

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-49-12-00002-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Economic Development, by increasing the number of positions of Senior Certification Analyst from 9 to 10.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-49-12-00003-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by increasing the number of positions of Child Abuse Specialist 3 from 1 to 2.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

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printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

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

Jurisdictional Classification

I.D. No. CVS-49-12-00004-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by adding thereto the position of Director Justice Center Implementation and by increasing the number of positions of Associate Counsel from 1 to 4.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

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

Jurisdictional Classification

I.D. No. CVS-49-12-00005-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by adding thereto the position of Minority Business Specialist 1 (1).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

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

Jurisdictional Classification

I.D. No. CVS-49-12-00006-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Agriculture and Markets, by deleting therefrom the position of Program Manager and by increasing the number of positions of Special Assistant from 8 to 9.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

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

Jurisdictional Classification

I.D. No. CVS-49-12-00007-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Economic Development, by increasing the number of positions of Associate Agency Services Analyst from 3 to 5.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

**Division of Criminal Justice
Services**

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

Equipment Maintenance Fee

I.D. No. CJS-49-12-00013-P

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

Proposed Action: Repeal of Part 6031 of Title 9 NYCRR.

Statutory authority: Executive Law, article 35 and section 837(8-b) and (13)

Subject: Equipment Maintenance Fee.

Purpose: Allow the Division to respond to the financial and service and repair needs of law enforcement.

Text of proposed rule: Part 6031 of Title 9 of the NYCRR is repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin, Esq., NYS Division of Criminal Justice Services, 4 Tower Place, Albany, New York 12203, (518) 485-0857, email: natasha.harvin@dcs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority:

Executive Law Article 35 established the NYS Division of Criminal Justice Services (Division) and charged it with a responsibility to assist law enforcement agencies in the performance of their duties. Executive Law § 837(8-b) authorizes the Division to charge a fee for the service and repair of municipal law enforcement equipment. Executive Law § 837(13) authorizes the Division to adopt, amend or rescind regulations “as may be necessary or convenient to the performance of the functions, powers and duties of the [D]ivision.”

2. Legislative objectives:

In an effort to provide services, the Division developed a program to calibrate, service and repair various breath and speed analysis equipment for State and local law enforcement agencies. Calibration and certification of equipment is important as it is used in court to secure convictions for criminal offenses such as DWI (Driving While Intoxicated).

Historically, the Division has experienced approximately 67% compliance with certification services, negatively impacting conviction levels. This was due to the cost of having the equipment serviced and repaired. There were significant local assistance cuts following the events of September 11, 2001. As a consequence, the Division began providing this important public safety service free of charge, and has since secured significant federal funding to fund this important program.

Additionally, the Division has achieved and maintained service levels of near 100% certification, positively impacting conviction levels. When the fees were eliminated, the Division implemented a program to remind each law enforcement agency of the critical need to make and keep their instrument certification appointments. Since the cost of certification was no longer an issue to be debated, the Division was able to improve the overall compliance rate from approximately 67% to approximately 98%.

This proposed rule merely repeals 9 NYCRR Part 6031, which is entitled the “Equipment Maintenance Fee Program,” so that the Division may respond to the financial needs of the law enforcement community, while continuing to respond to the service and repair needs of law enforcement agencies that use these services.

3. Needs and benefits:

Calibration and certification of equipment is important as it is used in court to secure convictions for criminal offenses such as DWI. The proposed rule will permit the Division to respond to the financial needs of the law enforcement community, while continuing to respond to the service and repair needs of law enforcement agencies that use these services. This proposed rule will allow the Division to continue the high level of services offered in the calibration and repair of breath and speed analysis equipment for law enforcement agencies while eliminating the local costs associated with this program.

4. Costs:

(a) Costs to State Government: The Division services approximately 6,000 instruments annually, and has secured federal funding for the vast majority of this program. The total revenue potential from the services to repair and calibrate breath and speed analysis equipment for law enforcement agencies in 2009, 2010 and 2011 (January 1, 2011 – October 31, 2011) was, respectively, \$228,710; \$221,760; and \$127,480. If we begin imposing a fee on the localities, the vast majority of the revenue would become reportable as program income, resulting in a \$1 for \$1 reduction in federal reimbursement, which is a near \$0 net gain for the State.

(b) Costs to Local Government: None.

(c) Costs to Private Regulated Parties: None.

(d) Costs to Regulating Agency: If we begin imposing a fee on the localities, the agency would lose access to funding and would have to reduce program services since our agency would not have access to the local revenues which would be deposited into the General Fund and our federal funds would be reduced by a commensurate amount.

5. Local government mandates:

The proposed rule imposes no mandates on local governments. Use of the services offered by the Division is at the discretion of the local government.

6. Paperwork:

The proposed rule will not impose additional paperwork requirements on law enforcement agencies. If a law enforcement agency uses the services offered by the Division, it currently must submit to the Division the equipment to be repaired. Each request for calibration or maintenance must be accompanied by a Service Authorization Form.

7. Duplication:

Repealing the fee upon localities would avoid duplicate funding for this program.

8. Alternatives:

The Division considered the previous practice of charging various fees every time law enforcement agencies use the services offered by the Division. The Division also considered charging law enforcement agencies an annual fee for the repair and calibration of breath and speed analysis equipment, which is based on a standard price per instrument and would yield similar revenue potential. The vast majority of revenue associated with both alternatives would need to be reported as program income to the federally funded program, resulting in a \$1 for \$1 reduction in federal funding, a near \$0 net gain to New York State. Additionally, both alternatives produce undesirable program results. Calibration and certification of equipment is important as it is used in court to secure convictions for criminal offenses such as DWI and there were significant local assistance cuts following 9/11. By offering this as a free (federally funded) service, we have achieved and maintained service levels of near 100% certification to maintain conviction levels. If we assess a fee, we anticipate compliance will fall below 2001 compliance rates of approximately 67%.

9. Federal standards:

The Federal Highway Safety Program provides funds to support State and local efforts to improve highway safety, such as impaired driving programs. Eligible organizations include state and local government agencies, educational institutions and certain nonprofit agencies. For-profit agencies and individuals, and applications to develop a product or provide a service for profit are not eligible.

This is a reimbursement program. The costs of the project are reimbursed consistent with the approved budget.

10. Compliance schedule:

The proposed rule will require no new action on the part of the law enforcement community or the Division. If a law enforcement agency uses the services offered by the Division, it must still submit to the Division the equipment to be repaired. Each request for calibration or maintenance must be accompanied by a Service Authorization Form.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not submitted with this rulemaking because the proposed rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

The proposed rule merely seeks to repeal 9 NYCRR Part 6031, which is entitled the "Equipment Maintenance Fee Program." Calibration and certification of equipment is important as it is used in court to secure convictions for criminal offenses such as DWI (Driving While Intoxicated). Historically, we have experienced approximately 67% compliance with certification services, negatively impacting conviction levels. There were significant local assistance cuts following 9/11. As a consequence, the NYS Division of Criminal Justice Services (Division) began providing this important public safety service free of charge, and we have since secured significant federal funding to fund this important program. Additionally, we have achieved and maintained service levels of near 100% certification to maintain conviction levels.

This proposed rule will permit the Division to continue the high level of services offered in the calibration and repair of breath and speed analysis equipment for law enforcement agencies by eliminating the costs associated with this program.

Accordingly, based on the foregoing, it is evident that this rule imposes neither an adverse economic impact nor a recordkeeping requirement, and small businesses and local governments in New York State are unaffected by this rule.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this rulemaking because the proposed rule will not impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

The proposed rule merely seeks to repeal 9 NYCRR Part 6031, which is entitled the "Equipment Maintenance Fee Program." Calibration and certification of equipment is important as it is used in court to secure convictions for criminal offenses such as DWI (Driving While Intoxicated). Historically, we have experienced approximately 67% compliance with certification services, negatively impacting conviction levels. There were significant local assistance cuts following 9/11. As a consequence, the NYS Division of Criminal Justice Services (Division) began providing this important public safety service free of charge, and we have since secured significant federal funding to fund this important program. Additionally, we have achieved and maintained service levels of near 100% certification to maintain conviction levels.

This proposed rule will permit the Division to continue the high level of services offered in the calibration and repair of breath and speed analysis equipment for law enforcement agencies by eliminating the costs to localities associated with this program.

Accordingly, based on the foregoing, it is evident that this rule imposes

neither an adverse economic impact nor a recordkeeping requirement, and public and private entities in rural areas of New York State are unaffected by this rule.

Job Impact Statement

The proposed rule merely seeks to repeal 9 NYCRR Part 6031, which is entitled the "Equipment Maintenance Fee Program." Calibration and certification of equipment is important as it is used in court to secure convictions for criminal offenses such as DWI (Driving While Intoxicated). Historically, we have experienced approximately 67% compliance with certification services, negatively impacting conviction levels. There were significant local assistance cuts following 9/11. As a consequence, the NYS Division of Criminal Justice Services (Division) began providing this important public safety service free of charge, and we have since secured significant federal funding to fund this important program. Additionally, we have achieved and maintained service levels of near 100% certification to maintain conviction levels.

This proposed rule will permit the Division to continue the high level of services offered in the calibration and repair of breath and speed analysis equipment for law enforcement agencies by eliminating the costs to localities associated with this program.

As such, it is apparent from the nature and purpose of the proposal that it will have no substantial adverse impact on jobs and employment opportunities.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Amend Provisions of 6 NYCRR Subpart 750-1, 6 NYCRR Subpart 360-4 and 6 NYCRR Subpart 360-5

I.D. No. ENV-49-12-00012-P

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

Proposed Action: Addition of sections 360-1.3, 360-4.2, 360-5.3, 360-5.5, 360-5.6 and 750-1.5; and amendment of sections 360-4.2, 360-5.3, 360-5.5, 360-5.6, 750-1.2, 750-1.7, 750-1.21 and 750-1.24 of Title 6 NYCRR.

Statutory authority: 33 U.S.C. 1251, et seq. (Federal Water Pollution Control Act); Environmental Conservation Law, section 1-0101; art. 3, title 3; section 8-0113; section 11-0325; art. 17, titles 3, 5, 7 and 8; section 19-0303; section 19-0304; section 19-0306; section 19-0307; art. 27, titles 1, 3, 5, 7, 9 and 13; and art. 70, title 1

Subject: Amend provisions of 6 NYCRR Subpart 750-1, 6 NYCRR Subpart 360-4 and 6 NYCRR Subpart 360-5.

Purpose: Remove requirement that certain CAFOs maintain ECL SPDES Permit coverage; revise land application, storage and composting rules.

Public hearing(s) will be held at: 2:00 p.m., Jan. 4, 2013 at Department of Environmental Conservation, 625 Broadway, Albany, NY; 2:00 p.m., Jan. 4, 2013 at State Fairgrounds, Eddy Rm., Syracuse, NY; and 2:00 p.m., Jan. 4, 2013 at Department of Environmental Conservation, Ray Brook, NY; and 2:00 p.m., Jan. 4, 2013 at Department of Environmental Conservation, Avon, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.ny.gov/65.html>): Subpart 750-1

The proposed rulemaking amends provisions of 6 NYCRR Subpart 750-1 to eliminate the requirement that non-discharging Medium Concentrated Animal Feeding Operations (CAFOs) with 200 to 299 mature dairy cows, milked or dry, obtain an ECL SPDES permit because for purposes of ECL § 17-0101(16) these Medium CAFOs would no longer be considered point sources. The proposed rulemaking revisions to Subpart 750-1 are not intended to make any changes with respect to the federal definition of a Large, Medium or Small CAFO or to limit, in any way, the scope of

federal law. Instead, the proposed Subpart 750-1 changes exempt non-discharging Medium CAFOs with 200 to 299 mature dairy cows from the requirement to obtain an ECL SPDES permit, while clarifying that although ECL SPDES permit requirements for these Medium CAFOs would be discontinued, state law is still more stringent than federal law. This is the case because unlike federal law which generally regulates discharges from point sources, state law regulates the creation of point sources even if there is not a discharge. The specific substantive revisions to 6 NYCRR Subpart 750-1 are summarized below.

Paragraph (21) of Subdivision 750-1.2(a) is revised to define the term "CAFO" and the different categories of CAFOs for purposes of state law. The definition of a "Large CAFO" and "Medium CAFO" in Section 750-1.2(a)(21) is defined to match the federal animal threshold numbers set forth in 40 CFR § 122.23(b)(4) and (6). Specifically, animal threshold numbers for a Medium dairy CAFO remain the same as those under federal law -- 200 to 699 mature dairy cows, whether milked or dry. Paragraph (12) of Subdivision 750-1.2(a) also makes explicit that the Department may designate an Animal Feeding Operation (AFO) as a Small CAFO, consistent with the Department's current practice. Under the ECL, if an AFO is designated as a Small CAFO, it is a point source that is required to have an ECL SPDES permit even if there is not a discharge.

Paragraph (12) of 6 NYCRR § 750-1.5(a), however, has been added to exempt Medium CAFOs with 200-299 mature dairy cows, whether milked or dry, without a discharge from obtaining an ECL SPDES permit. This category of non-discharging Medium CAFOs, however, may still elect to obtain ECL SPDES permit coverage, and if permit coverage is granted, the Medium CAFO would be considered a point source throughout permit coverage. Importantly, this provision provides flexibility by allowing all CAFOs that are no longer required to obtain an ECL SPDES permit the option to maintain permit protection. The overall effect of these changes, both the definition and the exception, is to: (1) require permit coverage of all CAFOs that discharge; (2) require permit coverage for dairy CAFOs above the threshold of 300 mature dairy cows irrespective of whether there is a discharge or not; and (3) exempt from permit coverage CAFOs with 200-299 mature dairy cows, whether milked or dry, without a discharge, unless the CAFO elects to seek coverage.

Subdivision (c) of Section 750-1.7 has been amended to incorporate 6 NYCRR Part 621 as part of a permit application requirement for CAFOs. This change would specifically apply to those CAFOs required to obtain an ECL CAFO SPDES permit. Paragraph (4) of Subdivision 750-1.21(b) has also been revised to clarify the Department's authority to issue a SPDES General Permit for CAFOs that do not discharge, by deleting the word "discharge." Subdivision 750-1.21(b) would now explicitly authorize a general permit for discharges or potential discharges from CAFOs. In addition, Subdivision (c) of Section 750-1.24 has been revised to update references applicable to CAFOs.

Subparts 360-4 and 360-5

The proposed rulemaking makes a number of substantive changes to Subpart 360-4 (Land Application and Associated Storage Facilities) and Subpart 360-5 (Composting and Other Class A Organic Waste Processing Facilities). As discussed in greater detail below, these revisions establish criteria for anaerobic digestion (AD) facilities, provide exemptions from permit and registration requirements for specified activities at farms and CAFOs, and make other changes to these Subparts to promote sound environmental practices and reduce regulatory overlap.

6 NYCRR Section 360-4.2(a)(1), as currently in effect, states that land application facilities for animal manure and associated bedding material are exempt from the requirements of Subpart 360-4. The proposed rule defines the term "bedding material" for purposes of the exemption to clarify that this exemption applies to common bedding material used at farms (e.g., hay, straw, sawdust, wood shavings, newsprint, and sand).

6 NYCRR Section 360-4.2(a)(4) is added to exempt land application facilities for undigested food and fecal material emanating from New York State-owned or licensed fish hatcheries from the requirements of Subpart 360-4 where the waste is applied at or below agronomic rates. This new exemption allows the Department to dispose of fish hatchery waste in a responsible manner.

6 NYCRR Section 360-4.2(a)(5) is added to create an exemption for a land application facility or manure storage facility on a Part 750 permitted CAFO that also involves food processing waste or other waste if the waste handling is addressed in a CNMP. The exemption does not apply if the waste contains any human fecal matter or if the amount of non-manure waste placed in the storage facility exceeds 50% of the total volume of waste placed in the storage facility on an annual basis.

6 NYCRR Subdivision 360-4-2(a) has been revised to effectuate the exemptions described above -- Sections Section 360-4.2(a)(4) and (5) -- on the effective date of this proposed rulemaking by deregistering those facilities that were previously registered provided that all required annual reports for the facility have been submitted to the department.

6 NYCRR Section 360-4.2(b)(1)(vii), is revised to expand the eligibil-

ity for registration (rather than requiring a permit) by increasing the amount of nonrecognizable food processing waste that may be accepted at a manure storage facility from 10% to 40%, but only if certain design and operational requirements are met.

6 NYCRR Section 360-5.3(a)(1) is revised to provide an exemption from Subpart 360-5 for a composting facility that accepts crop residues and to clarify that the exemption from Subpart 360-5 applies to farms.

6 NYCRR Section 360-5.3(a)(2) is revised to specify that the exemption from Subpart 360-5 applies to either processed or unprocessed yard waste and to indicate that precipitation, surface water, and groundwater that come in contact with yard waste or the resultant compost is not leachate, but must be managed in an acceptable manner to the Department.

6 NYCRR Section 360-5.3(a)(4) adds an exemption from Subpart 360-5 for certain composting facilities for animal mortalities located on a farm or CAFO and Section 360-5.3(a)(5) adds an exemption from Subpart 360-5 for AD facilities that accept specified farm waste. Certain activities associated with AD facilities are also exempted, including CAFOs implementing a CNMP for manure, food processing waste, fats, oil, grease, and other wastes without human fecal matter, provided that non-manure waste is less than 50%, by volume, of the waste placed in the AD unit on an annual basis. This section also exempts land application of solids and liquids from AD facilities and other activities relating to dewatered solids.

6 NYCRR Section 360-5.3(b)(1)(iv) is added to expand the eligibility for registration (rather than requiring a permit) for organic processing facilities for animal mortalities or parts generated from a farm, slaughterhouse, butcher or other generator; and Section 360-5.3(b)(1)(v) establishes eligibility for registration for composting facilities for dewatered solids from an AD that is subject to registration. Furthermore, Section 360-5.3(b) has been revised to create eligibility for registration for AD facilities that accept less than 50 tons of waste per day not containing human fecal matter provided that certain operating conditions are met. AD facilities accepting any waste containing human fecal matter or accepting 50 tons or more of waste per day must obtain a permit. Moreover, while land application of solids and liquids generated from an AD facility would require registration, land application that occurs at a Part 750 permitted CAFO is exempt if land application is addressed in a CNMP.

6 NYCRR Section 360-5.5(b) is revised to exempt AD digestate used on farms from pathogen reduction alternatives under this subdivision. Section 360-5.5(d)(14) is added to establish specific criteria, including pathogen reduction, for the operation of AD facilities.

6 NYCRR Section 360-5.6 makes certain revisions with respect to source separated organics processing facilities. Specifically, the revisions include permit application requirements, pathogen and vector attraction criteria, pollutant limits and product use for material distributed to the public, and design criteria and operational requirements. Subdivision (f) is added to set forth AD criteria.

Text of proposed rule and any required statements and analyses may be obtained from: Robert Simson, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3500, (518) 402-8271, email: rjsimson@gw.dec.state.ny.us

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

Public comment will be received until: January 21, 2013.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Summary of Regulatory Impact Statement

Statutory Authority and Legislative Objectives. The Department's statutory authority to undertake amendments to Part 750 is found in Environmental Conservation Law (ECL) Article 3, Title 3; Article 17, Titles 3, 5, 7, 8; Article 70, Title 1; and the Federal Water Pollution Control Act, 33 USC 1251, et seq. Animal Feeding Operations (AFOs) are lots or facilities where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility [40 CFR § 122.23(b)]. CAFOs are primarily defined based upon their animal threshold numbers, and are categorized as either large, medium or small. Under federal law, to meet the definition of a Medium CAFO there must also be a discharge of pollutants into the waters of the United States. Furthermore, based on recent case law and a federal rule change, CAFOs can only be required to obtain SPDES permit coverage under the Clean Water Act (CWA) if there is a discharge into the waters of the United States.

Conversely, the ECL provides the Department with authority to regulate the creation of a point source even if there is no discharge. Specifically, ECL § 17-0701(1)(a) states that, "it shall be unlawful for any person, until a written SPDES permit therefore has been granted ... to: (a) make or cause to make or use any outlet or point source for the discharge of sewage, industrial waste, or other wastes or the effluent there from, into the

waters of this state....” (emphasis added). ECL § 17-0105(16) defines a CAFO as a point source. Currently, consistent with the more stringent standards imposed by the ECL, the Department classifies Medium and Large CAFOs as “point sources” based upon the animal thresholds set forth in the federal regulations, irrespective of whether there is a discharge. Accordingly, under its authority to regulate the creation of a point source, the Department issues an ECL CAFO SPDES general permit for CAFOs that do not discharge.

The ECL CAFO General Permit requires the development and implementation of a site specific Comprehensive Nutrient Management Plan (CNMP). CNMPs are developed in accordance with conservation practice standards established by the Natural Resources Conservation Service (NRCS) to identify pollutant sources on the farm and recommend BMPs to prevent or minimize water pollution. The CNMP prescribes cyclical manure management techniques through recycling of manure and other organic wastes (both generated on the CAFO or from outside sources) into soil.

ECL § 1-0101(3) broadly sets forth the legislative objectives to achieve “social, economic and technological progress for present and future generations” while guaranteeing beneficial use of the environment without risk to health and safety when undertaking regulatory action. This proposed rulemaking clarifies the scope of the Department’s regulatory authority regarding Medium CAFOs by including a definition for Medium CAFOs consistent with federal requirements, while explicitly exempting those CAFOs (200-299 mature dairy cows) that do not discharge from needing SPDES general permit coverage. Furthermore, the proposed rules provide flexibility by allowing non-discharging CAFOs with 200-299 mature dairy cows to voluntarily seek CAFO SPDES permit coverage.

The proposed rulemaking to amend Subparts 360-4 and 360-5 is also consistent with the public policy objectives that the Legislature sought to advance. ECL § 3-0301(1)(f) provides the Department with the power to “[f]oster and promote sound practices for the use of agricultural land, river valleys, open land, and other areas of unique value.” ECL § 27-0101 also sets forth the intent “to encourage the development of economical projects for the present and future collection, treatment and management of solid and hazardous waste in such a manner as will assure full consideration of all aspects of planning for proper and effective solid and hazardous waste disposal.” Moreover, the State Administrative Procedure Act § 202-a(3)(f) encourages agencies to “minimize the impact” of duplication or overlap between regulatory rules. The Department’s statutory authority to promulgate amendments to Part 360 is found in ECL § 1-0101; Article 3, title 3; Article 27, titles 1, 3, 7, 9, 13, and 15; Article 70, title 1; and, Sections 8-0113, 11-0325, 19-0301, 19-0303, 19-0304, 19-0306, and 19-0310.

Part 360 provides regulatory oversight for solid waste management facilities in the State. Under existing regulations, if the waste management on a farm is confined to the farm and involves only waste (manure, crop residues) produced on such farm, the activities are exempt from Part 360. Conversely, if a farm accepts nutrient-based wastes from off-site, such as food processing wastes from yogurt producers, Part 360 criteria apply. Food processing waste may be land applied, placed in a manure lagoon, or added to a farm anaerobic digester to boost gas production.

Under the existing Part 360 regulations, there is overlap between the solid waste requirements and requirements for CAFOs permitted farm under Part 750. For example, land application of whey obtained from an outside source requires both registration under Part 360 and compliance with the requirements set forth in a SPDES permit. This duplication is unnecessary and burdensome on the affected farms, and provides no additional environmental protection. The primary changes to Part 360 eliminate this overlap by exempting these activities from Part 360. Part 360 is also being revised to add specific criteria for anaerobic digestion (“AD”) facilities. The lack of criteria and applicable standards in the current Part 360 regulations has led to confusion -- primarily in the farming community.

The changes would clarify that Part 360 exempts farm ADs for agricultural waste and includes a tiered structure based on size for the acceptance of off-site waste. This will help promote the development of ADs on farms which will advance manure management and provide an avenue for whey management. Accordingly, pursuant to this rulemaking, 6 NYCRR §§ 360-4.2(a)(5) and 360-5.3(a)(4), (5) would be revised, to create an exemption from registration or permitting for a land application facility, manure storage facility or an AD facility associated with a Part 750 permitted CAFO, if the waste handling is addressed in a CNMP. Similarly, Section 360-5.5(b) would be revised to exempt AD digestate used on farms from pathogen reduction alternatives.

Other changes to Part 360 would exempt land application facilities for undigested food and fecal material emanating from New York State owned or licensed fish hatcheries from the requirements of Subpart 360-4 where the waste is applied at or below agronomic rates; expand eligibility for registration (rather than requiring a permit) for organics processing facilities for animal mortalities or parts generated from a farm.; establish

eligibility for registration for composting facilities for dewatered solids from an AD facility that is subject to registration and AD facilities that accept less than 50 tons of waste per day that does not contain human fecal matter provided that certain operating conditions are met; and make revisions to application requirements, pathogen and vector attraction criteria, pollutant limits and product use for material distributed to the public, and design criteria and operational requirements with respect to source separate organics processing and AD facilities.

Needs and Benefits. By relieving non-discharging CAFOs with 200-299 mature dairy cows from the obligation to obtain SPDES general permit coverage, smaller non-discharging dairy farms would be less restricted in deciding whether to expand their herds. Increased milk production associated with expanded dairy farms is expected to create jobs both in the dairy service sector and the agricultural service industries. The establishment of larger farms and increased yogurt production will dictate the need for additional management infrastructure for manure and whey. Anaerobic digesters located on farms provide a superior method to manage both manure and whey, by providing the yogurt manufacturers with a long term, viable method to recycle this material and providing the farm with income from tipping fees and increased electricity production. The Part 360 revisions would promote the establishment of anaerobic digesters on farms by exempting some AD facilities from permit requirements, establishing registration criteria for those AD facilities that require registration, and providing a clearer regulatory path for those AD facilities that would still need a Part 360 permit.

Costs. There are no significant costs anticipated for the regulated community. The proposed rulemaking is expected to reduce costs for the regulated community by reducing regulatory overlap.

Local Government Mandates. There are no programs, services, duties or responsibilities imposed by the rule upon any county, city, town, village, school district, fire district or other special district. However, there may be some increased costs to local governments associated with water bodies that are subject to Total Maximum Daily Loads (TMDLs), if the proposed change in the Department’s CAFO permitting program results in a shift of wasteload allocation from CAFOs in general to other types of facilities, such as wastewater treatment plants.

Paperwork. CAFOs that are no longer required to obtain an ECL CAFO SPDES permit and that opt to discontinue permit coverage must file a one page Notice of Termination form with the NYSDEC. There are no other reporting requirements required as a result of this rule.

Duplication. The proposed changes to Subpart 750-1 clarify the different regulatory requirements for CAFOs that meet the federal definition of a Medium CAFO as compared to those CAFOs regulated pursuant to the ECL, thereby avoiding any duplication between the federal standards and the State standards. In addition, the proposed changes to Subparts 360-4 and 360-5 address unnecessary overlap between the regulations governing land application in Part 360 and Part 750 permit requirements for CAFOs.

Alternatives. The Department examined the no regulatory action alternative, but this alternative is not as likely to achieve the economic benefits and regulatory efficiencies associated with the rule making. The Department also considered exempting from permit coverage those CAFOs from 200-299 without a discharge, but requiring mandatory enrollment in the Agricultural Environmental Management (AEM) Program. Like the no-action alternative, this alternative may also fall short of meeting the rulemaking goals of expanding milk production to foster the yogurt industry in New York because it would essentially substitute one set of mandatory requirements with another. Similarly, the Department rejected a third alternative that would exempt from permit coverage those CAFOs from 200-299 without a discharge but require mandatory enrollment in the Department of Agriculture and Markets’ Agricultural Environmental Management (AEM) Program for CAFOs located in watersheds with an impaired waterbody. This patchwork approach would be difficult to employ. Finally, the Department considered terminating the ECL Permit program and simply administering the CWA permit and its corresponding standards. The Department rejected this alternative because it would not provide the necessary environmental protection, as the potential for a significant environmental impact from a discharge also proportionally grows by the increase in the number of mature dairy cows.

Federal Standards. The proposed rule change is consistent with federal standards because the applicable regulatory provisions and permit program for CAFOs that meet the federal definition and that fall under the CWA remain unchanged by this proposed rulemaking. With respect to the proposed changes to Subparts 360-4 and 360-5, there are no federal regulations for the facilities and activities contained in the proposed rulemaking.

Compliance Schedule. This rule eliminates permitting requirements for non-discharging Medium CAFOs with 200-299 mature dairy cows, as well as regulatory overlap between Part 750 and Part 360. Therefore, there is no additional time needed to achieve compliance with the rule. With respect to all other changes to Part 360, the regulated community will be required to comply upon enactment of the proposed regulations.

Regulatory Flexibility Analysis

1. 'Effect of Rule.' There are currently approximately 855 dairy farms that have 100-199 mature dairy cows in New York State. The Department of Agriculture and Markets estimates that as a result of this rulemaking approximately 285 of these farms will increase the size of their herds to more than 200 mature dairy cows over the next decade. Based upon input from dairy industry experts and agricultural service providers in the field, it is estimated that approximately 50 dairy farms are positioned to expand above 200 cows within the first year of the policy change. From that point, the balance of herd growth above 200 mature milking cows is likely to occur at a rate of 10-30 farms per year. This rulemaking is forecasted to increase the total NYS herd size by approximately 25,000 milking cows based upon 285 dairy farms expanding on average by 90 cows per farm. Based upon cow labor needs, it is estimated that one dairy farm job is created for every 40-50 cows added, so the addition of 25,000 cows over the next several years equates to 500-625 new on farm jobs.

The Cornell University study, Schmit and Bills (2012; <http://dyson.cornell.edu/outreach/extensionpdf/2012/Cornell-Dyson-eb1211.pdf>) finds that new on-farm jobs lead to additional jobs in the agricultural services industry (feed, animal health, fertilizer, farm equipment, crop protection, construction, milking systems, fuel, trucking, etc.). Therefore, a total of 700 to 875 jobs could be realized at the farm production level. The same study estimates job multipliers at the dairy processing level, as well. For every job created in the dairy processing sector, approximately 5 additional jobs are created in the various food processing service industries (dairy processing systems, manufacturing services, packaging, trucking, construction, fuel, marketing, etc.). A June 2012 study by the NYS Department of Labor (<http://www.labor.ny.gov/stats/PDFs/enys0612.pdf>) shows that Greek yogurt processors have created approximately 1,300 jobs since 2007, with another major yogurt plant set to add nearly 200 jobs by the summer of 2013. Considering the multiplier for dairy processing jobs, the growth since 2007 equates to an additional 7,500 jobs, totaling 9,000 jobs overall in the dairy processing and associated service industries. Increasing milk production in New York State is considered critical to maintaining the processing plants responsible for the jobs and, based on the positive trends for Greek yogurt consumption, will be a key element for continuing the job growth in dairy processing and associated support industries.

The Schmit and Bills study referenced above also finds that, like jobs, economic growth by farms and dairy processors is also coupled with multipliers, because those industries tend to make large portions of their business expenditures within the state. For dairy farms, for every \$1 of output, \$0.67 of additional economic activity is generated by the agricultural service industries. Assuming a milk price of \$17.50/cwt and an eventual increase in milk production of 500 million lbs/year (5 million cwt/yr), the value of the increased production to farmers equates to \$87.5 million/year. Applying the economic multiplier brings an additional \$59 million/year, totaling nearly \$150 million in additional economic activity with this policy. When applied to the dairy processing sector, the study finds that for every \$1 of output, \$1.18 of additional economic activity is generated by the dairy processing service industries. While the impact of this policy on Greek yogurt production is not quantified, Chobani estimates that it will achieve \$1 billion in annual revenues in 2012 (<http://www.nado.org/wp-content/uploads/2012/09/yogurt.pdf>). The economic multiplier is substantial when added to direct economic output from dairy processing plants. With positive trends in Greek yogurt consumption, increasing milk production to help maintain and grow New York's dairy processing industries will likely result in significant economic growth. The Division of Milk Control has recently reported that they are aware of 37 different dairy processing projects that are under consideration. Of those 37 dairy processing facility projects, 26 are new plants. The majority of these new processors are primarily engaged in manufacturing of cheese; however at least 5 are yogurt facilities. Cumulatively, these new dairy processors represent a 10 % expansion of facilities inspected by the Department. The remaining 11 dairy processing projects involve expansions and upgrades. Specifically, 2 of these are larger dairy processors engaged in the manufacturing of yogurt.

It is possible that some non-discharging Medium Concentrated Animal Feeding Operations (CAFOs) with 300 or more mature dairy cows may decrease the size of their herds to less than 300 mature dairy cows to relieve themselves from the permit requirement, but the number of Medium CAFOs downsizing for this reason is expected to be insignificant. CAFOs that are required to obtain an ECL SPDES permit must submit Comprehensive Nutrient Management Plans at the time that they are initially permitted and an annual Nutrient Management Plan thereafter. These Nutrient Management Plans are prepared by certified planners. This rule making will decrease the number of Medium CAFOs that must have permits and submit Nutrient Management Plans (although some of these farms may voluntarily opt to maintain permit coverage or maintain Nutrient Management Plans). As a result, it is estimated that a negligible

number of certified planners may lose business as a result of this rule. These certified planners, however, should still have opportunities to prepare Nutrient Management Plans, provide other necessary agricultural services and may in fact see an increase in business from dairy herd expansion over time.

2. 'Compliance Requirements.' There are no reporting, recordkeeping or other affirmative acts that a small business or local government will have to undertake to comply with this rule.

3. 'Professional Services.' There are no professional services that a small business or local government is likely to need to comply with the changes associated with this rule.

4. 'Compliance Costs.' This rule reduces capital costs for smaller AFOs that don't discharge by allowing them to expand to up to 299 mature dairy cows without needing to obtain an ECL SPDES permit and incurring the costs associated with structural and non-structural permit requirements.

5. 'Economic and Technological Feasibility.' This rule making promotes economic development and does not impose any economic or technological burdens on small business or local government.

6. 'Minimizing Adverse Impact.' This rule will have a positive economic impact on small businesses or local governments because the rule encourages economic expansion by allowing smaller non-discharging AFOs to expand to up to 299 mature dairy cows without having to obtain a permit and incur costs associated with permit requirements. This is expected to create on farm jobs and increase employment in the agricultural services industry, dairy processing industry, and food processing service industry.

7. 'Small business and local government participation.' The New York State Department of Environmental Conservation (NYSDEC) has complied with SAPA § 202-b(6) by assuring that small businesses and local governments have been given an opportunity to participate in the rule making. This participation has occurred through publication of the notice of proposed rulemaking in the State Register and through meetings and interaction with a CAFO Work Group composed of individuals from the following organizations:

- New York State Department of Agriculture and Markets
- New York State Department of Health
- Cornell University
- Environmental Advocates of New York
- Citizens Campaign for the Environment
- New York Farm Bureau
- Northeast Dairy Producers Association
- Certified Planners
- CAFO farmers
- NYSDEC central office and regional staff

The NYSDEC also met with the Sierra Club, Riverkeeper, and the National Resource Defense Council with respect to the proposed rulemaking. The Department offered to meet with the New York League of Conservation Voters, but the invitation was not accepted. Furthermore, the NYSDEC will be accepting public comments to the Notice of Proposed Rulemaking and will be providing responses to any comments that are received. A public hearing will also be held. Finally, the following documents required by the State Environmental Quality Review Act (SEQRA) have been or will be published in the Environmental Notice Bulletin: Environmental Assessment Form, Positive Declaration, Draft Environmental Impact Statement, and Final Environmental Impact Statement. The NYSDEC will be reviewing comments to the Draft Environmental Impact Statement and will provide responses to comments prior to issuing the Final Environmental Impact Statement.

8. 'Cure Period' This rulemaking does not involve the establishment or modification of a violation or of penalties associated with a violation. Therefore, no cure period is included in the proposed rule.

Rural Area Flexibility Analysis

1. 'Types and Estimated Numbers of Rural Areas.' This rule applies to the entire State and impacts all rural areas of the State.

2. 'Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services.' The rule will reduce reporting, recordkeeping or other compliance requirements. No professional services will be needed in rural areas to comply with the rule.

3. 'Costs.' There are no initial capital costs or annual costs to comply with the rule.

4. 'Minimizing Adverse Impact.' The rule is expected to have a positive economic impact on rural areas by encouraging the expansion of Animal Feeding Operations (AFOs) since the threshold at which non-discharging Medium Concentrated Animal Feeding Operations (CAFOs) are required to obtain an ECL SPDES Permit is being increased from 200 to 300 mature dairy cows. As these dairy farms increase the size of their herds, milk production will increase, creating new on farm jobs and increasing employment in the agricultural services industry, dairy processing industry, and food processing service industry. In terms of adverse environmental impacts on rural areas, dairy farms with less than 300 mature dairy cows

are still required to fully comply with other environmental laws and regulations. There is an increased risk, however, that removing the requirement of permit coverage for Medium CAFOs with 200-299 mature dairy cows could lead dairy farms already in this size range (and smaller CAFOs expanding to this size) to relax, discontinue, or fail to implement structural and non-structural Best Management Practices. This could result in discharges causing adverse impacts to ground and surface water, including fish and aquatic habitats. Medium CAFOs that are no longer required to maintain permit coverage may still voluntarily maintain permit coverage or voluntarily participate in the Agricultural Environmental Management (AEM) program administered by New York State Department of Agriculture and Markets.

5. 'Rural Area Participation.' The New York State Department of Environmental Conservation (NYSDEC) has complied with SAPA § 202-bb(7) by assuring that public and private interests in rural areas have been given an opportunity to participate in the rule making process. This participation has occurred through publication of the notice of proposed rulemaking in the State Register and through meeting and interaction with a CAFO Work Group composed of individuals from the following organizations:

- New York State Department of Agriculture and Markets
- New York State Department of Health
- Cornell University
- Environmental Advocates of New York
- Citizens Campaign for the Environment
- New York Farm Bureau
- Northeast Dairy Producers Association
- Certified Planners
- CAFO farmers
- NYSDEC central office and regional staff

The NYSDEC also met with the Sierra Club, Riverkeeper, and the National Resource Defense Council with respect to the proposed rulemaking. The Department offered to meet with the New York League of Conservation Voters, but the invitation was not accepted. Furthermore, the NYSDEC will be accepting public comments to the Notice of Proposed Rulemaking and will be providing responses to any comments that are received. A public hearing will also be held. Finally, the following documents required by the State Environmental Quality Review Act (SEQRA) have been or will be published in the Environmental Notice Bulletin: Environmental Assessment Form, Positive Declaration, Draft Environmental Impact Statement, and Final Environmental Impact Statement. The NYSDEC will be reviewing comments to the Draft Environmental Impact Statement and will provide responses to comments prior to issuing the Final Environmental Impact Statement.

Job Impact Statement

1. 'Nature of Impact.' This rule is expected to create jobs and employment opportunities.

2. 'Categories and Numbers Affected.' There are currently approximately 855 dairy farms that have 100-199 mature dairy cows in New York State. The Department of Agriculture and Markets estimates that as a result of this rulemaking approximately 285 of these farms will increase the size of their herds to more than 200 mature dairy cows over the next decade. Based upon input from dairy industry experts and agricultural service providers in the field, it is estimated that approximately 50 dairy farms are positioned to expand above 200 cows within the first year of the policy change. From that point, the balance of herd growth above 200 mature milking cows is likely to occur at a rate of 10-30 farms per year. This rulemaking is forecasted to increase the total NYS herd size by approximately 25,000 milking cows based upon 285 dairy farms expanding on average by 90 cows per farm. Based upon cow labor needs, it is estimated that one dairy farm job is created for every 40-50 cows added, so the addition of 25,000 cows over the next several years equates to 500-625 new on farm jobs.

The Cornell University study, Schmit and Bills (2012; <http://dyson.cornell.edu/outreach/extensionpdf/2012/Cornell-Dyson-eb1211.pdf>) finds that new on-farm jobs lead to additional jobs in the agricultural services industry (feed, animal health, fertilizer, farm equipment, crop protection, construction, milking systems, fuel, trucking, etc.). Therefore, a total of 700 to 875 jobs could be realized at the farm production level. The same study estimates job multipliers at the dairy processing level, as well. For every job created in the dairy processing sector, approximately 5 additional jobs are created in the various food processing service industries (dairy processing systems, manufacturing services, packaging, trucking, construction, fuel, marketing, etc). A June 2012 study by the NYS Department of Labor (<http://www.labor.ny.gov/stats/PDFs/enys0612.pdf>) shows that Greek yogurt processors have created approximately 1,300 jobs since 2007, with another major yogurt plant set to add nearly 200 jobs by the summer of 2013. Considering the multiplier for dairy processing jobs, the growth since 2007 equates to an additional 7,500 jobs, totaling 9,000 jobs overall in the dairy processing and associated ser-

vice industries. Increasing milk production in New York State is considered critical to maintaining the processing plants responsible for the jobs and, based on the positive trends for Greek yogurt consumption, will be a key element for continuing the job growth in dairy processing and associated support industries.

The Schmit and Bills study referenced above also finds that, like jobs, economic growth by farms and dairy processors is also coupled with multipliers, because those industries tend to make large portions of their business expenditures within the state. For dairy farms, for every \$1 of output, \$0.67 of additional economic activity is generated by the agricultural service industries. Assuming a milk price of \$17.50/cwt and an eventual increase in milk production of 500 million lbs/year (5 million cwt/yr), the value of the increased production to farmers equates to \$87.5 million/year. Applying the economic multiplier brings an additional \$59 million/year, totaling nearly \$150 million in additional economic activity with this policy. When applied to the dairy processing sector, the study finds that for every \$1 of output, \$1.18 of additional economic activity is generated by the dairy processing service industries. While the impact of this policy on Greek yogurt production is not quantified, Chobani estimates that it will achieve \$1 billion in annual revenues in 2012 (<http://www.nado.org/wp-content/uploads/2012/09/yogurt.pdf>). The economic multiplier is substantial when added to direct economic output from dairy processing plants. With positive trends in Greek yogurt consumption, increasing milk production to help maintain and grow New York's dairy processing industries will likely result in significant economic growth. The Division of Milk Control has recently reported that they are aware of 37 different dairy processing projects that are under consideration. Of those 37 dairy processing facility projects, 26 are new plants. The majority of these new processors are primarily engaged in manufacturing of cheese; however at least 5 are yogurt facilities. Cumulatively, these new dairy processors represent a 10% expansion of facilities inspected by the Department. The remaining 11 dairy processing projects involve expansions and upgrades. Specifically, 2 of these are larger dairy processors engaged in the manufacturing of yogurt.

It is possible that some non-discharging Medium Concentrated Animal Feeding Operations (CAFOs) with 300 or more mature dairy cows may decrease the size of their herds to less than 300 mature dairy cows to relieve themselves from the permit requirement, but the number of Medium CAFOs downsizing for this reason is expected to be insignificant. CAFOs that are required to obtain an ECL SPDES permit must submit Comprehensive Nutrient Management Plans at the time that they are initially permitted and an annual Nutrient Management Plan thereafter. These Nutrient Management Plans are prepared by certified planners. This rule making will decrease the number of Medium CAFOs that must have permits and submit Nutrient Management Plans (although some of these farms may voluntarily elect to maintain permit coverage and submit Nutrient Management Plans). As a result, it is estimated that a negligible number of certified planners may lose business as a result of this rule. These certified planners, however, should still have opportunities to prepare Nutrient Management Plans, provide other necessary agricultural services and may in fact see an increase in business from dairy herd expansion over time.

3. 'Regions of Adverse Impact.' There are no regions in the State where this rule making will have a disproportionate adverse impact on jobs or employment opportunities.

4. 'Minimizing Adverse Impact.' There are no unnecessary adverse impacts on existing jobs. This rulemaking is expected to create new on farm jobs and increase employment in the agricultural services industry, dairy processing industry, and food processing service industry.

Division of the Lottery

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Make a Technical Correction to Remove an Incorrect Provision Related to Licensing Agents

I.D. No. LTR-49-12-00009-P

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

Proposed Action: This is a consensus rule making to repeal section 2836-4.7(a) of Title 21 NYCRR.

Statutory authority: Lottery for Education Law, sections 1604 and 1617-a

Subject: To make a technical correction to remove an incorrect provision related to licensing agents.

Purpose: To conform with NYS Lottery for Education Law section 1617-a.

Text of proposed rule: Subdivision (a) of section 2836-4.7 is hereby repealed:

2836-4 Video Lottery Gaming Agents

2836-4.7 Relationship.

(a) [Each video lottery gaming agent shall be considered an independent contractor and not an agent, servant or employee of the division or the state. Notwithstanding such status, each video gaming agent is a holder in trust of state moneys for the benefit of the state and until such moneys are deposited pursuant to video gaming procedures issued by the division, such moneys shall be considered held "in trust" for the benefit of the state and the division. With respect to all state moneys, the video lottery gaming agent irrevocably pledges, assigns and grants the division and the state a security interest in and control over all such moneys and any and all deposit accounts which such moneys may be deposited, including, without limitation, all interest, dividends, cash, instruments and other property held therein. Without limiting any of the foregoing, the video lottery gaming agent, as a condition to its license and operation certificate, will consent to any action which the state and/or the division deems necessary to perfect the security interest described above.]

Text of proposed rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, Associate Attorney, New York Lottery, One Broadway Center, Schenectady NY 12301-7500, (518) 388-3408, email: nylrules@lottery.ny.gov

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

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

Consensus Rule Making Determination

Sections 1604 and 1617-a of the New York State Lottery for Education Law (Article 34 of the Tax Law) establish the New York Lottery's (the "Lottery") authority to promulgate regulations governing its games and the operation of video lottery gaming.

The Division of the Lottery's regulations are being amended to make a technical change to conform a provision of its regulations to Section 1617-a of the Lottery for Education Law.

Subdivision (a) of section 2836-4.7 incorrectly states that Video Lottery Agents are not agents of the Lottery. Such a statement is contrary to Section 1617-a of the Lottery for Education Law which authorizes the Lottery to license suitable applicants as Video Lottery Agents. Additionally, Video Lottery Agents are required to follow the Lottery's instructions.

Therefore, the proposed amendment is necessary to conform the Lottery's regulations to the Lottery's statutory authority to license agents.

No one is likely to object to these amendments because the amendment is being made to correct a technical error and conform the Lottery's regulations to law. This change will not have an impact on the manner in which the Lottery licenses agents or in the operation of Video Gaming.

Job Impact Statement

The proposed amendment of 21 NYCRR Part 2836-4.7 does not require a Job Impact Statement because there will be no adverse impact on jobs and employment opportunities in New York State.

The Division of the Lottery's regulations are being amended to make a technical change to conform a provision of its regulations to Section 1617-a of the Lottery for Education Law. Subdivision (a) of section 2836-4.7 incorrectly states that Video Lottery Agents are not agents of the Lottery. Such a statement is contrary to Section 1617-a of the Lottery for Education Law which authorizes the Lottery to license suitable applicants as Video Lottery Agents. Additionally, Video Lottery Agents are required to follow the Lottery's instructions. This change will not have an impact on the manner in which agents are licensed or in the operation of Video Gaming.

The change will not adversely impact jobs and employment opportunities within New York State.

Office of Mental Health

NOTICE OF ADOPTION

Operation of Hospitals for Persons with Mental Illness

I.D. No. OMH-35-12-00001-A

Filing No. 1170

Filing Date: 2012-11-20

Effective Date: 2012-12-05

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

Action taken: Amendment of section 582.8 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 31.04

Subject: Operation of Hospitals for Persons with Mental Illness.

Purpose: To add provisions regarding fire safety and smoking within buildings.

Text of final rule: A new subdivision (e) is added to Section 582.8 of Title 14 NYCRR and the existing subdivision (e) is re-lettered as (f).

(e) *Fire safety*

(1) *Training.* Facilities shall provide fire safety training to all staff. Fire safety training shall address topics including, but not limited to:

(i) fire prevention;

(ii) discovering a fire;

(iii) operating the fire alarm system;

(iv) use of firefighting equipment; and

(v) building evacuation, including fire drill protocols that identify staff roles and locations where patients must assemble (i.e., assembly points).

(2) *Fire Drills.* On a quarterly basis, facilities shall conduct fire drills in each building that houses patients. At least 50 percent of such drills must be unannounced.

(i) For each quarter, each such building must have a minimum of one practice fire drill per shift.

(ii) Facilities must direct all staff members on all shifts to participate in fire drills.

(iii) Drills must be scheduled at varying times during a shift.

(iv) Use of alternative exits must be practiced during fire drills.

(v) Whenever practicable, drills shall involve the actual evacuation of patients to an assembly point as specified in the fire drill protocols. Consistent with Life Safety Code standards, in larger facilities that are subdivided into separate smoke compartments to limit the spread of fire and smoke and move patients without leaving the building or changing floors, evacuation may include relocation of patients to such compartments.

(vi) Properly documented actual or false alarms may be used for up to 50 percent of required drills for each shift, if all elements of the facility's fire plan were implemented.

(vii) Facilities must document and maintain records regarding fire drill performance which include an evaluation of the results of the fire drill, any corrective action that may be required, and completion of steps taken to achieve such corrective action.

(3) *Tests and Inspections.* Facilities must routinely test and inspect all fire safety equipment according to applicable codes, regulations and manufacturer's recommendations.

(i) All tests and inspections, and the dates conducted, shall be documented.

(ii) Facilities shall immediately correct, and document correction of, any deficiency noted during inspection and testing.

(4) *Prohibited items.*

(i) The following items are prohibited from use within any buildings on the grounds of the facility:

(a) devices for heating, cooking, or lighting which use kerosene, gasoline, wood, or alcohol;

(b) portable electric hot plates; and

(c) barbecue grills, which may only be used outside the building if located further than 30 feet away of any building structure, including overhangs, canopies or awnings.

(ii) The use of portable space heating devices is prohibited in patient sleeping and treatment areas of the facility, as well as in facility administrative offices. Use of a portable space heating device in any other building on the grounds of a facility shall be in accordance with guidelines of the Office, provided that:

mark;

(a) the unit has an Underwriters Laboratories (UL) certification;

(b) the unit is thermostat-controlled and has a tip-over cutoff device;

(c) the unit is plugged directly into a wall receptacle (no extension cords);

(d) combustible materials are not stored around or near the unit;

(e) at least a three-foot clearance around the unit is maintained;

and

(f) the unit is not placed underneath a desk, furniture or other combustible items.

(5) *Smoking.* Facilities must not permit smoking within any buildings on the grounds of the facility. If smoking is permitted on the grounds of the facility, it shall be contained to a specific location(s) equipped with an approved non-combustible ash receptacle. Smoking shall not be permitted within 30 feet of any building structure, including overhangs, canopies or awnings.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 582.8(e)(2) and (4).

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

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not submitted with this notice because the changes being made to the final version of the rule making are non-substantive. The changes serve to clarify the frequency and percentage of unannounced fire drills and the acceptable use of portable space heaters. The final rule allows for the use of portable space heating devices under certain circumstances, but their use shall remain prohibited in patient sleeping and treatment areas.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this notice because the changes being made to the final version of the rule making are non-substantive. The changes serve to clarify the frequency and percentage of unannounced fire drills and the acceptable use of portable space heaters. The final rule allows for the use of portable space heating devices under certain circumstances, but their use shall remain prohibited in patient sleeping and treatment areas.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not submitted with this notice because the changes being made to the final version of the rule making are non-substantive. The changes serve to clarify the frequency and percentage of unannounced fire drills and the acceptable use of portable space heaters. The final rule allows for the use of portable space heating devices under certain circumstances, but their use shall remain prohibited in patient sleeping and treatment areas.

Revised Job Impact Statement

A revised Job Impact Statement is not submitted with this notice because the changes being made to the final version of the rule making are non-substantive. The changes serve to clarify the frequency and percentage of unannounced fire drills and the acceptable use of portable space heaters. The final rule allows for the use of portable space heating devices under certain circumstances, but their use shall remain prohibited in patient sleeping and treatment areas.

Assessment of Public Comment

The agency received one letter of comment regarding the proposed rule making amending 14 NYCRR Part 582, "Operation of Hospitals for Persons with Mental Illness." The commenter expressed the belief that the fire safety provisions added to Part 582 should ultimately result in safer facilities. The comment letter included the following two issues:

Issue: The commenter felt that clarification is needed regarding the frequency of unannounced fire drills and the percentage of unplanned fire drills.

Response: The Office agrees and has amended the regulation. The final regulation clarifies that at least 50 percent of fire drills must be unannounced. Further, the regulation also clarifies that properly documented actual or false alarms may be used for up to 50 percent of the required drills for each shift, assuming all elements of the facility's fire plan were implemented.

Issue: The commenter expressed concern with the prohibition on the use of portable space heating devices. The commenter felt the language as written was overbroad in that it would prevent the use of portable heaters in buildings not housing patients, such as garages, storage buildings, guard/parking attendant booths and similar detached outbuildings.

Response: The Office agrees and has amended the regulation to allow

for the use of portable space heating devices in buildings on the grounds of facilities that do not include patient sleeping and treatment areas. The use of portable space heaters must be in accordance with guidelines of the Office and meet the safety criteria listed in Section 582.8(e)(4)(ii) of Title 14 NYCRR.

NOTICE OF ADOPTION

Personalized Recovery Oriented Services (PROS)

I.D. No. OMH-39-12-00006-A

Filing No. 1168

Filing Date: 2012-11-19

Effective Date: 2012-12-05

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

Action taken: Amendment of Part 512 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a), 43.02(a), (b) and (c); and Social Services Law, sections 364(3) and 364-a(1)

Subject: Personalized Recovery Oriented Services (PROS).

Purpose: Adjust fees paid to providers as well as update and clarify existing PROS regulations.

Text or summary was published in the September 26, 2012 issue of the Register, I.D. No. OMH-39-12-00006-EP.

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

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

Assessment of Public Comment

The agency received no public comment.

Office of Parks, Recreation and Historic Preservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

No-Smoking Areas at OPRHP Parks, Recreational Facilities and Historic Sites

I.D. No. PKR-49-12-00011-P

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

Proposed Action: Addition of Part 386 to Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, section 3.09(2), (5) and (8)

Subject: No-smoking areas at OPRHP parks, recreational facilities and historic sites.

Purpose: To allow OPRHP to designate and enforce non-smoking areas at parks, historic sites and facilities.

Text of proposed rule: A new Part 386 is added to 9 NYCRR as follows:

Part 386

NO SMOKING AREAS

§ 386.1 No Smoking Areas

(a) Smoking of tobacco or any other product is prohibited in the following outdoor locations under the jurisdiction of the office:

(1) any No Smoking Area designated by the commissioner. Examples of areas that may be designated as No Smoking Areas include: playgrounds, swimming pool decks, beaches, sport or athletic fields and courts, recreational facilities, picnic shelters, fishing piers, marinas, historic sites, group camps, park preserves, gardens, concessions, educational programming, or other areas where visitors congregate, including within fifty feet of entrances to buildings; and

(2) each state park in New York City, with the exception that the commissioner may allow smoking in limited areas within each park.

(b) The commissioner shall approve and periodically update a statewide

list of designated No Smoking Areas that shall be published on the office's public website.

(c) The office shall install signage at each designated No Smoking Area, informing the public that smoking is prohibited in such areas.

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, OPRHP, Albany, NY 12238 (for USPS mailing), 625 Broadway, Albany NY 12207 (for physical delivery), (518) 486-2921, email: rule.making@parks.ny.gov

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

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

Consensus Withdrawal Objection

An advocacy organization that enforces smokers' rights through litigation contends the proposed regulation exceeds the Office of Parks, Recreation and Historic Preservation's delegated statutory authority.

Regulatory Impact Statement

1. Statutory Authority

The Office of Parks, Recreation and Historic Preservation (State Parks) proposes a rule that authorizes the Commissioner to establish and enforce no-smoking areas in certain designated outdoor locations in state parks, historic sites and other facilities under the agency's jurisdiction. Section 3.09 of the Parks, Recreation and Historic Preservation Law (PRHPL) grants general authority to State Parks to regulate, operate and maintain properties under its jurisdiction as follows:

- PRHPL § 3.09(2) requires State Parks to operate and maintain historic sites and objects, parks, parkways, and recreational facilities under its jurisdiction.
- PRHPL § 3.09(5) authorizes the Office of Parks, Recreation and Historic Preservation to provide for the health, safety and welfare of the public using facilities under its jurisdiction.
- PRHPL § 3.09(8) authorizes State Parks to adopt, amend, or rescind rules, regulations, and orders as necessary or convenient for the performance or exercise of the functions, powers, and duties of the office.

Additionally, subdivision (3) of section 1399-r of the Public Health Law (the Clean Indoor Air Act) states, in part, that smoking may not be permitted where prohibited by any other law, rule or regulation of any state agency or political subdivision of the state.

2. Legislative Objectives

The rule would implement the Legislature's broad grant of authority to State Parks to manage and operate its facilities to protect public health, safety and welfare.

3. Needs and Benefits

State Parks oversees 179 state parks, 35 historic sites and other facilities, providing diverse recreational opportunities and educational programming to more than 58 million annual visitors. The proposed rule would allow the Commissioner to establish and enforce smoke-free areas in limited outdoor spaces within some (but not all) facilities in settings primarily where people congregate. State Parks anticipates that outdoor areas designated as "no-smoking" would be limited to less than five percent of the total 330,000-acre state park system, and smoking would continue to be allowed in most campsites, open air picnic areas, parking areas and throughout undeveloped areas.

Additionally, in New York City, with limited exceptions, Riverbank, Roberto Clemente, East River, Clay Pit Ponds, Gantry Plaza, Bayswater and Four Freedoms State Parks would be designated entirely smoke-free parks. These state parks are small in comparison to parks in the rest of the State and these parks would be regulated in a manner consistent with other public parks in New York City, where smoking is prohibited in all city-run parks.

The rule is needed to allow all of our patrons to enjoy the outdoors, breathe fresh air, walk, swim, exercise and experience State Parks' amenities and programs without being exposed to secondhand tobacco smoke and tobacco litter. Specifically, the proposed rule would provide the following public benefits:

1. **Public Health.** There is a broad body of scientific evidence documenting the public health hazards of exposure to second hand tobacco smoke (<http://www.surgeongeneral.gov/library/reports/tobaccosmoke/index.htm> (last visited 11/01/2012)). By allowing the Commissioner to establish and enforce smoke-free areas, the proposed regulation would reduce exposure to second hand tobacco smoke for patrons and staff in facility locations where large numbers of people congregate.

2. **Public Enjoyment of State Parks and Historic Sites.** In addition to potential health risks, exposure to tobacco smoke negatively impacts the experience of park visitors, as does litter from discarded cigarette and cigar butts. Visitors to playgrounds, beaches, swimming pool decks, picnic shelters, and other areas where large numbers of people congregate,

prefer not to have their park experience degraded by unhealthy and irritating exposure to second hand tobacco smoke and litter. A recent survey of patrons at Lake Welch Beach, Jones Beach and Walkway on the Hudson State Parks found strong support for designation of no-smoking areas.

3. **Healthy Lifestyles.** State parks provide a vital setting to promote healthy lifestyles for the more than 58 million people who visit them each year. Adoption of the rule would promote smoking cessation efforts, and assist in preventing children from becoming addicted to tobacco because they would be viewing smoking less frequently in outdoor recreational settings. (<http://www.tobaccofreekids.org/research/factsheets/pdf/0103.pdf> (last visited 11/01/2012)).

4. **Operational Savings.** State Parks staff expends time and operational resources each year cleaning up cigarette butt litter - for example, cleaning up cigarette butts in the sand on swimming beaches. Establishing smoke-free areas would reduce agency costs.

5. **Fully Implement Successful Pilot Programs.** Managers at various State Parks facilities had been establishing voluntary no-smoking areas on an ad hoc basis in response to operational and maintenance needs, together with patron requests, long before Parks initiated this rulemaking, and patrons there have supported these designations. For example, the 2-year pilot program designating swimming beaches in our Saratoga-Capital region as no-smoking on a voluntary basis has been successful with the public, and has significantly reduced cigarette butt litter on these beaches.

Sixty percent of New York State adults favored limiting smoking outdoors (http://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume5/n5_eliminating_smoking_from_public_parks.pdf (last visited 11/01/2012)). And, restricting smoking in parks and playgrounds is becoming the norm in New York State. More than 240 municipalities have adopted rules limiting smoking in outdoor settings. (<http://www.tobaccofreenys.org/Outdoor-Tobacco-Use-Policies-NY.html> (last visited 11/01/2012)). New York City has prohibited smoking in all of its parks. Other states are considering similar measures, for example, the State of Maine prohibits smoking on state beaches and parks.

It is important to stress that the proposed rule would not prohibit people who smoke from visiting state parks and historic sites or from participating in recreational, cultural, or educational activities offered at these facilities. At virtually all designated no-smoking areas, such as playgrounds, beaches and picnic shelters, visitors who choose to smoke will have access to other areas where smoking is not prohibited. New York City is the only State Park Region where all parks would be designated smoke-free. The state parks there are modest in size (the largest is 28 acres) and visitors can easily walk to a sidewalk or area outside of the park where smoking is allowed.

It is also important to note that the proposed rule would only apply to and affect use of properties operated and maintained by State Parks. The rule does not regulate activities on parkland owned by the federal government, county or municipal governments or private entities. The proposed regulation would be no different in application from the many other rules adopted and enforced by the agency to promote the public's overall enjoyment of state parks, historic sites and recreational facilities. (See, 9 NYCRR § 370.1(c) and (d)) Examples of similar regulations include: prohibiting loud playing of music, enforcing quiet hours in campgrounds after 10:00 pm, keeping pets on leashes, prohibiting consumption of alcoholic beverages except under certain controlled circumstances, prohibiting glass containers on swimming beaches and pool decks, allowing fires only in grills and fireplaces, and so forth. (See, 9 NYCRR §§ 375.1; 385.1).

4. Costs

- a. Costs to State Government - None.
- b. Costs to Local Government - None.
- c. Costs to Private Regulated Parties - A person who fails to comply with the rule could be issued a ticket for a violation that usually includes a fine up to \$250 and may also require payment of a mandatory local surcharge. (See, PRHPL §§ 27.11 and 27.12; Penal Law §§ 10.00(3) and 80.05(4); see also, Criminal Procedure Law § 1.20(39) - definition of a "petty offense.")
- d. Costs to the Office of Parks, Recreation and Historic Preservation - the only costs to the agency are those minimal costs associated with signage for designated no-smoking areas.

5. Local Government Mandates

The proposed rule does not impose any additional program, service, duty, or responsibility upon local governments.

6. Paperwork

The proposed rule does not impose any additional paperwork requirements.

7. Duplication

The proposed rule does not duplicate, overlap, or conflict with any other State or federal statute or regulation.

8. Alternatives

State Parks has considered three alternatives. The first alternative would

have continued the practice of voluntary compliance with State Parks' no-smoking guidelines. Voluntary compliance is currently achieved through the posting of "no smoking" signs without any enforcement mechanism. Since more than 80% of adult New Yorkers do not smoke, however, not smoking has become the cultural norm. State Parks is compelled, therefore, to recognize that public sentiment on the smoking issue has evolved to the point that a majority of visitors would support a narrowly-drawn, enforceable rule enforcing no-smoking areas where people (especially children) congregate. (http://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume5/n6_survey_method_change_indications.pdf (last visited 11/01/2012)).

In contrast to continuing the existing voluntary alternative, the proposed rule would create a reasonable enforceable prohibition on smoking in certain delineated areas where large numbers of people congregate and it would provide greater certainty for park patrons who do not want to be exposed to second-hand tobacco smoke and tobacco litter.

The second alternative would have adopted an outright ban on smoking in all State Parks facilities, similar to the approach that New York City and other local governments have adopted. Given that State Parks are typically much larger than these municipal parks (several state parks exceed 10,000 acres), the agency concluded that a system-wide ban is not practical.

Under the third alternative the Commissioner would have designated and enforced no-smoking areas through signage and staff directions only. Failure to obey would have been addressed through a general citation for disorderly conduct. See, 9 NYCRR § 375.1(f)(1). However, State Parks decided that it would be fairer and clearer to the public to formally adopt a specific narrowly-drawn regulation authorizing the designation of no-smoking areas through publication and signage. It would be enforced through a citation for violation of the specific rule proposed here.

9. Federal Standards

There are no applicable federal statutes regulating smoking in State Parks' facilities, and the proposed rule does not exceed federal standards.

10. Compliance Schedule

Enforcement will occur upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

This rule allows the Commissioner of the Office of Parks, Recreation and Historic Preservation to designate and enforce No Smoking Areas at parks, historic sites and recreational facilities. It does not affect small businesses or local governments or recordkeeping requirements.

Rural Area Flexibility Analysis

This rule allows the Commissioner of the Office of Parks, Recreation and Historic Preservation to designate and enforce No Smoking Areas at parks, historic sites and recreational facilities. It does not affect small businesses or local governments or recordkeeping requirements.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the rule will have no impact on jobs and employment opportunities.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of Certain Requirements of 16 NYCRR Section 255.604 Concerning "Operator Qualification"

I.D. No. PSC-49-12-00001-EP

Filing Date: 2012-11-14

Effective Date: 2012-11-14

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

Proposed Action: The PSC adopted an order providing a further waiver of certain requirements of 16 NYCRR § 255.604 concerning operator qualification during the pendency of work related to storm restoration of service efforts by the State's gas utilities as a result of outages caused by Hurricane Sandy.

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

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

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis pursuant to State Administrative Procedures Act (SAPA) § 202(6). Failure to grant the waiver on an emergency basis could result in the hampering of efforts to timely restore gas utility service resulting from damage caused by Hurricane Sandy. The hampering of such restoration efforts would adversely impact the public safety, health and general welfare of the citizens of New York. As a result, compliance with the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest, and an immediate waiver of certain requirements of 16 NYCRR § 255.604 is necessary for the preservation of the public health, safety and general welfare.

Subject: Waiver of certain requirements of 16 NYCRR section 255.604 concerning "operator qualification."

Purpose: The waiver will allow flexibility in utility personnel to facilitate the restoration of gas service impacted by Hurricane Sandy.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.dps.ny.gov): The Public Service Commission adopted an order waiving on a temporary basis, subject to the terms and conditions set forth in the order, the requirements of 16 NYCRR § 255.604 regarding to "Operator Qualification" for additional restoration tasks during the pendency of restoration efforts by the State's gas utilities resulting from storm damage caused by Hurricane Sandy.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 10, 2013.

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: deborah.swatling@dps.ny.gov

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

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

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

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

(12-G-0504EP2)

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Temporary Waiver of the Notification Requirement Contained in 16 NYCRR Section 261.53

I.D. No. PSC-49-12-00010-EP

Filing Date: 2012-11-16

Effective Date: 2012-11-16

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

Proposed Action: The Public Service Commission adopted an order extending a temporary waiver of the notification requirement contained in 16 NYCRR section 261.53 that could delay restoration of gas service to customers affected by Hurricane Sandy as well as other storm recovery activities.

Statutory authority: Public Service Law, sections 4, 65 and 66

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

Specific reasons underlying the finding of necessity: Approval of the extension of the temporary waiver of 16 NYCRR Section 261.53 should be adopted on an emergency basis pursuant to SAPA § 202(6). Requiring compliance with 16 NYCRR Section 261.53 while gas utilities work to restore gas service to customers in the aftermath of Hurricane Sandy could cause delays in restoring gas service that would threaten the public health, safety and general welfare. As a result, compliance with the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest.

Subject: Temporary waiver of the notification requirement contained in 16 NYCRR section 261.53.

Purpose: To provide gas utilities with a temporary waiver of 16 NYCRR section 261.53.

Text of emergency/proposed rule: On November 16, 2012, the Public Service Commission issued an Order granting an extension of a temporary waiver of the notification requirement contained in 16 NYCRR Section 261.53, on an emergency basis. That regulation required utilities to notify local Department of Social Services (DSS) offices when the disconnection of gas service to results in a customer being unable to use heating facilities. As a result of Hurricane Sandy, The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid have a large number of customers who currently do not have gas service and need to have such service restored. In the process of restoring service to these customers, these utilities' employees may discover hazardous conditions within buildings which prevent them from restoring gas service. Compliance with the notification requirement of 16 NYCRR Section 261.53 under these circumstances could result in delays to utility restoration efforts and hamper local DSS offices contemporaneous storm recovery efforts.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 13, 2013.

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: deborah.swatling@dps.ny.gov

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

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

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

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

(12-G-0500EP2)

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Child Support

I.D. No. TDA-49-12-00014-P

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

Proposed Action: Amendment of sections 346.2 and 347.17 of Title 18 NYCRR.

Statutory authority: United States Code, section 654(6)(B)(ii) of title 42; Code of Federal Regulations, sections 302.33 and 303.2 of title 45; Social Services Law, sections 20(3)(d), 111-a, 111-c(4)(a) and 111-g(3)(a) and (b); Family Court Act, section 453(a)

Subject: Child Support.

Purpose: To address child support services applications and notification requirements and the imposition of an annual service fee; and set forth requirements concerning the provision of legal services and the recovery of associated costs.

Text of proposed rule: Section 346.2 of Title 18 of the NYCRR is amended to read as follows:

§ 346.2 Application for services to individuals not otherwise eligible.

(a) Individuals not otherwise eligible may apply for child support services by signing and providing to a local child support enforcement unit an application form prescribed by the Office.

(b) Any petition, written application or written motion to a court for the establishment of paternity or the establishment, modification and/or enforcement of a child support obligation for persons not in receipt of [aid to dependent children] public assistance and care or foster care or continuing to receive services as provided in section 347.13 of this Title which contains a signed statement requesting child support [enforcement] services[,] as provided under Title 6-A of the Social Services Law, consti-

tutes an application for such services pursuant to section 347.17 of this Title. However, where a court proceeding resulted in an order for child or child and spousal support payable through the [SCU] support collection unit, based upon a paternity or support petition filed prior to September 30, 1990, such petition and/or moving papers are deemed to be an application for child support [enforcement] services.

[(b) The SCU must require all petitioners in child support cases referenced in subdivision (a) of this section except public officials acting in their official capacities, to provide the following data:

(1) their names;

(2) their addresses, except that a post-office box will not be accepted unless the U.S. Postal Service does not make residential delivery to the petitioner's home;

(3) the name(s) and date(s) of birth of all children under the subject order;

(4) their social security numbers;

(5) a statement by the petitioner whether he or she is in receipt of, or has applied for, home relief or aid to dependent children; and

(6) such other information as the department may require.]

(c) [For the purpose of this section, child support enforcement services do not include legal services or field investigative services.] *Where an individual has made application for child support services pursuant to subdivision (b) of this section, the support collection unit must obtain a copy of the petition, written application or written motion to the court which clearly indicates a request for services. The support collection unit must advise such individual to provide any information the support collection unit deems necessary to provide services.*

(d) The support collection unit must provide all individuals applying for child support services pursuant to subdivisions (a) or (b) of this section information describing all available child support services, the individual's rights and responsibilities, and the State's fees, cost recovery and distribution policies on a form prescribed by the Office. The support collection unit must provide such information to all applicants or recipients of public assistance and care and foster care within 5 days of referral to the child support enforcement unit.

Section 347.17 of Title 18 of the NYCRR is amended to read as follows:

§ 347.17 Child support services available to individuals not otherwise eligible and to individuals who become ineligible for public assistance and care or foster care.

(a) All child support services under this Part and Part 346 of this Title must be made available to any individual not otherwise eligible upon receipt of either (1) a signed application on a form prescribed by the [department] Office and filed by such individual with [the] a child support enforcement unit or support collection unit [of the county where such individual resides], or (2) an application made to a court, as set forth in section 346.2 of this Title, and to individuals who become ineligible for public assistance and care or foster care. Services are available only for the [purpose] purposes of locating parents, establishing paternity and/or [obtaining] establishing, modifying or enforcing child support. Such services cannot be provided in the absence of an application, as set forth in this subdivision. [Application must be made for all necessary services that are rendered free of charge, as indicated in subdivision (f) of this section.] Application for legal services [that are rendered for a fee], for which costs are recovered as indicated in subdivision [(g)] (d) of this section, is optional. Application forms for child support services must be:

(1) readily accessible to the public;

(2) provided to an individual on the day the individual makes a request in person, or sent to an individual no later than [five] 5 working days after a written or telephone request. *The support collection unit must ensure [All] all such application forms [must be] accompanied by information describing available services, the individual's rights and responsibilities, fees, cost recovery and distribution policies, as provided in subdivision (d) of section 346.2 of this Title; and*

(3) accepted as filed on the day received.

(b) Fees and cost recovery for child support services are as follows:

(1) The application fee for child support services [not listed under section 347.13(e) of this Part] for individuals applying pursuant to section 346.2 of this Title shall be \$1, which shall be paid by the [department] Office. [For the services specified in subdivision (d) of this section, a "Right to Recovery" agreement shall be required and the district shall recover the actual cost of such services from the collections made on behalf of the applicant.]

(2) An annual service fee of \$25 shall be imposed for any individual receiving child support services who has never received assistance pursuant to Title IV-A of the federal Social Security Act if at least \$500 of support has been collected in the federal fiscal year on the individual's child support case. Where a custodial parent has children with different noncustodial parents, the order of support payable by each noncustodial parent shall be a separate child support case for the purpose of imposing an annual service fee. The annual service fee shall be deducted from child

support payments received on behalf of the individual receiving child support services pursuant to section 347.13 of this Part. In international cases under section 111-g (3) (b) of the Social Services Law which meet the criteria for imposition of the fee under this paragraph, the annual service fee shall be imposed but may not be collected from the country requesting services or from an individual living in another country unless permitted by federal law or regulation.

(3) (i) For legal services in subdivision (d) of this section, execution of a "Right to Recovery Agreement for Legal Services" shall be required and the social services district shall recover either standardized costs for attorneys provided by the social services district or actual costs of such services if legal services are provided by contract attorneys.

(ii) If the applicant for legal services is the support obligee, the applicant shall assign to the social services district twenty-five percent of the current support obligation pursuant to the order of support. If there is no current support obligation pursuant to the order of support, the applicant shall assign an amount equal to twenty-five percent of the former current support obligation. If there never was a current support obligation pursuant to the order of support, the applicant shall assign an amount equal to twenty-five percent of the additional amount determined pursuant to section 347.9(e) of this Part. The assigned amount for legal services shall be satisfied by collections received by the support collection unit on behalf of the child(ren) pursuant to section 347.13 of this Part until the total assigned costs for those legal services provided are reimbursed.

(iii) If the applicant for legal services is the support obligor, the applicant shall pay an additional amount equal to twenty-five percent of the current support obligation pursuant to the order of support. If there is no current support obligation pursuant to the order of support, the applicant shall pay an additional amount equal to twenty-five percent of the former current support obligation. If there never was a current support obligation pursuant to the order of support, the applicant shall pay an additional amount equal to twenty-five percent of the additional amount determined pursuant to section 347.9(e) of this Part. The amount to be paid for legal services shall be paid separately to the support collection unit until the total costs for those legal services provided are reimbursed.

(4) The attorney for the social services district may seek recovery from the noncustodial parent of the assigned cost of legal services, counsel fees, and expenses when authorized by law. Sums recovered for the cost of legal services shall be credited against the amounts due pursuant to the "Right to Recovery Agreement for Legal Services."

(c) The child support services available upon application or pursuant to subdivision 347.13(e) of this Part without a "Right to Recovery Agreement for Legal Services" are:

(1) assistance in the location of [absent] putative fathers and noncustodial parents, including the processing of the name of the [absent parent] putative fathers and noncustodial parents through the State Parent Locator [files] Service and Federal Parent Locator [files] Service in accordance with section 347.7 of this Part;

(2) assistance in establishing paternity and establishing and modifying child support obligations including the preparation and filing of [support,] paternity, [violation] support and modification petitions as required in accordance with sections 347.6 and 347.8 of this Part;

(3) collection, distribution, and disbursement of child support payments in accordance with federal and State law and section 347.13 of this Part;

(4) enforcement of support obligations, through the use of all available administrative enforcement remedies, as provided in Parts 346 and 347 of this Title [including the mandatory implementation of income executions when absent parents default on their support obligation], and if necessary, judicial enforcement remedies, consistent with the provisions of section 347.9 of this Part; and

(5) [collection of delinquent child support payments and arrears through the Federal, New York State and/or New York City tax refund offset process in accordance with section 346.9 of this Title; and] the review and cost of living adjustment of orders of support.

[(6) the review and adjustment of child support orders, except for legal representation related to such activity.]

(d) (1) A "Right to Recovery Agreement for Legal Services" signed by the applicant shall be required where [the following] legal services are requested.

[(i) field investigation; and/or

(ii) legal representation.]

(2) (i) The attorney for the social services district may appear in any court proceeding brought by or on behalf of an applicant for legal services. The attorney appearing on behalf of the social services district shall represent the interests of the social services district and not the interests of any other party. The interests of the social services district shall include, but not be limited to: establishing paternity; establishing and modifying orders of support in accordance with the Child Support Standards Act; and enforcing orders of support.

(ii) The appearance by the attorney for the social services district in any action or the provision of services pursuant to Title 6-A of the Social Services Law or section 580-307 of the Family Court Act does not create an attorney-client relationship between the social services district or its attorneys, and any party. The social services district shall inform any applicant for child support services in writing that providing such services, including legal services provided by an attorney, does not create an attorney-client relationship with the applicant.

(3) The social services district shall make [these] legal services available upon request and shall have sufficient [investigators and] attorneys to provide these services[.]; provided, however, that nothing herein shall require the social services district to provide services it determines to be without substantial merit or contrary to law.

[(3) The district shall, pursuant to the "Right to Recovery" agreement, deduct an amount no larger than 25 percent from each child support payment received on behalf of the applicant until the actual costs of the above services are reimbursed.

(4) When a child support enforcement client signs the "Right to Recovery" provision of the application for child support enforcement services and a hearing is held for the establishment of paternity and/or a support order, the Child Support Enforcement Unit or the Support Collection Unit representative must request the court to make the order of support payable to the Support Collection Unit, for the purposes of recovering field investigation and/or legal representation costs.]

(e) The [State Office] Division of Child Support Enforcement and each [local] social services district's child support enforcement/support collection unit shall regularly and frequently publicize the availability of child support [enforcement] services. This information shall be made available through a variety of media services including public service announcements. All publicity must include information on any application fees which may be imposed for such support collection services and a telephone number [and] or postal address where additional information about such services may be obtained.

Text of proposed rule and any required statements and analyses may be obtained from: Jeanine S. Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, Floor 16C, Albany, NY 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@otda.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority:

Social Services Law (SSL) § 20(3)(d) authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

SSL § 111-a requires OTDA to promulgate regulations necessary to obtain and retain approval of its child support state plan, required to be submitted to the federal Department of Health and Human Services by Part D of Title IV of the federal Social Security Act.

Title 42 of the United States Code (42 USC) § 654(6)(B)(ii), also known as § 454(6)(B)(ii) of the federal Social Security Act, provides that in the case of an individual who has never received assistance under a state program funded under Part A of Title IV of the federal Social Security Act and for whom the state has collected at least \$500 of support, the state shall impose an annual fee of \$25 for each case in which services are furnished.

Title 45 of the Code of Federal Regulations (45 CFR) § 302.33(a)(1)(i) provides that states must make available all child support services under their state plans to any individual who files an application for the services with a child support agency.

Federal regulations at 45 CFR § 302.33(d) allow states to recover the costs of various child support services beyond an application fee by recovering either the actual cost or a standardized cost for the services.

Federal regulations at 45 CFR § 303.2(a)(2) provide, in part, that information describing available services, the individual's rights and responsibilities, and the state's fees, cost recovery, and distribution policies must accompany all applications for services, and be provided to applicants/recipients of Medicaid and assistance under Parts A and E of Title IV of the federal Social Security Act.

Family Court Act (FCA) § 453(a) gives a support collection unit the authority to originate and prosecute support proceedings on behalf of persons in receipt of public assistance or in receipt of services pursuant to SSL § 111-g.

SSL § 111-c(4)(a) provides that a social services district represents the interests of the district in performing its functions and duties, and not the interests of any party. The interests of a district include, but are not limited to, establishing paternity, and establishing, modifying and enforcing child support orders.

SSL § 111-g(3)(a) provides that a person who is receiving child support

services pursuant to this section who has never received assistance pursuant to Part A of Title IV of the federal Social Security Act shall be subject to an annual service fee of \$25 for each child support case if at least \$500 of support has been collected in the federal fiscal year. Where a custodial parent has children with different noncustodial parents, the order payable by each noncustodial parent shall be a separate child support case for the purpose of imposing an annual service fee. The fee shall be deducted from child support payments received on behalf of the individual receiving services.

SSL § 111-g(3)(b) provides that in international child support cases under 42 USC § 654(32) that meet the criteria for the imposition of the annual service fee, the annual service fee must be imposed upon, but may not be collected from, the country requesting services or a person living in another country unless collection is permitted by federal law or regulation.

2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that child support enforcement services are provided to eligible persons to ensure that, to the greatest extent possible, parents provide financial support for their children.

3. Needs and Benefits:

The amendments to 18 NYCRR § 346.2 are being made to ensure the state's compliance with the child support application and notification requirements provided in federal regulations. Pursuant to 45 CFR § 302.33, states must make available all services to any individual who files an application with the child support agency. Pursuant to 45 CFR § 303.2, information describing available services, the individual's rights and responsibilities, and the state's fees, cost recovery, and distribution policies must accompany all applications for services, and be provided to all applicants/recipients of Medicaid and assistance programs under Parts A and E of Title IV of the federal Social Security Act. Existing state regulations at 18 NYCRR § 346.2 allow an individual to apply for child support services through court proceedings to establish paternity, or establish, modify, or enforce a child support obligation, and not necessarily through a form prescribed by OTDA. The proposed amendments will require local support collection units (SCUs) to obtain a copy of the request for child support services made in any petition, written application or written motion to a court to ensure the individual has in fact applied for services in a manner authorized by law, and to advise such individuals to provide the SCU with any information the SCU deems necessary to provide services. The amendments ensure that all federal notification requirements are met.

The amendments to 18 NYCRR 347.17 are being made as a result of federal changes requiring the imposition of an annual service fee. Section 454(6)(B) of the Deficit Reduction Act (DRA) of 2005 amended 42 USC § 654 and Chapter 57 of the Laws of 2008 amended SSL § 111-g to require the service fee. The DRA of 2005 requires that states impose a mandatory fee of \$25 for a family that has never received assistance pursuant to Title IV-A of the Social Security Act and for whom the state has collected at least \$500 of support during the federal fiscal year. Enabling legislation amending SSL § 111-g was enacted in the state's 2008 Budget requiring that the fee be withheld from support collected. The enabling legislation also provided that in international child support cases under section 454(32) of the federal Social Security Act which meet the criteria for the imposition of the annual service fee, the fee must be imposed but may not be collected from the country requesting services or the recipient living in another country unless permitted by federal law or regulation. The proposed regulatory amendments will set forth the procedure by which New York State will impose the federally required annual service fee.

In addition, Chapter 343 of the Laws of 2009 amended the Family Court Act (FCA) § 453 and SSL § 111-c to clarify certain roles and authorities of a local social services district in providing child support services. The amendments to FCA § 453 clarified that a support collection unit has the authority to originate and prosecute proceedings under FCA § 422 on behalf of persons receiving public assistance or in receipt of services pursuant to SSL § 111-g. The amendments to SSL § 111-c provided that a social services district represents the interests of the district in performing its duties and not those of any other party. Providing child support services, including legal services, does not constitute or create an attorney-client relationship between the individual receiving services and the attorney representing the district. In addition, the district may appear in any action to establish paternity, or to establish, modify, or enforce an order of support when an individual is receiving child support services. The proposed amendments to 18 NYCRR § 347.17 will make state regulation consistent with state statute.

Federal regulations at 45 CFR § 302.33(a) require that services under a state plan must be made available to any individual who files an application for services. Legal services, therefore, must be made available to all individuals who file an application pursuant to SSL § 111-g, and in addition, request legal services by signing a "Right to Recovery Agreement for

Legal Services." Pursuant to 45 CFR § 302.33(d), states may recover costs beyond an application fee, either by recovering the actual cost of the services or a standardized cost. The proposed amendments provide clarification to the existing state regulation concerning the provision of legal services and the manner used to recover the associated costs.

4. Costs:

The proposed amendments to the regulations will not require the social services districts to incur any initial capital costs. The anticipated fiscal impact associated with the federally mandated annual service fee is a modest increase in program income that will be shared between the federal, state, and local governments. For federal fiscal years 2008-09 and 2009-10, the first two years the fee was withheld from collections in the state, approximately \$4 million was reported as program income in each year as a result of the fee withholding. Any new local district costs of providing legal services will be offset in part by recovery of such costs from child support collected and from federal and state reimbursement for providing services under Title IV-D of the Social Security Act.

5. Local Government Mandates:

The proposed amendments conform the regulations to existing statutory requirements. Local social services districts will be required to ensure that all individuals requesting child support services have made application by one of two ways authorized by state law, and by ensuring all individuals applying for child support services, and all applicants/recipients of Medicaid and assistance under Parts A and E of Title IV of the federal Social Security Act receive notification of child support program information. The proposed amendments concerning child support applications and services are clarifying in nature and are consistent with federal and state laws.

Local social services districts have followed procedural rules to implement the federally required annual service fee since 2008. Local districts must continue to report to OTDA's Division of Child Support Enforcement their effectiveness and efficiency in providing for the annual service fee and for legal services.

The existing regulations require the districts to make legal services available for requesting individuals based on a signed "Right to Recovery Agreement for Legal Services" and to recover costs for legal services provided. The proposed amendments concerning the provision of legal services and cost recovery are clarifying in nature. To the extent that local districts have not provided for legal services in the past, there may be new or additional requirements imposed on local social services districts.

6. Paperwork:

One new form will be required to be used by local district staff in carrying out their responsibilities for notifying recipients of the option for, and right to recovery of, legal services. Local districts and/or their attorneys providing legal services will be required to keep time records, and notify recipients of legal services of the associated costs. Local districts will be required to provide individuals receiving child support services a new form to satisfy the federal notification requirements.

7. Duplication:

The proposed amendments do not duplicate, overlap or conflict with any existing federal or state law or regulation.

8. Alternatives:

There are no significant alternatives to consider because the proposed amendments are consistent with federal and state statutes and regulations.

9. Federal Standards:

The proposed amendments do not exceed federal minimum standards for the same subject.

10. Compliance Schedule:

Because the state statutes implementing the federal requirements are already in effect, local social services districts should already be in compliance with the proposed amendments on their effective date.

Regulatory Flexibility Analysis

1. Effect of Rule:

Each of the 58 local social service districts in New York State will be affected by the proposed regulatory amendments.

2. Compliance Requirements:

The proposed amendments conform the regulations to existing statutory requirements. Local social services districts will be required to comply with the proposed amendments by ensuring that all individuals requesting child support services have made application by one of two ways authorized by state law, and by ensuring all individuals applying for child support services, and all applicants/recipients of Medicaid and assistance programs under Parts A and E of Title IV of the federal Social Security Act receive notification of child support program information. Districts will also be required to ensure that the federally required annual service fee is accounted for and reported. The fee withholding and reporting process is largely automated, however. Districts will also be required to make legal services available for requesting individuals based on a signed "Right to Recovery Agreement for Legal Services," and to recover costs for legal services provided.

3. Professional Services:

To the extent local social services districts already comply with the current requirement to provide legal services, no new professional services will be imposed on local districts.

4. Compliance Costs:

The proposed amendments to the regulations will not require the social services districts to incur any initial capital costs. The anticipated fiscal impact associated with the federally mandated annual service fee is a modest increase in program income that will be shared between the federal, state, and local governments. For federal fiscal years 2008-09 and 2009-10, the first two years the fee was withheld from collections in the state, approximately \$4 million was reported as program income in each year as a result of the fee withholding. Any new local district costs of providing legal services will be offset in part by recovery of such costs from child support collected and from federal and state reimbursement for providing services under Title IV-D of the Social Security Act.

5. Economic and Technological Feasibility:

The Division of Child Support Enforcement within OTDA continues to assume all administrative cost and responsibility for the systematic programming for implementing the annual service fee. Technological feasibility is not a concern for local social services districts.

6. Minimizing Adverse Impact:

The proposed regulations will not have an adverse economic impact on social services districts.

7. Small Business and Local Government Participation:

The procedure for local social services districts to obtain an application from individuals requesting child support services is not new. The proposed amendments clarify the need to obtain a deeming application in instances where an individual requests child support services through a court. The proposed amendments ensure state regulations are consistent with federal application and notification requirements.

Local social services districts have followed procedural rules to implement the federally required annual service fee since 2008. The implementation of the annual service fee was and continues to be largely an automated process administered by OTDA's Division of Child Support Enforcement. Local districts must continue to report to OTDA's Division of Child Support Enforcement their effectiveness and efficiency in providing for the annual service fee and for legal services.

The proposed amendments concerning the provision of legal services and cost recovery policy are clarifying in nature.

The statutes on which these regulatory changes are predicated have been discussed with the local social services districts. OTDA and the social services districts have had ongoing discussions regarding these requirements, and this regulatory proposal will bring state regulations into compliance with federal and state requirements and, at the same time, address the practical, day-to-day needs of the districts.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The proposed regulations will affect the 44 rural social services districts in the State.

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

Local social services districts in rural districts will be required to comply with the proposed amendments by ensuring that all individuals requesting child support services have made application by one of two ways authorized by state law, and by ensuring all individuals applying for child support services, and all applicants/recipients of Medicaid and assistance programs under Parts A and E of Title IV of the federal Social Security Act receive notification of child support program information.

Local social services districts in rural areas will also need to be sure that the federally required annual service fee is accounted for and reported. The fee withholding and reporting process is largely automated, however. The Division of Child Support Enforcement within OTDA continues to assume all administrative costs and responsibility for the systematic programming for the annual service fee. Consequently, technological feasibility is not a concern for local social services districts in rural areas.

Lastly, current regulations require social services districts in rural areas to make legal services available for requesting individuals based on a signed "Right to Recovery Agreement for Legal Services" and to recover costs for legal services provided. One new form will be required to be used by local district staff in carrying out their responsibilities for notifying recipients of the option for and the right to recovery of legal services. To the extent local social services districts in rural areas already comply with the current requirement to provide legal services, no new professional services will be imposed on local districts. Local districts will be required to provide individuals receiving child support services a new form to satisfy the federal notification requirements.

3. Costs:

The proposed amendments to the regulations will not require the social services districts in rural areas to incur any initial capital costs. The

anticipated fiscal impact associated with the federally mandated annual service fee is a modest increase in program income that will be shared between the federal, state, and local governments. For Federal Fiscal Years 2008-09 and 2009-10, the first two years the fee was withheld from collections in the state, approximately \$4 million was reported as program income in each year as a result of the fee withholding. Any new local district costs of providing legal services will be offset in part by recovery of such costs from child support collected and from federal and state reimbursement for providing services under Title IV-D of the Social Security Act.

4. Minimizing adverse impact:

The proposed regulations will not have an adverse economic impact on social services districts in rural areas.

5. Rural area participation:

The procedure for local social services districts in rural areas to obtain an application from individuals requesting child support services is not new. In instances where an individual requests child support services through a court, the amendments clarify the local district needs to obtain a copy of the petition, written application, or written motion to the court which clearly indicates the individual is requesting services. The proposed amendments ensure state regulations are consistent with federal application and notification requirements.

Local social services districts in rural areas have followed procedural rules to implement the federally required annual service fee since 2008. The implementation of the annual service fee continues to be largely an automated process administered by OTDA's Division of Child Support Enforcement. Local districts in rural areas must continue to report to OTDA's Division of Child Support Enforcement their effectiveness and efficiency in providing for the annual service fee and for legal services.

The proposed amendments concerning the provision of legal services and cost recovery policy are clarifying in nature.

The statutes on which these regulatory changes are predicated have been discussed with the local social services districts in rural areas. OTDA and the social services districts have had ongoing discussions regarding these requirements, and this regulatory proposal will bring State regulations into compliance with federal and state requirements and, at the same time, address the practical, day-to-day needs of the districts.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulatory amendments because the rule will not have a substantial adverse impact on jobs and employment opportunities in either the public or private sector. The proposed amendments to 18 NYCRR § 346.2 and § 347.17 will have no impact on jobs and employment opportunities in New York State. It is evident from the subject matter of the amendments that the jobs of the child support enforcement personnel and the attorneys representing the local social services districts will not be impacted in any real way by the proposed amendments.