

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.

Office of Children and Family Services

NOTICE OF ADOPTION

Child Care for Children Experiencing Homelessness

I.D. No. CFS-24-16-00001-A

Filing No. 118

Filing Date: 2017-02-14

Effective Date: 2017-03-01

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

Action taken: Amendment of sections 404.1, 404.6, 404.8, 415.1, 415.2, 415.3, 415.4, 415.7, 415.8 and 415.9; and repeal of section 415.11 of Title 18 NYCRR.

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

Subject: Child care for children experiencing homelessness.

Purpose: To reduce barriers for children experiencing homelessness to receive child care assistance and to attend child care.

Text or summary was published in the June 15, 2016 issue of the Register, I.D. No. CFS-24-16-00001-P.

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

Revised rule making(s) were previously published in the State Register on January 4, 2017.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793, email: info@ocfs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

This assessment responds to the comments received on the Notice of Revised Rule Making for Child Care for Children Experiencing Homelessness, Parts 404 and 415 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), I.D. No. CFS-24-16-00001-RP, included in the New York State Register dated January 4, 2017. The Office of Children and Family Services (OCFS) received comments from 14 responders during the public comment period. Responses were received from representatives of child and family advocacy groups. OCFS combined similar comments from multiple responders in preparing the following assessment of public comments.

OCFS received comments from 14 responders supporting the elimination of parent fees for families experiencing homelessness. OCFS determined that no change will be made to the proposed regulations in response to these comments.

OCFS received comments from 14 responders supporting the higher differential rate for licensed and registered child care providers serving children experiencing homelessness. Additionally, one of these commenters supported providing social services districts with the option to set a differential rate for legally-exempt providers serving children experiencing homelessness. OCFS determined that no change will be made to the proposed regulations in response to these comments.

OCFS received comments from 14 responders stating that the proposed regulations do not comport with the requirements of federal statute, and therefore recommended OCFS revise the proposed regulations to establish a mandatory grace period for children experiencing homelessness and children in foster care to receive child care services while the family takes necessary action to comply with immunization and other health and safety requirements. Section 658E(c)(2)(I)(i)(I) of the Child Care and Development Block Grant Act (CCDBG) and Section 98.41(a)(1)(i)(C) of the Child Care and Development Fund (CCDF) regulations require Lead Agencies to establish a grace period that allows homeless children and children in foster care to receive child care subsidies while their families are taking any necessary action to comply with immunization and other health and safety requirements. Use of the word “allows” instead of “requires” indicates that child care providers can choose whether or not to implement the grace period. The proposed regulations are in compliance with federal statute and regulations, which only require OCFS to establish a permissible grace period. There is no requirement in federal statute or regulation for OCFS to establish a mandatory grace period. Moreover, Section 98.41(a)(1)(i)(C)(3) of the CCDF regulations allows Lead Agencies to establish grace periods for children who are not homeless or in foster care. As provided in the Preamble to the CCDF regulations the intent was to establish, at a minimum, a grace period for children experiencing homelessness and children in foster care, but not to limit the State’s ability to establish a grace period for other children. Section 2164(7)(a) of the New York State Public Health Law prohibits a child care program from allowing a child to attend such program for more than fourteen days (thirty days for a child coming from another state or country) without documentation of immunization. The grace period in New York State Public Health Law Section 2164(7)(a) is not limited to children experiencing homelessness or children in foster care; it applies to all children seeking enrollment at a child care program. OCFS cannot revise the proposed regulations in a way that would limit the availability of the grace period to only families of children experiencing homelessness or in foster care, or expand the grace period beyond the state statutorily defined time period. The proposed regulations are in compliance with federal statute and regulations, which were intended to reduce barriers to enrollment but not to undermine children’s health and safety. The proposed regulations codify the provisions set forth above in the New York State Public Health Law. Therefore, OCFS

determined that no change will be made to the proposed regulations in response to these comments.

OCFS received comments from two responders recommending that the grace period be set at 90 days. Section 2164(7)(a) of the New York State Public Health Law prohibits a child care program from allowing a child to attend such program for more than fourteen days (thirty days for a child coming from another state or country) without documentation of immunization. OCFS cannot extend the grace period to 90 days without a change to this statute. OCFS will issue policy statements clarifying that child care providers cannot delay enrollment of children experiencing homelessness or children in foster care due to lack of medical or immunization records, and will detail the statutorily designated length of time that such children are able to participate in the child care program in accordance with the New York State Public Health Law. OCFS determined that no change will be made to the proposed regulations in response to these comments.

OCFS received comments from two responders alleging that the proposed regulations do not apply to licensed and registered child care providers and current regulations at 18 NYCRR Part 418-1.11(a) and 418-2.11(a) do not address a grace period. Current regulations at 18 NYCRR § 418-1.11(a), § 418-2.11(a), for licensed and registered child care program already codify the provisions set forth above in the New York State Public Health Law, in that they allow a child to be enrolled without documentation of immunization provided the child's immunizations are in process and the parent gives the program specific appointment dates for required immunizations. OCFS determined that no change will be made to the proposed regulations in response to these comments.

OCFS received comments from 14 responders recommending that all homeless families should be categorically eligible for child care assistance, provided funding is available. Section 658E(c)(3)(B)(i) of CCDBG and Section 98.51 of the CCDF regulations require OCFS to use the amounts provided to the State for each fiscal year for activities that improve access to child care services for homeless children, including the use of: procedures to permit enrollment (after an initial eligibility determination) of homeless children while required documentation is obtained; training and technical assistance on identifying and serving homeless children and their families; and specific outreach to homeless families. There is no requirement in federal statute or regulation for OCFS to require categorical eligibility for homeless children. Section 98.20(b) of the CCDF regulations specifically allows OCFS to establish eligibility conditions or priority rules in addition to those specified through Federal regulation so long as they do not discriminate, limit parental rights, or violate priority requirements. The Preamble to the CCDF regulations provides further guidance about the State's ability to establish eligibility requirements, specifically that a State could decide to provide child care services to a family experiencing homelessness; this language is discretionary, not mandatory. OCFS determined that no change will be made to the proposed regulations in response to these comments.

OCFS received comments from 13 responders supporting the proposed regulation that includes the arrangement for, and participation in, counseling services programs in the list of approved activities for families experiencing homelessness, as an additional subclause (d) to the changes to 18 NYCRR § 415.2(a)(2)(v). OCFS determined that no change will be made to the proposed regulations in response to these comments.

OCFS received comments from 13 responders supporting the revised regulation after OCFS withdrew proposed changes to 18 NYCRR § 415.2(a)(3)(iii)(b) and § 415.2(a)(3)(iii)(c) that would have eliminated the option for social services districts to provide child care assistance to income-eligible homeless families to the extent that funding is available. OCFS determined that no change will be made to the proposed regulations in response to these comments.

OCFS received comments from two responders recommending the inclusion of the definition of homeless in regulation. Additionally, one of these responders recommended the regulations also include a definition for family experiencing homelessness. Section 98.2 of the CCDF regulations defines "child experiencing homelessness" as a child who is homeless as defined in section 725 of Subtitle VII-B of the McKinney-Vento Act (42 U.S.C. 11434a). OCFS is required to comply with the federal regulatory definition and, as provided in the Preamble to the CCDF regulations, use of the McKinney-Vento definition will provide for consistency with other programs that also use the McKinney-Vento definition. OCFS reviewed the comment and intends to issue a policy statement to clarify that the applicable definition of homelessness is the one included in the McKinney-Vento Act. OCFS determined that no change will be made to the proposed regulations in response to these comments.

OCFS received comments from two responders recommending that social services districts be required to administer a housing questionnaire at the time of application for child care assistance. OCFS reviewed the comments and determined that the Application for Child Care Assistance (form OCFS-6025) and the New York State Application for Certain

Benefits and Services (form LDSS-2921) includes an item for the applicant to indicate whether the family is homeless. OCFS maintains that this information will be adequate in identifying homelessness. However, social services districts may establish additional local procedures as needed to assist in determining if families are experiencing homelessness. OCFS determined that no change will be made to the proposed regulations in response to these comments.

OCFS received comments from two responders recommending that social services districts be required in regulation to report the number of children receiving child care subsidies that are experiencing homelessness. OCFS reviewed the comments and determined that federal rules require OCFS to report whether families chosen in monthly samples of child care assistance cases are experiencing homelessness. OCFS obtains this information on a quarterly basis from each of the social services districts; this information will also be recorded in the Welfare Management System (WMS) by the social services districts. OCFS has issued a policy statement to social services districts identifying the data needed to meet new federal reporting requirements (16-OCFS-LCM-17). OCFS determined that no change will be made to the proposed regulations in response to these comments.

OCFS received comments from two responders recommending that homeless children be able to enroll in full-time day care, regardless of the number of hours a parent is engaged in an approved activity. OCFS reviewed the comments and determined that New York State Social Services Law § 410(1) requires child care to be provided only in cases where it is determined, under criteria established by OCFS, that there is a need for child care because of the inability of the parents to provide care and supervision for a substantial part of the day and that such care is in the best interest of the child and parent. Therefore, OCFS maintains that child care must be reasonably related to the hours of work or other activity and permit time for the delivery and pick-up of the child. OCFS determined that no change will be made to the proposed regulations in response to these comments.

OCFS received a comment from one responder recommending that OCFS regulations should require social services districts to appoint a liaison to assist families experiencing homelessness in obtaining necessary immunizations and medical records. OCFS reviewed the comment and determined that, with limited federal and state resources, the State does not have sufficient child care funds to pay for such positions nor does the State wish to pass unfunded personnel costs on to social service districts. OCFS determined that no change will be made to the proposed regulations in response to this comment.

OCFS received a comment from one responder supporting the proposed regulation that includes families experiencing homelessness as a priority population to receive child care assistance. OCFS reviewed the comment and determined that no change will be made to the proposed regulations in response to this comment.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regional Hunting Regulations

I.D. No. ENV-09-17-00001-P

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

Proposed Action: This is a consensus rule making to repeal Parts 69 and 101 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0321 and 11-2101

Subject: Regional Hunting Regulations.

Purpose: To repeal regional hunting regulations.

Text of proposed rule: Part 69 of Title 6 of the Codes, Rules and Regulations of the State of New York is repealed.

Part 101 of Title 6 of the Codes, Rules and Regulations of the State of New York is repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Nick Perry, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4752, (518) 402-9526, email: nicholas.perry@dec.ny.gov

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

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

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

Consensus Rule Making Determination

NYSDEC is updating language in Title 6 NYCRR Parts 69 and 101 as they were outdated and were replaced with an updated statewide regulation that was adopted on May 11, 2016, by the State Office of Parks, Recreation and Historic Preservation (OPRHP).

NYSDEC has determined that due to the nature and purpose of the amendment, no person is likely to object to the rule as written.

Job Impact Statement

The rule repeals outdated sets of regional hunting regulations. For this reason, the department anticipates that the proposed rule making will have no adverse impact on jobs or employment opportunities in New York and that a job impact statement is not necessary.

Department of Financial Services

NOTICE OF ADOPTION

Cybersecurity Requirements for Financial Services Companies

I.D. No. DFS-39-16-00008-A

Filing No. 117

Filing Date: 2017-02-14

Effective Date: 2017-03-01

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

Action taken: Addition of Part 500 to Title 23 NYCRR.

Statutory authority: Financial Services Law, sections 102, 201, 202, 301, 302 and 408

Subject: Cybersecurity Requirements for Financial Services Companies.

Purpose: To require effective cybersecurity to protect consumers and ensure the safe and sound operation of Department-regulated entities.

Substance of final rule: The full text of the regulation can be viewed at dfs.ny.gov.

The following is a summary of the final rule:

Section 500.00, "Introduction," introduces the rule.

Section 500.01, "Definitions," defines terms used throughout the rule.

Section 500.02, "Cybersecurity Program," requires that each Covered Entity maintain a cybersecurity program reasonably designed to protect the confidentiality, integrity and availability of its Information Systems.

Section 500.03, "Cybersecurity Policy," requires each Covered Entity to implement and maintain a written cybersecurity policy addressing specified areas and also sets forth the requirements for approval of that policy.

Section 500.04, "Chief Information Security Officer," requires that each Covered Entity designate a qualified individual responsible for overseeing and implementing the Covered Entity's cybersecurity program (the "CISO"), and that the CISO shall develop a written report, at least annually, which shall be reviewed internally and which shall address specified cybersecurity issues.

Section 500.05, "Penetration Testing and Vulnerability Assessments," requires each Covered Entity's cybersecurity program to include monitoring and testing, developed in accordance with the Covered Entity's Risk Assessment, designed to assess the effectiveness of the Covered Entity's cybersecurity program. The monitoring and testing shall include continuous monitoring or periodic Penetration Testing and vulnerability assessments. Absent effective continuous monitoring, or other systems to detect, on an ongoing basis, changes in Information Systems that may create or indicate vulnerabilities, Covered Entities shall conduct annual Penetration Testing and a bi-annual vulnerability assessment of the Covered Entity's Information Systems, based on the Covered Entity's Risk Assessment.

Section 500.06, "Audit Trail," requires each Covered Entity to securely maintain systems that, based on its Risk Assessment, reconstruct material financial transactions and include audit trails designed to detect and respond to Cybersecurity Events that have a reasonable likelihood of materially harming any material part of the normal operations of the Covered Entity.

Section 500.07, "Access Privileges," requires that each Covered Entity shall, based on the Covered Entity's Risk Assessment, limit user access privileges to Information Systems that provide access to Nonpublic Information and that the Covered Entity shall periodically review such privileges.

Section 500.08, "Application Security," requires that each Covered Entity's cybersecurity program include written procedures, guidelines and standards designed to ensure the use of secure development practices for in-house developed applications, and procedures for evaluating, assessing or testing the security of externally developed applications utilized by the Covered Entity within the context of the Covered Entity's technology environment, and also requires that such procedures and standards be periodically reviewed, assessed and updated.

Section 500.09, "Risk Assessment," requires each Covered Entity to conduct a periodic Risk Assessment of the Covered Entity's Information Systems, updated as reasonably necessary to address changes to the Covered Entity's Information Systems, Nonpublic Information or business operations. The Risk Assessment shall allow for revision of controls to respond to technological developments and evolving threats and shall consider the particular risks of the Covered Entity's business operations related to cybersecurity, Nonpublic Information collected or stored, Information Systems utilized and the availability and effectiveness of controls to protect Nonpublic Information and Information Systems. The Risk Assessment shall be documented and shall be carried out in accordance with written policies and procedures which shall include criteria for the evaluation and categorization of identified cybersecurity risks or threats facing the Covered Entity, criteria for assessing the confidentiality, integrity, security and availability of the Covered Entity's Information Systems and Nonpublic Information, and requirements describing how identified risks will be mitigated or accepted, and how the cybersecurity program will address the risks.

Section 500.10, "Cybersecurity Personnel and Intelligence," requires each Covered Entity to utilize qualified cybersecurity personnel of the Covered Entity, an Affiliate, or a Third Party Service Provider; provide such personnel with cybersecurity updates and training; and verify that key cybersecurity personnel take steps to maintain current knowledge of changing cybersecurity threats and countermeasures.

Section 500.11, "Third Party Service Provider Security Policy," requires each Covered Entity to develop policies and procedures designed to ensure the security of Information Systems and Nonpublic Information accessible to, or held by, Third Party Service Providers. Such policies shall be based on the Covered Entity's Risk Assessment and shall include relevant guidelines for due diligence and/or contractual protections relating to Third Party Service Providers.

Section 500.12, "Multi-Factor Authentication," requires each Covered Entity to use effective controls to protect against unauthorized access to Nonpublic Information or Information Systems. Covered Entities are required to utilize Multi-Factor Authentication for any individual accessing the Covered Entity's internal networks from an external network, unless the Covered Entity's CISO has approved in writing the use of reasonably equivalent or more secure access controls.

Section 500.13, "Limitations on Data Retention," requires each Covered Entity to have policies and procedures for the secure periodic disposal of specified categories of Nonpublic Information.

Section 500.14, "Training and Monitoring," requires each Covered Entity to implement risk-based policies to monitor the activity of Authorized Users and detect unauthorized access or use of Nonpublic Information, and to provide regular cybersecurity awareness training for all personnel.

Section 500.15, "Encryption of Nonpublic Information," requires each Covered Entity to implement controls, including encryption, based on the Covered Entity's Risk Assessment, to protect Nonpublic Information held or transmitted by the Covered Entity both in transit over external networks and at rest. This section allows for the use of effective compensating controls to secure Nonpublic Information in transit over external networks and at rest if encryption of such is infeasible. Such compensating controls must be reviewed and approved by the Covered Entity's CISO. To the extent that a Covered Entity is utilizing compensating controls, the feasibility of encryption and effectiveness of the compensating controls shall be reviewed by the CISO at least annually.

Section 500.16, "Incident Response Plan," requires each Covered Entity to establish a written incident response plan designed to promptly respond to, and recover from, any Cybersecurity Event materially affecting the confidentiality, integrity or availability of the Covered Entity's Information Systems or the continuing functionality of any aspect of the Covered Entity's business or operations.

Section 500.17, "Notices to Superintendent," requires each Covered Entity to annually submit to the Superintendent a written statement covering the prior calendar year by February 15, certifying that the Covered Entity is in compliance with the requirements set forth in the rule; to

maintain for examination by the Department all records, schedules and data supporting the certificate for a period of five years; to notify the superintendent within 72 hours from the determination of the occurrence of a Cybersecurity Event impacting the Covered Entity of which notice is required to be provided to any government body, self-regulatory agency or any other supervisory body, or that has a reasonable likelihood of materially harming any material part of the normal operation(s) of the Covered Entity; and to document the identification of areas that require material improvement, updating or redesign, as well as planned remedial efforts.

Section 500.18, "Confidentiality," states that information provided by a Covered Entity pursuant to this Part is subject to exemptions from disclosure under the Banking Law, Insurance Law, Financial Services Law, Public Officers Law, or any other applicable state or federal law.

Section 500.19, "Exemptions," provides that Covered Entities that have less than the specified number of employees, gross annual revenue, or year-end total assets shall be exempt from the requirements of the enumerated sections; an exemption for an employee, agent, representative or designee of a Covered Entity, who is itself a Covered Entity; an exemption from enumerated sections for a Covered Entity that does not directly or indirectly operate, maintain, utilize or control any Information Systems, and that does not, and is not required to, directly or indirectly control, own, access, generate, receive or possess Nonpublic Information; an exemption from enumerated sections for a Covered Entity under Article 70 of the Insurance Law that does not and is not required to directly or indirectly control, own, access, generate, receive or possess Nonpublic Information other than information relating to its corporate parent company (or Affiliates); a requirement that Covered Entities that qualify for an exemption file a Notice of Exemption; an exemption for Persons that do not otherwise qualify as Covered Entities and are subject to Insurance Law Section 1110, Insurance Law Section 5904, and any accredited reinsurer or certified reinsurer that has been accredited or certified pursuant to 11 NYCRR 125; and that a Covered Entity that ceases to qualify for an exemption must comply with all applicable requirements of the final rule.

Section 500.20, "Enforcement," provides that the rule will be enforced by the superintendent pursuant to, and is not intended to limit, the superintendent's authority under any applicable laws.

Section 500.21, "Effective Date," provides that the rule will be effective March 1, 2017, and that Covered Entities will be required to annually prepare and submit a certification of compliance pursuant to Section 500.17 commencing February 15, 2018.

Section 500.22, "Transitional Periods," provides that Covered Entities shall have 180 days from the effective date of the final rule to comply with its requirements, except as otherwise specified, and also includes additional transitional periods.

Section 500.23, "Severability," states that in the event a specific provision of the rule is adjudged invalid, such judgment shall not impair the validity of the remainder of the rule.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 500.1, 500.2, 500.4, 500.5, 500.6, 500.10, 500.11, 500.13, 500.14, 500.17, 500.19 and 500.21.

Revised rule making(s) were previously published in the State Register on December 28, 2016.

Text of rule and any required statements and analyses may be obtained from: Cassandra Lentchner, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1675, email: CyberRegComments@dfs.ny.gov

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

A Revised Regulatory Impact Statement, Regulatory Flexibility Analysis and Rural Area Flexibility Analysis are not required because the revisions to the proposed regulation do not change the conclusions set forth in the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis and Rural Area Flexibility Analysis.

Revised Job Impact Statement

A Revised Job Impact Statement is not required because the revisions to the proposed regulation do not change the statement regarding the need for a Job Impact Statement that was previously published.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The New York State Department of Financial Services (the "Department" or "DFS") initially released proposed rule 23 NYCRR 500 in September 2016 and received over 150 comments to that proposed rulemaking from individuals and entities, including a variety of regulated

entities and trade associations, as well as from third party service providers, including cybersecurity service providers, and others. Every comment was processed and considered by the Department and in December 2016 the Department issued a revised proposed rule 23 NYCRR 500, which incorporated a number of changes made in response to those comments. In response to that revised proposed rulemaking the Department received more than 60 comments from many of the same commenters. Many commenters addressed more than one provision of the proposed regulation, and many requested specific changes. The Department has processed and considered every comment and has made several clarifications to the regulation. This summary is intended to provide an overview of the categories of comments received by the Department, the clarifications the Department has added to the final rule in response to those comments, and, where applicable, the reasons for not making additional changes or clarifications.

Generally, comments received during the second comment period addressed issues regarding the scope, meaning and/or particular wording of nearly every section of the revised proposed rule. In many cases, the Department did not make suggested revisions because the Department determined, based on its experience and knowledge, that the suggestions were unnecessary within the context of the final rule or were inconsistent with the minimum cybersecurity standards the Department is setting.

Many commenters commended the Department for its efforts in addressing cybersecurity. Many commenters also expressed broad support for changes made, recognizing the Department's responsiveness to comments submitted and praising the Department's efforts and process.

Some commenters stated that the proposed regulation should harmonize more closely with other standards, including state, federal and international standards, both existing and proposed. Several commenters also stated that the Department should wait for the federal government to promulgate regulations or should be allowed to comply with alternative standards currently used in industry in lieu of the standards contained in the revised proposed rule. The Department has not accepted any such suggestions, as the Department continues to believe that the regulation is consistent with other standards, and it is vitally important to establish regulatory minimum standards for cybersecurity practices to address challenges currently facing the New York financial services sector.

Commenters requested clarification, tailoring and/or narrowing of certain definitions, including the definitions of "Cybersecurity Event," "Information System," "Nonpublic Information" and "Publicly Available Information." DFS has not revised these definitions because the Department believes the breadth of these definitions are appropriate in the final rule and should not be narrowed or limited.

Some commenters also suggested that the definition of "Penetration Testing" was unclear or overly narrow with respect to testing methodologies. In response, the Department revised section 500.01(i) to delete the word "unauthorized" as unnecessarily limiting.

Several commenters requested clarification regarding the allocation of responsibilities for the provisions of the Cybersecurity Program section with respect to Affiliates. In response the Department revised section 500.02(c) to clarify that a Covered Entity may adopt the relevant and applicable provisions of the cybersecurity program of an Affiliate provided that such provisions meet the requirements of the final rule.

Commenters made suggestions in regard to the Cybersecurity Policy section (500.03), including suggested revisions to narrow its scope or incorporate other standards. The Department considered these comments and has decided not to narrow section 500.03, because the Department has determined that its provisions are appropriately consistent with the Department's goal of requiring entities to have a broad, risk based cybersecurity program.

Commenters made suggestions or sought clarification in regard to the Chief Information Security Officer section (500.04), particularly with respect to its scope. The Department did not make any changes in response, as the Department believes that this section's scope is appropriate and sufficiently clear.

Several commenters requested clarification regarding the requirements of the Penetration and Vulnerability Assessment section (500.05), including comments relating to timing requirements. In response, the Department revised section 500.05 to clarify that periodic penetration testing and vulnerability assessments are required in the absence of continuous monitoring capabilities.

Some commenters asserted that the requirements of the Audit Trail section (500.06) were overly broad, leading to the capture and retention of too much information. In addition, some commenters claimed that the five-year retention period was unnecessarily long. In response, the Department has made certain revisions to section 500.06, including decreasing the retention period applicable to paragraph 500.06(a)(2) to three years.

Commenters made suggestions in regard to the Application Security section (500.08), including suggested revisions to narrow its scope. The Department has not revised section 500.08 in response, because the

Department has determined that its provisions are appropriately consistent with the Department's goal of setting effective minimum standards.

Commenters also made suggestions or sought clarification in regard to the Risk Assessment section (500.09), particularly with respect to its scope. The Department did not make any changes in response, as the Department believes that this section's scope is appropriate and sufficiently clear.

Commenters offered suggestions regarding the Cybersecurity Personnel and Intelligence section (500.10), including suggestions that it be narrowed or that more specific language be included. The Department did not make any changes in response, as the Department believes that the section is appropriate. However, the Department did make a clarifying revision.

Commenters also stated that the requirements in section 500.11 regarding third parties doing business with a Covered Entity were too prescriptive, requiring entities to apply certain controls to all Third Party Service Providers and subjecting such Third Party Service Providers to multiple conflicting requirements imposed by multiple Covered Entities. Commenters also requested clarification regarding several subsections, including the definitions of the terms "Multi-Factor Authentication" and "sensitive systems" as used in section 500.11. The Department has clarified section 500.11 by, among other things, making greater use of previously defined terms. The Department notes that, as revised, section 500.11 requires Covered Entities to develop and implement risk-based policies and procedures that include relevant guidelines concerning certain enumerated issues.

In addition, commenters suggested revisions to the Multi-Factor Authentication section (500.12), asserting both that its provisions should be less prescriptive and more prescriptive. The Department did not make any changes in response, as the Department believes that section 500.12 is appropriately tailored.

Commenters made suggestions or sought clarification in regard to the Limitations on Data Retention section (500.13), particularly with respect to its scope. The Department did not make any changes in response, as the Department believes that this section's scope is appropriate and sufficiently clear.

Commenters also made suggestions and sought clarification in regard to the Training and Monitoring section (500.14). In response, the Department made a clarifying revision.

Several commenters requested changes in scope or wording to the Encryption of Nonpublic Information section (500.15), suggesting, for example, that the encryption at rest language should be removed altogether or should be limited in application, or that the provisions regarding encryption of data in transit should be revised to exclude leased lines from the term "external networks." The Department has not revised section 500.15 in response to these comments because the Department has determined that section 500.15 as drafted appropriately highlights the importance of encryption as a key cybersecurity control while also providing flexibility for Covered Entities to evaluate, in light of their Risk Assessment, the scope and means of feasibly implementing encryption controls. Further, the Department does not believe the term "external networks," which includes both public networks and external leased lines, requires further clarification within the final rule.

Commenters made suggestions in regard to the Incident Response Plan section (500.16), including suggested revisions to narrow its scope. The Department has not revised section 500.16 in response, because the Department has determined that its provisions are appropriately consistent with the Department's goal of setting effective minimum standards.

Commenters requested clarification with respect to provisions of the Notices to the Superintendent section (500.17) and also offered suggestions to narrow its scope and suggestions to increase the 72-hour reporting timeframe. Based on its experience and goals, the Department believes that the 72-hour reporting timeframe is appropriate and necessary to address fast-moving cybersecurity risks and thus has retained it. However, in response to comments, the Department has made revisions to section 500.17 to clarify the scope of reportable Cybersecurity Events.

Some commenters asserted that the annual certification requirement of subsection 500.17(b) should be eliminated. Other commenters sought revisions in the annual certification requirement and/or certification form. The Department has determined that the annual certification is an important requirement for effective regulatory oversight of cybersecurity within and the Department's overall oversight of the financial markets and is essential to good corporate governance. Accordingly, the Department has retained this requirement, but has made revisions to this section to clarify the time period covered by the certification.

Commenters offered suggestions regarding the Confidentiality section (500.18), including suggestions that it be expanded or that more specific language be included. The Department did not make any changes in response, as the Department believes that the current Confidentiality section is sufficient.

The Department received a number of comments regarding coverage of

the regulation and its limited exemptions. Certain types of entities asserted that they should not be considered, or were not, a "Covered Entity." Others sought clarification as to whether or not they were a "Covered Entity." Others requested clarification or offered suggestions regarding the calculation of eligibility for the limited exemptions set forth in subsection 500.19(a). Some commenters questioned whether the revised proposed regulation extended to entities or activities outside of the jurisdiction of the Department, or regarding which state regulation has been preempted by federal law. As with all regulations, the Department does not intend to extend the application of the final rule beyond the Department's legal boundaries and wants them to extend to entities that are appropriate.

The Department has revised section 500.19 to clarify the scope of the regulation. More specifically, the Department has revised section 500.19 to include appropriate exemptions for:

- Entities regulated under Article 70 of the New York Insurance Law (captive insurance companies);
- Entities regulated under section 1110 of the New York Insurance Law (charitable annuity societies);
- Entities regulated under section 5904 of the New York Insurance Law (non-domestic risk retention groups); and
- Any accredited reinsurer or certified reinsurer that has been accredited or certified pursuant to 11 NYCRR 125.

In addition, the Department has clarified the limited exemptions including by limiting exemptions to activities within New York, and clarifying whether affiliates should be included in those calculations. In response, the Department has made certain changes to subsection 500.19(a) to clarify its scope and application.

Commenters additionally requested clarification regarding the timing of filing the required notice of exemption under section 500.19(e). In response, the Department revised section 500.19(e) to clarify that the required filing must be made within 30 days of the determination that the Covered Entity is exempt.

Some commenters offered suggestions for more-specific enforcement-related provisions. The Department did not make any revisions in response to those suggestions because it believes that the current Enforcement section (500.20) is sufficient.

Several commenters expressed concern about the implementation timeframes contained in sections 500.21 and 500.22 and requested that various transitional periods be extended or otherwise adjusted. The Department has determined that the effective date of the final rule and the various transitional periods are appropriate.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Valuation of Life Insurance Reserves and Recognition of the 2001 CSO Mortality Table and the 2017 CSO Mortality Table, et al.

I.D. No. DFS-09-17-00002-P

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

Proposed Action: This is a consensus rule making to amend Parts 98 (Regulation 147) and 100 (Regulation 179) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 1304, 1308, 4217, 4218, 4221, 4224, 4240 and 4517

Subject: Valuation of Life Insurance Reserves and Recognition of the 2001 CSO Mortality Table and the 2017 CSO Mortality Table, et al.

Purpose: To adopt the 2017 CSO Mortality Table.

Substance of proposed rule (Full text is posted at the following State website: <http://www.dfs.ny.gov>): Section 98.4(b)(5)(ii), (iii) and (vii)(b)(2) are amended to specify that mortality improvement for varying premium term life insurance policies and universal life insurance policies that guarantee coverage will remain in force as long as the accumulation of premiums paid satisfies the secondary guarantee requirement may only be recognized for policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2018 if optionally elected.

Section 98.5(d) is amended to state that if an insurer substitutes the 2001 CSO Preferred Class Structure Mortality Table for the 2001 CSO Mortality Table for a policy issued on a form filed for approval after January 1, 2009 and prior to January 1, 2020, then the insurer shall recalculate the segments using the new valuation mortality rates.

A new section 98.5(e) is added to state that if an insurer substitutes the 2017 CSO Preferred Class Structure Mortality Table for the 2017 CSO Mortality Table then the insurer shall recalculate the segments using the new valuation mortality rates.

Sections 98.6(a)(1), 98.6(a)(7), 98.6(b)(1)(ii) and 98.6(b)(2) are amended to specify that the reserve methodology specific to varying premium term life insurance policies may only be applied for policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2018 if optionally elected subject to the conditions listed in section 98.6(a)(1)(iii).

Sections 98.7(b)(1)(iv) and 98.7(b)(1)(v) are amended to specify that mortality improvement for universal life insurance policies that guarantee coverage will remain in force as long as the accumulation of premiums paid satisfies the secondary guarantee requirement may only be recognized for policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2018 if optionally elected.

Sections 98.9(c)(2)(viii)(b)(2) and 98.9(c)(2)(viii)(e) are amended to specify that the lapse rate assumption of no more than two percent for the first five years, followed by a rate of no more than one percent for the remaining life of the contract for universal life insurance policies that guarantee coverage will remain in force as long as the accumulation of premiums paid satisfies the secondary guarantee requirement may only be assumed for policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2018 if optionally elected subject to the conditions listed in section 98.9(c)(2)(viii)(b)(2)(iii).

The title of Part 100 of Title 11 is amended to include reference to the 2017 CSO Mortality Table.

Sections 100.1(a) and 100.1(b) are amended to recognize the 2017 CSO Mortality Table and the 2017 CSO Preferred Class Structure Mortality Table, respectively.

Section 100.3(e) is amended to refer to the 2001 Valuation Basic Preferred Class Structure Mortality Table as 2001 VBT.

Sections 100.3(f) through 100.3(v) are renumbered as sections 100.3(k) through 100.3(aa); and new sections 100.3(f) through 100.3(j) are added to define the 2017 CSO Mortality Table, 2017 CSO Mortality Table (F), 2017 CSO Mortality Table (M), 2017 CSO Preferred Class Structure Mortality Table, and 2017 Unloaded CSO Preferred Class Structure Mortality Table, respectively. A new section 100.3(ab) is added to define Valuation Basic Table. In addition to section 100.3(o) being renumbered as section 100.3(t), it is also amended to update a reference to section 100.11.

The title of section 100.4 is amended to include reference to the 2017 CSO Mortality Table.

Section 100.4(b) is amended and new sections 100.4(d) and 100.4(e) are added to adopt the 2017 CSO Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2020, or if optionally elected, on or after January 1, 2017, replacing the 2001 CSO Mortality Table.

The title of section 100.5 is amended to include reference to the 2017 CSO Mortality Table.

Sections 100.5(c) and 100.5(d) are amended to set forth the conditions for using the 2017 CSO Mortality Table.

The title of section 100.6 is amended to include reference to the 2017 CSO Mortality Table.

Sections 100.6(a)(2), 100.6(a)(3), 100.6(a)(7), and 100.6(a)(8) are amended to specify that mortality improvement for varying premium term life insurance policies may only be recognized for policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2018 if optionally elected.

Section 100.6(b) is renumbered as 100.6(c); and a new section 100.6(b) is added to state the manner in which the 2017 CSO Mortality Table shall be used in applying Part 98 of this Title.

The title of section 100.7 is amended to include the 2017 CSO gender-blended mortality tables.

Sections 100.7(a) and 100.7(b) are amended to specify that the 2001 CSO gender-blended mortality tables may only be assumed for policies issued on or after January 1, 2004 and prior to January 1, 2020.

Section 100.7(c) is renumbered as 100.7(e); and new sections 100.7(c) and 100.7(d) are added to set forth the general requirements for use of the 2017 CSO gender-blended mortality tables. Such tables may be substituted for the 2017 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits for policies issued on or after January 1, 2017.

The title of section 100.8 is amended to include reference to the 2017 CSO Preferred Class Structure Mortality Table.

Section 100.8(a) is amended to specify that the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum mortality standard for policies issued on or after January 1, 2007 and prior to January 1, 2020.

Section 100.8(b) is renumbered as 100.8(c) and amended to specify that the 2017 CSO Preferred Class Structure Mortality Table shall not be used

as the minimum nonforfeiture standard described in section 4221(k)(9)(B)(vi) of the Insurance Law.

A new section 100.8(b) is added that sets forth the general requirements for use of the 2017 CSO Preferred Class Structure Mortality Table. Such table may be substituted for the 2017 CSO Mortality Table for policies issued on or after January 1, 2017, for individual life insurance and group life insurance products sold to individuals by certificate with premium rates guaranteed from issue for at least two years, if certain conditions are met by the insurer.

The title of section 100.9 is amended to include the 2017 CSO Preferred Class Structure Mortality Table.

Sections 100.9(a), 100.9(b), 100.9(c), 100.9(d), 100.9(e), 100.9(f) and 100.9(g) are amended to define the conditions for use of the 2017 CSO Preferred Class Structure Mortality Table and define tests of sufficiency that must be met for policies valued as super preferred nonsmoker, preferred nonsmoker, and preferred smoker.

The title of section 100.10 is amended to include reference to the 2017 CSO Preferred Class Structure Mortality Table.

Sections 100.10(a), 100.10(a)(1), 100.10(a)(2), 100.10(a)(2)(i)(a), 100.10(a)(2)(i)(e), 100.10(a)(2)(ii)(e) and 100.10(b)(2)(i) are amended to provide guidance on how to choose an appropriate table from the 2017 CSO Preferred Class Structure Mortality Table.

Section 100.11 is amended to specify that mortality improvement for varying premium term life insurance policies may only be recognized for policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2018 if optionally elected subject to the conditions listed in section 100.11(b).

Section 100.12 is amended to specify that mortality improvement for universal life insurance policies that guarantee coverage will remain in force as long as the accumulation of premiums paid satisfies the secondary guarantee requirement may only be recognized for policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2018 if optionally elected subject to the conditions listed in section 100.12(b).

A new Appendix 26 is added that contains the 2017 CSO Mortality Table.

A new Appendix 26A is added that contains the 2017 CSO Preferred Class Structure Mortality Table.

A new Appendix 26B is added that contains the 2017 Unloaded CSO Preferred Class Structure Mortality Table.

Text of proposed rule and any required statements and analyses may be obtained from: Amanda Fenwick, New York State Department of Financial Services, One Commerce Plaza, Albany, New York 12257, (518) 474-7929, email: amanda.fenwick@dfs.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

The proposed consolidated rulemaking specifies that the Fifth and Sixth Amendments to Insurance Regulation 147 and the Third and Fourth Amendments to Insurance Regulation 179 shall only apply to policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2018 with written notification provided to the Superintendent by June 30, 2017. The proposed consolidated rulemaking also adopts the 2017 CSO Mortality Table as the minimum valuation standard for applicable life insurance policies issued on or after January 1, 2020, or if the insurer optionally so elects, on or after January 1, 2017. The proposed table is the same table that was adopted by the National Association of Insurance Commissioners ("NAIC") in April of 2016, which had been vetted with the life insurance industry and consumer representatives during the NAIC adoption process.

The Department of Financial Services had implemented the prior amendments to Insurance Regulation 147 and Insurance Regulation 179 to reflect the emerging mortality experience that had significantly improved since the implementation of the 2001 CSO Mortality Table. The mortality improvement included in the prior amendments are no longer needed since this is directly incorporated within the 2017 CSO table. Allowing the Fifth and Sixth Amendments to Insurance Regulation 147 and the Third and Fourth Amendments to Insurance Regulation 179 to remain along with the adoption of the 2017 CSO Mortality Table would, in essence, be double counting the mortality improvement. As such, the concurrent amendments to Insurance Regulations 147 and 179 are not expected to have a material impact on the minimum reserve standards or costs to consumers. For this reason, no person or entity is likely to object to the adoption of this rulemaking.

Accordingly, this rulemaking is determined to be a consensus rulemaking, as defined in State Administrative Procedure Act ("SAPA") § 102(11), and is proposed pursuant to SAPA § 202(1)(b)(i). Therefore, this rulemaking is exempt from the requirements to file a Regulatory Impact State-

ment, Regulatory Flexibility Analysis for Small Businesses and Local Governments, and a Rural Area Flexibility Analysis.

Job Impact Statement

The amendments to Insurance Regulations 147 and 179 should have no impact on jobs and employment opportunities. The amendments adopt the 2017 CSO Mortality Table as the minimum valuation standard for applicable life insurance policies issued on or after January 1, 2020, or if optionally elected, on or after January 1, 2017, replacing the 2001 CSO Mortality Table. The amendments also specify that the Fifth and Sixth Amendments to Regulation 147 and the Third and Fourth Amendments to Regulation 179 shall only apply to policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2018 with written notification provided to the Superintendent by June 30, 2017. Insurers should not need to hire additional employees or independent contractors to comply with these new standards.

Department of Health

NOTICE OF ADOPTION

Non-Prescription Emergency Contraceptives Drugs

I.D. No. HLT-39-16-00031-A

Filing No. 114

Filing Date: 2017-02-10

Effective Date: 2017-03-01

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

Action taken: Amendment of section 505.3 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 201(1)(v); Social Services Law, sections 363-a(2) and 367-a(9)(b)

Subject: Non-Prescription Emergency Contraceptives Drugs.

Purpose: Allow pharmacies to dispense non-prescription emergency contraceptive drugs for Medicaid female recipients without a written order.

Text or summary was published in the September 28, 2016 issue of the Register, I.D. No. HLT-39-16-00031-P.

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

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

Assessment of Public Comment

The Department received one set of comments during the public comment period from the New York State Academy of Family Physicians.

Comment:

Proposed § 505.3(b)(1)(i) allows recipients to obtain non-prescription emergency contraceptive drugs “subject to a utilization frequency limit of 6 courses of treatment in any 12-month period”. Women should have access to the full spectrum of birth control options to meet their needs. These limitations are contrary to the protection of women’s choice, and should be removed.

Response:

The regulations were not revised to include this change. Emergency contraception is indicated for the prevention of pregnancy following unprotected intercourse or a known or suspected contraceptive failure. Per the U.S. Food and Drug Administration (FDA) approved prescribing information, emergency contraception is not indicated for routine use as a contraceptive. Based on this information, the utilization frequency limit is deemed appropriate.

Comment:

It is recommended that the same provisions be made for the other emergency contraceptive pill, Ella or ulipristal acetate. This medication is effective in women with a BMI over 25, while Plan B is not.

Response:

The regulations were not revised to include this change. This regulation relates to non-prescription emergency contraceptive drugs, as approved by the FDA. Ella or ulipristal acetate has not been approved by the FDA as a non-prescription drug. Although it continues to be available when prescribed by a physician, it cannot be made available without a prescription, in accordance with Federal and New York State law.

Office of Parks, Recreation and Historic Preservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Swimming in State Park Lands

I.D. No. PKR-09-17-00004-P

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

Proposed Action: Addition of section 375.1(t); and amendment of section 377.1(h) of Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, section 3.09(2), (5), (8) and (10)

Subject: Swimming in State park lands.

Purpose: To amend and clarify an outdated regulation.

Text of proposed rule: A new subdivision Title 9 NYCRR Part 375.1(t) is added to read as follows:

(t) *Swimming, diving, bathing or wading. No person shall swim, dive, bathe or wade in any body of water, including a swimming pool:*

(1) *where there is an open and obvious danger that is likely to result in serious bodily injury or death; or*

(2) *in a manner or location that disobeys a lawful order of any officer or employee of the office or the direction of any sign erected by or at the direction of the office.*

Title 9 NYCRR Part 377.1(h) is amended as follows:

[(h) Swimming, diving, bathing or wading in swimming pools or other waters or walking upon the frozen surface thereof.] *Walking upon the frozen surface of any body of water.*

Text of proposed rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, NYS Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, NY 12207, (518) 486-2921, email: shari.calnero@parks.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority

Summary of Regulatory Proposal: The Office of Parks, Recreation and Historic Preservation (“OPRHP” or “Office”) is proposing to update its rule on access to swimming areas in the state park system. OPRHP seeks to effectively repeal the current swimming regulation at 9 NYCRR Part 377.1(h) and adopt a new swimming regulation at 9 NYCRR 375.1(t).

Parks, Recreation and Historic Preservation Law (“PRHPL”) Section 3.09(8) empowers OPRHP to adopt, amend, or rescind such regulations as are necessary for the performance of its duties. Section 3.09(2) vests OPRHP with the duty to operate and maintain the sites, parks, and recreational facilities under its jurisdiction. PRHPL Section 3.09(5) requires that OPRHP provide for the health, safety and welfare of the public using facilities under its jurisdiction. PRHPL Section 3.09(10) authorizes OPRHP to encourage, promote and provide recreational opportunities for residents of urban, suburban and rural areas.

2. Legislative Objectives

The current swimming regulation has not been revised in over forty years. OPRHP continually searches for ways to enhance the quality of the experience and the health and safety of park visitors and to respond to patron requests for new recreational opportunities. By providing more opportunities to enjoy the lakes, ponds, and other bodies of water throughout the state park system, the Office is furthering its statutory mission.

The current swimming regulation overly restricts park patrons from accessing and enjoying the myriad safe water recreation opportunities because it absolutely prohibits swimming everywhere in state parks except in areas specifically designated for guarded swimming such as developed bathing beaches and swimming pools. The proposed rule would allow swimming, wading and bathing in all water bodies within OPRHP’s parks except in those areas that present an open and obvious danger of serious bodily harm or drowning and those areas where such activities are expressly prohibited by signage or other directive, including the lawful directive of an OPRHP employee.

This regulatory change is closer in spirit to OPRHP’s statutory policy direction to provide and promote more recreational opportunities in the state park system.

3. Needs and Benefits

There is a need to update the existing swimming regulation set forth in 9 NYCRR Part 377.1(h) to respond to patron requests for more access to swimming areas. Although OPRHP's mission is to encourage and promote recreational opportunities that correspond to the abundance of natural and scenic resources in the state parks, the existing rule forbids swimming everywhere in the state park system except in designated, guarded swimming areas.

The plain language of the rule prohibits more swimming and water-related activity than is necessary. In effect, the rule restricts the public's access to natural, scenic and recreational resources in a manner at odds with the Office's statutory mission in PRHPL Section 3.02 to provide for public enjoyment of and access to these resources.

For example, under the existing rule, park patrons could be penalized for wading into a lake adjacent to their campsite that does not have a developed beach or lifeguard. OPRHP seeks to allow rather than preclude or penalize this access to swimming opportunities.

The existing rule has other limitations OPRHP seeks to address. No other conditions or description of how OPRHP regulates swimming are contained in the rule.

The proposed amendment, which adds subdivision (t) to section 375.1, would allow wading, swimming and bathing in all bodies of water in the state parks except in areas where there is an open and obvious danger of serious bodily injury or drowning or those areas where OPRHP has expressly forbidden swimming by signage or other directive of the Office.

The benefits from this proposal would help OPRHP achieve multiple goals. The proposed rule would ease overly restrictive restrictions and, at the same time, balance the need for promoting the safety of park patrons with more public access to swimming areas. The change would expand areas where park patrons may permissibly swim, thus creating more recreational opportunities open to the public.

The new rule would authorize OPRHP to more precisely prohibit swimming in areas that are known to be unsafe or inappropriate for recreation. Accordingly, if this amendment is adopted, OPRHP will erect "no swimming" signs or direct patrons away from those areas where it is aware of dangerous conditions, including, currents, obstructions, pollution and drop-offs. This regulation will not change current OPRHP practices regarding swimming pools, which will be open for public use only when lifeguards are on duty.

4. Costs

There would be minimal cost to OPRHP for additional signage, but no costs to park patrons who swim or to local governments from this regulation.

5. Local Government Mandates

This regulation would not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district or fire district.

6. Paperwork

Some additional paperwork and record keeping would result from the proposed rule involving the erection of signage for appropriate areas.

7. Duplication

No other State or federal regulations govern swimming in pools or waters under OPRHP's jurisdiction.

8. Alternatives

OPRHP considered leaving the outdated regulation in place. This alternative overly restricts park patrons from accessing and enjoying the abundance of safe water recreation opportunities naturally available throughout New York's state park system. The proposed rule appropriately allows more swimming and entry into state park waters in areas that do not contain patent or known dangers or contravene any sign or other directive of OPRHP. The new rule also fosters a relaxing and healthy recreational atmosphere appropriate to the unique settings under OPRHP's jurisdiction.

9. Federal Standards

There are no federal standards that apply to swimming regulation in New York State parks.

10. Compliance Schedule

This regulation, if adopted, would become effective immediately upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required for this proposal since it will not impose any adverse economic impact on small businesses or local governments. The proposed rule changes the manner in which OPRHP regulates swimming in waters within its jurisdiction. Therefore, a Regulatory Flexibility Analysis is not required.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required for this proposed rule because it does not impose an adverse economic impact on any private or public sector interests in rural areas. The proposed rule changes the man-

ner in which OPRHP regulates swimming in waters within its jurisdiction. Therefore, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

The proposed amendments to OPRHP's swimming regulations will not affect jobs or employment opportunities. Therefore, a Job Impact Statement is not required.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity and Waiver Request of Energy Audit Requirement

I.D. No. PSC-09-17-00005-P

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

Proposed Action: The Public Service Commission is considering a Notice of Intent, filed by BRP Renny LLC, to submeter electricity at 2351-2359 Adam Clayton Powell Jr. Blvd., New York, New York and a request for waiver of 16 NYCRR section 96.5(k)(3), requiring an energy audit.

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

Subject: Notice of Intent to submeter electricity and waiver request of energy audit requirement.

Purpose: To consider the Notice of Intent to submeter electricity at 2351-2359 Adam Clayton Powell Jr. Blvd., NY, NY and waiver request.

Substance of proposed rule: The Public Service Commission (Commission) is considering the Notice of Intent, filed by BRP Renny LLC (Owner) on January 30, 2017, to submeter electricity at 2351-2359 Adam Clayton Powell Jr. Blvd., New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission is also considering the Owner's request for a waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. The full text of the petition and waiver request may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(17-E-0063SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of Incremental Metering Costs Associated with Voluntary Time of Use (VTOU) Rates

I.D. No. PSC-09-17-00006-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid or Company) for a limited waiver of incremental metering costs.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Waiver of incremental metering costs associated with Voluntary Time of Use (VTOU) rates.

Purpose: To waive the incremental \$3.36 per month customer charge for certain VTOU rate customers.

Substance of proposed rule: The Public Service Commission is considering a proposal by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid or Company) to waive the \$3.36 monthly incremental metering charge for Service Classification 1 – Residential customers taking service under the Voluntary Time of Use rate option located within the area of the Company's Clifton Park Demand Reduction REV Demonstration Project. The full text of the proposal may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may approve, modify or reject, in whole or in part, the petition and may resolve related matters.

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

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

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

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

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

(14-M-0101SP17)

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

Petition to Submeter Electricity

I.D. No. PSC-09-17-00007-P

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

Proposed Action: The Public Service Commission is considering a petition, filed by 587-91 Third Owner LLC, to submeter electricity at 591 Third Avenue, New York, New York.

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

Subject: Petition to submeter electricity.

Purpose: To consider the petition of 587-91 Third Owner LLC to submeter electricity at 591 Third Avenue, New York, New York.

Substance of proposed rule: The Commission is considering the petition, filed by 587-91 Third Owner LLC on January 25, 2017, to submeter electricity at 591 Third Avenue, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(17-E-0054SP1)

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

Petition to Submeter Electricity

I.D. No. PSC-09-17-00008-P

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

Proposed Action: The Public Service Commission is considering a petition, filed by Red Hook 160, LLC, to submeter electricity at 160 Imlay Street, Brooklyn, New York.

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

Subject: Petition to submeter electricity.

Purpose: To consider the petition of Red Hook 160, LLC to submeter electricity at 160 Imlay Street, Brooklyn, New York.

Substance of proposed rule: The Commission is considering the petition, filed by Red Hook 160, LLC on February 3, 2017, to submeter electricity at 160 Imlay Street, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0688SP1)

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

Extension of an Outstanding Loan's Repayment Schedule

I.D. No. PSC-09-17-00009-P

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

Proposed Action: The Public Service Commission is considering a petition by Great Expectation, LLC, to extend the term of the repayment schedule for an outstanding loan.

Statutory authority: Public Service Law, sections 89-b, 89-c and 89-f

Subject: Extension of an outstanding loan's repayment schedule.

Purpose: To consider the extension of an outstanding loan's repayment schedule.

Text of proposed rule: The Commission is considering a petition, filed on January 12, 2017, by Great Expectations, LLC (Company) to extend the term of the repayment schedule by three years. By the Commission Order in Case 03-W-0941, the Company was authorized to establish an escrow account with the maximum balance of \$50,000 for the purpose of making extraordinary repairs and/or plant replacements. At the end of 2008, the Company spent a total \$89,854 for well and manganese treatment work. Out of the total expenditure of \$89,854, the Company paid \$26,000 from the escrow account. The remaining balance of \$62,854 was paid using Company's advances. By the Commission Order in case 09-W-0409, the Company was authorized to withdraw \$7,300 per year from its escrow account over an 11 year period to recover this advances. During 2015 and 2016, the Company further incurred extraordinary repairs which exceed the available balance of the escrow account. As a result, the Company did not recover the \$7,300 annual payment for 2015 and 2016. In addition, the Company advanced another \$9,704 to cover the extraordinary repairs. In this petition, the Company requested to extend the term of the repayment

by three years to fully recover the extraordinary repairs cost. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(17-W-0015SP1)

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-48-16-00002-A

Filing No. 115

Filing Date: 2017-02-13

Effective Date: 2017-02-13

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period January 1, 2017 through March 31, 2017.

Text or summary was published in the November 30, 2016 issue of the Register, I.D. No. TAF-48-16-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

Assessment of Public Comment

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-09-17-00003-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2017 through June 30, 2017.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxxxvi) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
<i>(lxxxv) Jan.-March 2017</i>					
14.1	22.1	38.3	15.1	23.1	37.55
<i>(lxxxvi) April-June 2017</i>					
14.6	22.6	38.8	15.7	23.7	38.15

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

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

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Storage of Furniture and Personal Belongings

I.D. No. TDA-46-15-00005-A

Filing No. 116

Filing Date: 2017-02-13

Effective Date: 60 days after filing

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

Action taken: Amendment of sections 352.6(f) and 397.5(k) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(3)(d), 34(3)(f), 131(1) and 303(1)(k)

Subject: Storage of furniture and personal belongings.

Purpose: Provide clarification regarding allowances for the storage of furniture and personal belongings.

Text or summary was published in the November 18, 2015 issue of the Register, I.D. No. TDA-46-15-00005-P.

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

Revised rule making(s) were previously published in the State Register on November 16, 2016.

Text of rule and any required statements and analyses may be obtained from: Joseph C. Mazza, NYS Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, NY 12243-0001, (518) 474-0574, email: Joseph.Mazza@otda.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.