore, the department has determined that this rule making does not impact rural areas or any public or private entities located in rural areas. Further, the proposed does not impose any reporting, record keeping, or other compliance requirements on public or private entities in rural areas.

Since no rural areas will be affected by the proposed rule making, a Rural Area Flexibility Analysis is not required.

#### **Job Impact Statement**

The Department of Environmental Conservation (department) has determined that the proposed regulations will not have a substantial adverse impact on jobs and employment opportunities. Therefore, a job impact statement is not required.

The participation in the New York State (NYS) Atlantic Ocean surfclam fishery is limited to 22 eligible vessels and is closed to new entrants (6 NYCRR Subpart 43-3). There were 20 licensed surfclam/ocean quahog Atlantic Ocean owner/lessees and 18 licensed surfclam/ocean quahog Atlantic Ocean captains/operators in New York's Atlantic Ocean fishery in 2008. Additionally, there was an estimated 36 surfclam crew members employed by this fishery; the estimated number assumes a crew of 2 for each captain in the fishery since there is no special surfclam permit required other than the possession of a valid shellfish diggers permit to work as a crew member on a surfclam boat in the Atlantic Ocean. In 2009, there were only 12 licensed surfclam/ocean quahog Atlantic Ocean captains/operators in New York's Atlantic Ocean fishery. The proposed regulations are not expected to significantly impact existing jobs or employment opportunities in this fishery which are estimated to be at less than 100 licensed participants.

The proposed regulations implement the provisions of Amendment 1 to the Fishery Management Plan for the Mechanical Harvest of the Atlantic Surfclam from NYS waters of the Atlantic Ocean. The amendments to 6 NYCRR Subpart 43-2 will promote sustainability of the surfclam resource, enhance the economic viability of participants in the surfclam fishery, foster compliance with surfclam regulations, and reduce the administrative burden on the industry and department. The proposed rule making will establish an Individual Fishing Quota system (IFQ) which will allocate to each eligible surfclam vessel an individual fishing quota. The proposed rule making will eliminate weekly and quarterly catch limits which will provide flexibility to surfclam harvesters to determine when they want to fish based on market demand and price and favorable weather. The daily catch limit will be established at no more than 28 standard cages of surfclams per day per eligible vessel which will allow vessels in this fishery to maximize the carrying capacity of their vessel for each trip. Although the proposed rule making may reduce the number of fishing days required to catch an IFQ assigned to each eligible vessel, it will increase the economic viability and efficiency of each vessel. Additionally, the proposed rule making will establish an annual harvest limit at no more than 5 percent of the fully recruited surfclam biomass (as measured in industry standard bushels) based on the best available scientific information and most recent surfclam population assessment (survey) which is considered more protective of the long-term sustainability and viability of the surfclam resource. The proposed amendments are expected to have a positive impact on the economic viability and long-term sustainability of the surfclam fishery. The protection and maintenance of a sustainable surfclam resource should protect existing jobs and create potential employment opportunities in this fishery.

Based on the above and the department's knowledge of similar regulations in the Federal Surfclam Individual Transferable Quota fishery, the department has concluded that there will not be any substantial adverse impacts on jobs or employment opportunities in this fishery as a consequence of this rule making.

## Department of Health

### NOTICE OF ADOPTION

#### **Tanning Facilities**

**I.D. No.** HLT-41-08-00006-A

**Filing No.** 1129

**Filing Date:** 2009-09-22

**Effective Date:** 2009-10-07

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

**Action taken:** Addition of Subpart 72-1 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 3551 and 3554

**Subject:** Tanning Facilities.

**Purpose:** To establish standards for the safer and sanitary operation of Tanning Facilities.

**Substance of final rule:** The proposed Subpart contains the following provisions:

The term 'tanning facility' is defined and operators are required to obtain a biennial permit to operate from the permit issuing official (PIO) having jurisdiction in the county where the tanning facility is located. This may be the State, or the County or other specified local health officer when such officer requests to be authorized as a PIO. Inspection of facilities and enforcement of the Subpart by the PIO is established by this proposed regulation, as well as specifying operation standards for tanning facilities. The standards include age restrictions for use of ultraviolet radiation devices, requirements for patron identification, warning and consent requirements, operation and maintenance of physical facilities and equipment, use of protective eyewear during tanning and general operator responsibilities.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 72-1.1, 72-1.3, 72-1.4, 72-1.6, 72-1.7, 72-1.8 and 72-1.9.

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

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

##### **Statutory Authority:**

The Commissioner is authorized by Public Health Law (PHL) Article 35-A Sections 3551 and 3554 to promulgate rules and regulations necessary to effectuate the provisions of the Article.

##### **Needs and Benefits:**

In July 1990, Article 35-A of the Public Health Law (PHL) was enacted giving the Department of Health the authority and responsibility to license and inspect ultraviolet radiation devices in tanning facilities, effective July 1991. The legislation established a program that includes biennial licensure and inspection of all commercial non-medical tanning operations. The purpose of this program is to license and inspect commercial tanning facilities with the intent of increasing consumer knowledge of the hazards of ultraviolet tanning and minimizing user injuries.

On August 14, 2006, Chapter 573 of Laws of 2006 amended Article 35-A to prohibit children under 14 years old from using tanning facilities and requiring that children between the ages of 14 and 18 have a parent or legal guardian sign a consent form before the child can use the tanning equipment. Adults must sign a similar statement indicating that they have read the Department's warning materials. The amendments to Article 35-A became effective November 14, 2006. The enacting legislation authorized the Commissioner to promulgate regulations to implement the amendments to the law.

##### **Regulated Parties:**

There are approximately 1,800 tanning facilities in New York State. Five counties in New York State have established or are in the process of establishing local regulations which provide performance standards

and enable them to permit and inspect tanning facilities. The remaining counties and New York City have not enacted local regulations or established programs to regulate and permit tanning facilities as required by PHL Article 35-A.

#### Costs to Regulated Parties:

The proposed regulation creates no significant cost to tanning facility operators aside from biennial license and inspection fees established within Article 35-A. Minimal expenses may also be incurred by operators who currently do not provide protective eyewear "free of charge" as required by PHL Article 35-A. In these cases, operators will likely provide inexpensive single use disposable eyewear, which most operators currently sell to patrons for about \$1.00 per set of eyewear. This disposable eyewear is readily available through wholesale, retail and internet sales and can be purchased for less than \$0.20 per pair.

Some operators may have equipment that requires retrofitting to achieve compliance with the requirements within this regulation for ultraviolet device timer access controls. Research indicates that even the most expensive remote timer systems would cost less than \$300 per unit to retrofit ultraviolet radiation devices to meet the requirements of this regulation. A less costly option exists, adding a patron lockout to the existing device timer. Estimates obtained indicate that this option would cost less than \$50 per device to achieve compliance with the regulation for those operators whose equipment does not already meet the requirement.

#### Government:

The printing and distribution of the new regulation and the corresponding program inspection report, warning sign, information sheet, consent and acknowledgement forms will be a minimal State Health Department expense. There will be additional costs for staff time and travel expenses to train and to provide technical guidance to voluntary local health department (LHD) staff. Costs will be offset by additional revenue generated from permit and inspection fees. It is expected that PIOs will use existing staff to manage the workload because of the relatively low number of tanning facilities in any particular jurisdiction. Reimbursement to PIOs will be at the current State Aid rate of 36% for public health programs.

#### Alternatives Considered:

No alternatives were considered as compliance is mandated by Public Health Law. The proposed regulation meets the requirements established by PHL Article 35-A and would effectuate the provisions of the article as intended.

#### Compliance Schedule:

The proposed regulation will be effective upon publication of a notice of adoption in the *State Register*.

#### **Revised Regulatory Flexibility Analysis**

##### Effect on Small Business and Local Government:

There are approximately 1,800 tanning facilities in New York State, most of which are not currently under regulation. It is believed that most of these tanning facilities may be considered small businesses.

##### Compliance Requirements:

##### Reporting and Recordkeeping:

Tanning facility operators will be required to report certain patron injuries and illnesses within 24 hours of occurrence, and to maintain written records of such events for a period of two years. Operators must document the age of patrons and obtain a signed acknowledgement form from every adult patron. Operators must obtain parental consent forms for every minor patron from the ages of 14 to 18 years. These forms expire 12 months from the date of signing. Operators will also be required to test the accuracy of tanning device timers annually, and keep records of this activity. They shall also be required to keep equipment maintenance logs and to keep entries in these logs for a period of two years.

##### Other affirmative acts:

Tanning facility operators are required to obtain a biennial permit to operate from the permit issuing official (PIO) having jurisdiction in the county that the facility is located. Operators must check the identification of every prospective patron, ensuring that it meets the

criteria set forth in PHL 35-A. Operators must also ensure that every patron has in their possession a set of adequate protective eyewear for use with ultraviolet radiation devices. For patrons without such eyewear, the operator must provide a set at no additional charge to the patron. Operators must also ensure that all ultraviolet radiation devices are adequately labeled, operated and maintained.

##### Compliance Costs:

The proposed regulation creates no significant cost to most tanning facility operators aside from biennial license and inspection fees established within Article 35-A. A facility permit fee of \$30 and an inspection fee of \$50 per ultraviolet radiation device will be assessed biennially.

Some operators may have equipment that requires retrofitting to achieve compliance with the requirements within this regulation for ultraviolet device timer access controls. Research indicates that even the most expensive remote timer systems would cost less than \$300 per unit to retrofit ultraviolet radiation devices with a remote access system to meet the requirements of this regulation. Costs depend largely on prevailing rates charged by electrical contractors. A less costly option exists, adding a patron lockout to the existing device timer. Estimates obtained indicate that this option would cost less than \$50 per device to achieve compliance with the regulation for those operators whose equipment does not already meet the requirement.

Minimal additional expenses may also be incurred by operators who are not currently providing protective eyewear "free of charge" as required by PHL Article 35-A. In these cases, operators will likely provide inexpensive single use disposable eyewear, which most operators currently sell to patrons for about \$1.00 per set of eyewear. This disposable eyewear is readily available through wholesale, retail and internet sales and can be purchased for less than \$0.20 per pair.

Operators may incur a minimal expense to obtain and post warning signs as required by the proposed regulations.

##### Professional Services:

These regulations do not impose any additional burden for professional services.

##### Economic and Technological Feasibility:

The proposal is technologically feasible because it requires the use of existing technology. The overall economic impact to comply with the requirements of this regulation is expected to be minimal.

##### Minimizing Adverse Economic Impact:

The proposed regulation establishes standards for operating ultraviolet radiation devices within tanning facilities in such a way as to minimize risk to the public health. Should this regulation have a substantial adverse impact on a particular facility, a waiver of one or more requirements other than those required by Article 35-A of Public Health Law will be considered, so long as alternative arrangements protect public health and safety.

Alternatively, a variance, allowing additional time to comply with one or more requirements, can be granted if the health and safety of the public is not prejudiced by the variance.

##### Small Business Participation:

During the development of this regulation, Department staff met with representatives of the Indoor Tanning Association, which represents approximately 23 NYS tanning operators, and several small business owners on several occasions and also had numerous telephone conversations to develop a better understanding of tanning facility operations. This information obtained during these outreach activities was incorporated into the proposed regulation. Furthermore, Department staff were invited to observe several small tanning business operations in person, and knowledge gleaned during these on-site observations was critical in the development of the proposed regulations. Small business participation included six operators in Saratoga County and two in Dutchess County.

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

##### Types and Estimated Number of Rural Areas:

There are approximately 1800 tanning facilities in New York State. Approximately forty percent are located in rural areas throughout the state, as determined by a survey of all local health departments in November 2006.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

Reporting and Recordkeeping:

Tanning facility operators will be required to report certain patron injuries and illnesses within 24 hours of occurrence, and to maintain written records of such events for a period of two years. Operators must document the age of patrons and obtain a signed acknowledgment form from every adult patron. Operators must obtain parental consent forms for every minor patron from the ages of 14 to 18 years. These forms expire 12 months from the date of signing. Operators will also be required to test the accuracy of tanning device timers annually, and keep records of this activity. They shall also be required to keep equipment maintenance logs and to keep entries in these logs for a period of two years.

Other affirmative acts:

Tanning facility operators are required to obtain a biennial permit to operate from the permit issuing official (PIO) having jurisdiction in the county that the facility is located. Operators must check the identification of every prospective patron, ensuring that it meets the criteria set forth in PHL 35-A. Operators must also ensure that every patron has in their possession a set of protective eyewear that meets United States Food and Drug Administration standards for use with ultraviolet radiation devices. For patrons without such eyewear, the operator must provide a set at no additional charge to the patron. Operators must also ensure that all ultraviolet radiation devices are adequately labeled, operated and maintained.

Compliance Costs:

The proposed regulation creates no significant cost to most tanning facility operators aside from biennial license and inspection fees established within Article 35-A. A facility permit fee of \$30 and an inspection fee of \$50 per ultraviolet radiation device will be assessed biennially.

Some operators may have equipment that requires retrofitting to achieve compliance with the requirements within this regulation for ultraviolet device timer access controls. Research indicates that even the most expensive remote timer systems would cost less than \$300 per unit to retrofit ultraviolet radiation devices with a remote access system to meet the requirements of this regulation. Costs depend largely on prevailing rates charged by electrical contractors. A less costly option exists, adding a patron lockout to the existing device timer. Estimates obtained indicate that this option would cost less than \$50 per device to achieve compliance with the regulation for those operators whose equipment does not already meet the requirement.

Minimal additional expenses may also be incurred by operators who are not currently providing protective eyewear "free of charge" as required by PHL Article 35-A. In these cases, operators will likely provide inexpensive single use disposable eyewear, which most operators currently sell to patrons for about \$1.00 per set of eyewear. This disposable eyewear is readily available through wholesale, retail and internet sales and can be purchased for less than \$0.20 per pair.

Operators may incur a minimal expense to obtain and post warning signs as required by the proposed regulations.

Professional Services:

These regulations do not impose any additional burden for professional services.

Minimizing Adverse Economic Impact on Rural Areas:

The proposed regulation establishes standards for tanning facilities to minimize risk to the public health. Should this regulation have a substantial adverse impact on a particular facility, a waiver of one or more requirements other than those required by Article 35-A of Public Health Law will be considered, so long as alternative arrangements protect public health and safety. Alternatively, a variance, allowing additional time to comply with one or more requirements, can be granted if the health and safety of the public is not prejudiced by the variance.

Rural Area Participation:

During the development of this regulation, the Department met with industry representatives on several occasions and had numerous

telephone conversations to develop a better understanding of tanning facility operation and incorporated the information obtained during these outreach activities into the proposed regulation. Furthermore, Department staff were invited to observe several small tanning business operations in person. Some of these facilities were in rural areas. Knowledge gleaned during these on-site observations was critical in the development of the proposed regulations.

**Revised Job Impact Statement**

Changes made to the last published rule do not necessitate revision to the previously published JIS.

**Assessment of Public Comment**

A total of seventeen (17) letters containing comments were received from tanning facility operators, local health departments (and a county board of supervisors), an industry membership association, and from the director of a not-for-profit entity. A review of the comments has been performed and the following is a summary of the major comments.

Section 72-1.1 Definitions

Comment:

The New York City Department of Health and Mental Hygiene stated that the regulation created an unfunded mandate and impermissible shift of statutory obligations from the State to City and County Health Departments.

They further contend that the only authority in Public Health law Article 35-A for the State Department of Health (DOH) to delegate any of its responsibilities to City and County Health Departments is in Section 3554. Their interpretation is that DOH cannot directly require the implementation of requirements or enforcement of the Public Health Law sections that precede (Licenses, Fees) or 2006 amendments that follow that section (age restrictions, written consent).

One county board of supervisors also submitted a resolution opposing the proposed regulations as an unfunded mandate. One other local health department had a similar comment concerning lack of funding and resources to implement the program.

Response:

Agree. The delegation or authorization of a City or County Health Department is to be made in response to a request by a County or City Health Department to the State Health Commissioner to implement the proposed regulatory program. To address this issue, the Permit Issuing Official (PIO) definition was clarified indicating that when designated by the State Health Commissioner, City and County Health Departments could participate in this optional program. The regulations therefore will not impose any local government mandates. City and County Health Departments that wish to act as the PIO to enforce these regulations can request an approval for authorization from the State Commissioner of Health. The State Department of Health will assume responsibility for program implementation in all other locations.

Section 72-1.4 Permits and Fees

Comment:

Nine operators and an industry tanning association objected to permit and/or inspection fees; several stated that fees were excessive and suggested a cap on inspection fees. Several comments were received from local health departments and NYC regarding inability of current fee structure to support the program. They also contend that PHL Article 35-A requires that any fees collected can only offset costs incurred by the State, that City and County Health Departments cannot collect permit or inspection fees.

Response:

No change. Fees are set in Public Health Law Article 35-A.

Section 72-1

Comment:

Four operators objected to having to provide free protective eyewear to patrons that do not possess their own protective eyewear.

Response:

No Change. Public Health law Article 35-A requires each tanning facility to provide safety goggles and any other safety-related devices to customers without additional charge.

## Comment:

A not for profit entity generally supported the regulation but would like to see a total ban on tanning for children under age 18.

## Response:

The current age restriction for tanning of minors is established in Public Health Law Article 35-A. A change in the statute or adoption of a more stringent local law would be needed.

## Other comments:

Two County Health Departments and the Indoor Tanning Association asked for guidance regarding sanitizing products and procedures.

One operator asked for guidance regarding testing of timer accuracy.

One operator asked for guidance regarding proof that an adult was a parent or legal guardian of a minor.

Several other comments were received relating to general program administration.

## Response:

No change. Most of these are technical and procedural questions that can be addressed through guidance documents and fact sheets.

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

#### WIC Vendor Minimum Stocking Requirements

I.D. No. HLT-40-09-00003-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 60-1.13 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2500

**Subject:** WIC Vendor Minimum Stocking Requirements.

**Purpose:** Amends vendor applicant enrollment criteria relative to stocking minimum quantities of WIC acceptable foods.

**Text of proposed rule:** Pursuant to the authority vested in the Commissioner of Health by Section 2500(1) of Title 1 of Article 25 of the Public Health Law, Section 60-1.13 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register to read as follows:

60-1.13 Vendor applicant enrollment criteria.

(a) Any food store (excluding pharmacies) which applies for participation in the WIC program shall be enrolled via a *State Health Department approved* one-year expirable contract if all of the following criteria are met. If all the criteria are not met, the vendor may not be enrolled.

(4) The *applicant* vendor shall stock [and maintain] WIC-acceptable foods, as determined by the New York State Department of Health, in the [following] minimum quantities[.] *prescribed in the vendor application document at the time of enrollment.*

[Item Minimum Quantity

Milk 35 qts.-fluid and 9 quarts-dry (each unit 3 quarts or larger) and, if required by the WIC local agency, 4 units of lactose-reduced milk

Cereal 3 boxes of each of three varieties of adult cold cereals (total of 9 boxes) and 3 boxes of adult hot cereal and 3 boxes of infant cereal

Eggs 5 dozen eggs (medium and/or large and/or extra large)

Juice 8 units of fluid juice (can, bottle, or carton - 1 quart or larger) (3 varieties) or 90 oz. of frozen juice (each unit 6 oz. or larger) (3 varieties)

Infant juice 20 - 4.2 oz. jars

Cheese 5 - 1 lb. units (3 or more varieties)

Peanut butter 5 - 18 oz. jars

Formula-iron fortified 1 case each of 2 brands of milk-based formula;

and

Formula 1 case of soy-based formula]

(b) Any pharmacy which applies for participation in the WIC program shall be enrolled if all the following criteria are met. Any vendor who meets these criteria should be enrolled via a *State Health Department approved* one-year expirable contract.

(2) The applicant *pharmacy shall* stock[s] a minimum of three cases of iron-fortified] formula [(one case soy for every three cases milk-based). A minimum of two brands of milk-based formula are available.] *in the minimum quantities prescribed in the vendor application document at the time of enrollment.*

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

Statutory Authority:

Public Health Law § 2500 provides the commissioner with authority relative to maternal and child health and mandates that the commissioner "shall administer such services bearing on the health of mothers and children for which funds are or shall hereafter be made available." This includes the federal Women, Infant and Children's (WIC) program funding.

Basis:

As it relates to the consensus rule definition, the proposal will:

- eliminate requirements no longer applicable. Obsolete requirements currently in the regulation will not be carried over to the vendor application document listing minimum stock quantity requirements.
- apply the same mandatory provisions, as they relate to minimum stock requirements, currently required of vendors participating in the WIC program.
- effect a technical, noncontroversial change by combining minimum stock requirement language in the regulations with that in the vendor application packet into the application document only. The rule will identify the vendor application as the lawful source of minimum stock requirement text.

The Department of Health does not anticipate any opposition to the proposal and expects vendors to favor it for several reasons:

- It simply merges minimum stock requirements, currently specified in State regulations and in the vendor application packet, into a single document within the application. The actual foods required to be stocked (currently and in the future), and their minimum amounts, are not affected.
- Obsolete and contradictory stocking requirements in the regulations will be removed.
- There are no costs associated with the proposal since it will not change that which is currently required. New foods will be added to the required stock list as a result of the USDA WIC food package changes specified in federal regulations, but this will occur whether or not the State regulations are changed.
- This change will result in the WIC program being more responsive to feedback from the vendor community since the amendments permit changes in the marketplace to be recognized, such as with preferences in baby formula.
- The WIC program will have the flexibility to establish different minimums for different vendor groups, commensurate with participant volume or store size.
- The rule change has been discussed with major vendor organizations within New York State and they have responded encouragingly. Both the Food Industry Alliance of New York State Inc. and the National Supermarket Association have expressed their support for the proposal.

#### Job Impact Statement

A Job Impact Statement is not required. The objective of the rule change is to remove obsolete minimum stock quantity requirements in Title 10 Section 60-1.13 and replace it with language stating that minimum quantity requirements for WIC vendor applicants will be found in the application document. This will ensure there is one source for all minimum quantity requirements. It is apparent from the nature and purpose of this rule that it will have no impact on jobs or employment opportunities.

## Office of Mental Retardation and Developmental Disabilities

### EMERGENCY RULE MAKING

#### Notification of Incidents and Access to Records

I.D. No. MRD-40-09-00001-E

Filing No. 1094

Filing Date: 2009-09-16

Effective Date: 2009-09-16

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

**Action taken:** Amendment of sections 624.1, 624.2, 624.3, 624.4, 624.5, 624.6 and 624.20; and addition of section 624.8 to 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 September 16, 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 and June 18, 2009.

- No changes were made in the September 16, 2009 regulations compared to the June 18, 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 an emergency adoption, to be valid for 90 days or less. This rule expires December 14, 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**

##### 1. 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/DDSO 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 and June 18, 2009.

OMRDD has filed similar proposed regulations and 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 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 and June 18, 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-40-09-00004-E

**Filing No.** 1108

**Filing Date:** 2009-09-18

**Effective Date:** 2009-09-19

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, sections 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. OMRDD filed emergency regulations on that date which are now expiring. New emergency regulations are necessary to continue the relief for disabilities program until such point that permanent regulations can be adopted.

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

(Statutory authority: Mental Hygiene Law Sections 13.09(b) and 13.09(f))

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 adjudicated as having a mental disability or committed to a mental institution, including but not limited to involuntary commitment 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)? (Note: "adjudicated as having a mental disability" has the same meaning as the term "adjudicated as a mental defective" is defined in 27 C.F.R. 478.11. "Committed to a mental institution" has the same meaning as the term is defined in the cited federal regulation.)

(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 and the Federal Bureau of Investigation pertaining to the applicant, or a copy of a response from such Division and Bureau indicating that there is no criminal history information on file;

(iv) notarized letters of reference from current and past employers, 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.

(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 notify NICS that the certificate of relief has been granted; 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 December 16, 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 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 \$50 for the NYS Division of Criminal Justice Services check and \$18 for the Federal Bureau of Investigation check. 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: Similar emergency regulations were effective on June 22, 2009.

**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.

### **NOTICE OF ADOPTION**

#### **Appeals Process Pursuant to Chapter 508, Laws of 2008**

**I.D. No.** MRD-28-09-00014-A

**Filing No.** 1128

**Filing Date:** 2009-09-22

**Effective Date:** 2009-10-07

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

**Action taken:** Addition of Part 630 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.09(b) and 13.37

**Subject:** Appeals process pursuant to Chapter 508, Laws of 2008.

**Purpose:** To establish an appeals process to use when a person is determined not to be in need of OMRDD adult services.

**Text or summary was published** in the July 15, 2009 issue of the Register, I.D. No. MRD-28-09-00014-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Barbara Brundage, Director of Regulatory Affairs, OMRDD, 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 determined that the action describe herein will have no effect on the environment and an E.I.S. is not needed.

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

The agency received no public comment.

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

**Data, views or arguments may be submitted to:** Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.state.ny.us

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

#### **Consensus Rule Making Determination**

This proposed regulation would exempt violations related to the operation of a motor vehicle while using a portable electronic device from the point system. Chapter 403 of the Laws of 2009 prohibits the operation of a motor vehicle while using such a device.

Section 510(3)(i) of the Vehicle and Traffic Law (VTL) provides that the Department of Motor Vehicles (the Department) may take license action against a motorist who persistently violates laws related to traffic. Part 131 establishes the point system, whereby specific point values are assigned for most traffic offenses. A person who accumulates 11 or more points within an 18 month period is deemed a persistent violator and is subject to a license suspension or revocation.

Part 131.3(b)(7) sets forth exemptions from the point system. For example, points are not assessed for violations involving registration, insurance, inspection, parking and equipment. In 2002, the Department, via a regulatory amendment, exempted mobile phone (also known as cell phone) violations (VTL section 1225-c) from the point system. The Department wrote in its regulatory submission that: "To the extent that certain instances of mobile telephone usage may result in erratic or unsafe driving, the conviction for a violation of section 1225-c will likely be accompanied by other Vehicle and Traffic Law violations which will, in and of themselves, result in the assessment of points under Part 131 and, therefore, aid in the identification of persistent violators."

The Department believes that it is appropriate to exempt violations of VTL section 1225-d involving the use of portable electronic devices from the point system for the same reason that we exempted violations of the mobile phone law, that is, such violations will most likely be accompanied by other violations that will result in the issuance of a traffic ticket. In fact, this reason is more compelling in relation to portable electronic devices because section 1225-d requires "secondary enforcement" of this statute, i.e., the officer may only issue a ticket for a violation of 1225-d if there is reasonable cause to believe that the motorist violated another provision of the law. Thus, it is highly likely that the portable electronic device violation will be accompanied by another violation that will result in the assignment of points.

Since this proposal is a logical extension of the exemption for mobile phones, it is appropriate to submit this as a consensus regulation.

Since this amendment is purely technical in nature and does not impose any additional burden on commercial motor vehicle operators, a consensus rulemaking is appropriate.

#### **Job Impact Statement**

A Job Impact Statement is not submitted because this rule will have no adverse impact on job creation or job development in New York State.

## **Department of Motor Vehicles**

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

#### **Point System**

**I.D. No.** MTV-40-09-00002-P

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

**Proposed Action:** This is a consensus rule making to amend Part 131 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 510(3)(i)

**Subject:** Point System.

**Purpose:** To exempt violations related to using a portable electronic device while operating a vehicle from the point system.

**Text of proposed rule:** Subparagraph (ix) of paragraph (7) of subdivision (b) of section 131.3 is amended to read as follows:

(ix) any violation of section 1225-c or section 1225-d of the Vehicle and Traffic Law involving the use of a mobile phone or portable electronic device.

## **Public Service Commission**

### **NOTICE OF ADOPTION**

#### **Water Rates and Charges**

**I.D. No.** PSC-36-02-00013-A

**Filing Date:** 2009-09-18

**Effective Date:** 2009-09-18

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

**Action taken:** On 9/17/09, the PSC approved a request filed by Forever Wild Water Company, Inc. to make temporary rates permanent.

**Statutory authority:** Public Service Law, section 89-c(10)

**Subject:** Water rates and charges.

**Purpose:** To approve the current temporary rates on a permanent basis.

**Substance of final rule:** The Commission on September 17, 2009, adopted an order approving the request of Forever Wild Water Company, Inc., to make permanent current rates, which are in effect on a temporary basis, 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.

(01-W-0358SA2)

### NOTICE OF ADOPTION

#### Revisions to the UPB to Establish a “Contest Period” & Denying the Request to Provide Notice to ESCOs

**I.D. No.** PSC-39-06-00021-A

**Filing Date:** 2009-09-22

**Effective Date:** 2009-09-22

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

**Action taken:** On 9/17/09, the PSC adopted an order approving, with modifications, U.S. Energy Saving Corp.’s petition for revisions to the Uniform Business Practices (UBP) to establish a “contest period”, and denying the request to provide notice to ESCOs.

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

**Subject:** Revisions to the UPB to establish a “contest period” & denying the request to provide notice to ESCOs.

**Purpose:** To approve revisions to the UPB to establish a “contest period” & denying the request to provide notice to ESCOs.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order approving, with modifications, U.S. Energy Saving Corp.’s (US Energy) petition for revisions to the Uniform Business Practices to establish a “contest period”, and denying US Energy’s request that the distribution utility be required to provide the pending Energy Service Company (ESCO) notice that a customer is currently served by another ESCO, 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.

(98-M-0667SA57)

### NOTICE OF ADOPTION

#### Cancel Filed Tariff Amendments and Implement Supplements

**I.D. No.** PSC-22-07-00016-A

**Filing Date:** 2009-09-17

**Effective Date:** 2009-09-17

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

**Action taken:** On 9/17/09, the PSC adopted an order approving New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation to cancel their filed tariff amendments to the electric and gas tariff schedules and implement supplements eff. 10/1/09.

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

**Subject:** Cancel filed tariff amendments and implement supplements.

**Purpose:** To approve the cancellation of filed tariff amendments and implement supplements.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order approving New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (the utilities) to cancel their

May 4, 2007 filed tariff amendments to the electric and gas tariff schedules, and on September 1, 2009, the utilities filed supplements to implement the cancellation and effective October 1, 2009.

**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.

(02-M-0514SA9)

### NOTICE OF ADOPTION

#### Water Rates and Charges

**I.D. No.** PSC-23-08-00013-A

**Filing Date:** 2009-09-18

**Effective Date:** 2009-09-18

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

**Action taken:** On 9/17/09, the PSC adopted an order approving the request of Forever Wild Water Company, Inc., to increase its annual operating revenues by \$5,772 or 4.61% to become effective 9/27/09.

**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 annual operating revenues by \$5,772 or 4.61%.

**Substance of final rule:** The Commission on September 17, 2009, adopted an order approving the request of Forever Wild Water Company, Inc., to increase its annual operating revenues by \$5,772 or 4.61%, to become effective September 27, 2009, 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-0556SA1)

### NOTICE OF ADOPTION

#### Reactive Power Provision

**I.D. No.** PSC-02-09-00009-A

**Filing Date:** 2009-09-22

**Effective Date:** 2009-09-22

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

**Action taken:** On 9/17/09, the PSC adopted an order directing New York State Electric & Gas Corporation to file tariff amendments, effective November 1, 2009, containing the reactive demand rates and power factor levels.

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

**Subject:** Reactive Power Provision.

**Purpose:** To adopt tariff amendments containing the reactive demand rates and power factor levels.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order directing New York State Electric & Gas Corporation to file tariff amendments, effective November 1, 2009, on not less than one day’s notice, containing the reactive demand rates and power factor levels.

The new reactive rates and power factor level will become effective May 1, 2010 and the reactive demand rates will be applicable to customers with demands not less than the proposed applicability levels in any two of the previous twelve months, 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-E-0751SA1)

### NOTICE OF ADOPTION

**Reactive Power Provision**

**I.D. No.** PSC-03-09-00011-A

**Filing Date:** 2009-09-22

**Effective Date:** 2009-09-22

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

**Action taken:** On 9/17/09, the PSC adopted an order directing Rochester Gas and Electric Corporation to file tariff amendments, eff. 11/1/09, containing the reactive demand provisions and rates.

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

**Subject:** Reactive power provision.

**Purpose:** To adopt tariff changes containing reactive demand rates.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order directing Rochester Gas and Electric Corporation (Company) to file tariff amendments, effective November 1, 2009, on not less than one day's notice, containing the reactive demand provisions and rates. The revised amendments will provide for the three-year phase-in of the reactive demand rates and will be applicable to customers with demands not less than the proposed applicability levels in any two of the previous twelve months, 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-E-0751SA2)

### NOTICE OF ADOPTION

**Reactive Power Provision**

**I.D. No.** PSC-03-09-00012-A

**Filing Date:** 2009-09-22

**Effective Date:** 2009-09-22

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

**Action taken:** On 9/17/09, the PSC adopted an order directing Consolidated Edison Company of New York, Inc. to file tariff amendments within 30 days of the issuance of the order, effective 3/1/10, reactive power tariff provisions & rates with supporting documentation.

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

**Subject:** Reactive power provision.

**Purpose:** To adopt tariff changes containing reactive demand rates.

**Substance of final rule:** The Commission, on September 17, 2009,

adopted an order directing Consolidated Edison Company of New York, Inc. to file within 30 days of the issuance of the order, to become effective March 1, 2010, reactive power tariff provisions and rates with supporting documentation, 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-E-0751SA5)

### NOTICE OF ADOPTION

**Reactive Power Provision**

**I.D. No.** PSC-03-09-00013-A

**Filing Date:** 2009-09-22

**Effective Date:** 2009-09-22

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

**Action taken:** On 9/17/09, the PSC adopted an order directing Orange and Rockland Utilities, Inc. to file tariff within 30 days of the issuance of the order, to become effective March 1, 2010, reactive power tariff provisions and rates with supporting documentation.

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

**Subject:** Reactive power provision.

**Purpose:** To adopt tariff changes containing reactive demand rates.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order directing Orange and Rockland Utilities, Inc. to file tariff within 30 days of the issuance of the order, to become effective March 1, 2010, reactive power tariff provisions and rates with supporting documentation, 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-E-0751SA4)

### NOTICE OF ADOPTION

**Reactive Power Provision**

**I.D. No.** PSC-03-09-00014-A

**Filing Date:** 2009-09-22

**Effective Date:** 2009-09-22

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

**Action taken:** On 9/17/09, the PSC adopted an order directing Central Hudson Gas & Electric Corporation to file tariff amendments for all applicable service classifications, effective November 1, 2009.

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

**Subject:** Reactive power provision.

**Purpose:** To adopt tariff changes containing reactive demand rates.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order directing Central Hudson Gas & Electric Corporation to file tariff amendments for all applicable service classifications, effective November 1, 2009, stating that, (1) as of May 1, 2010, reactive demand rates will be applicable to customers with power factors below 95% and demands not less than 1,000 kW in any two of the previous twelve months

and (2) as of October 1, 2011, reactive demand rates will be applicable to customers with power factor below 95% and demands not less than 500 kW in any two of the previous twelve months, 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-E-0751SA6)

### NOTICE OF ADOPTION

#### Reactive Power Provision

**I.D. No.** PSC-03-09-00017-A

**Filing Date:** 2009-09-22

**Effective Date:** 2009-09-22

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

**Action taken:** On 9/17/09, the PSC adopted an order directing Niagara Mohawk Power Corporation d/b/a National Grid to file tariff amendments, eff. 11/1/09, the reactive demand rates will be applicable eff. 5/1/10.

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

**Subject:** Reactive power provision.

**Purpose:** To adopt tariff changes containing reactive demand rates.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order directing Niagara Mohawk Power Corporation d/b/a National Grid to file tariff amendments, effective November 1, 2009, on not less than one day's notice, stating that, as of May 1, 2010, the reactive demand rates will be applicable to customers with demands not less than the current applicability levels in any two of the previous twelve months, 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-E-0751SA3)

### NOTICE OF ADOPTION

#### Adoption to Permanently Stay the Commission Order Issued November 24, 2008

**I.D. No.** PSC-09-09-00008-A

**Filing Date:** 2009-09-17

**Effective Date:** 2009-09-17

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

**Action taken:** On September 17, 2009, the PSC adopted an order permanently staying its 11/24/08 Order approving the Submetering of Electricity at 510-580 Main Street, Roosevelt Island, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 5, 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

**Subject:** Adoption to permanently stay the Commission order issued November 24, 2008.

**Purpose:** Adoption to permanently stay the Commission order issued November 24, 2008.

**Substance of final rule:** The Commission, on September 17, 2009,

adopted an order permanently staying its November 24, 2008 order approving the Petition of North Town Roosevelt, LLC to submeter electricity at 510-580 Main Street, Roosevelt Island, New York, until such time as the Building Owners have submitted to the Commission a plan to comply or to demonstrate compliance with the further conditions, 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-E-0838SA2)

### NOTICE OF ADOPTION

#### Adoption to Permanently Stay the Commission Order Issued November 24, 2008

**I.D. No.** PSC-09-09-00009-A

**Filing Date:** 2009-09-17

**Effective Date:** 2009-09-17

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

**Action taken:** On September 17, 2009, the PSC adopted an order permanently staying its 11/24/08 Order approving the Submetering of Electricity at 1295 Fifth Ave., 1309 Fifth Ave., and 1660 Madison Ave., New York, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 5, 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

**Subject:** Adoption to permanently stay the Commission order issued November 24, 2008.

**Purpose:** Adoption to permanently stay the Commission order issued November 24, 2008.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order permanently staying its November 24, 2008 order approving the Petition of Frawley Plaza LLC to submeter electricity at 1295 Fifth Avenue, 1309 Fifth Avenue and 1660 Madison Avenue, New York, New York, until such time as the Building Owners have submitted to the Commission a plan to comply or to demonstrate compliance with the further conditions, 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-E-0836SA2)

### NOTICE OF ADOPTION

#### Adoption to Permanently Stay the Commission Order Issued November 24, 2008

**I.D. No.** PSC-09-09-00010-A

**Filing Date:** 2009-09-17

**Effective Date:** 2009-09-17

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

**Action taken:** On September 17, 2009, the PSC adopted an order permanently staying its 11/24/08 Order approving the Submetering of Electricity at 1940-1966 First Avenue and 420 East 102nd Street, New York, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 5, 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

**Subject:** Adoption to permanently stay the Commission order issued November 24, 2008.

**Purpose:** Adoption to permanently stay the Commission order issued November 24, 2008.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order permanently staying its November 24, 2008 order approving the Petition of Metro North Owners, LLC to submeter electricity at 1940-1966 First Avenue and 420 East 102nd Street, New York, New York, until such time as the Building Owners have submitted to the Commission a plan to comply or to demonstrate compliance with the further conditions, 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-E-0837SA2)

### NOTICE OF ADOPTION

#### Adoption to Permanently Stay the Commission Order Issued November 24, 2008

**I.D. No.** PSC-09-09-00011-A

**Filing Date:** 2009-09-17

**Effective Date:** 2009-09-17

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

**Action taken:** On September 17, 2009, the PSC adopted an order permanently staying its 11/24/08 Order approving the Submetering of Electricity at 1890 Lexington Avenue and 1990 Lexington Avenue, New York, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 5, 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

**Subject:** Adoption to permanently stay the Commission order issued November 24, 2008.

**Purpose:** Adoption to permanently stay the Commission order issued November 24, 2008.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order permanently staying its November 24, 2008 order approving the Petition of KNW Apartments, LLC to submeter electricity at 1890 Lexington Avenue and 1990 Lexington Avenue, New York, New York, until such time as the Building Owners have submitted to the Commission a plan to comply or to demonstrate compliance with the further conditions, 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-E-0839SA2)

### NOTICE OF ADOPTION

#### Petition for Rehearing for the Submetering of Electricity

**I.D. No.** PSC-09-09-00016-A

**Filing Date:** 2009-09-17

**Effective Date:** 2009-09-17

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

**Action taken:** On September 17, 2009, the PSC adopted an order granting in part and denying in part the Petition for Rehearing of Frawley Plaza, LLC.

**Statutory authority:** Public Service Law Sections 2, 4(1), 5, 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

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

**Purpose:** To grant in part and deny in part the petition for rehearing of Frawley Plaza, LLC, to submeter electricity.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order granting in part and denying in part the Petition for Rehearing filed on behalf of the tenants of 1295 Fifth Avenue, 1309 Fifth Avenue and 1660 Madison Avenue, New York, New York, (Schomberg Plaza), 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-E-0836SA3)

### NOTICE OF ADOPTION

#### Petition for Rehearing for the Submetering of Electricity

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

**Filing Date:** 2009-09-17

**Effective Date:** 2009-09-17

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

**Action taken:** On September 17, 2009, the PSC adopted an order granting in part and denying in part the Petition for Rehearing of North Town Roosevelt, LLC.

**Statutory authority:** Public Service Law, sections 2, 4(1), 5, 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

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

**Purpose:** To grant in part and deny in part the petition for rehearing of North Town Roosevelt, LLC, to submeter electricity.

**Substance of proposed rule:** The Commission, on September 17, 2009, adopted an order granting in part and denying in part the Petition for Rehearing filed on behalf of the tenants of 510-580 Main Street, Roosevelt Island, New York, (Roosevelt Landings), 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-E-0838SA3)

### NOTICE OF ADOPTION

#### Petition for Rehearing for the Submetering of Electricity

**I.D. No.** PSC-09-09-00018-A

**Filing Date:** 2009-09-17

**Effective Date:** 2009-09-17

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

**Action taken:** On September 17, 2009, the PSC adopted an order granting in part and denying in part the Petition for Rehearing of KNW Apartments, LLC.

**Statutory authority:** Public Service Law, sections 2, 4(1), 5, 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

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

**Purpose:** To grant in part and deny in part the petition for rehearing of KNW Apartments, LLC, to submeter electricity.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order granting in part and denying in part the Petition for Rehearing filed on behalf of the tenants of 1890 Lexington Avenue and 1990 Lexington Avenue, New York, New York, (KNW Apartments), 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-E-0839SA3)

**NOTICE OF ADOPTION**

**Petition for Rehearing for the Submetering of Electricity**

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

**Filing Date:** 2009-09-17

**Effective Date:** 2009-09-17

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

**Action taken:** On September 17, 2009, the PSC adopted an order granting in part and denying in part the Petition for Rehearing of Metro North Owners, LLC.

**Statutory authority:** Public Service Law, sections 2, 4(1), 5, 22, 23, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65 and 66

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

**Purpose:** To grant in part and deny in part the petition for rehearing of Metro North Owners, LLC, to submeter electricity.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order granting in part and denying in part the Petition for Rehearing filed on behalf of the tenants of 1940-1966 First Avenue and 420 East 102nd Street, New York, New York, (Metro North Apartments), 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-E-0837SA3)

**NOTICE OF ADOPTION**

**Expansion of O&R's ESCO Referral Program, PowerSwitch**

**I.D. No.** PSC-12-09-00014-A

**Filing Date:** 2009-09-21

**Effective Date:** 2009-09-21

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

**Action taken:** On 9/17/09, the PSC adopted an order approving, with modifications, the expansion of Orange and Rockland Utilities, Inc.'s, (O&R) ESCO Referral Program, PowerSwitch, to new customers at the initiation of service.

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

**Subject:** Expansion of O&R's ESCO Referral Program, PowerSwitch.

**Purpose:** To approve the expansion of O&R's ESCO Referral Program, PowerSwitch.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order approving, with modifications, the expansion of Orange and Rockland Utilities, Inc.'s, ESCO Referral Program, PowerSwitch, to new customers at the initiation of service, 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-E-0949SA4)

**NOTICE OF ADOPTION**

**Delegation of Authority to the Secretary for Approval of Tariff Filing Suspensions for Utility Corporations**

**I.D. No.** PSC-14-09-00017-A

**Filing Date:** 2009-09-18

**Effective Date:** 2009-09-18

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

**Action taken:** On 9/17/09, the PSC adopted an order delegating to the Secretary to the Commission the authority to issue suspensions of the effective date of a proposed tariff amendment for a major rate change.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 8, 66, 80, 89-c(1), (10) and 92

**Subject:** Delegation of authority to the Secretary for approval of tariff filing suspensions for utility corporations.

**Purpose:** To approve the delegation of authority to the Secretary for approval of tariff filing suspensions for utility corporations.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order delegating its authority to the Secretary to the Commission to issue an initial 120 day suspension and subsequent six month suspension of the effective date of a tariff amendment proposing a major rate change, subject to the terms and condition 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-0207SA1)

**NOTICE OF ADOPTION**

**Water Rates and Charges**

**I.D. No.** PSC-15-09-00015-A

**Filing Date:** 2009-09-18

**Effective Date:** 2009-09-18

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

**Action taken:** On 9/17/09, the PSC adopted an order approving the request of Forever Wild Water Company, Inc., to charge an \$800 connection fee for each new water customer, to become effective 9/27/09.

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

**Subject:** Water rates and charges.

**Purpose:** To approve a \$800 connection fee for each new water customer.

**Substance of final rule:** The Commission on September 17, 2009, adopted an order approving the request of Forever Wild Water Company, Inc., to charge an \$800 connection fee for each new water customer, to become effective September 27, 2009, 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-0556SA2)

## NOTICE OF ADOPTION

### Issuance of Securities and Other Forms of Indebtedness

**I.D. No.** PSC-16-09-00021-A

**Filing Date:** 2009-09-22

**Effective Date:** 2009-09-22

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

**Action taken:** On 9/17/09, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's request to sell securities and enter into a multi-year committed credit agreement.

**Statutory authority:** Public Service Law, section 70

**Subject:** Issuance of securities and other forms of indebtedness.

**Purpose:** To approve the authorization of issuance of securities and other forms of indebtedness.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order approving Central Hudson Gas & Electric Corporation's request to enter into a multi-year committed credit agreement in amounts not to exceed \$175 million in the aggregate and maturities not to exceed five years. In addition, the Company is authorized to issue and sell long-term debt, through December 31, 2012, in an amount not to exceed \$250 million in aggregate, 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-0308SA1)

## NOTICE OF ADOPTION

### Revision of Rates for Gas Transportation Service

**I.D. No.** PSC-17-09-00013-A

**Filing Date:** 2009-09-21

**Effective Date:** 2009-09-21

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

**Action taken:** On 9/17/09, the PSC adopted an order directing St. Lawrence Gas Company Inc. to modify its gas transportation contract with AG-Energy, L.P.

**Statutory authority:** Public Service Law, sections 64, 65(1), (2), (3), 66(1), (3), (5), (10) and (12)

**Subject:** Revision of rates for gas transportation service.

**Purpose:** To approve the revision of rates for gas transportation service.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order concerning Ag-Energy, L.P.'s petition and complaint concerning the rates for gas transportation service by St. Lawrence Gas Company, Inc. (company), and directed the company to modify its gas transportation contract with AG-Energy, L.P., 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-G-0320SA1)

## NOTICE OF ADOPTION

### Water Rates and Charges

**I.D. No.** PSC-21-09-00009-A

**Filing Date:** 2009-09-17

**Effective Date:** 2009-09-17

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

**Action taken:** On 9/17/09, the PSC adopted an order approving the request of Great Expectations, LLC, for a 50% increase in the quarterly surcharge to fund its escrow account, effective October 1, 2009.

**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 the quarterly surcharge to fund the escrow account.

**Substance of final rule:** The Commission on September 17, 2009, adopted an order approving the request of Great Expectations, LLC, for a 50% increase in the quarterly surcharge to fund its escrow account, effective October 1, 2009.

**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-W-0409SA1)

## NOTICE OF ADOPTION

### Mandatory Hourly Pricing

**I.D. No.** PSC-22-09-00010-A

**Filing Date:** 2009-09-17

**Effective Date:** 2009-09-17

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

**Action taken:** On 9/17/09, the PSC adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s tariff amendments to implement the Commission's directives regarding Mandatory Hourly Pricing (MHP) in the 2008 Rate Order.

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

**Subject:** Mandatory Hourly Pricing.

**Purpose:** To adopt tariff amendments for Mandatory Hourly Pricing.

**Substance of final rule:** The Commission, on September 17, 2009,

adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s tariff amendments to implement the Commission's directives regarding Mandatory Hourly Pricing (MHP) in the 2008 Rate Order. The incremental metering charges comply with the directive that incremental metering costs associated with providing the interval metering necessary to effectuate MHP service be charged directly to MHP customers, 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-0432SA1)

## NOTICE OF ADOPTION

### Inter-carrier Telephone Service Quality Standards and Metrics

**I.D. No.** PSC-25-09-00008-A

**Filing Date:** 2009-09-17

**Effective Date:** 2009-09-17

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

**Action taken:** On 9/17/09, the PSC adopted an order approving the proposed modifications to the Inter-Carrier Service Quality Guidelines (C2C Guidelines) consisting of three administrative changes and 105 process changes.

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

**Subject:** Inter-carrier telephone service quality standards and metrics.

**Purpose:** To approve the proposed modifications to the Inter-Carrier Service Quality Guidelines.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order approving the proposed modifications to the Inter-Carrier Service Quality Guidelines (C2C Guidelines) consisting of three administrative changes and 105 process changes, 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.

(97-C-0139SA31)

## NOTICE OF ADOPTION

### Specific Commercial and Industrial Natural Gas Energy Efficiency Programs

**I.D. No.** PSC-26-09-00008-A

**Filing Date:** 2009-09-18

**Effective Date:** 2009-09-18

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

**Action taken:** On 9/17/09, the PSC adopted an order approving, with modifications, the System Benefits Charge (SBC) funding for Energy Efficiency Portfolio Standard (EEPS) programs to be administered by Niagara Mohawk Power Corporation d/b/a National Grid, KEDNY & KEDLI.

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

**Subject:** Specific commercial and industrial natural gas energy efficiency programs.

**Purpose:** To approve with modifications, the SBC funding for the EEPS programs.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order approving, with modifications, the System Benefits Charge (SBC) funding for Energy Efficiency Portfolio Standard (EEPS) programs. The approved programs include the Energy Initiative Program (gas) to be administered by Niagara Mohawk Power Corporation d/b/a National Grid; and the large industrial portion of the Commercial, Industrial and Multi Family Energy Efficiency Program (gas) to be administered by The Brooklyn Union Gas Company d/b/a National Grid NY, and KeySpan Gas East Corporation d/b/a National Grid (KEDNY/KEDLI). The Commission rejected the Advanced Burner Program (gas) proposed by the New York State Energy Research and Development Authority, 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-E-1127SA3)

## NOTICE OF ADOPTION

### Disposition of Tax Refund

**I.D. No.** PSC-26-09-00009-A

**Filing Date:** 2009-09-18

**Effective Date:** 2009-09-18

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

**Action taken:** On 9/17/09, the PSC adopted an order approving the petition of Verizon New York Inc. to retain approximately \$8 million, the intrastate portion of a \$13 million property tax refund associated with the 2008-09 tax year, received from New York City.

**Statutory authority:** Public Service Law, section 113(2)

**Subject:** Disposition of tax refund.

**Purpose:** To approve the allocation and disposition of a tax refund from the City of New York.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order approving the petition of Verizon New York Inc. to retain approximately \$8 million, the intrastate portion of a \$13 million property tax refund associated with the 2008-09 tax year, received from New York City, 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-0478SA1)

## NOTICE OF ADOPTION

### Authorization to Issue Up to \$7 Million in Long-Term Securities No Later Than December 31, 2013

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

**Filing Date:** 2009-09-18

**Effective Date:** 2009-09-18

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

**Action taken:** On 9/17/09, the PSC adopted an order authorizing Corning

Natural Gas Corporation (Company) to issue up to \$7 million in long-term securities no later than December 31, 2013.

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

**Subject:** Authorization to issue up to \$7 million in long-term securities no later than December 31, 2013.

**Purpose:** To approve the authorization to issue up to \$7 million in long-term securities no later than December 31, 2013.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order authorizing Corning Natural Gas Corporation (Company) to issue up to \$7 million in long-term securities no later than December 31, 2013, 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-G-0488SA1)

### NOTICE OF ADOPTION

#### Revision of Amendments to PSC No. 4 - Gas

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

**Filing Date:** 2009-09-17

**Effective Date:** 2009-09-17

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

**Action taken:** On 9/17/09, the PSC allowed Orange and Rockland Utilities, Inc.'s tariff revisions to PSC No. 4 - Gas to go into effect on 10/1/09.

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

**Subject:** Revision of amendments to PSC No. 4 - Gas.

**Purpose:** To approve the revision of amendments to PSC No. 4 - Gas.

**Substance of final rule:** The Commission, on September 17, 2009, allowed Orange and Rockland Utilities, Inc.'s tariff filing to revise its gas tariff to combine withdrawable transportation service and withdrawable sales service under one service classification (S.C. No. 9), PSC No. 4 - Gas, to go into effect on October 1, 2009.

**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-G-0507SA1)

### NOTICE OF ADOPTION

#### Removal of the Company from the Commission's Jurisdiction List and Cancelling the Tariff

**I.D. No.** PSC-27-09-00022-A

**Filing Date:** 2009-09-22

**Effective Date:** 2009-09-22

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

**Action taken:** On 9/17/09, the PSC adopted an order removing Pierson Lakes Homeowners Association, Inc. (Company) from the list of water companies subject to the jurisdiction of the Commission and cancelling its tariff.

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

**Subject:** Removal of the company from the Commission's jurisdiction list and cancelling the tariff.

**Purpose:** To approve the removal of the company from the Commission's jurisdiction list and cancelling the tariff.

**Substance of final rule:** The Commission, on September 17, 2009, adopted an order removing Pierson Lakes Homeowners Association, Inc. from the list of water companies subject to the jurisdiction of the Public Service Commission cancelling its tariff, 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-W-0509SA1)

### NOTICE OF ADOPTION

#### Transfer of Property

**I.D. No.** PSC-28-09-00003-A

**Filing Date:** 2009-09-22

**Effective Date:** 2009-09-22

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

**Action taken:** On 9/17/09, the PSC adopted, as a permanent rule, an order approving the transfer of two parcels of property & the granting of two easements in the City of Poughkeepsie & Town of Lloyd to the Poughkeepsie-Highland Railroad Bridge Co. Inc.

**Statutory authority:** Public Service Law, section 70

**Subject:** Transfer of property.

**Purpose:** To approve as a permanent rule, the transfer of property to Poughkeepsie-Highland Railroad Bridge Co. Inc.

**Substance of final rule:** The Commission, on September 17, 2009, adopted, as a permanent rule, an order approving the transfer of two parcels of property and the granting of two easements in the City of Poughkeepsie and Town of Lloyd to the Poughkeepsie-Highland Railroad Bridge Co. Inc. /DBA Walkway Over The Hudson and the Town of Lloyd.

**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-0485SA1)

### PROPOSED RULE MAKING

#### NO HEARING(S) SCHEDULED

#### Specific Commercial and Industrial Electric and Gas Energy Efficiency Programs

**I.D. No.** PSC-40-09-00008-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 commercial and industrial electric and gas energy efficiency program proposals as a component of the Energy Efficiency Portfolio Standard.

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

**Subject:** Specific commercial and industrial electric and gas energy efficiency programs.

**Purpose:** To encourage electric and gas energy conservation in the State.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, (a) commercial and industrial electric energy efficiency program proposals made in response to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008 [see Ordering Clauses 8, 10 & 17]; and (b) commercial and industrial gas energy efficiency program proposals made in response to a notice in Case 07-M-0548 entitled "Notice Requesting Proposals" issued by the Secretary to the Public Service Commission on April 20, 2009. For potential independent program administrators that submitted updated proposals for programs in accordance with Ordering Clause 8 of the aforementioned June 23, 2008 Order, such submissions shall be considered as pre-filed comments responsive to this notice to the degree that they relate to the provision of energy efficiency programs for commercial and industrial customers. The program proposals under consideration for this rule include the following:

1. Cases 08-E-1135 and 09-G-0363 - Central Hudson Gas & Electric Corporation, Petition letter from Thompson Hine, Robert J. Glasser, Esq., dated September 22, 2008 and "Updated Small Commercial Gas Efficiency Program Description" dated June 5, 2009: (a) Small Commercial Gas Efficiency Program (gas).

2. Cases 08-E-1127 - Consolidated Edison Company of New York, Inc., "Residential and Commercial Energy Efficiency Programs" dated September 22, 2008: (a) Targeted Demand Side Management Program (electric).

3. Cases 08-E-1129/08-E-1130 and 09-G-0363 - New York State Electric & Gas Corporation/Rochester Gas and Electric Corporation, "Electric Program Plan of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation" dated September 22, 2008, Updates dated April 30, 2009, and Updates dated May 15, 2009 (corrected June 11, 2009) and September 18, 2009: (a) Block Bidding Program (electric and gas).

4. Cases 08-E-1132 and 09-G-0363 - New York State Research and Development Authority, "Energy Efficiency Portfolio Program Administrator Proposal" dated September 22, 2008, Updates dated November 21, 2008, Updates dated June 2, 2009, and Updates dated June 5, 2009: (a) Benchmarking and Operations Efficiency Program (electric), (b) Bidding Program (electric and gas), (c) Commercial Loan Fund and Finance Program (electric and gas), (d) New York Energy Smart Business Partners Program (electric), and (e) High Performance New Construction Program (gas).

5. Cases 08-E-1133 and 09-G-0363 - Niagara Mohawk Power Corporation d/b/a National Grid, "Electric and Gas Energy Efficiency Program Proposals" dated September 22, 2008 and "Updated Gas Energy Efficiency Proposals for EnergyWise and Energy Initiative Programs" dated May 28, 2009: (a) Building Practices and Demonstrations Program (gas).

6. Case 09-G-0363 - The Brooklyn Union Gas Company/KeySpan Gas East Corporation, "Gas Energy Efficiency Program Proposals" dated September 22, 2008, Updates dated September 26, 2008, and Updates dated June 5, 2009: (a) Building Practice and Demonstration Program (gas).

**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.

(08-E-1127SP9)

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

**Possible Modifications to Goals, Targets, Procurement Rules, Budgets and Collections**

**I.D. No.** PSC-40-09-00009-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, as part of a planned 2009 comprehensive review, whether to adopt modifications to its Renewable Portfolio Standard (RPS) program.

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

**Subject:** Possible modifications to goals, targets, procurement rules, budgets and collections.

**Purpose:** To encourage electric energy generation in the State from renewable resources.

**Substance of proposed rule:** The New York State Public Service Commission is considering, as part of a planned 2009 comprehensive review, whether to adopt modifications to its Renewable Portfolio Standard (RPS) program established in Case 03-E-0188. The RPS program has been the State's primary policy initiative to promote the development of new renewable energy resources. It is an integral part of an effort to achieve an overall goal of increasing the percentage of electricity consumed by retail customers in the state that is generated by renewable resources to 25 percent by 2013. The RPS program is designed to achieve the share of that goal attributable to retail customers under the jurisdiction of the Commission; it excludes shares attributable to the voluntary market and to retail customers served by the New York Power Authority and the Long Island Power Authority, two entities not under the jurisdiction of the Commission. To date, the Commission has authorized the collection from ratepayers of approximately \$741.5 million through 2013 to fund the RPS program through 2013 based upon cost projections made in 2003. These collections were authorized with the expectation that additional collections would be necessary after 2013 to pay the continued cost of RPS contracts beyond 2013 until they expire. The collection amounts did not include funding for maintenance contracts, administration and evaluation expenses, or amounts incurred as a New York State Cost Recovery Fee.

The New York State Energy Research and Development Authority (NYSERDA) is the designated administrator of the RPS program. Resources for the RPS program are procured by NYSEDA in two "tiers". The first or "Main Tier" consists primarily of medium to large-scale electric generation facilities that deliver their electrical output into the wholesale power market administered by the New York Independent System Operator and are generally awarded performance-based incentive payment contracts on a competitive basis. The second or "Customer-Sited Tier" consists of smaller, "behind-the-meter" resources that produce electricity for use on site and upon application to NYSEDA receive a one-time incentive payment or a combination of a one-time payment and performance-based incentives. The RPS program also currently provides financial incentives within the structure of the Main Tier to maintain the operation of certain existing facilities considered "Maintenance Resources". Maintenance contracts are only awarded on a case-by-case basis after rigorous Commission review and approval.

Three Main Tier solicitations have been completed to date. NYSEDA is currently administering 30 contracts for procured Main Tier RPS resources including wind, hydroelectric and biomass facilities expected to generate about 2.69 million MWh in 2013. That level of generation represents approximately 27% of the original Main Tier target of 9,854,038 MWh established by the Commission. The total cost of the first three solicitations over the life of the contracts is approximately \$458.2 million. In addition, a fourth Main Tier solicitation request for proposals was issued on September 8, 2009 with a budget of approximately \$95 million.

Two maintenance contracts have been awarded to date to ensure that two existing direct combustion biomass facilities operate at an annual rate of up to about 259,000 MWh with a total cost over the life of the contracts of approximately \$33.9 million.

The Customer-Sited Tier currently has a budget of \$103.3 million for procurements through 2009. The Customer-Sited Tier budget was enhanced in 2009 to accommodate robust demand for solar photovoltaic and anaerobic digester applications. On the basis of that budget and the current rate of demand, it is expected that the funding through December 2009 will result in approximately 32 MW of installed capacity that will produce about 96,000 MWh annually. That level of generation represents approximately 48% of the original Customer-Sited Tier target of 201,130 MWh established by the Commission.

Finally, the Commission has additionally authorized up to \$25.6 million for administration and evaluation costs and up to \$12.1 million if incurred as a New York State Cost Recovery Fee through 2013. All together, the RPS program costs described above equal approximately \$728.1 million. Interest earnings on RPS funds that have been collected but not yet expended and funds received as a result of forfeiture of letters of credit will offset a portion of these costs.

The Commission has required a comprehensive review of the RPS program in 2009 and has provided a list of topics for consideration in that 2009 Review. As part of that review, Staff of the Department of Public Service (Staff) is preparing an RPS Mid-Course Report (the "Report") which addresses these topics.

It is anticipated that the Report will be finalized and made publicly available in the near future. The Commission has already received extensive comments from parties as to whether the RPS program should be continued, and if so, how it can be improved. The Commission has also received two evaluation reports prepared by third-party contractors and a draft report filed by NYSEERDA. The Report builds on the comments by stakeholders and NYSEERDA reports, in light of current facts and circumstances, and will address funding and a number of additional issues that affect the long-term viability of the RPS 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

**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.

(03-E-0188SP22)

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

**Specific Residential and Residential Low-Income Electric and Gas Energy Efficiency Programs**

**I.D. No.** PSC-40-09-00010-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 residential and residential low-income electric and gas energy efficiency program proposals as a component of the Energy Efficiency Portfolio Standard.

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

**Subject:** Specific residential and residential low-income electric and gas energy efficiency programs.

**Purpose:** To encourage electric and gas energy conservation in the State.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, (a) residential and residential low-income electric energy efficiency program proposals made in response to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008 [see Ordering Clauses 8, 10 & 17]; and (b) residential and residential low-income gas energy efficiency program proposals made in response to a notice in Case 07-M-0548 entitled "Notice Requesting Proposals" issued by the Secretary to the Public Service Commission on April 20, 2009. For potential independent program administrators that submitted updated proposals for programs in accordance with Ordering Clause 8 of the aforementioned June 23, 2008 Order, such submissions shall be considered as pre-filed comments responsive to this notice to the degree that they relate to the provision of energy efficiency programs for residential and residential low-income customers. The program proposals under consideration for this rule include the following:

1. Cases 08-E-1135 and 09-G-0363 - Central Hudson Gas & Electric Corporation, Petition letter from Thompson Hine, Robert J. Glasser, Esq., dated September 22, 2008 and Updates dated June 5, 2009: (a) Residential Lower Income Assistance Program (electric and gas); (b) Residential Appliance Recycling Program (electric); (c) Expanded Residential HVAC Program (electric and gas); and (d) Residential Lighting - Community Group CFL Sales Program (electric).

2. Cases 08-E-1127 - Consolidated Edison Company of New York, Inc., "Residential and Commercial Energy Efficiency Programs" dated September 22, 2008: (a) Residential Direct Installation Program (electric), (b) Residential Room Air Conditioning Program (electric), and (c) Appliance Bounty Program (electric).

3. Cases 08-E-1129/08-E-1130 and 09-G-0363 - New York State Electric & Gas Corporation/Rochester Gas and Electric Corporation,

"Electric Program Plan of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation" dated September 22, 2008, and Updates dated April 30, 2009 and August 24, 2009: (a) Residential Energy Star HVAC Electric Program (electric), (b) Residential Recommissioning/Early Replacement Program (electric), (c) Residential Lighting Program (electric), (d) Residential Limited Income Program (electric).

4. Cases 08-E-1132 and 09-G-0363 - New York State Research and Development Authority, "Energy Efficiency Portfolio Program Administrator Proposal" dated September 22, 2008, Updates dated November 21, 2008, Updates dated June 2, 2009, and Updates dated June 5, 2009: (a) Power Management Pilot Program (electric), (b) ReModel With Energy Star Program (electric), (c) Residential Green Building Program (electric and gas), (d) EmPower New York (gas), (e) Home Performance With Energy Star Program (gas), (f) Assisted Home Performance With Energy Star Program (gas), and (g) New York Energy Star Homes (gas).

5. Cases 08-E-1133 and 09-G-0363 - Niagara Mohawk Power Corporation d/b/a National Grid, "Electric and Gas Energy Efficiency Program Proposals" dated September 22, 2008: (a) Enhanced Home Sealing Incentives Program (electric and gas), (b) Residential Energy Star Products and Recycling Program (electric), (c) Residential Energy Star Products Program (gas), (d) Residential Low Income Program (electric and gas), (e) Residential Internet Audit Program and E-Commerce Sales Program (electric and gas), (f) Residential Building Practices and Demonstration Program (electric and gas), and (g) Residential Pricing Pilot With Load Control Program (electric).

6. Case 08-E-1128 - Orange and Rockland Utilities, Inc., "Residential and Commercial Energy Efficiency Portfolio Programs" dated September 22, 2008: (a) Efficient Products Program (electric).

7. Case 09-G-0363 - The Brooklyn Union Gas Company/KeySpan Gas East Corporation, "Gas Energy Efficiency Program Proposals" dated September 22, 2008, Updates dated September 26, 2008, and Updates dated June 5, 2009: (a) Enhanced Home Sealing Incentives Program (gas), (b) Residential Energy Star Products Program (gas), (c) Residential Low Income Program (gas), (d) Residential Internet Audit Program and E-Commerce Sales Program (gas), (e) Residential Building Practices and Demonstration Program (gas), (f) Home Energy Audits Program (gas), and (g) Energy Star Homes Program On Long Island (gas).

**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.

(08-E-1127SP8)

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

**Interconnection of the Networks Between Windstream and AT&T for Local Exchange Service and Exchange Access**

**I.D. No.** PSC-40-09-00011-P

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

**Proposed Action:** The PSC is considering whether to approve or reject a proposal filed by Windstream New York, Inc. (Windstream) for approval of an Interconnection Agreement with AT&T Communications of New York, Inc. (AT&T) executed on July 27, 2009.

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

**Subject:** Interconnection of the networks between Windstream and AT&T for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Windstream and AT&T.

**Substance of proposed rule:** Windstream New York, Inc. and AT&T

Communications of New York, Inc. have reached a negotiated agreement whereby Windstream New York, Inc. and AT&T Communications of New York, 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 networks lasting until July 27, 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. (09-01599SP1)

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

**Interconnection of the Networks Between Windstream and TC Systems, Inc. for Local Exchange Service and Exchange Access**

**I.D. No.** PSC-40-09-00012-P

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

**Proposed Action:** The PSC is considering whether to approve or reject a proposal filed by Windstream New York, Inc. (Windstream) for approval of an Interconnection Agreement with TC Systems, Inc. executed on July 27, 2009.

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

**Subject:** Interconnection of the networks between Windstream and TC Systems, Inc. for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Windstream and TC Systems, Inc.

**Substance of proposed rule:** Windstream New York, Inc. and TC Systems, Inc. have reached a negotiated agreement whereby Windstream New York, Inc. and TC Systems, 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 networks lasting until July 27, 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. (09-01600SP1)

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

**Uniform System of Accounts - Request for Deferral and Amortization of Costs**

**I.D. No.** PSC-40-09-00013-P

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

**Proposed Action:** The Commission is considering a petition filed by the Incorporated Village of Freeport Electric Department to authorize deferral and amortization of Selective Catalytic Reduction System costs.

**Statutory authority:** Public Service Law, sections 5(1)(b), 65(1), and 66(1), (5), (9) and (12)

**Subject:** Uniform System of Accounts - request for deferral and amortization of costs.

**Purpose:** To consider a petition to defer and amortize costs.

**Substance of proposed rule:** The Public Service Commission is considering a petition by the Incorporated Village of Freeport Electric Department (Village) to defer and amortize over a three year period, the costs associated with the malfunctioning Selective Catalytic Reduction System as part of the Village's LM-6000 Generating Facility. The Commission may accept, reject or modify, in whole or in part, the proposed deferral and amortization.

**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-0660SP1)

**Department of State**

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

**Uniform Standards of Professional Appraisal Practice**

**I.D. No.** DOS-40-09-00014-P

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

**Proposed Action:** This is a consensus rule making to amend section 1106.1 of Title 19 NYCRR.

**Statutory authority:** Executive Law, section 160-d(1)(d)

**Subject:** Uniform Standards of Professional Appraisal Practice.

**Purpose:** To adopt the 2010-2011 edition of the Uniform Standards of Professional Appraisal Practice.

**Text of proposed rule:** § 1106.1 Appraisal Standards

(a) Every appraisal assignment shall be conducted and communicated in accordance with the following provisions and standards set forth in the [2008-2009] 2010-2011 edition of the Uniform Standards of Professional Appraisal Practice:

[The Division of Licensing Services has moved to the Alfred E. Smith State Office Building, 80 South Swan Street, Albany, NY 12201]

- (1) Definitions;
- (2) Preamble;
- (3) Ethics rule;

- (4) Competency rule;  
 (5) Scope of work rule;  
 (6) Jurisdictional exception rule;  
 (7) Standard 1-Real Property Appraisal, Development;  
 (8) Standard 2-Real Property Appraisal, Reporting;  
 (9) Standard 3-[Real Property and Personal Property] Appraisal Review, Development and Reporting;  
 (10) Standard 4-Real Property Appraisal Consulting, Development;  
 (11) Standard 5-Real Property Appraisal Consulting, Reporting;  
 (12) Standard 6-Mass Appraisal, Development and Reporting;  
 (13) Standard 7-Personal Property Appraisal, Development;  
 (14) Standard 8-Personal Property Appraisal, Reporting;  
 (15) Standard 9-Business Appraisal, Development; and  
 (16) Standard 10-Business Appraisal, Reporting.
- (b) The [2008-2009] 2010-2011 edition of the Uniform Standards of Professional Appraisal Practice is published by the Appraisal Foundation, which is authorized by the United States Congress as the source of appraisal standards. Copies may be obtained from:

The Appraisal Foundation  
 1029 Vermont Avenue, NW, Suite 900  
 Washington, DC 20005  
 tel: 202-347-7722  
 www.appraisalfoundation.org

The [2008-2009] 2010-2011 edition of the Uniform Standards of Professional Appraisal Practice can be viewed, downloaded and printed from <http://www.appraisalfoundation.org/html/USPAP2006/toc.htm>

Copies are also available for inspection and copying at the following offices of the Department of State:

Division of Licensing Services  
 N.Y.S. Department of State  
 Alfred E. Smith State Office Building  
 80 South Swan St., 10th Fl.  
 Albany, NY 12210  
 tel: 518-473-2728

Division of Licensing Services  
 N.Y.S. Department of State  
 65 Court Street  
 Buffalo, NY 14202  
 tel: 716-847-7110

Division of Licensing Services  
 N.Y.S. Department of State  
 123 William Street  
 New York, NY 10038  
 tel: 212-417-5747

Division of Licensing Services  
 N.Y.S. Department of State  
 250 Veterans Memorial Highway  
 Hauppauge, NY 11788  
 tel: 631-952-6579

**Text of proposed rule and any required statements and analyses may be obtained from:** Whitney Clark, NYS Department of State, Division of Licensing Services, Alfred E Smith Office Building, 80 South Swan Street, (518) 473-2728, email: [whitney.clark@dos.state.ny.us](mailto:whitney.clark@dos.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.

**This action was not under consideration at the time this agency's regulatory agenda was submitted.**

#### Consensus Rule Making Determination

This rule is being proposed as a consensus rule making. The New York State Board of Real Estate Appraisal does not expect that any person is likely to object to its adoption because the proposed rule merely implements a nondiscretionary statutory direction, i.e., the adoption of these appraisal standards is mandated by § 160(d)(1)(d) of the Executive Law.

Section 160-d(1)(d) of the Executive Law provides, in part, that the New York State Board of Real Estate Appraisal shall adopt standards for the development and communication of real estate appraisals; provided, however, that those standards must, at minimum, conform to the uniform standards of professional appraisal promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Acting pursuant to Title IX of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C.A. §§ 3310-3351), the

Appraisal Standards Board has adopted and, from time to time, amended the Uniform Standards of Professional Appraisal Practice, which set forth national standards for developing an appraisal and for reporting its results. This proposal will adopt the 2010-2011 edition of the Uniform Standards of Professional Appraisal Practice relating to real estate appraisals. Since § 160-d(1)(d) directs that the standards adopted by the State Board of Real Estate Appraisal conform, at a minimum, to the standards promulgated by the Appraisal Standards Board, the State Board does not expect that any person is likely to object to the adoption of the 2010-2011 edition of the Uniform Standards of Professional Appraisal Practice. The State Board has previously adopted the 2002, 2003, 2005, 2006, 2007 and 2008-2009 editions of the Uniform Standards of Professional Appraisal Practice.

#### Job Impact Statement

Licensed and certified real estate appraisers are currently subject to the 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice, which has been revised by the 2010-2011 edition. Accordingly, the New York State Board of Real Estate Appraisal does not believe that adoption of the 2010-2011 edition of the Uniform Standards of Professional Appraisal Practice will have any substantial adverse impact on jobs and employment opportunities.

## State University of New York

### NOTICE OF ADOPTION

#### State University of New York Tuition and Fees Schedule

**I.D. No.** SUN-30-09-00009-A

**Filing No.** 1109

**Filing Date:** 2009-09-18

**Effective Date:** 2009-10-07

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

**Action taken:** Amendment of section 302.1 of Title 8 NYCRR.

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

**Subject:** State University of New York Tuition and Fees Schedule.

**Purpose:** To amend the SUNY Tuition and Fees Schedule to increase tuition for resident students in graduate & professional programs.

**Text or summary was published** in the July 29, 2009 issue of the Register, I.D. No. SUN-30-09-00009-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** Marti Anne Ellermann, Senior Counsel, State University of New York, Office of the University Counsel, University Plaza, S-333, Albany, New York 12246, (518) 443-5400, email: [Marti.Ellermann@SUNY.edu](mailto:Marti.Ellermann@SUNY.edu)

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF EXPIRATION

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

#### Proposed Amendments to the Traffic and Parking Regulations of the State University of New York at Potsdam

I.D. No.	Proposed	Expiration Date
SUN-38-08-00003-P	September 17, 2008	September 17, 2009

## Susquehanna River Basin Commission

### INFORMATION NOTICE

18 CFR Parts 806 and 808

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Final rule.

**SUMMARY:** This document contains amendments to the project review regulations of the Susquehanna River Basin Commission (Commission) including provisions restricting the use of docket reopening petitions to avoid abuses of process; amending the "Approval by Rule" (ABR) process to 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. These amendments were first proposed in a Notice of Proposed Rulemaking (NOPR) that appeared at 74 FR 31647 on July 2, 2009.

**DATES:** These rules are effective on November 1, 2009.

**ADDRESSES:** Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391.

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

**SUPPLEMENTARY INFORMATION:**

**Background and Purpose of Amendments**

The Commission convened public hearings on August 4, 2009, in Harrisburg, Pennsylvania and on August 5, 2009, in Elmira, New York. A written comment period was held open until August 15, 2009. Comments were received at both the hearings and during the comment period. A summary of the comments and the Commission's responses thereto follows.

**Comments by Section, Part 806**

**Section 806.4 Projects requiring review and approval.**

**Comment:** The Commission's proposal to require review and approval for any hydroelectric project regulated by the Federal Energy Regulatory Commission (FERC) and initiating a licensing or licensing amendment is defective and should not be adopted because: 1) As currently worded, the proposed amendment to 18 CFR § 806.4 (a) would exceed the Commission's project review powers under Section 3.10 of the Susquehanna River Basin Compact (Compact); 2) The proposed amendment to 18 CFR § 806.4 (a) would produce duplicative and redundant licensing proceedings for review of hydroelectric projects and run afoul of the intent of Congress under the Federal Power Act and paragraph (w) of the Federal Reservations to the Compact to retain sole, unimpeded licensing authority in FERC; and 3) the Commission already has sufficient powers under its existing regulations and its compact authority to review aspects of hydroelectric and nuclear projects that affect water resources, and there is no need to single out these facilities for review in the proposed amendment to 18 CFR § 806.4 (a). Despite the Commission's claim in the Notice of Proposed Rulemaking (NOPR) that it is merely codifying its current practice, the proposal represents a break with past Commission practice regarding both hydroelectric facility and nuclear power plant review without any explanation or justification for the change, and is therefore arbitrary and capricious.

The NOPR seeks to infringe on the exclusive authority of FERC granted to it under the Federal Power Act and reserved by Congress when it consented to the Compact. Nothing in the Compact provides, or even suggests, that the United States and the other parties to the Compact intended to grant the Commission review and approval authority of licensing or license amendment proceedings before FERC. There is no need for the additional language proposed in the NOPR in that the Commission has ample authority to review and approve "projects" that are separately undertaken and that affect the water resources of the basin under its existing regulatory program. With regard to projects regulated by the Nuclear Regulatory Commission (NRC), the Compact, the Commission's existing regulatory program and current practices are clear enough, well-established, and fully recognized by NRC, thus questioning the need for the suggested modification.

The Commission appears to be proposing that before an application can even be submitted to FERC or the NRC, application and approval must first be obtained from the Commission, which directly and materially interferes with FERC and NRC's procedures and processes.

**Response:** The Commission exercises concurrent jurisdiction with FERC and the NRC and believes that its exercise of same is both appropriate and authorized under the Compact. Furthermore, it has no intention of exercising that authority in a manner that conflicts or interferes with that exercised by these two federal agencies. Nor was it the intention of the proposed change to require Commission approval prior to the submission of licensing applications to the federal agencies. Rather, the intention was to have the initiation of federal licensing likewise initiate project review by the Commission. As was the case in a recent hydroelectric facility licensing process, the Commission undertakes a single, coordinated review with all federal and state resource agencies that serves both regulatory schemes.

However, it is apparent from the comments received and the Commission's own reconsideration that the proposed changes, as drafted, do not provide the clarification originally sought. Therefore, the Commission believes it is appropriate to suspend final action on this element of the NOPR so that it can be re-drafted, particularly to ensure that it does not interfere with FERC and NRC procedures. (This is especially the case with respect to the comment that the proposal could be interpreted as requiring both review and approval prior to initiating licensing actions.) The Commission will move forward with publication of a new NOPR at such time as it completes development of a revised set of proposed changes for projects involved in licensing procedures.

Licensing and licensing amendment actions are projects that often have significant effects upon the water resources of the basin and the SRBC Comprehensive Plan. Federal Reservations, Section 2, paragraph w of the Compact, while preserving the authority of federal licensing authorities, also makes clear that use of the waters of the basin shall be subject to approval in accordance with the terms of the Compact.

Both the Compact and the Commission's current regulations require review and approval for, but not limited to: (1) projects on or crossing the boundary between signatory states; (2) projects in one signatory state having a significant effect on the water resources within another signatory state; and (3) projects included in the Commission's Comprehensive Plan or which would have a significant effect upon the plan. All hydroelectric and nuclear facilities in the basin meet one or more of these requirements. The Commission will therefore continue, as appropriate and as it has done in the past, to exercise concurrent authority with federal licensing authorities to review and approve such projects.

**Comment:** The deletion of the existing § 806.4(a)(8) language, which requires Commission review and approval of any natural gas well development project targeting the Marcellus or Utica shale formations and involving a withdrawal, diversion or consumptive use of water, regardless of quantity, was alarming. The Commission's acknowledgement that the deletion of § 806.4(a)(8) was a drafting error, the public recognition of the error it posted on its website upon discovery of the error, and its willingness to correct the error at the final rulemaking stage is appreciated.

**Response:** The Commission regrets the inadvertent proposed deletion of the provision and any confusion resulting from the error. Given that the Commission is not moving forward with any revisions to § 806.4(a)(8) as a part of this final rulemaking action, the error is of no affect and the provision in question remains effective. At such time as the Commission moves forward with revisions to § 806.4 as part of a new NOPR, it will be certain not to repeat the error.

**Section 806.22 Standards for consumptive use of water.**

**Comment:** Deletion of the contiguous landowner notification requirement in exchange for a display ad newspaper notice would leave such landowners without direct or effective notice, nor any guarantee that newspaper notification would provide adequate time for meaningful participation in the Approval by Rule (ABR) process. Any participation in the process would be markedly diminished, even though they remain the citizens most immediately affected. Moreover, some contiguous landowners do not reside on the affected land and thus may not be reached by the general newspaper notice. And as more newspapers fold as a result of declining readership and advertisement revenue, such notice will become increasingly inadequate.

Do not eliminate the requirement that project sponsors notify contiguous landowners as part of the ABR process; it is only fair that notice be given to the persons who are directly affected by such projects, and adjacent landowners are well placed to inform the Commission about potential adverse impacts of the approval.

Contiguous landowners need to have notice concerning water withdrawals since the presence of streams, pond or wetlands, and groundwater, contributes significantly to the value of the property. They should be entitled to notice and allowed a sufficient amount of time to comment on the impact of proposed withdrawals.

If the Commission wants to enhance public transparency, it should make information concerning applications submitted to it available on the Commission's website. In addition to providing information on the name of applicants, amount of water requested, location of withdrawals, date, and details of final action taken by the Commission, it should also plot withdrawals on a map display so that it is easy to see how much water is being withdrawn in a given area.

**Response:** The Commission acknowledges the concerns raised in the comments, but notes that there is some confusion about the scope of the ABR process. First, the process does not involve approvals for withdrawals from surface or groundwater sources. A number of the comments received spoke to the legitimate right of contiguous landowners to receive notice of proposed withdrawals because of the potential impact of their use and enjoyment and potentially diminished

value to their land. Withdrawals are regulated separately by the Commission, they require separate docket approval, and contiguous landowner notification is required in advance of any Commission action. The proposed revisions do not modify those notification provisions in any way.

The ABR process involves an administrative approval for consumptive use at the natural gas well drilling pad site and enables the Commission to track all sources of water transported to the site, the quantities used in development of the well, and the fate of flowback and produced fluids. These data are important to assess the cumulative impact of this industry's activity on the water resources of the basin. A number of the comments received, however, spoke to the appropriateness of landowner notification if well drilling and hydrofracing activity was occurring adjacent to their property. The ABR process does not involve approval to drill or hydrofrac; it is limited to regulating the consumptive use of water involved in either of those activities. Approval to drill (and to undertake the related hydrofracture development activity) is a separate governmental action undertaken by the Commission's member states in the form of gas well permitting.

The impetus behind the Commission's proposal to modify contiguous landowner notice provisions in the ABR process stem from the fact that they have been problematic, administratively burdensome, and often lead to confusion at the landowner level. And while those shortcomings are pronounced with the ABR process, given the recent level of natural gas development activity, the Commission acknowledges that a number of those shortcomings are likewise present with its contiguous landowner notification requirements for docket applications as well. Therefore, after review and consideration of the comments received, as well as its own reconsideration of the appropriate scope of amendments to its existing notification procedures, the Commission believes it is appropriate to suspend action on this element of the NOPR as part of this final rulemaking action. Accordingly, it will move forward with publication of a new NOPR at such time as it completes development of a revised set of proposed changes to its general application notification requirements.

With respect to public transparency, please note that the Commission continues to increase the amount of information contained on its website, [www.srbc.net](http://www.srbc.net), for the benefit of the public. Further improvements are underway and are anticipated to be completed by the end of 2009 that will afford greater access to approvals, requests for approval, lists of approved water sources by project sponsor, location information about approved withdrawal and consumptive use sites, and mapping features to display information to better inform the public.

Comment: The flexible use of approved water withdrawal sources by gas well developers at various drill pad sites without modification of their pad site ABR under proposed regulation § 806.22(f)(11 & 12) will mean that such withdrawals, and the ABR approved well pad sites they serve, will receive less regulatory scrutiny.

Response: All such withdrawals will have already been fully reviewed and approved by the Commission prior to any use and will have met all public notice requirements at the time of their initial approval. This means that the impacts of withdrawals will have been fully evaluated and appropriate conditions such as passby requirements included. All users of these approved sources will be subject to the same limitations and conditions contained in the approved docket.

In approving a withdrawal, the Commission exercises continuing regulatory oversight and can, at any time, reopen the docket approval and add new conditions or make further orders to meet any changed conditions and otherwise protect the public welfare and the environment. In addition, the main purpose of the proposed change is to simplify administrative procedures without compromising regulatory oversight.

Again, as noted above, the ABR process involves an administrative approval for consumptive use at the natural gas well drilling pad site and enables the Commission to track all sources of water transported to the site, the quantities used in development of the well, and the fate of flowback and produced fluids. The substantive evaluation of withdrawals and the conditions under which they may be undertaken without impact to the environment or other users occurs under the Commission's withdrawal regulations, and not the ABR process for which changes are proposed under this NOPR.

Comment: The proposed changes to § 806.22(f)(11) and (f)(12) would eliminate core safeguards for the water-related values that the Commission is committed to protect by allowing project sponsors to shift water from one project to another without even registering the transfer with the Commission.

Response: This is a misreading of the NOPR and implies that project sponsors will be shifting water sources from one drilling pad site to another without oversight by the Commission. To the contrary, what the Commission is proposing is a system whereby each project sponsor engaged in natural gas development will have an approved list of water

sources for which it has received docket approvals, with accompanying conditions to properly limit and monitor its withdrawals from each of those sources. The sources are added to the list at the time of docket approval, which effectively registers them for use at the project sponsor's approved drilling pad sites. The Commission sees no need to require a separate registration action by the project sponsor when it can be done administratively at the time of docket approval. All other sources that the project sponsor may use at its approved drilling pad sites must first be registered or otherwise approved by the Commission.

Comment: The proposed changes to § 806.22(f)(12) would permit project sponsors to share and trade water sources without obtaining new or modified ABRs, and without certifying to the Commission their intention to comply with all terms and conditions of each other's ABRs, and would authorize new sources of water without modifying the existing ABRs.

Response: The terms and conditions incorporated into every water source approval, and every ABR issued by the Commission, must be adhered to by project sponsors. The purposes of the proposed modifications are to facilitate efficient water use and water sharing by the natural gas industry, and to streamline administrative processes so that the Commission's resources are better focused on substantive review and management of water resources, not inefficient bureaucracy. Issuing a single approval for a given water source and allowing its use at any of the project sponsor's approved drilling pad sites, with appropriate conditions and monitoring requirements, is far preferable than requiring the project sponsor, and the Commission, to modify each and every ABR issued to the project sponsor, which could number in the hundreds over time. From a water resources management standpoint, the issue is whether the source is approvable for use without adverse effect, regardless of whether the project sponsor intends to utilize the source at one site, or multiple sites. Allowing water sharing limits the number of withdrawals across the basin and limits tanker truck traffic by allowing project sponsors to use the closest approved water source site, even if the withdrawal approval was first issued to another operator. Adherence to all docket conditions, and ABR recordkeeping and reporting conditions, will continue to be required of all project sponsors, resulting in a full daily accounting of all water withdrawn across the basin (by source, by date, by project sponsor), where it was delivered to, and quantities used on site.

Comment: The new proposed subsections § 806.22(f)(11) and (f)(12)(ii) contain language requiring the project sponsor to obtain all necessary approvals required for the project from the state agency. However, such reference to the need for state agency approval is absent from new proposed § 806.22(f)(12)(i). For the regulation to be internally consistent and for member state agency coordination purposes, a sentence should be added at the end of § 806.22(f)(12)(i) that is similar to the one contained in § 806.22(f)(12)(ii), indicating that registrations "shall be subject to any approval or authorization required by the member State to utilize such source(s)." The proposed language would put the project sponsor on notice that it would also need state-level authorization to use such source at the time it is registered with the Commission and before its use for natural gas well development.

Response: The Commission agrees with the commenter and the final rulemaking incorporates the proffered language.

Section 806.32 Reopening/modification.

Comment: This procedural change will allow interested parties' to fully participate in Commission processes, while avoiding unnecessary or duplicative proceedings.

Response: The Commission agrees.

Comment: Due process requires that the Commission narrowly construe its proposal to prevent persons whose administrative appeals are denied from petitioning for reopening of the approval seeking the same or similar relief absent new facts not known or readily discernable at the time of the appeal. Concern is raised about the use of the term "similar" being applied in such a way as to frustrate legitimate new claims, and the term "functionally equivalent" is recommended to be inserted in its place.

Response: The Commission agrees and the final rulemaking incorporates the proffered language.

Comment: We oppose the proposed restrictions to petitioning and reopening a docket.

Response: The Commission believes that any interested party should have the right to petition for a reopening of a project approval, but believes that parties attempting to use this provision to obtain administrative review of matters for which administrative appeals were denied constitutes an abuse of process and should be restricted.

Comments by Section, Part 808

Section 808.1 Public hearings.

Comment: We agree that the Commission should hold at least one

public hearing within a reasonable period after rules revisions are initially proposed. The rule leaves open the option of convening additional hearings if, for example, the Commission recommends substantial changes in response to comments on the initial proposed rulemaking.

Response: The Commission agrees with the interpretation of the commenter. As structured, the rule would require the Commission to convene at least one additional hearing in the event changes to an NOPR are substantial and result in re-publication.

Section 808.2 Administrative appeals.

Comment: The proposed constructive notice rule allowing the appeal period for persons other than project sponsors to run 30 days from the date of publication of the action in the Federal Register is respectful of due process rights and is commendable.

Response: The Commission agrees that this modification advances the due process rights of interested parties and has retained it in this final rulemaking action.

Comment: This procedural change will maximize interested parties' ability to fully participate in Commission processes.

Response: The Commission agrees.

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 § 806.22, revise paragraph, (f) (11) and add paragraph (f) (12) to read as follows:

§ 806.22 – Standards for consumptive use of water.

\*\*\*\*\*

(f) \*\*\*

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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. Any approval issued hereunder shall be further subject to any approval or authorization required by the member state to utilize such source(s).

(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 functionally equivalent 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 discernable 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) (2) and (c) to read as follows:

§ 808.1 – Public hearings.

(a) \*\*\*

(2) Proposed rulemaking.

\*\*\*\*\*

(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: September 16, 2009.

Thomas W. Beauduy,

Deputy Director.

**INFORMATION NOTICE**

**Notice of Projects Approved for Consumptive Uses of Water**

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Approved Projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in "DATES."

DATE: July 1, 2009, through August 31, 2009.

ADDRESS: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR § 806.22(f) for the time period specified above:

Approvals By Rule Issued:

1. Cabot Oil & Gas Corporation, Pad ID: BrooksW P1, ABR-20090701, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: July 6, 2009.
2. Cabot Oil & Gas Corporation, Pad ID: HullR P1, ABR-20090702, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: July 6, 2009.
3. Cabot Oil & Gas Corporation, Pad ID: Heitsman P1A, ABR-20090703, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: July 6, 2009.
4. Cabot Oil & Gas Corporation, Pad ID: Teel P7, ABR-20090704, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: July 6, 2009.
5. Cabot Oil & Gas Corporation, Pad ID: Gesford P2, ABR-20090705, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: July 6, 2009.
6. Cabot Oil & Gas Corporation, Pad ID: LarueC P2, ABR-20090706, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: July 6, 2009.
7. Cabot Oil & Gas Corporation, Pad ID: SmithR P2, ABR-20090707, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: July 6, 2009.
8. EnerVest Operating, LLC, Pad ID: Wood #1, ABR-20090708, Athens Township, Bradford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: July 6, 2009.
9. EnerVest Operating, LLC, Pad ID: Harris #1, ABR-20090709, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: July 6, 2009.
10. EnerVest Operating, LLC, Pad ID: Gerbino #1, ABR-20090710, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: July 6, 2009.
11. EnerVest Operating, LLC, Pad ID: Warren #1, ABR-20090711, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: July 6, 2009.
12. XTO Energy Incorporated, Pad ID: Marquardt, ABR-20090712, Troy Township, Lycoming County, Pa.; Consumptive Use of up to 1.000 mgd; Approval Date: July 7, 2009.
13. XTO Energy Incorporated, Pad ID: Jenzano, ABR-20090713, Franklin Township, Lycoming County, Pa.; Consumptive Use of up to 1.000 mgd; Approval Date: July 7, 2009.
14. XTO Energy Incorporated, Pad ID: Temple, ABR-20090714, Moreland Township, Lycoming County, Pa.; Consumptive Use of up to 1.000 mgd; Approval Date: July 7, 2009.
15. XTO Energy Incorporated, Pad ID: Hazlak, ABR-20090715, Shrewsbury Township, Lycoming County, Pa.; Consumptive Use of up to 1.000 mgd; Approval Date: July 7, 2009.
16. EXCO-North Coast Energy, Inc., Pad ID: Skyline Golf Course, ABR-20090716, Greenfield Township, Lackawanna County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: July 7, 2009.
17. Seneca Resources Corporation, Pad ID: J. Pino Pad G, ABR-20090717, Covington Township, Tioga County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: July 8, 2009.
18. Chief Oil & Gas, LLC, Pad ID: Zinck Unit #1H, ABR-20090718, Watson Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: July 9, 2009.
19. EOG Resources, Inc., Pad ID: PHC 10V, ABR-20090719, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: July 9, 2009.
20. EOG Resources, Inc., Pad ID: PHC 11V, ABR-20090720, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: July 9, 2009.
21. EOG Resources, Inc., Pad ID: PHC 6H, ABR-20090721, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: July 9, 2009.
22. EOG Resources, Inc., Pad ID: PHC 7H, ABR-20090722, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: July 9, 2009.
23. EOG Resources, Inc., Pad ID: PHC 8H, ABR-20090723, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: July 9, 2009.
24. Cabot Oil & Gas Corporation, Pad ID: BrooksW P2, ABR-20090724, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: July 16, 2009.
25. Alta Operating Company, LLC, Pad ID: Carrar Pad Site, ABR-20090725, Liberty Township, Susquehanna County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: July 16, 2009.
26. Chesapeake Appalachia, LLC, Pad ID: Kent, ABR-20090726, Towanda Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: July 22, 2009.
27. East Resources, Inc., Pad ID: 212 1H, ABR-20090727, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 23, 2009.
28. East Resources, Inc., Pad ID: 235 1H, ABR-20090728, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 23, 2009.
29. East Resources, Inc., Pad ID: Courtney 129 1H-2H, ABR-20090729, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 23, 2009.
30. East Resources, Inc., Pad ID: Courtney H 255-1H, ABR-20090730, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 23, 2009.
31. East Resources, Inc., Pad ID: Neal 134D, ABR-20090731, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 23, 2009.
32. East Resources, Inc., Pad ID: Kipferl 261-1H, ABR-20090732, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 23, 2009.
33. Cabot Oil & Gas Corporation, Pad ID: BrooksJ P1, ABR-20090733, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: July 27, 2009.
34. Pennsylvania General Energy Company, Pad ID: Tract 729 Well #2384, ABR-20090734, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.900 mgd; Approval Date: July 27, 2009.
35. Pennsylvania General Energy Company, Pad ID: State Forest Tract 293 Well Pad #1, ABR-20090735, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.900 mgd; Approval Date: July 27, 2009.
36. Cabot Oil & Gas Corporation, Pad ID: HunsingerA P1, ABR-20090736, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: July 28, 2009.
37. Cabot Oil & Gas Corporation, Pad ID: Elk Lake School District P1, ABR-20090737, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: July 28, 2009.
38. Cabot Oil & Gas Corporation, Pad ID: ChudleighW P1, ABR-20090738, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: July 28, 2009.
39. Chesapeake Appalachia, LLC, Pad ID: Hershberger, ABR-20090739, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: July 28, 2009.
40. Alta Operating Company, LLC, Pad ID: Five E's FLP Pad Site, ABR-20090801, Middletown Township, Susquehanna County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 6, 2009.
41. EQT Production Company, Pad ID: Hurd, ABR-20090802, Ferguson Township, Clearfield County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 10, 2009.
42. Victory Energy Corporation, Pad ID: Wilcox #1, ABR-20090803, Covington Township, Tioga County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: August 10, 2009.
43. Victory Energy Corporation, Pad ID: Brookfield #1, ABR-20090804, Brookfield Township, Tioga County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: August 10, 2009.
44. Cabot Oil & Gas Corporation, Pad ID: GrimsleyJ P1, ABR-20090805, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: August 13, 2009.
45. Chesapeake Appalachia, LLC, Pad ID: Eileen, ABR-20090806, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 13, 2009.
46. Chesapeake Appalachia, LLC, Pad ID: Claudia, ABR-20090807, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 13, 2009.
47. Chesapeake Appalachia, LLC, Pad ID: Skoronski, ABR-20090808, Northmoreland Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 13, 2009.
48. Chesapeake Appalachia, LLC, Pad ID: Fitzsimmons, ABR-20090809, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 13, 2009.
49. Fortuna Energy, Inc., Pad ID: Klein R, ABR-20090810, Armenia Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 13, 2009.
50. Fortuna Energy, Inc., Pad ID: DCNR 587 Pad #2, ABR-20090811, Ward Township, Tioga County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 13, 2009.
51. Fortuna Energy, Inc., Pad ID: DCNR 587 Pad #4, ABR-20090812, Ward Township, Tioga County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 13, 2009.
52. Chief Oil & Gas, LLC, Pad ID: Phelps Unit #1H, ABR-20090813,

Lathrop Township, Susquehanna County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 17, 2009.

53. Seneca Resources Corporation, Pad ID: T. Wivell Pad Horizontal; ABR-20090814, Covington Township, Tioga County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: August 17, 2009.

54. Chief Oil & Gas, LLC, Pad ID: Bower Unit #1H Drilling Pad, ABR-20090815, Penn Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 18, 2009.

55. Chief Oil & Gas, LLC, Pad ID: Warburton Unit #1H Drilling Pad, ABR-20090816, Penn Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 18, 2009.

56. Anadarko E&P Company, LP, Pad ID: WW Litke #1H, ABR-20090817, Curtin Township, Centre County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 19, 2009.

57. Covalent Energy Corporation, Pad ID: Ross 1, ABR-20090818, Maryland Town, Otsego County, N.Y.; Consumptive Use of up to 0.0790 mgd; Approval Date: August 24, 2009.

58. EXCO-North Coast Energy, Inc., Pad ID: Treval LLC Unit, ABR-20090819, Greenfield Township, Lackawanna County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: August 24, 2009.

59. Anadarko E&P Company, LP, Pad ID: COP Tract 678 #1000H, ABR-20090820, Noyes Township, Clinton County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 26, 2009.

60. Anadarko E&P Company, LP, Pad ID: COP Tract 678 #1001H & #1002H, ABR-20090821, Noyes Township, Clinton County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 26, 2009.

61. Anadarko E&P Company, LP, Pad ID: Texas Gulf B #1H, ABR-20090822, Beech Creek Township, Clinton County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 26, 2009.

62. Anadarko E&P Company, LP, Pad ID: Texas Gulf B #2H & #3H, ABR-20090823, Beech Creek Township, Clinton County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 26, 2009.

63. East Resources, Inc., Pad ID: Sampson 147 1H-3H, ABR-20090824, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 27, 2009.

64. East Resources, Inc., Pad ID: Smith 253 1H, ABR-20090825, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 27, 2009.

65. Chief Oil & Gas, LLC, Pad ID: Polovitch Unit #1H, ABR-20090826, Nicholson Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 28, 2009.

66. Seneca Resources Corporation, Pad ID: DCNR 595 Pad D, ABR-20090827, Bloss Township, Tioga County, Pa.; Consumptive Use of up to 2.999 mgd; Approval Date: August 28, 2009.

67. Alta Operating Company, LLC, Pad ID: Markovitch Pad Site, ABR-20090828, Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of up to 3.999 mgd; Approval Date: August 31, 2009.

68. East Resources, Inc., Pad ID: Wheeler 268 1H, ABR-20090829, Jackson Township, Tioga County, Pa.; Consumptive use of up to 4.000 mgd; Approval Date: August 31, 2009.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: September 15, 2009.

Thomas W. Beauduy  
Deputy Director.