

Office of Parks, Recreation and Historic Preservation Regulations
9 NYCRR Title 9, Subtitle I

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Chapter I. Parks

Subchapter A. Statewide Rules

Part 370. Statement of Policy

Section 370.1. Statement of policy

(a) The State of New York is abundant in natural, scenic and recreational resources. The magnificent State park, recreational and historic site system, administered by the Office of Parks, Recreation and Historic Preservation encourages and facilitates the use and enjoyment of such resources by the public and thereby promotes and enhances the well-being of each individual.

(b) State parks, however, contain waterfalls, waterways, chasms, slopes and other natural features which, by their nature, may constitute hazards and present dangers to persons approaching them.

(c) In addition to the dangers presented by natural hazards, the use of State parks and historic sites by the public for varied and divergent purposes may also, if not controlled, endanger the safety of members thereof and tend to deny certain individuals equality of opportunity in the use and enjoyment of these resources.

(d) Therefore, to enhance and promote the safety, well-being and enjoyment of each individual in the use of the State park, recreational and historic site system, and to assure to each individual equality of opportunity in the use and enjoyment of such system, the rules and regulations set forth in this Chapter are hereby established to govern the conduct of the public with respect thereto.

Sec. repealed, new filed May 13, 1966; renum. 200.1, Title 17, new added by renum. 200.1, Title 6, Sept. 1971; repealed, new filed June 6, 1974; amd. filed May 7, 1982 eff. May 7, 1982.

Part 371. Definitions and Construction of Terms; Territorial Application; Validity

Section 371.1. Definition of terms

Whenever used in this Chapter, the following terms shall mean and include the meanings expressly set forth in this section, unless otherwise expressly defined:

(a) **Commissioner** shall mean the Commissioner of Parks, Recreation and Historic Preservation.

(b) **Motor vehicle** shall mean any vehicle designed or maintained for use primarily on a highway, and powered by any power other than muscular power, other than a snowmobile, all-terrain vehicle or similar wheeled or air-cushioned vehicle designed or equipped to operate outside of roadways.

(c) **Office** shall mean the State Office of Parks, Recreation and Historic Preservation.

(d) **Personal property** shall mean any property, or interest therein, other than real property.

(e) **Property** shall mean real or personal property.

(f) **Real property** shall mean lands, improvements and structures thereon, rights, franchises and interests therein, lands under water and riparian rights, and any and all interests in lands less than full title, including, without limitation, temporary or permanent easements (including scenic or conservation easements), divided or undivided interests, rights of way, uses, leases, licenses and any other estate, interest or right in lands, legal and equitable.

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(g) **Region** or **park region** shall mean a park region as established by the provisions of section 7.01 of the Parks, Recreation and Historic Preservation Law.

(h) **Regional park, recreation and historic preservation commission** shall mean a regional park, recreation and historic preservation commission as enumerated in section 7.03 of the Parks, Recreation and Historic Preservation Law.

Sec. renum. 440.1, new added by renum. 373.1, filed June 1962; repealed, new filed Dec. 1, 1967; renum. 201.1, Title 17, new added by renum. 201.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; amd. filed May 7, 1982 eff. May 7, 1982.

Section 371.2. Construction of terms

Any term contained in this Chapter shall be construed as follows:

- (a) Any term in the singular shall include the plural;
- (b) Any term in the masculine shall include the feminine and neuter;
- (c) The prohibition of any act shall extend to and include an attempt to commit such act and the causing and/or the procuring, directly or indirectly, of such act;
- (d) No provision contained in this Chapter shall cause to be deemed unlawful any act performed by an officer or employee of the office in the line of duty or in the scope of employment, or any act performed by a person, his agents or employees in the performance or execution of the terms of an agreement with the office.

Sec. renum. 440.2, new added by renum. 373.2, filed June 1962; repealed, new filed Dec. 1, 1967; renum. 201.2, Title 17, new added by renum. 201.2, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974 eff. June 10, 1974.

Section 371.3. Territorial application

The provisions of this Chapter shall be effective within, upon and in the airspace above all property that is presently or shall in the future be under the jurisdiction, custody or control of the office unless otherwise provided.

Sec. renum. 440.3, new added by renum. 373.3, filed June 1962; repealed, new filed Dec. 1, 1967; renum. 201.3, Title 17, new added by renum. 201.3, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974 eff. June 10, 1974.

Section 371.4. Validity

If any Part, section, subdivision, paragraph or provision of this Chapter shall be determined to be invalid, such determination shall apply to the particular Part, section, subdivision, paragraph or provision, and all other provisions of this Chapter shall remain valid and in effect.

Sec. added by renum. 373.4, filed June 1962; repealed, new filed Dec. 1, 1967; renum. 201.4, Title 17, new added by renum. 201.4, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974 eff. June 10, 1974.

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Part 372. Permits

Section 372.1. Permits

- (a) A written permit issued by the commissioner to do any act shall authorize the same only insofar as it may be performed in strict accordance with the terms and conditions thereof.
- (b) Any act authorized pursuant to a permit may be performed only by the person named therein, and any such authorization may not be assigned or delegated, unless and except as provided in such permit.
- (c) Any permit may be revoked at the option of the commissioner whose action shall be final. In case of such revocation, all monies paid for or on account thereof shall, at the option of the commissioner, be forfeited to and retained by the office.
- (d) In any case where the holder of a permit or his agent or employee shall have been found to have violated a term or condition thereof, such holder and his agent or employee who has violated such terms and conditions shall be jointly and severally liable to the State of New York for any damages or loss suffered by it in excess of money forfeited and retained by the office.
- (e) Neither the forfeiture and retention of any such money by the office nor the recovery or collection of any damages or both shall preclude the prosecution of any person for a violation of a rule or regulation of the office or the violation of any other State or local law, ordinance, rule or regulation.

Sec. renum. 441.1, filed June 1962; new filed May 13, 1965; renum. 202.1, Title 17, new added by renum. 202.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974 eff. June 10, 1974.

Section 372.2. Activities or uses prohibited except when undertaken pursuant to a permit

Except where authorized by a contract, license or other agreement with the office entered into pursuant to section 3.09 of the Parks, Recreation and Historic Preservation Law, any person engaging in the activities listed in section 372.7 of this Part on property under the jurisdiction, custody or control of the office must obtain a permit issued by the commissioner and comply with the terms thereof and any other conditions contained in this Part.

Sec. renum. 441.2, filed June 1962; new filed May 13, 1965; renum. 202.2, Title 17, new added by renum. 202.2, Title 6, filed Sept. 1971; repealed, new filed Sept. 7, 1973; repealed, filed June 6, 1974; new filed: April 19, 1994 as emergency measure, expired 60 days after filing; June 24, 1994 eff. July 13, 1994.

Section 372.3. Permit applications

- (a) Unless another address is provided on the permit application or permit information, permit applications shall be submitted to the district or regional office with jurisdiction over the facility for which the permit is sought.
- (b) Application for a permit shall be made in the manner indicated by the office. Where an application form is provided, the form shall be properly completed and signed and shall be accompanied by any required supplemental documents.
- (c) Any person issued a permit assumes all liability and responsibility for any activity conducted under the authority of the permit or any actions resulting from activities authorized by the permit.

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(d) The application must be accompanied by the application and permit fees, if any, and by any other items which may be required as a condition of the permit, such as certificates of insurance, bonds and letters of credit.

Sec. renum. 441.3, filed June 1962; new filed May 13, 1965; renum. 202.3, Title 17, new added by renum. 202.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed: April 19, 1994 as emergency measure, expired 60 days after filing; June 24, 1994 eff. July 13, 1994.

Section 372.4. Action on permit applications

- (a) If an application is not complete, the office will contact the applicant for additional information within 15 calendar days of its receipt.
- (b) Except as provided in subdivision (c) of this section, if the application is complete, the office will either issue or deny the permit within 15 calendar days of its receipt.
- (c) If the office needs additional time to review a permit application, it will notify the applicant within 15 calendar days that additional review time is required and indicate when it will act upon the permit request.
- (d) If the office denies an application for a permit, it will notify the applicant of its reasons why the permit was not issued. Any application and/or permit fees will be returned to the applicant.
- (e) This section does not apply to camping and cabin permits which are issued through the office's camping reservation system.

Sec. filed May 13, 1965; renum. 202.4, Title 17, new added by renum. 202.4, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed: April 19, 1994 as emergency measure, expired 60 days after filing; June 24, 1994 eff. July 13, 1994.

Section 372.5. Reasons for not issuing permits

The office may reject a permit application for the following reasons:

- (a) another activity or use has been previously scheduled for the same time at the facility or area requested;
- (b) the proposed activity or use is not compatible with the recreational, environmental or historic character of the facility or area requested;
- (c) the office can reasonably anticipate that the proposed activity or use cannot be accommodated with safety for all park patrons or may result in damage to park or facility resources;
- (d) the proposed activity or use cannot be accommodated without requiring the office to spend additional funds to provide for operational, supervisory, maintenance or law enforcement personnel, equipment or services;
- (e) the proposed activity or use will cause undue interference with the activities of other park patrons; or
- (f) a material condition of the permit has not been met by the applicant.

Sec. added by renum. 202.5, Title 6, filed Sept. 1971; new filed: April 19, 1994 as emergency measure, expired 60 days after filing; June 24, 1994 eff. July 13, 1994.

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Section 372.6. Appeal of denial of a permit application

An applicant may appeal denial of a permit application by writing the Commissioner of Parks, Recreation and Historic Preservation, Agency Building 1, Empire State Plaza, Albany, NY 12238.

Sec. added by renum. 202.6, Title 6, filed Sept. 1971; new filed: April 19, 1994 as emergency measure, expired 60 days after filing; June 24, 1994 eff. July 13, 1994.

Section 372.7. Activities requiring a permit

The following activities shall require a permit:

- (a) *Fireworks and explosives.* The introduction, possession or use of fireworks, gun powder, powder used in blasting, high explosives, blasting materials, detonating fuses, detonators and other detonating agents, smokeless powder or any chemical compound or any mechanical mixture containing any oxidizing and combustible units, or other ingredients in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion or detonation of any part thereof may cause an explosion.
- (b) *Commercial activities.* The selling or offering for sale, hire or lease of any merchandise, service or other thing of value; the taking of moving pictures or photographs for commercial or publicity purposes or the purchasing or selling of negatives thereof or prints therefrom or the exhibition of same in public.
- (c) *Public exhibitions, etc.* The holding of any lecture or any form of entertainment, performance, motion picture, contest or other such event for commercial purposes and the distribution or posting of handbills or advertisements in connection therewith, or the erection of any structure, stand or platform in connection therewith.
- (d) *Charter excursions.* The receiving or discharge of passengers from or upon any wharf, dock or other property by a vessel or aircraft which carries such passenger for hire other than in an emergency.
- (e) *Aviation.* The voluntary introduction, launch, takeoff or landing of any aircraft, parachute, hang glider, ultra-light, balloon or other weight-carrying machine or device designed for flight in or navigation of the air other than in an emergency.
- (f) *Advertising.*
 - (1) The posting or distributing of advertising matter or the oral advertising for sale of any merchandise, article, service or other thing of value, or soliciting in connection with the sale of the same outside a park.
 - (2) The use of an aircraft for the purpose of advertising by means of towing banners, signs or other devices, dropping or distributing advertising materials or advertising through a loud speaker or other device.
- (g) *Camping.* Camping at authorized sites, cabins or other structures.
 - (1) No picnic table, garbage receptacle, woodpile and other equipment supplied by the office shall be placed at any location other than those approved by an officer or employee of the office.
 - (2) No laundry shall be hung or spread on trees, shrubs or lawns.
 - (3) No campsite or cabin shall be sublet.
 - (4) Campsites shall be kept in a neat, clean and sanitary condition.
 - (5) No person shall wash dishes, clothes or his person at a water fountain or other outlet.

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- (6) Camping trailers and self-contained campers shall provide suitable receptacles to prevent the discharge of waste from sink outlets onto real property.
- (7) Ditching around tents is prohibited in grassed areas. Ditching is permitted in graveled areas, provided that such ditches are filled in upon vacating the site.
- (8) No person under the age of 18 will be permitted to camp unless accompanied and supervised by a person 18 years of age or older who has been issued a permit; provided, however, that at such facilities as may be designated by the commissioner, no camping permit will be issued to any person under the age of 21.
- (9) No person shall make any structural change or alteration in any campsite or cabin.
- (10) Failure to occupy a reserved site at the time specified in the permit may result in the cancellation of such permit without refund.
- (11) No person shall occupy a site after the time specified in the permit or renewal thereof.
- (12) No person shall attach a rope, line or other device to a tree, shrub or structure.
- (13) All temporary mirrors used for extra trailering safety shall be removed immediately after unhooking trailers at campsites.
- (14) Campers shall respect the rights and privacy of others and shall maintain quiet on the campsite between the hours of 10 p.m. and 7 a.m.
- (15) Campsites shall be closed to all persons who are not registered as occupants thereof between the hours of 10 p.m. and 7 a.m.
- (16) Upon discovering that an occupant of a campsite or cabin is registered as a Level 2 or Level 3 sex offender under article 6-C of the Correction Law, the office is authorized to direct such occupant to leave the campground and may revoke the camping permit for the campsite or cabin.
- (17) No more than two pets (dogs, cats or other domesticated animals normally maintained in or near the household of the owner or person who cares for them) shall be present at any campsite, cabin or cottage in a park that allows these animals to be there. Persons at the campsite, cabin or cottage shall directly control and supervise the pets and crate or restrain them on leashes that are not more than six feet in length. Proof of licensure for dogs and proof of rabies inoculation for dogs, cats and domesticated ferrets shall be produced if requested by staff. If any provision of this paragraph is violated the pet shall be removed from the park by either the pet owner or the person who cares for the pet or the permit holder. This paragraph does not apply to a person with a disability or his or her companion service animal.
- (h) *Outing buses.* The use and operation of outing or recreational buses for the purpose of transporting persons to and from property under the jurisdiction of the office for a recreational experience. This provision shall not apply to the use of such vehicles on a parkway.
- (i) *Public omnibuses.* Public omnibuses having a seating capacity of more than 12 passengers. Any applicant for such a permit shall also have the rates of fares approved by the commissioner and both the permit and rates must be clearly displayed on the omnibus. This provision shall not apply to the use of such vehicles on a parkway.
- (j) *Toy or model rockets or aircraft.* The use or operation of toy or model rockets or aircraft.

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- (k) *Research and educational projects.* The conducting of a research or educational project including, but not limited to, the collection and possession of specimens.
- (l) Picnics and outings.
- (1) The conducting of a picnic or outing by a group or organization in excess of 25 persons, including educational field trips.
- (2) Notwithstanding paragraph (1) of this subdivision, in the ninth park region a permit shall be required for a picnic or outing conducted by a group or organization in excess of 50 persons.
- (m) Within the ninth park region only, the use and operation of four-wheel drive vehicles in designated areas off the improved portion of a park road, notwithstanding the provisions of section 378.1(e) of this Title.
- (n) *Archaeological excavations.* The exploration for and excavation and gathering of archaeological or paleontological objects. Permits shall be subject to the approval of the New York State Education Department.
- (o) *Metal detectors.* The use or operation of a metal detector or other mechanical device to locate buried or concealed metal. Permits shall be granted for use of metal detectors in designated areas only.
- (p) *The use or possession of any bows and arrows or muzzle-loading weapons.* Except for hunting permitted under subdivision (q), permits shall be subject to the following conditions:
- (1) The use of bows and arrows shall be restricted to areas specifically designated for that purpose and conducted under the direction of a qualified supervisor.
- (2) The use of muzzle-loading weapons shall be limited to demonstrations and interpretive programming conducted by staff members at State historic sites and to special events sponsored by the office, such as the reenacting of Revolutionary or Civil War battles. The weapons shall be loaded with blanks only.
- (q) *Hunting.* The killing, wounding, hunting, molesting, taking, removing, or possession of any nest, game, wildlife, shellfish, crustacean, protected insects, or the eggs of any of the above, on or from any lands under the jurisdiction of the office, except pursuant to a permit issued by the region (Regional Permit).
- (1) Regional Permits may include but not be limited to the following conditions: the areas designated for hunting; the species to be hunted; the implements to be used for hunting; and the dates and hours during which hunting is permitted.
- (2) Except as otherwise provided in this Part and Regional Permit conditions, the provisions of the Environmental Conservation Law and its implementing regulations in relation to hunting, including those relating to open seasons, hunting hours, manner of taking, use of firearms, tagging, and transportation, shall apply in the areas designated for hunting.
- (3) The erection of permanent hunting blinds is prohibited. Regional permits may include a provision allowing a temporary hunting blind.
- (4) The erection of permanent tree stands is prohibited. Portable tree stands may be allowed by regional permit provided that they do not damage any trees. Cutting, placing nails or screws into, or otherwise damaging trees or other vegetation is prohibited.

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(5) No person shall hunt in an area of a park that is posted or otherwise identified as a “Restricted Area.”

(6) A regional permit shall be valid only for the period for which it is issued, shall not be transferred, and may be revoked at any time.

(7) Hunters shall provide a report of their take when requested by the region.

(r) *Trapping*. The trapping of any game or wildlife on or from any lands under the jurisdiction of the office. The Commissioner may issue a permit or authorize the region to issue a permit for trapping if the Office has determined that the population of a specific species has increased to the extent that it may damage vegetation, constitute a hazard to the general public, threaten a state-listed species, or damage buildings or infrastructure.

Sec. added by renum. 202.7, Title 6, filed Sept. 1971; repealed, new filed Feb. 19, 1974; repealed, filed June 6, 1974; new filed: April 19, 1994 as emergency measure, expired 60 days after filing; June 24, 1994 eff. July 13, 1994; amd. filed July 20, 2011 eff. Aug. 10, 2011; amd. filed Aug. 5, 2011 eff. Aug. 24, 2011; amd. filed April 22, 2016 eff. May 11, 2016.

Part 374. Lost Articles

Section 374.1. Return of lost articles

Any person finding or taking possession of lost property not his own, of the value of \$20 or more, shall immediately return such property to its lawful owner or custodian. If the lawful owner or custodian cannot be immediately found or ascertained, the property shall be turned over to a member of the regional State park police or if no member of the regional park police can be located, an employee of the office, who shall issue a receipt therefor.

Sec. renum. 443.1, filed June 1962; new added by renum. 204.1, Title 6, filed Sept. 1971; repealed, new filed Nov. 17, 1971; repealed, filed Aug. 10, 1972; new filed June 6, 1974; repealed, new filed June 5, 1975; amd. filed Jan. 27, 1983 eff. March 1, 1983.

Part 375. Prohibited Activities

Section 375.1. Activities absolutely prohibited

The activities and uses enumerated in this section shall be absolutely prohibited on property under the jurisdiction, custody and control of the office.

(a) The activities and uses enumerated in this section shall be absolutely prohibited on property under the jurisdiction, custody and control of the office. (a) Failure to wear face coverings and prohibition on non-essential gatherings during the COVID-19 state disaster emergency declared by Executive Order 202. (1) Every person over the age of two, and who can medically tolerate a face covering, shall wear an acceptable face covering if they come within six feet of another person who is not a member of their household. Acceptable face coverings for COVID-19 include but are not limited to clothbased face coverings and disposable masks that cover both the mouth and nose. (2) Any gathering of people who are not members of the same household or family unit shall constitute a non-essential gathering and is prohibited pursuant to Executive Order 202.10, as extended by subsequent Executive Orders

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(b) *Pollution of waters.* No person shall in any manner cause to be placed in waters or into any storm sewer, drain or stream flowing into such waters any sewage, garbage, trash, litter, debris, waste material or any nauseous or offensive matter.

(c) *Littering.* No person shall in any manner cause any rubbish, garbage, refuse, organic or inorganic waste, diseased or dead animal, or other offensive matter or any abandoned property or material to be placed or left in or on any property, except in receptacles provided for that purpose.

(d) *Drains and sewers.* No person shall discharge into any openings or gutter leading into any sewer, receiving basin or drain in or leading into any property any gas or vapor, or any substance which may form a deposit tending to choke same, or any volatile liquid which may emit an inflammable vapor at a temperature below 160 degrees Fahrenheit, or any steam or water above 100 degrees Fahrenheit.

(e) *Injury to property.* No person shall make an excavation on or injure, destroy, deface, remove, fill in, tamper with or cut any real or personal property, tree or other plant life.

(f) *Disorderly conduct.* No person shall do any of the following:

- (1) disobey a lawful order of any officer or employee of the office or the directions of any sign erected by or at the direction of the office;
- (2) use abusive or obscene language or make an obscene gesture;
- (3) throw stones or other objects or missiles which may inflict bodily injury or damage to property;
- (4) obstruct vehicular or pedestrian traffic;
- (5) climb upon any wall, fence, structure or monument;
- (6) engage in or encourage fighting or violent or threatening behavior;
- (7) spit upon grounds or other surfaces;
- (8) make any unreasonable noise;
- (9) throw away or discard any lighted match, cigar, cigarette, charcoal or other burning object other than in a receptacle provided for that purpose;
- (10) operate any watercraft, wheeled vehicle, snowmobile, or other equipment in such a manner as to endanger other persons or property or in such a manner so as to create an unreasonable noise or disturbance;
- (11) commit an act which may result in injury to any person or damage to real or personal property or create a hazardous or offensive condition by any act which serves no legitimate purpose;
- (12) without lawful authority, disturb any lawful assembly or meeting of persons; and
- (13) congregate with other persons and refuse to comply with a lawful order to disburse.

(g) *Charges.* No person shall enter upon or use any facility or property for the use of which a charge or fee is imposed, unless he shall have first paid such charge or fee.

(h) *Property closed to public.* No person shall enter or remain upon any property or within any structure during such hours, seasonal or indefinite periods that such property or structure has been designated as closed by a sign or by an employee of the office.

(i) *Use of established ways.* No person shall use other than trails, overlooks, roads and other ways established and provided for public use by the office. No liability shall attach to the State, its officers, employees or agents for injuries to persons resulting from the use of other than such established trails, overlooks, roads or ways.

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(j) **Minors.**

(1) No person having custody or control of a minor shall permit such minor to do any act in violation of a rule or regulation of the office. Minors under 10 years of age shall at all times be under the supervision and control of a parent, guardian or responsible custodian.

(2) Notwithstanding paragraph (1) of this subdivision, within the twelfth park region minors under six years of age only shall at all times be under the supervision and control of a parent, guardian or responsible custodian.

(k) *Hitchhiking.* No person shall solicit a ride or hitchhike. No person shall pick up a hitchhiker.

(l) *Gambling.*

(1) Gambling, lotteries, games of chance and fortune-telling are prohibited.

(2) Notwithstanding paragraph (1) of this subdivision, the sale of tickets for the New York State Lottery by concessioners approved by the commissioner shall be permitted in those park regions where the approval of the regional park, recreation and historic preservation commission has been given.

(m) No person shall introduce, possess or use any machete or cutting tool other than an axe, hatchet or sheath knife for the purpose of preparing wood for a cooking fire.

(n) *Animals.* No person shall introduce or possess any animal except as otherwise provided in this Subchapter or in the rules and regulations of a regional park, recreation and historic preservation commission.

(o) *All-terrain vehicle.*

(1) No person shall use or operate an all-terrain vehicle or other similar wheeled or air-cushioned vehicle designed or equipped to operate outside of highways. This prohibition shall not be interpreted to include snowmobiles unless equipped with a wheeled conversion to an all-terrain vehicle.

(2) Notwithstanding the provisions of paragraph (1) of this subdivision, a nonambulatory person who has been issued by the Department of Environmental Conservation, according to the provisions of subdivision (2) of section 11-0931 of the Environmental Conservation Law, a permit to possess a loaded firearm in or on a motor vehicle may, pursuant to a permit issued by the commissioner, operate an all-terrain vehicle on property under the jurisdiction of the office for the purposes of hunting.

(i) Application for a permit to operate an all-terrain vehicle for hunting shall be made in writing to the commissioner and shall include a copy of the permit for loaded firearm in a vehicle issued by the Department of Environmental Conservation.

(ii) A permit issued pursuant to this subdivision shall be for a specified period and shall contain such terms and conditions as the commissioner shall deem necessary to assure the safety and protection of the general public, park resources and the permittee. Such terms and conditions may include, but need not be limited to, the specific areas designated for nonambulatory hunting and the types of vehicles allowed.

(p) **Firearms and weapons.**

(1) Notwithstanding the provisions of paragraph (2) and (3) of this subdivision, no person, other than a member of a Federal, State or municipal law enforcement agency, shall introduce or possess, either

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upon the person or within a vehicle, or use any firearm, bow, crossbow, or any instrument or weapon the propelling force of which is a spring, rubber or air or any ammunition or propellant therefor, except pursuant to a permit issued according to Part 372 of this Title.

(2) Any person employed by a private security firm which has contracted with the office or with a lessee or licensee of the office for services on property under the jurisdiction, custody and control of the office shall be permitted, with the approval of the office, to carry a firearm supplied by his or her employer in the course of his or her employment on such property, provided that such person is licensed pursuant to section 400.00 of the Penal Law and meets such minimum qualifications as may be established by the commissioner. In addition, any firm providing security services on lands under the jurisdiction of the office shall provide public liability insurance, naming the State as an insured party, in such amounts as the commissioner shall require.

(3) On certain facilities of the Office, to be determined by the Commissioner, a person may possess an unloaded weapon for the purpose of accessing adjacent properties for lawful hunting purposes.

The list of facilities shall be published on the Office's public website.

(q) *Attire*. No person shall appear nude in public as defined in section 235.20(2) of the Penal Law, dress or undress other than in facilities provided therefor, enter or remain in any area or facility in such attire as may be prohibited by a sign or by an employee of the office or bathe in other than a bathing suit safe and suitable for such purpose.

(r) *Artificial swimming aids*. No person shall use tubes, floats, swim fins, Aqua-lungs or skin diving equipment of any kind, or any other inflated or buoyant objects or artificial or mechanical aids for swimming or diving, except under the following circumstances:

(1) when the use of skin or scuba diving equipment is authorized in accordance with the terms of a permit issued by the commissioner; or

(2) when the use of personal flotation devices at designated facilities is specifically authorized by the commissioner. Only United States Coast Guard-approved personal flotation devices shall be allowed.

(s) The use of property of the Niagara Reservation, Whirlpool or Devil's Hole State Parks for the purpose of launching a vessel or watercraft on the Niagara River or for the purpose of negotiating the Niagara River by any means whatsoever.

(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.

Sec. renum. 442.1, filed June 1962; new filed June 6, 1974; ams. filed: May 2, 1978; July 25, 1980; June 30, 1981; May 7, 1982; June 8, 1982; April 29, 1983; Oct. 24, 1984; Nov. 6, 1985; Oct. 26, 1987; July 17, 1990 eff. Aug. 1, 1990; amd. filed Mar. 3, 2016 eff. Mar. 23, 2016; amd. filed April 22, 2016 eff. May 11, 2016; amd. filed May 2, 2017 eff. May 17, 2017. Emerg. filed June 10, 2020 eff. Sept. 9, 2020

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Part 377. Regulated Activities

Section 377.1. Regulated activities

The following activities are prohibited on property under the jurisdiction, custody and control of the office, except in areas specifically designated therefor, during such hours or seasonal periods specifically authorized and subject to such conditions as may be contained herein or imposed by a region.

- (a) The throwing, striking, kicking or catching of any ball, horseshoe or other object or the conduct of any game or athletic activity, or the use of any device or equipment used in any such game or athletic activity.
- (b) The engaging in toy or model boating or automobiling.
- (c) The use or riding of saddle horses:
 - (1) No horse shall be left unattended or in an unenclosed space without being securely fastened to a device provided for such purpose.
 - (2) Saddle horses shall be used or ridden in such a manner so as not to endanger the safety of the public or interfere with the use and enjoyment of a park by others.
- (d) The building, kindling, lighting or maintaining of any fire. Fires may be built and maintained only in fireplaces, grills or stoves suitable for cooking purposes, and no fire shall be started or maintained unless under the constant supervision of a responsible person.
- (e) The use of a sled, skis, skates or other vehicle, equipment or device used for the purpose of moving over snow or ice on runners, wheels or other means.
- (f) Roller skating and skateboarding.
- (g) Kite flying.
- (h) Walking upon the frozen surface of any body of water.
- (i) *Use and operation of boats or watercraft.*
 - (1) As used in 377.1(i) and (j), the terms “boat or watercraft” mean any type of motorized or non-motorized boat, vessel, sailboat, sailboard, kiteboard, paddleboard, inflatable watercraft or any other device capable of being used as a means of transportation of persons or property on or through the water, and the terms “use” and “operation” include, but are not limited to, launching, beaching, docking, mooring or anchoring.
 - (2) No boat or watercraft shall be operated within an area specifically designated for bathing or within the ninth park region within an area specifically designated as a surfing area. For the purposes of the ninth park region only, a bathing or surfing area shall be deemed to include the water area adjacent to and within 1,000 feet of any bathing beach or surfing area on the Atlantic Ocean, Long Island Sound and the bays along the shores of Long Island.
 - (3) No boat or watercraft shall be operated at a speed greater than five miles per hour in any area designated as a boat basin or anchorage area.
 - (4) No boat or watercraft shall be operated at a speed greater than 12 miles per hour in those waters designated as the channel system within the ninth park region.

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- (5) Within those waters designated as the channel system within the ninth park region, no person shall permit a boat or watercraft to be moored or anchored except at the edge of a channel and in no case shall a boat or watercraft be moored to or anchored within 50 feet of a channel marker or so as to interfere with the full use of the channel.
- (6) If any boat or watercraft shall burn, submerge or become disabled, such boat or watercraft shall be removed immediately by its owner or other person having custody thereof. If such boat or watercraft is not removed within 24 hours, the office may have it removed and charge the owner or other person having custody thereof with any expense incurred in relation thereto.
- (7) No person shall operate a boat or watercraft without having the exhaust from the engine run through a muffler so constructed and used as to muffle the noise of exhaust in a reasonable manner.
- (8) All inflatable boats or inflatable watercraft must be multi-chambered and affixed with a manufacturer certification label stating the boat or watercraft was built to USCG standards, ISO standard 6185, or in accordance with small craft standards of Transport Canada.
- (9) Use and operation of boats or watercraft in Allegany State Park.
- (i) Boats or watercraft are permitted only in waters designated for boat or watercraft operation.
 - (ii) The use of motorized boats or watercraft is permitted in the Allegany Reservoir.
 - (iii) In the waters of Quaker Lake and Red House Lake, motorized boats or watercraft utilizing electric motors of no more than five horsepower are permitted.
- (10) *Inspection, removal and drainage of potentially invasive species prior to launch and after retrieval.* Prior to launching and after retrieving a boat or watercraft in or from a waterbody at a boat launch site, a fishing access site, or any other site from which a boat or watercraft can be launched, the operator of the boat or watercraft shall:
- (i) inspect the boat or watercraft for any plant, aquatic life, animal, or parts thereof, which are visible, in, on, or attached to any part, including livewells and bilges, the motor, rudder, anchor or other appurtenants, any equipment or gear, or, the trailer or any other device used to transport or launch the boat or watercraft that may come into contact with the waterbody;
 - (ii) remove any plant, aquatic life or animal, or parts thereof, observed during inspection and dispose of such material in designated receptacles provided at the site; or, if no such receptacle is provided, dispose of such material at a distance away from the waterbody and above any high water mark to avoid contact of the material with the waterbody; and
 - (iii) drain all water from the boat or watercraft, including bilge areas, livewells, bait wells and ballast tanks, at a distance from the waterbody and above any high water mark to avoid contact of the drainage with the waterbody.
- (11) The provisions of paragraphs 10 of this subdivision shall not apply to:
- (i) plants not otherwise defined in law or regulation as invasive species affixed to or transported in a boat or watercraft for use as camouflage for hunting or wildlife viewing purposes;
 - (ii) bait, including baitfish, legally used on a waterbody and possessed consistent with all applicable laws and regulations;
 - (iii) the use of plants or animals for habitat restoration, weed control, scientific research, or other activity approved by the office, consistent with all applicable laws and regulations;

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(iv) a dog or other companion animal as defined in section 350 of the Agriculture and Markets Law; or

(v) legally taken “game” and “fish” as defined, respectively, in sections 11-0103(2) and 11-0103(1)(a) of the Environmental Conservation Law.

(12) Notwithstanding paragraph (1) of this subdivision, the use of a paddleboard, windsurfing board or sailboard may be permitted within an area specifically designated for such activities, including a surfing area within the ninth park region. The use of a personal flotation device is required when paddleboarding, windsurfing or sailboarding.

(j) *The towing of persons on water skis or aquaplanes; the use of a surfboard, paddleboard, windsurfing board or sailboard.* A surfboard must have securely fastened to it a tether not exceeding eight feet in length, the free end of which must be securely bound to either the ankle or waist of the surfer. A personal flotation device must be worn at all times when using a paddleboard, windsurfing board or sailboard, or as required by law when operating a boat or watercraft.

(k) The use or operation of a snowmobile as defined in subdivision 3 of section 21.05 of the Parks, Recreation and Historic Preservation Law.

(1) Notwithstanding the foregoing provision, the operation of a snowmobile during the period beginning one-half hour after sunset and ending at sunrise or the holding of a special event for snowmobiles, including but not limited to races and competitions, shall be permitted only pursuant to a written permit issued by the commissioner.

(2) The operator of any snowmobile shall carry liability insurance in an amount equal to that prescribed by law for such operation on highways and carry evidence of same.

(3) No person shall operate a snowmobile in any area where the snow cover is less than three inches.

(4) No person under 10 years of age may operate a snowmobile on property under the jurisdiction, custody or control of the office.

(5) No person under 16 years of age may operate a snowmobile without having received and in his possession a snowmobile safety certificate issued by the commissioner or unless such person is accompanied by a person at least 18 years of age.

(l) *Golf.* Engaging in the game of golf or in practice therefor:

(1) golfers and caddies must register before play;

(2) only registered golfers and their caddies may enter upon a golf course or practice area or search for lost balls in adjacent areas; and

(3) no person shall commence play at other than designated starting tees.

(m) Taxis and limousines.

(1) Taxis and limousines shall be permitted to pick up and discharge passengers, but shall not be permitted to cruise or solicit passengers. The provision shall not apply to the use or operation of a taxi or limousine in a parkway.

(2) Notwithstanding paragraph (1) of this subdivision, within the Watkins Glen State Park and within the fifth park region, taxis shall be permitted only pursuant to a permit issued by the commissioner.

(n) *Motorized two- and three-wheeled vehicles.* Motorized two- and three-wheeled vehicles may be operated on the improved portion of park roads and other designated areas.

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(o) Bicycling.

Sec. filed, Sept. 21, 1961; repealed, filed May 1, 1962; new added by renum. 211.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; amds. filed: May 7, 1976; Feb. 2, 1982; May 7, 1982; July 17, 1990; May 10, 1994 eff. May 25, 1994; amd. filed June 23, 2011 eff. July 13, 2011; amd. filed Oct. 28, 2014 eff. Nov. 12, 2014; amd. filed Mar. 3, 2016 eff. Mar. 23, 2016; amd. filed May 2, 2017 eff. May 17, 2017. amd. filed May 30, 2017 eff. June 14, 2017

Part 378. Traffic

Section 378.1. Use and operation of motor vehicles on property under the jurisdiction, custody and control of the office

(a) No person shall cause or permit a vehicle to be towed or pushed by another vehicle, except that a disabled vehicle may be towed to the nearest park or parkway exit by a tow truck operated for such purpose. Disabled vehicles shall be moved off the paved portion of a parkway or road so as to prevent obstruction of traffic, but a disabled vehicle shall be permitted to remain off the pavement only until temporary repairs are made or until power can be obtained to remove it. If such vehicle is not removed within 24 hours, it may be removed by the office at the expense of the owner or person in charge thereof. Any vehicle left on the paved portion of a parkway or park road may be immediately removed by the office at the expense of the owner or person in charge thereof.

(b) No motor vehicle shall contain any person or object protruding or hanging outside or on the top thereof, except that sports and recreation equipment may be carried on the rear of such vehicle or on a rack designed for such purpose and attached to the top thereof. Fastenings shall be secure and substantial, and in no case shall any such equipment be permitted to protrude to the extent that it may create a hazard to other vehicles.

(c) No person shall operate a motor vehicle unless duly licensed in accordance with the laws of the State of New York, and no person having custody or control of a motor vehicle shall permit the same to be operated by another person not duly licensed in accordance with the laws of the State of New York. Persons having a learner's permit issued in accordance with the provisions of section 501 of the Vehicle and Traffic Law shall be permitted to operate a motor vehicle on such parkways or park roads specifically designated for such purpose.

(d) No person shall cause or permit the interior of a motor vehicle to be closed from view, except those vehicles designed or used for camping purposes and then only when being used for camping.

(e) No person shall cause or permit a motor vehicle to be driven or otherwise moved off the improved or paved portion of a parkway, park road or designated parking area except by designated access drive or except as otherwise provided in this Chapter.

(f) No person shall cause or permit a motor vehicle to be parked or to stand, except in designated areas.

(g) No person shall cause or permit a motor vehicle to enter or leave property under the jurisdiction, custody or control of the office, except by designated routes.

(h) No person shall cause or permit a motor vehicle to make a U-turn, except around a plaza or other place where designated.

(i) No person shall cause or permit a motor vehicle to unnecessarily stop or obstruct traffic.

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- (j) No person shall cause or permit a motor vehicle to be driven at such a slow speed as to impede or block the normal and reasonable movement of traffic, except where such reduced speed is necessary for safe operation or in compliance with the directions of an employee of the office.
- (k) No person shall cause or permit a motor vehicle to cross a solid longitudinal traffic line, except when directed to do so by an employee of the office.
- (l) No person shall cause or permit a motor vehicle to weave in and out of traffic, change its course, enter or change traffic lanes in such a manner or at such a speed as to unreasonably interfere with the operation of any other vehicle.
- (m) No person shall cause or permit a motor vehicle to be driven or backed on a traffic lane opposite to that of the movement of traffic in such lane.
- (n) No person shall cause or permit a motor vehicle to be stopped on the improved or paved portion of any parkway or other road for the purpose of removing or replacing a tire or making any repair to a vehicle.
- (o) During any period declared to be a snow emergency by the commissioner, any motor vehicle determined by the commissioner to be abandoned shall be removed by the office at the expense, including towing and storage, of the owner or other person in charge of such vehicle.
- (p) During any period declared to be a snow emergency by the commissioner, no person shall cause or permit a vehicle to be operated, unless the powered wheels of such vehicle are equipped with chains or snow tires. Worn or damaged tires which no longer provide effective traction or which fail to meet the requirements of the Commissioner of Motor Vehicles established pursuant to the Vehicle and Traffic Law shall not constitute snow tires regardless of their original classification.
- (q) All persons shall heed and comply with the directions of the regional park police and other employees of the office and the directions of all traffic signs and signals.
- (r) Except for emergencies, no person shall cause or permit a motor vehicle to be stopped, other than within an authorized parking area, on the following parkways:
- (1) Loop Parkway. Beginning at Lido Boulevard easterly to Meadowbrook Causeway.
 - (2) Meadowbrook Parkway. Beginning at the south end of the sloop channel bridge northerly to Merrick Road.
 - (3) Wantagh Parkway. Beginning at a point one-half mile north of the Jones Beach State Park water tower (south end of gas station plaza) northerly to Merrick.
 - (4) Ocean Parkway. Beginning at the easterly boundary of Jones Beach State Park (east side of entrance to Parking Field No. 9) easterly to the entrance to Captree State Park.
 - (5) Robert Moses Causeway. Beginning at the Robert Moses State Park water tower northerly to Montauk Highway.
- (s) Except pursuant to a permit issued by the commissioner, during the period from December 15th through March 31st of each year, no person shall operate or cause to be operated any motor-driven vehicle except a snowmobile upon the customarily unplowed roads of Allegany State Park which are part of the designated snowmobile trail system of the park. Such roads include, but are not limited to, the following:

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- (1) Allegany State Park Route 1, from the Red House store parking lot southerly to the intersection with ASP Route 3;
 - (2) Bay State Road, the unpaved portion;
 - (3) France Brook Road;
 - (4) Thunder Rocks Road;
 - (5) Limestone Ridge Road;
 - (6) Limestone Run Road, the portion within the Town of Red House; and
 - (7) Stone Tower Ridge Road.
- (t) Traffic using the driveway to the regional administration building, Red House Area, Allegany State Park, shall travel one-way in a north-to-south direction.

Sec. filed Jan. 2, 1962; repealed, filed May 1, 1962; new added by renum. 212.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; amds. filed: Feb. 2, 1982; March 18, 1986; July 17, 1990 eff. Aug. 1, 1990. Amended (i).

Part 379. Parkway Speed Limits

Section 379.1. Maximum speed limit

- (a) The operation of any motor vehicle at a speed in excess of 55 miles is hereby prohibited on any of the following parkways: Robert Moses State Parkway (Niagara County); South State Parkway (Erie County); West River State Parkway (Erie County); Lake Ontario State Parkway (Monroe and Orleans Counties); Bethpage State Parkway (Nassau County); Heckscher State Parkway (Suffolk County); Loop Parkway (Nassau County); Meadowbrook Parkway and Causeway (Nassau County); Montauk State Parkway (Suffolk County); Northern State Parkway (Nassau and Suffolk Counties); Robert Moses State Parkway and Causeway (Suffolk County); Sagtikos State Parkway (Suffolk County); Southern State Parkway (Nassau and Suffolk Counties); Sunken Meadow State Parkway (Suffolk County); Wantagh State Parkway (Nassau County).
- (b) In areas where lower speed limits are determined to be appropriate by the office, or when weather conditions or special hazards require a lower speed limit, and signs are posted indicating such speed, a rate of speed greater than that posted shall be prohibited.

Sec. filed Jan. 2, 1962; repealed, filed May 1, 1962; new added by renum. 213.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; March 4, 1975; May 6, 1976; amd. filed July 12, 1977 eff. July 15, 1977. Amended (a).

Part 381. Fees

Section 381.1. General requirements for fees and charges

- (a) The office may establish fees or charges for the use of State parks, parkways, historic sites and recreational facilities under its jurisdiction.
- (b) Generally, any fee or charge of \$100 or more resulting in annual aggregate revenue of more than \$1,000 is required by law to be established by regulation. Therefore, the office has determined that apart

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from the other separate fees and charges it may assess that are under \$100, the fees and charges listed in this Part shall be assessed.

(c) When used in this Part, the term **nonprofit** includes a State or municipal agency or entity.

(d) Information regarding all fees and charges and the procedures for applying to use the facilities under the jurisdiction of the office is available at www.nysparks.state.ny.us; at the headquarters of the office's 11 regions as listed in section 461.6 of this Title; or by contacting the commissioner at Agency Building 1, Empire State Plaza, Albany, NY 12238.

Sec. added by renum. 215.1, Title 6, filed Sept. 1971; amd. filed Feb. 10, 1972; repealed, filed Aug. 10, 1972; new filed April 28, 1976; amds. filed: May 7, 1982; April 22, 1986; renum. 384.1, new filed Aug. 17, 1988; amds. filed: March 14, 1989; April 16, 1991; June 27, 1991; May 11, 1992; May 14, 1996; Feb. 15, 2000; March 12, 2002; June 8, 2004 as emergency measure; Aug. 31, 2004 eff. Sept. 15, 2004. Amended (b)(2)-(5); rep. and new added filed Sept. 27, 2010 eff. Oct. 13, 2010.

Section 381.2. Statewide fees for cabins

(a) Cabin fees are for a seven-day rental period, payable in advance and are based on the sleeping capacity of the cabin and not the number of registered occupants. For each cabin, a base rate is determined by sleeping capacity. Differences in fees between cabins of the same capacity are based on the amenities offered. Surcharges are added for these amenities (such as a wood stove or fireplace) to determine the total weekly rental rate. The base rate covers a cabin of average condition and basic furnishings, electricity and a stove and refrigerator. The following fees apply:

- (1) Two-person cabin base rate \$145 per week.
- (2) Four-person cabin base rate \$190 per week.
- (3) Six-person cabin base rate \$235 per week.
- (4) Eight-person cabin base rate \$255 per week.
- (5) A surcharge of \$25 per week shall be added for each of the following amenities:
 - (i) open porch;
 - (ii) wood stove or fireplace;
 - (iii) in-cabin running water;
 - (iv) in-cabin shower;
 - (v) more than one bedroom;
 - (vi) prime site location (e.g., waterfront, scenic views or more secluded area);
 - (vii) prime condition (rehabilitated within the last five years); or
 - (viii) occupancy December 15 through March 15.
 - (ix) out of state surcharge
- (6) A surcharge of \$50 per week shall be added for each of the following amenities:
 - (i) screened porch;
 - (ii) propane or electric heat;
 - (iii) separate bedroom and living areas; and
 - (iv) in-cabin toilet facilities.
- (7) A deduction of \$25 per week shall be made in the following cases:

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- (i) a cabin which does not have electricity;
- (ii) a cabin which does not have a stove and refrigerator;
- (iii) a cabin considered to be in need of refurbishing or rehabilitation (e.g. rustic condition or old furnishings); or
- (iv) a cabin in a less popular location (e.g., located further away from bathrooms or other facilities).

Sec. added by renum. 215.2, Title 6, filed Sept. 1971; amd. filed Feb. 10, 1972; repealed, filed Aug. 10, 1972; new filed April 28, 1976; ams. filed: May 7, 1982; April 22, 1986; Aug. 4, 1988 eff. Aug. 24, 1988; renum. 384.2, new added by renum. 373.2, filed Aug. 17, 1988 eff. Sept. 7, 1988; rep. and new added filed Sept. 27, 2010 eff. Oct. 13, 2010.

Section 381.3. Other statewide fees

- (a) The following fees apply statewide:
 - (1) Golf outings: Shotgun start \$500 plus payment of a negotiated reservation deposit and payment of greens fees for a required minimum of 100 players.
 - (2) Rowboat weekly rental \$100.

Sec. added by renum. 215.3, Title 6, filed Sept. 1971; amd. filed Feb. 10, 1972; repealed, filed Aug. 10, 1972; new filed April 28, 1976; ams. filed: May 7, 1982; April 22, 1986; Aug. 4, 1988 eff. Aug. 24, 1988; renum. 384.3, new added by renum. 373.1, filed Aug. 17, 1988 eff. Sept. 7, 1988; rep. and new added filed Sept. 27, 2010 eff. Oct. 13, 2010.

Section 381.4. Boating facility and marina berth fees by region

- (a) The following seasonal charges at marinas are based on the length in feet of the vessel for which the berth is required except where a flat fee is otherwise indicated.

- (1) Allegany region.
 - (i) Long Point on Lake Chautauqua State Park:
 - (a) Slip with electricity.
 - (1) Type A slip is \$46 per foot.
 - (2) Type B slip is \$44 per foot.
 - (3) Type C slip is \$40 per foot.
 - (b) Slips without electricity.
 - (1) Type D slip is \$37 per foot.
 - (2) Type E slip is \$34 per foot.
 - (3) Type F slip is \$31 per foot.
 - (4) Type G slip is \$28 per foot.
 - (c) Personal watercraft \$250.
 - (d) Dry slip \$188.

- (2) Finger Lakes region.
 - (i) Allan H. Treman State Park, Lodi Point State Park, Sampson State Park, Taughannock Falls State Park and Seneca Lake State Park:
 - (a) 18 feet or less without electricity \$625.
 - (b) 18 feet or less with electricity \$800.

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- (c) Over 18 feet without electricity \$42 per foot.
 - (d) Over 18 feet with electricity \$52 per foot.
 - (ii) Allan H. Treman State Park and Seneca Lake State Park:
 - (a) Dry slip \$450.
- (3) Long Island region.
 - (i) Robert Moses State Park—Captree Island Resident Mooring Permit (April 1st to October 31st): \$250 per year.
- (4) Niagara region.
 - (i) Big Six Mile Creek Marina:
 - (a) 17 feet or less \$595 flat fee.
 - (b) 18 to 40 feet \$35 per foot.
 - (c) Over 40 feet \$35 per foot for the first 40 feet plus an additional \$41 per foot for each foot of length over 40 feet.
 - (ii) Beaver Island finger pier:
 - (a) 40 feet and under \$595 or \$35 per foot, whichever is higher.
 - (b) Over 40 feet \$35 per foot for the first 40 feet plus an additional \$41 per foot for each foot of length over 40 feet.
- (5) Taconic region.
 - (i) Norrie Point marina in Mills-Norrie State Park:
 - (a) Finger pier \$50 per foot (\$800 minimum).
 - (b) Surcharge for provision of electricity:
 - (1) 30 amp (floating dock) \$75.
 - (2) Dual 30 amp service \$160.
 - (c) A surcharge of \$35 shall be assessed for a dinghy tied up to a vessel.
 - (d) Personal watercraft \$375.
- (6) Thousand Islands region. The following charges shall apply at marinas in the region:
 - (i) Keewaydin State Park:
 - (a) Slip with electricity \$60 per foot.
 - (b) Slip without electricity \$50 per foot (\$850 minimum).
 - (c) Personal watercraft \$150 per season.
 - (ii) Robert Moses State Park:
 - (a) Slip with electricity \$30 per foot (\$700 minimum).
 - (b) Slip without electricity \$22 per foot (\$500 minimum).
 - (iii) Wellesley Island:
 - (a) Seasonal slip \$35 per foot (\$800 minimum).
 - (b) Dry slip \$150 per season.
 - (c) Personal watercraft \$150 per season.
 - (iv) Permit fee for use of boat ramps by commercial haulers. This excludes heavy equipment users (barges, dump trucks, etc.) whose fees are separately negotiated with the regional office.
 - (a) 10-24 uses per year \$100.

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- (b) 25-49 uses per year \$250.
- (c) 50-99 uses per year \$500.
- (d) 100 or more uses per year \$1,000.

Sec. added by renum. 215.4, Title 6, filed Sept. 1971; amd. filed Feb. 10, 1972; repealed, filed Aug. 10, 1972; new filed April 28, 1976; amds. filed: May 7, 1982; April 22, 1986; June 17, 1987; renum. 384.4, filed Aug. 17, 1988 eff. Sept. 7, 1988; rep. and new added filed Sept. 27, 2010 eff. Oct. 13, 2010.

Section 381.5. Picnic shelter use fees by region

(a) Shelter rental fees shall be based on the size of the group occupying the shelter, the capacity and amenities available and the market and public demand for such facilities in the area of the park. In some instances more than one group may occupy the picnic shelter at the same time.

(1) Allegany Region.

(i) Long Point State Park on Lake Chautauqua \$100 per day.

(ii) Midway State Park:

- (a) Shelter 6- Blue (500 maximum capacity) \$100 per day.
- (b) Shelter 6 - Red (500 maximum capacity) \$100 per day.
- (c) Shelter 6 - All (1,000 maximum capacity) \$175 per day.
- (d) Shelters 7 and 8 - (600 maximum capacity) \$170 per day.

(2) Central New York Region.

(i) Bowman Lake State Park: \$135 per day (includes 20 vehicle use fees)

(ii) Chenango Valley State Park.

- (a) Pine Grove shelter: (includes 30 vehicle use fees) \$175 weekdays, \$225 weekends and holidays per day; (excluding vehicle use fees) \$100 weekends and holidays per day.
- (b) Pine Plains shelter: maximum \$175 weekdays; \$375 weekends and holidays per day.
- (c) Pine Plains shelter (includes 200 vehicle use fees): \$1,000 weekdays; \$1,375 weekends and holidays per day.
- (d) Pine Plains shelter (one-half use) (includes 100 vehicle use fees): \$550 weekdays; \$775 weekends and holidays per day.
- (e) Pine Plains shelter (one-fourth use) (includes 50 vehicle use fees): \$350 weekdays; \$400 weekends and holidays per day.
- (f) Tween Lakes shelter (includes 20 vehicle use fees): \$125 weekdays; \$150 weekends and holidays per day.

(iii) Chittenango Falls State Park Fairchild shelter; Clark Reservation State Park large shelter; Betty and Wilbur Davis shelter, Delta Lake Sunset shelter, Gilbert Lake State Park Briggs Pavilion, Glimmerglass East shelter, Glimmerglass State Park beachfront shelter, Selkirk Shores State Park open shelter, Verona Beach State Park south shelter: weekends and holidays \$100 per day.

(iv) Delta Lake State Park beach pavilions 1 and 2: \$100 per day.

(v) Gilbert Lake State Park large shelter: weekends and holidays \$150 per day full use for 300 people; \$100 per day one-half use for 150 people.

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- (vi) Glimmerglass State Park west shelter: weekdays \$100; weekends and holidays \$125 per day.
 - (vii) Delta Lake State Park shelters 1 and 2, Glimmerglass State Park lake view shelter, Green Lakes State Park Livingston shelter, Selkirk Shores State Park enclosed shelter: weekends and holidays \$150 per day.
 - (viii) Verona Beach State Park large shelter: weekdays \$100, weekends and holidays \$150 per day.
- (3) Finger Lakes Region.
- (i) Buttermilk Falls State Park:
 - (a) Upper shelter \$100 per day.
 - (ii) Cayuga Lake State Park:
 - (a) Bathhouse shelter \$125 per day.
 - (iii) Fair Haven Beach State Park:
 - (a) Sabin Hall \$150 per day.
 - (b) Bay \$100 per day.
 - (iv) Seneca Lake State Park:
 - (a) Shelter No. 1 \$175 per day.
 - (b) Shelter No. 2 \$150 per day.
 - (v) Taughannock Falls State Park:
 - (a) Central and Lakeside North shelters \$125 per day.
 - (vi) Robert H. Treman State Park:
 - (a) Playfield shelter \$150 per day.
 - (b) South shelter \$100 per day.
 - (vii) Newtown Battlefield:
 - (a) Lodge with kitchen \$150 per day.
 - (viii) Sampson State Park:
 - (a) Enclosed shelter \$100 per day.
 - (b) Recreation shelter (not available July and August) \$100 per day.
- (4) Genesee Region.
- (i) Letchworth State Park - North and South Highbanks \$100 per day.
 - (ii) Hamlin State Park - Picnic shelter numbers 3 and 5 \$100 per day.
- (5) Long Island Region.
- (i) Heckscher State Park:
 - (a) Field 3 Pavilion \$325 per day up to 400 people.
 - (b) Deer Range and Taylor Pavilions (minimum of 100 people required).
 - (1) Up to 500 people, weekdays \$200 per day.
 - (2) Up to 500 people, weekends and holidays \$250 per day.
 - (ii) Bethpage State Park:
 - (a) Weekdays \$200 per day.
 - (b) Weekends and holidays \$250 per day.
 - (iii) Belmont Lake State Park:

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- (a) Birch, Oak and Pine Pavilions.
 - (1) Weekdays \$200 per day.
 - (2) Weekends and holidays \$250 per day.
- (b) Maple Pavilion.
 - (1) Weekdays \$200 per day.
 - (2) Weekends and holidays \$250 per day.
- (iv) Hempstead Lake State Park:
 - (a) Weekdays \$200 per day.
 - (b) Weekends and holidays \$250 per day.
 - (c) Carousel Pavilion rental \$350 for 3 hours.
- (v) Valley Stream State Park:
 - (a) Weekdays \$200 per day.
 - (b) Weekends and holidays \$250 per day.
- (vi) Orient Beach State Park:
 - (a) Weekdays \$200 per day.
 - (b) Weekends and holidays \$250 per day.
- (6) New York City Region.
 - (i) Roberto Clemente State Park reserved picnic areas 101 to 150 people \$115 per day; 151-200 people (maximum) \$140 per day.
- (7) Palisades Region.
 - (i) Rockland Lake State Park and Nyack Beach State Park picnic areas \$150 per day.
 - (ii) Minnewaska State Park Preserve picnic area \$200 per day.
- (8) Saratoga-Capital District Region.
 - (i) Saratoga Spa State Park:
 - (a) Columbia and Orenda shelters \$300 per day.
 - (b) Ferndell, Hathorn, Carlsbad and Coesa shelters \$150 per day.
 - (c) Karista and Peerless shelters \$125 per day.
 - (ii) John Boyd Thacher State Park.
 - (a) Greenhouse, Yellow Rock, Glen Doone and Knowles Flat shelters \$250 per day.
 - (b) Paint Mine, Pear Orchard, Horseshoe 1 and 2, and Hailes Cave shelters \$125 per day.
 - (iii) Moreau Lake State Park: shelters including vehicle use fees \$225 per day; shelters excluding vehicle use fees \$100 per day.
 - (iv) Grafton Lakes State Park: Deerfield, Rabbit Run, North Area and Beach shelters \$100 per day.
 - (v) Cherry Plain State Park: Waters Edge shelters \$100 per day.
 - (vi) Peebles Island State Park: pavilion with use of kitchen \$150 per day.
- (9) Taconic Region.
 - (i) James Baird State Park:
 - (a) Shelter #1.
 - (1) Mondays through Thursdays \$100 per day.

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- (2) Fridays, Saturdays or Sundays \$200 per day.
- (b) Shelter #2.
 - (1) Mondays through Thursdays \$150 per day.
 - (2) Fridays, Saturdays or Sundays \$300 per day.
- (ii) Franklin Delano Roosevelt State Park:
 - (a) Shelter—Lot #4: Monday to Thursday \$100 per day; Friday, Saturday, Sunday and holidays \$150 per day.
- (10) Thousand Islands Region.
 - (i) Coles Creek State Park and Robert Moses State Park \$100 per day.

Sec. added by renum. 215.5, Title 6, filed Sept. 1971; amd. filed Feb. 10, 1972; repealed, filed Aug. 10, 1972; new filed April 28, 1976; ams. filed: May 7, 1982; April 22, 1986; Jan. 21, 1988; Aug. 4, 1988 eff. Aug. 24, 1988; renum. 384.5, filed Aug. 17, 1988 eff. Sept. 7, 1988; rep. and new added filed Sept. 27, 2010 eff. Oct. 13, 2010.

Section 381.6. Seasonal lodging use fees by region

(a) Rates for the rental of furnished and unfurnished houses to the public are published and based on the size, amenities and services available, the location, the surrounding market and the time of year they are rented. Peak season runs from the fourth week of June to the last weekend before Labor Day:

- (1) Allegany Region.
 - (i) Allegany State Park:
 - (a) Pitt Cottage peak and non-peak season \$575 per week; non-peak season \$143.75 per night.
 - (b) Fancher and Parallel Cottages peak and non-peak season \$690 per week; non-peak season \$172.50 per night.
 - (c) Camp Allegany \$275 per day.
 - (d) Group Camps \$680 per week; \$170 per day.
 - (ii) Central Region.
 - (i) Betty and Wilbur Davis State Park:
 - (a) Two-bedroom full service cottages: core peak season \$1,000 per week; peak season \$800 per week or \$150 per night; non-peak season \$650 per week or \$150 per night.
 - (ii) Oquaga Creek State Park:
 - (a) Full-service cottage: peak and non-peak season \$650 per week; non-peak season \$150 per day.
 - (iii) Selkirk Shores State Park:
 - (a) Full-service cottage: peak and non-peak season \$650 per week; non-peak season \$150 per day.
- (3) Finger Lakes Region.
 - (i) Taft House peak season \$700 per week; non-peak \$400 per week.
 - (ii) Young House peak season \$600 per week; non-peak \$350 per week.
 - (iii) Bayview Cottage peak season \$500 per week; non-peak \$400 per week.
 - (iv) Cayuga Lake peak season \$800 per week; non-peak \$500 per week or \$125 per day.
 - (v) Long Point peak and non-peak season \$500 per week.

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- (4) Genesee Region.
 - (i) Letchworth State Park:
 - (a) Genesee Conference Center \$275 per night.
 - (b) Maplewood Lodge peak season \$700 per week; non-peak season \$600 per week or \$150 per night.
- (5) Niagara Region.
 - (i) Golden Hill State Park:
 - (a) Lighthouse Cottage \$1,250 per week or \$200 per night.
- (6) Saratoga-Capital District Region.
 - (i) Moreau Lake State Park:
 - (a) Lakehouse Cottage: May 8th to Memorial Day \$375 per week; Tuesday after Memorial Day to June 22nd \$575 per week; June 23rd to July 21st \$800 per week; July 22nd to Labor Day \$1,000 per week; Tuesday after Labor Day to Columbus Day \$375 per week.
 - (b) Campground Cottage: May 8th to May 22nd \$400 per week; May 23rd to July 31st \$525 per week; August 1st to September 11th \$650 per week; September 12th to Columbus Day \$400 per week.
- (7) Taconic Region.
 - (i) Lake Taghkanic:
 - (a) Four-person cottage \$720 per week or \$180 per night.
 - (b) Six-person cottages \$750 per week or \$190 per night.
 - (c) Eight-person cottages \$780 per week or \$195 per night.
 - (ii) Taconic State Park:
 - (a) Copake Falls cottage \$700 per week or \$175 per night.
- (8) Thousand Islands Region.
 - (i) Wellesley Island State Park:
 - (a) Two-bedroom cottage peak season \$700 per week; non-peak season \$500 per week or \$100 per night.
 - (b) Three bedroom cottage peak season \$800 per week; non-peak season \$600 per week or \$125 per night.
 - (ii) Grass Point State Park Cottage peak season \$825 per week; non-peak season \$650 per week.
 - (iii) Robert G. Wehle State Park Complex peak season \$2,500; non-peak season \$2,100 per week or \$300 per night.

Sec. added by renum. 215.6, Title 6, filed Sept. 1971; amd. filed Feb. 10, 1972; repealed, filed Aug. 10, 1972; new filed April 28, 1976; amds. filed: Feb. 2, 1982; May 7, 1982; April 22, 1986; renum. 384.6, filed Aug. 17, 1988 eff. Sept. 7, 1988; rep. and new added filed Sept. 27, 2010 eff. Oct. 13, 2010.

Section 381.7. Special facility and event fees by region

- (a) The following facilities and events are available by special fee or by permit in each region.
 - (1) Allegany Region.
 - (i) Allegany State Park:

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- (a)* Small tent rental \$175 per day.
 - (b)* Large tent rental \$200 per day.
 - (c)* Peddling fee for sale of merchandise or food \$225 per permit per year.
 - (ii)* Lake Erie State Park:
 - (a)* Tent rental (20' by 40') \$180 per day.
 - (b)* Bathhouse rental \$130 per day.
- (2)* Central Region.
 - (i)* Special use/group use permit \$100 to \$500 maximum per day. The fee is assessed on a case-by-case basis taking into account the following factors: nonprofit status of the group; size of the group; time of year and duration of the event; the nature of the activity and its potential impacts on park resources or other patrons; and, duration and level of staff time and staff services required for the event.
 - (ii)* State Park at the Fair \$100 per day for grounds use; \$200 per day for building use.
 - (iii)* Oquaga Creek State Park tent rental (maximum capacity 100) \$125 per day weekends and holidays.
 - (iv)* Verona Beach State Park tent rental (maximum capacity 120) \$100 per day weekends and holidays.
 - (v)* Chenango Valley State Park:
 - (a)* Pine Room rental \$125 per day; or discount fee of \$150 per day that includes 10 vehicle use fees.
 - (b)* Great Hall room rental \$100 per day or discount fee of \$225 per day that includes 20 vehicle use fees.
 - (c)* Great Hall and Pine Room rental together \$175 per day; or discount fee of \$275 per day that includes 30 vehicle use fees.
 - (vi)* Delta Lake State Park:
 - (a)* Four Seasons room \$100 per day.
 - (vii)* Green Lakes State Park:
 - (a)* Community Room \$125 per day weekdays; \$200 per day weekends and holidays.
 - (b)* Great Room \$100 per day weekdays; \$175 per day weekends and holidays.
 - (viii)* Sandy Island Beach State Park:
 - (a)* Community Room \$75 per day weekdays; \$125 per day weekends and holidays.
- (3)* Finger Lakes Region.
 - (i)* Fishing Tournaments:
 - (a)* Cayuga Lake State Park \$100 per event.
 - (b)* Other parks (100 - 150 boats) \$100 per event.
 - (ii)* Special use/group use permit \$100 to \$500 maximum per day. The fee is assessed on a case-by-case basis taking into account the following factors: nonprofit status of the group; size of the group; time of year and duration of the event; the nature of the activity and its potential impacts on park resources or other patrons; and, duration and level of staff time and staff services required for the event.

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- (iii) Seneca Lake State Park tent rental \$100 per day.
 - (iv) Annual Golf Pass at Soaring Eagles \$1,031 per adult; \$750 per senior; \$435 per junior.
 - (v) Watkins Glen State Park group camp dining hall and kitchen \$600 per week plus \$160 cleaning fee.
 - (vi) Peddling fee for sale of merchandise or food \$400 per permit per year.
- (4) Genesee Region.
- (i) Special use/group use permit \$100 to \$500 maximum per day. The fee is assessed on a case-by-case basis taking into account the following factors: nonprofit status of the group; size of the group; time of year and duration of the event; the nature of the activity and its potential impacts on park resources or other patrons; and, duration and level of staff time and staff services required for the event.
 - (ii) Outreach Programs at Letchworth State Park \$100 for 4 or more hours; 2 to 4 hours \$50; less than 2 hours \$25.
- (5) Long Island Region.
- (i) Field Usage:
 - (a) Snowflake Softball League \$400 per field per season from September 1st to November 15th.
 - (b) Summer Softball League \$1,000 per field per season from April 1st to August 31st.
 - (c) Cross Country Running Event at Sunken Meadow State Park:
 - (1) Up to 300 participants \$150 per day weekends or holidays.
 - (2) 301 to 900 participants \$150 per day weekends or holidays; \$100 weekdays.
 - (3) 901 to 2,000 participants \$300 per day weekends or holidays; \$150 weekdays.
 - (4) Over 2,000 participants is \$450 per day weekends or holidays; \$150 weekdays.
 - (d) Multi-event with multi affiliates (major) \$9,000 per permit for one or more days.
 - (e) Multi-event (minor) \$1,500 per permit for one or more days.
 - (f) Polo Field at Bethpage State Park \$100 per hour.
 - (g) Lacrosse / Soccer at Heckscher State Park \$3,000 per weekday week; \$2,500 weekends (2-days); \$1,500 full days; \$750 half days.
 - (h) Cross Country Running Events at Bethpage State Park:
 - (1) Section VIII (all schools combined) \$8,500 per season.
 - (2) Non-section VIII \$256 for each school per season.
 - (i) Flag Football League \$750 per season.
 - (j) Brentwood State Park:
 - (1) Baseball Fields and Multi-Use Field #1 \$200 for 2 hours.
 - (2) Baseball Fields and Multi-Use Field #1 \$750 for all-day tournament.
 - (3) Baseball Fields and Multi-Use Field #1 \$1,500 for two-day tournament.
 - (4) Soccer Fields #2 and #3 \$100 for 2 hours.
 - (5) Soccer Fields #2 and #3 \$375 for all-day tournament.
 - (6) Soccer Fields #2 and #3 \$750 for two-day tournament.
 - (ii) Still photography.

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- (a) Weddings \$100 per event for the grounds; \$150 minimum per event for other areas.
- (iii) Student film permits \$250 per day.
- (iv) Walk-A-Thon per event:
 - (a) 75 to 249 participants \$100.
 - (b) 250 to 1,000 participants \$250.
 - (c) Over 1,000 participants \$500.
- (v) Commercial stable operation:
 - (a) Belmont Lake State Park, Bethpage State Park, and Montauk Downs State Park \$2,500 each per year.
 - (b) Hempstead Lake (with manure management) \$6,000 per year.
- (vi) Parking: Helicopter landing at Jones Beach State Park \$1,500 per landing.
- (vii) Use of parkway and test borings for geotechnical investigation of subsurface conditions e.g., for parkway maintenance or new construction \$150 per permit.
- (viii) Scuba Diving for non-resident of New York State \$110 per season.
- (ix) Group horse riding fee \$100 per day.
- (x) Fishing permit. Beach vehicle fee for non-resident of New York State \$110 per season.
- (xi) Room and facility rental.
 - (a) Planting Fields Arboretum State Historic Park.
 - (1) Annex \$100 per day weekends or holidays for a nonprofit or horticultural society; \$125 per day for all others.
 - (2) Dahlia Garden \$300 per half day.
 - (3) Carriage House \$100 per day weekends or holidays and \$75 per weekday for a nonprofit or horticultural society; \$200 per day weekends or holidays and \$125 per weekday for all others.
 - (4) Greenhouse Classroom \$100 per day weekends or holidays and \$75 per weekday for a nonprofit or horticultural society; \$200 per day weekends or holidays and \$100 per weekday for all others.
 - (5) Manor House Conference Room \$100 per day weekends or holidays for a commercial entity.
 - (6) Manor House Interior/Rose Garden \$500 per day weekends or holidays for a commercial entity; \$300 per weekday for commercial entity.
 - (7) Main Greenhouse \$1,000 per day for a nonprofit or horticultural society; \$1,500 per day for all others.
 - (8) Playhouses \$300 per half day.
 - (9) Haybarn (Main House) \$350 per day for weekends or holidays (nonprofit or horticultural society) \$200 per weekday (nonprofit or horticultural society); \$1,500 per day for weekends or holidays (all others) or \$1,000 per weekday (all others).
 - (10) Haybarn (South Lawn) \$125 per day weekends or holidays and \$75 per weekday for a nonprofit or horticultural society; \$200 per day weekends or holidays and \$125 per weekday for all others.

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- (11) Haybarn (Glass Classroom) \$125 per day weekends or holidays or \$100 per weekday for commercial entity.
- (12) Camilia Greenhouse (April through October) \$750 per event.
- (13) Camilia Greenhouse (April through October) \$500 per wedding ceremony.
- (b) Nissequogue River State Park administration conference room \$100 per day.
- (c) Bayard Cutting Arboretum State Park.
 - (1) Carriage House (Upper) \$150 per day.
 - (2) Carriage House (Lower) \$100 per day.
 - (3) Library (large evening event) \$100 for 4 hours.
- (d) Jones Beach State Park: Theodore Roosevelt Nature Center (birthday party up to 16 people) \$200 and \$15 for each additional person over 16 people.
- (xii) Golf Pass. Montauk Downs State Park: winter pass \$500; senior pass \$300.
- (xiii) Vehicle Access Pass. Robert Moses State Park Field #5 \$400 per year.
- (xiv) Peddling fee for sale of merchandise or food.
 - (a) Brentwood State Park \$300 per permit per year.
 - (b) Trailview \$500 per permit per year.
 - (c) Jones Beach State Park (vending fee for special events) \$250 per permit per event.
- (6) New York City Region. The following fees shall be assessed in addition to a standard \$30 application fee for these permits, events or activities:
 - (i) Wedding photography \$100 per event.
 - (ii) Picnic areas at East River State Park and Gantry Plaza State Park:
 - (a) 51 - 100 people \$115 for nonprofits per day; \$550 for all others for 3 hours.
 - (iii) Weddings:
 - (a) East River State Park:
 - (1) Up to 50 people \$275 for 90 minutes; \$425 for 3 hours.
 - (2) 51 to 100 people \$525 for 90 minutes; \$625 for 3 hours.
 - (b) Gantry Plaza State Park:
 - (1) Up to 50 people \$800 for 90 minutes; \$1,050 for 3 hours.
 - (2) 51 to 100 people \$1,050 for 90 minutes; \$1,300 for 3 hours.
 - (3) 101 to 150 people \$1,300 for 90 minutes; \$1,600 for 3 hours.
 - (4) Each additional hour \$275 per hour (6 hours maximum).
 - (iv) Private parties:
 - (a) Gantry Plaza State Park.
 - (1) 4 hours \$2,000; 8 hours \$3,000 and each additional hour \$250 (nonprofits receive a 25% discount).
 - (2) Use of canopied pier \$500 per event.
 - (3) Amplified sound/music \$150 per event.
 - (b) East River State Park tent rental \$100 per day.
 - (v) Athletic Fields:
 - (a) Gantry Plaza State Park \$50 per hour.

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- (vi) Riverbank State Park:
- (a) Athletic fields:
 - (1) Football and soccer: \$225 for 2 hours (nonprofits); \$450 for 2 hours (all others).
 - (2) Softball: \$175 for 2 hours (nonprofits); \$350 for 2 hours (all others).
 - (3) Track and Field: \$100 for 2 hours (nonprofits); \$200 for 2 hours (all others).
 - (b) Jumping Pit: \$75 for 2 hours (nonprofits); \$150 (all others).
 - (c) Tennis Courts: \$75 hour (nonprofits); \$150 hour (all others).
 - (d) Hardball Courts: \$60 hour (nonprofits); \$120 hour (all others).
 - (e) Gymnasium 1/3 of the gymnasium space: \$125 for 2 hours (nonprofits); \$250 for 2 hours (all others).
 - (f) Roller rink: \$160 per hour (nonprofits); \$320 per hour (all others).
 - (g) Aquatic complex: \$180 for indoor (50m) and \$110 for indoor/outdoor (25m) (excludes nonprofit).
 - (h) Cultural venues (theater, amphitheater, main stage): \$275 for 3 hours (nonprofits); \$450 for 3 hours (all others).
 - (i) Courtyard: \$50 per hour (nonprofits); \$100 per hour (all others).
 - (j) Fitness room: \$200 per year; \$60 per quarter year; \$10 per day.
 - (k) Skating rink.
 - (1) Terrace: \$120 hour (excludes nonprofits).
 - (2) Ice rink: \$300 for 80 minutes (nonprofits); \$600 for 80 minutes (all others).
 - (3) Ice rink season pass: \$225 per adult; \$175 per child (less than 18 years of age).
 - (4) Ice rink: open hockey \$175 per season per person.
- (vii) Roberto Clemente State Park:
- (a) Gymnasium: Full use \$200 for 2 hours (nonprofits) or \$400 for 2 hours (all others); half use is \$100 for 2 hours (nonprofits) or \$200 for 2 hours (all others).
 - (b) Baseball Field: \$75 for 3 hours daytime (nonprofits), \$100 for 3 hours (all others); after 7 p.m. \$125 for 3 hours (nonprofits), \$250 for 3 hours (all others).
 - (c) Softball Field: \$50 for 3 hours (nonprofits); \$100 for 3 hours (all others).
 - (d) Tent rental.
 - (1) (20' by 40') \$300 half day, \$500 full day.
 - (2) (40' by 100') \$500 half day, \$800 full day.
 - (e) Multi-purpose room \$150 (nonprofits), \$175 (all others).
 - (f) Fitness room \$150 per year.
- (viii) Summer camp at Riverbank State Park and Roberto Clemente State Park \$500 per child.
- (7) Niagara Region.
- (i) Athletic fields use \$150 per season.
 - (ii) Room and location rentals:
 - (a) Evangola State Park banquet room \$200 per day.
 - (b) Beaver Island State Park Golf Course: \$100 deposit for golf outings; \$170 LINKS card weekdays; \$200 LINKS card weekends.

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- (c) Knox Farm State Park.
 - (1) Equestrian: \$150 per day nonprofits; \$200 per day all others.
 - (2) Weddings (Garden Area)
 - (i) \$290 ceremony only up to 50 guests.
 - (ii) \$400 reception only up to 50 guests.
 - (iii) \$520 ceremony and/or reception 51-100 guests.
 - (iv) \$690 ceremony and/or reception 101-150 guests.
 - (v) \$920 ceremony and/or reception 151-250 guests.
 - (d) Niagara Reservation State Park: commercial entity bus (includes entrance fee for passengers).
 - (1) 1 to 16 passengers \$300.
 - (2) 17 to 28 passengers \$450.
 - (3) 29 or more passengers \$550.
 - (e) Niagara Reservation State Park Discovery Center (group program) for 66 to 100 participants \$105.
 - (f) Woodlawn Beach State Park full building \$550 day.
- (8) Palisades Region.
- (i) Athletic field use at Rockland Lake State Park and Tallman Mountain State Park \$300 per month.
 - (ii) Amplified music per event \$100 (nonprofits), \$400 (all others).
 - (iii) Special use/group use permit \$100 for 200 people plus \$50 for each additional 100 people.
 - (iv) Sporting event/festival: \$200 plus 5 percent of what the organization collects in registration or entrance fees for nonprofits; \$400 plus 10 percent of what the organization collects in registration or entrance fees for all others.
 - (v) Fundraiser per event: \$200 plus 1 percent of gross collected (maximum \$25,000) for nonprofits; \$400 plus 2 percent of gross collected (maximum \$50,000) for all others.
 - (vi) Alcohol/Caterer Permits: \$100 per event.
 - (vii) Tent rental at Minnewaska State Park Preserve \$200 per day.
 - (viii) Room and location rentals:
 - (a) Nyack Beach State Park Old Bathhouse \$100 per day plus \$75 for refuse removal if required.
 - (b) Senate House State Historic Site building or grounds \$500 per day.
 - (c) Sterling Forest State Park Visitor Center.
 - (1) auditorium \$100 per day.
 - (2) auditorium/deck/portico together \$150 per day.
 - (ix) Commercial entity bus permit: \$100 per day.
- (9) Saratoga/Capital Region.
- (i) Special use/group use permit \$100 maximum per day.
- (10) Taconic Region.

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- (i) Special use/group use permit \$100 maximum per day for less than 100 people plus vehicle use fees.
- (ii) Special use/group use permit \$101 to maximum \$5,000 per day for 100 or more people plus vehicle use fees. The fee is assessed on a case-by-case basis taking into account the following factors: nonprofit status of the group; size of the group; time of year and duration of the event; the nature of the activity and its potential impacts on park resources or other patrons; and, duration and level of staff time and staff services required for the event.
- (iii) John Jay Homestead State Historic Site. Nonprofits receive a 25 percent discount on the following fees:
 - (a) Main barn \$2,500 per day or \$500 per meeting.
 - (b) Brick yard \$3,000 per day.
 - (c) Ballroom (glass porch and conservancy).
 - (1) Maximum 75 people for meal, 150 for lecture: \$4,000 for up to 8 hours, \$2,000 for up to 4 hours.
 - (2) Maximum 50 people without catering \$750 for up to 2 hours.
 - (d) Potting shed \$250 per day.
- (iv) Mills Mansion State Historic Site:
 - (a) Use of location for up to 1 1/2 hours for photography for weddings and similar events \$100.
 - (b) Gardeners House \$2,500 per day.
 - (c) West Lawn \$500 maximum per day.
 - (d) Power House \$450 maximum up to 2 hours, \$50 for each hour over.
- (v) Taconic Outdoor Education Center Highland Lodge \$130 per hour.
- (vi) Clarence Fahnestock Memorial State Park Hubbard Lodge \$120 per hour.
- (vii) Clermont State Historic Site:
 - (a) Argyle House Lawn \$600 per day.
 - (b) Cutting Garden \$600 per day.
 - (c) Mansion Lawn North \$1,200 per day.
 - (d) Mansion Lawn Southwest \$2,200 per day.
 - (e) Weddings (ceremony only) \$200.
- (viii) Rockefeller State Park Preserve \$100 half day.
- (ix) Philipse Manor Hall State Historic Site:
 - (a) Gothic Chamber \$150.
 - (b) Downstairs \$200.
 - (c) Whole house \$400.
- (x) Olana State Historic Site:
 - (a) Weddings.
 - (1) Garden: wedding only \$400; wedding and reception \$1,000.
 - (2) Studio: wedding only \$500; wedding and reception \$1,200.
 - (3) Lakeside and lakeview: wedding only \$600; wedding and reception \$1,500.
 - (4) East lawn: wedding only \$2,500; wedding and reception \$5,000.

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- (xi) Walkway Over the Hudson State Historic Park:
 - (a) Weddings up to 50 people per event \$500; 51-100 people per event \$1,000.
- (11) Thousand Islands Region.
 - (i) Tent rental \$180 per day.
 - (ii) Robert G. Wehle Complex and Sackets Harbor Battlefield State Historic Site site rental: \$120 for 51 to 100 people; \$240 for more than 100 people.
 - (iii) Peddling fee for sale of merchandise or food \$100 per permit per year.
 - (iv) Wellesley Island, Keewaydin and Long Point motor boat rental:
 - (a) 14 foot / 15 HP \$30 per half day; \$50 per full day; \$250 per week.
 - (b) 16 foot /20 HP \$40 per half day; \$75 per day; \$375 per week.

Sec. added by renum. 215.7, Title 6, filed Sept. 1971; amd. filed Feb. 10, 1972; repealed, filed Aug. 10, 1972; new filed April 28, 1976; amd. filed Jan. 21, 1988; renum. 384.7, filed Aug. 17, 1988 eff. Sept. 7, 1988; rep. and new added filed Sept. 27, 2010 eff. Oct. 13, 2010.

Section 381.8. Refund of fees

(a) In any case where the commissioner has established a fee or charge for the use of any facility under the jurisdiction, custody or control of the office, a refund of such charge or fee may be made under the following circumstances; provided, however, that a service charge to be established by the commissioner shall be deducted and withheld from any refund made pursuant to the provisions of this subdivision:

- (1) where no financial loss occurs to the State through the cancellation of reservations for the use of space or property, or when such cancellation is received by the office 30 days in advance of occupancy;
- (2) where, in the judgment of the commissioner, the cancellation is predicated on circumstances beyond the control of the reserving party;
- (3) where, in the judgment of the commissioner, it is clear that there has been a misunderstanding on the part of the patron as to space or facilities reserved; or
- (4) where an error has been made by an employee of the office as to the property or space reserved.

Secs. added by renum. 215.8-215.9, Title 6, filed Sept. 1971; amd. filed Feb. 10, 1972; repealed, filed Aug. 10, 1972; new filed April 28, 1976; amds. filed: May 7, 1982; Jan. 21, 1988; renum. 384.8-384.9, filed Aug. 17, 1988 eff. Sept. 7, 1988; rep. and new added filed Sept. 27, 2010 eff. Oct. 13, 2010.

Section 381.9. Cash deposits; bonds

(a) In any case where the commissioner may require a cash deposit or indemnity bond as security to protect property of the office against loss or damage, or to limit the extent or duration of the use of such property, or to guarantee compensation to the office for property rented or engaged, such cash deposit or indemnity bond shall be forfeited:

- (1) in the case of loss of or damage to property of the office, provided that no such forfeiture shall prevent the office from recovering any damages over and above the amount of the deposit or bond resulting from loss or damage of property; or

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(2) in the case of a violation of any agreement or condition upon which the requirement of a cash deposit or indemnity bond is based.

Secs. added by renum. 215.8-215.9, Title 6, filed Sept. 1971; amd. filed Feb. 10, 1972; repealed, filed Aug. 10, 1972; new filed April 28, 1976; amds. filed: May 7, 1982; Jan. 21, 1988; renum. 384.8-384.9, filed Aug. 17, 1988 eff. Sept. 7, 1988; rep. and new added filed Sept. 27, 2010 eff. Oct. 13, 2010.

Section 381.10. Multi-year vehicle use passes to state parks and historic sites

(a) The following multi-year vehicle use passes are established:

- (1) Three-year passes allowing free vehicle use: \$165;
- (2) Five-year passes allowing free vehicle use: \$260; and
- (3) Lifetime passes allowing free vehicle use for the lifetime of the purchasing individual: \$750.

Sec. added by renum. 215.10, Title 6, filed Sept. 1971; amd. filed Feb. 10, 1972; repealed, filed Aug. 10, 1972; new filed April 28, 1976; amds. filed: July 25, 1980; May 7, 1982; renum. 384.10, filed Aug. 17, 1988 eff. Sept. 7, 1988; repealed, filed Sept. 27, 2010 eff. Oct. 13, 2010; new adopted filed June 13, 2014 eff. July 2, 2014.

Part 382. Access Pass

Section 382.1. Definitions

Whenever used in this Part:

- (a) **Access Pass** shall mean the authorization issued under this Part to an individual who qualifies for free use of a park facility under the jurisdiction of the Office of Parks, Recreation and Historic Preservation or the Department of Environmental Conservation.
- (b) **Commissioner** shall mean the commissioner of Parks, Recreation and Historic Preservation.
- (c) **Department** shall mean the Department of Environmental Conservation.
- (d) **Free use** shall mean waiver of the base fees (excluding amenities) assessed by the office or the department at a park facility.
- (e) **Office** shall mean the Office of Parks, Recreation and Historic Preservation.
- (f) **Park facility** shall mean a campsite, cabin, park, or other public place of recreation or historic site under the jurisdiction of the office or the department.
- (g) **Person who has a mental disability** shall mean a person who is eligible to receive services from a program licensed, operated, certified or funded by the Office of Mental Retardation and Developmental Disabilities or the Office of Mental Health.
- (h) **Person who is blind** shall mean a person who has a central visual acuity of 20/200 or less or limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees in the better eye with the use of a correcting lens.
- (i) **Person who is deaf** shall mean a person with profound hearing loss causing the person to primarily rely on visual communications (sign language, lip reading, gestures) and assistive technology.
- (j) **Person who is nonambulatory** shall mean a person who is permanently disabled, requires use of a wheelchair and who has severely limited mobility.

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(k) **Person who has an amputated arm or leg** shall mean a person who has a fully or partially amputated or congenitally absent arm or leg, excluding the extremities of the hands and feet.

(l) **Physician's certification** shall mean a physician's attestation on a form provided by the office that the applicant is a person who has an amputated arm or leg or a person who is blind, deaf or nonambulatory. The certification must be made within six months of the application date by a physician currently practicing in and licensed to practice by New York State. The certification must accompany the first application, and may be required to accompany subsequent renewal applications.

(m) **Resident** shall mean a person whose primary residence or whose legal guardian's primary residence is located within New York State as identified by copies of the following documents that must accompany the application: the New York State tax return (IT 201) for the preceding tax year or a valid New York State driver's license or a New York State non-driver's identification card that show the person's name and a New York State address.

(n) **Veteran who has a disability** shall mean any veteran of the wars of the United States with a 40 percent or greater disability as certified by the United States Veterans Administration, or who has at any time been awarded by the Federal government an allowance towards the purchase of an automobile or who is eligible for such an award.

Sec. filed Jan. 3, 1978; amds. filed: June 8, 1978; July 25, 1980 eff. July 25, 1980; rep. and new added filed May 4, 2010 eff. May 19, 2010.

Section 382.2. Free use of park facilities

(a) Any resident of the State who is:

- (1) a person who is blind, deaf, or nonambulatory;
- (2) a person who has an amputated arm or leg;
- (3) a veteran who has a disability; or

(4) a person who has a mental disability shall be entitled to receive an Access Pass from the office that shall provide for free use of a park facility defined in this Part upon the same terms and conditions as apply to the general public.

(b) Subdivision (a) of this section shall not apply to any park facility operated by a concessionaire pursuant to a license agreement with the office or the department, nor shall it be interpreted to require the waiver of any fee charged by an agent of the office or the department for services rendered to the public.

(c) The commissioner shall create a written application for a person to request an Access Pass, which shall be available on line on the office's public website (<http://www.nysparks.state.ny.us>), and at all regional park headquarters and such other places as the commissioner may designate. The commissioner shall require a physician's certification and any other proof necessary to establish the eligibility of any person to receive an Access Pass. No person shall be deemed eligible to receive or shall receive free use of a park facility defined in this Part prior to receiving an Access Pass. No person who has been issued an Access Pass shall make it available for use by any other person.

Sec. filed Jan. 3, 1978; amds. filed June 8, 1978; July 25, 1980 eff. July 25, 1980; rep. and new added filed May 4, 2010 eff. May 19, 2010.

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Part 383. Annual Pass for Vehicular Access

Section 383.1. Annual pass for vehicular access; conditions and limitations

(a) The annual pass established by the commissioner, pursuant to section 13.16 of the Parks, Recreation and Historic Preservation Law for vehicular access to State park and recreation facilities under the jurisdiction of the office, shall be available to the public at all regional park headquarters and such other places as the commissioner may designate, upon payment to the office of the fee established therefor. No person shall be entitled to a refund of such fee under any circumstances.

(b) No person shall intentionally alter the form or content of the annual pass, or transfer or permit the transfer of such pass for use on a vehicle other than the particular vehicle for which it is issued.

(c) (1) The annual pass shall not be accepted for admission to State park and recreation facilities if it is altered in any way, or if the decal portion of the pass is not permanently affixed to the driver's side window of the vehicle for which it is issued.

(2) Notwithstanding the provisions of paragraph (1) of this subdivision, a decal which has been purchased by a public or private nonprofit agency utilizing chartered bus service shall be permanently affixed to a frame of durable material and shall be displayed on the driver's side of the bus when entering the park. Such decal shall remain in the custody of such agency at all times when not being so displayed.

(d) The annual pass shall not be accepted in lieu of the payment of any toll or for admission to the following facilities under any circumstances:

- (1) Bayard Cutting Arboretum, Long Island; and
- (2) Planting Fields Arboretum, Long Island.

(e) The annual pass shall not be available for purchase by the owner or operator of a vehicle used for the purpose of transporting persons for hire. A public or private agency which has purchased an annual pass for use by the owner or operator of a vehicle in transporting persons to or from a State park or recreation facility pursuant to an agreement with such public or private agency shall not permit the use of the annual pass for any purpose other than to carry out the terms of such agreement.

(f) The annual pass shall not entitle the owner or operator of any vehicle to admission to a State park or recreation facility if, in the determination of the office, space for such vehicle is not available.

Sec. added by renum. 220.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Jan. 3, 1978; amd. filed April 11, 1979 eff. April 11, 1979. Substituted new (c) and repealed (d)(3).

Part 384. Listing of State Parks, Parkways, Recreation Facilities, State Land and Historic Sites (Facilities)

Section 384.1. Niagara Region

(a) State parks.

Amherst	Erie
Beaver Island	Erie
Buckhorn Island	Erie
Buffalo Harbor	Erie
DeVeaux Woods	Niagara

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Devil's Hole	Niagara
Earl W. Brydges Artpark	Niagara
Evangola	Erie
Fort Niagara	Niagara
Four Mile Creek	Niagara
Golden Hill	Niagara
Joseph Davis	Niagara
Knox Farm	Erie
Niagara Falls	Niagara
Reservoir	Niagara
Strawberry Island	Erie
Whirlpool	Niagara
Wilson-Tuscarora	Niagara
Woodlawn Beach	Erie

(b) Boat launches.

Big Six Mile Creek Marina	Erie
Rt. 62 North Tonawanda Boat Launch	Niagara

(c) Parkways.

Niagara Scenic Parkway	Niagara
South State	Erie
West River	Erie

(d) State historic sites.

Darwin Martin House	Erie
Old Fort Niagara	Niagara

(e) Trails and miscellaneous.

Niagara Gorge Trail	Niagara
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Sec. added by renum. 221.1, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 381.1, filed Aug. 17, 1988; amd. filed Aug. 15, 2002 eff. Sept. 4, 2002; rep. and new added filed May 23, 2011 eff. June 8, 2011; amd. filed Oct. 11, 2016 eff. Oct. 26, 2016.

Section 384.2. Allegany Region

(a) State parks.

Allegany	Cattaraugus
Lake Erie	Chautauqua
Long Point on Lake Chautauqua	Chautauqua
Midway	Chautauqua

(b) Boat launches.

Allegheny Reservoir	Cattaraugus
Sunset Bay State Marine Park	Chautauqua

(c) Parkways.

None

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Harriet Hollister Spencer Recreation Area	Ontario
Indian Hills	Steuben
Keuka Lake	Yates
Long Point	Cayuga
Mark Twain	Chemung
Newtown Battlefield Reservation	Chemung
Pinnacle	Steuben
Robert H. Treman	Tompkins
Sampson	Seneca
Seneca Lake	Ontario and Seneca
Sonnenberg Gardens & Mansion State Historic Park	Ontario
Stony Brook	Steuben
Taughannock Falls	Tompkins
Two Rivers	Tioga
Watkins Glen	Schuyler

(b) Boat launches.

Allan H. Treman State Marine Park	Tompkins
Canandaigua Lake Marine Park	Ontario
Deans Cove Boat Launch	Seneca
Honeoye Lake Marine Park	Ontario
Lodi Point Marine Park	Seneca

(c) Parkways.

None

(d) State historic sites.

Ganondagan	Ontario
Parrot Hall	Ontario

(e) Trails and miscellaneous.

Black Diamond Trail	Tompkins
Catharine Valley Trail	Chemung and Schuyler

Sec. added by renum. 221.4, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 381.4, filed Aug. 17, 1988; amd. filed Aug. 15, 2002 eff. Sept. 4, 2002; rep. and new added filed May 23, 2011 eff. June 8, 2011; amd. filed Oct. 11, 2016 eff. Oct. 26, 2016.

Section 384.5. Central New York Region

(a) State parks.

Battle Island	Oswego
Betty and Wilbur Davis	Otsego
Bowman Lake	Chenango
Chenango Valley	Broome
Chittenango Falls	Madison
Clark Reservation	Onondaga
Delta Lake	Oneida

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Gilbert Lake	Otsego
Glimmerglass	Otsego
Green Lakes	Onondaga
Helen L. McNitt	Madison
Mexico Point	Oswego
Old Erie Canal State Historic Park	Onondaga, Madison and Oneida
Oquaga Creek	Broome and Delaware
Pixley Falls	Oneida
Robert V. Riddell	Otsego
Sandy Island Beach	Oswego
Selkirk Shores	Oswego
State Park at the Fair	Onondaga
Verona Beach	Oneida

(b) Boat launches.

Canadarago Boat Marine Park	Otsego
Mexico Point Marine Park	Oswego

(c) Parkways.

None

(d) State historic sites.

Fort Ontario	Oswego
Herkimer Home	Herkimer
Hyde Hall	Otsego
John Burroughs Memorial	Delaware
Lorenzo	Madison
Oriskany Battlefield	Oneida
Steuben Memorial	Oneida

(e) Trails and miscellaneous.

Hudson-Mohawk Trail	Herkimer
Lehigh Valley Trail	Madison

Sec. added by renum. 221.5, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 381.5, filed Aug. 17, 1988; amd. filed Aug. 15, 2002 eff. Sept. 4, 2002; rep. and new added filed May 23, 2011 eff. June 8, 2011.

Section 384.6. Taconic Region

(a) State parks.

Clarence Fahnestock Memorial	Putnam
Donald J. Trump	Putnam and Westchester
Franklin D. Roosevelt	Westchester
Hart's Brook Nature Preserve & Arboretum	Westchester
Hudson Highlands State Park Preserve	Putnam, Dutchess and Westchester
James Baird	Dutchess
Lake Taghkanic	Columbia
Margaret Lewis Norrie	Dutchess

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Ogden Mills and Ruth Livingston Mills Memorial	Dutchess
Old Croton Aqueduct State Historic Park	Westchester
Peter Jay	Westchester
Quiet Cove Riverfront Park	Dutchess
Rockefeller State Park Preserve	Westchester
Taconic	Columbia and Dutchess
Taxter Ridge Park Preserve	Westchester
Wonder Lake	Putnam
Walkway Over The Hudson State Historic Park	Dutchess and Ulster

(b) Boat launches.

Hudson Boat Launch	Columbia
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(c) Parkways.

None

(d) State historic sites.

Clermont	Columbia and Dutchess
Clinton House	Dutchess
John Jay Homestead	Westchester
Olana	Columbia
Philipse Manor Hall	Westchester
Staatsburgh	Dutchess

(e) Trails and miscellaneous.

Appalachian Trail	Dutchess and Putnam
Harlem Valley Rail Trail	Columbia and Dutchess

Sec. added by renum. 221.6, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 381.6, filed Aug. 17, 1988 eff. Sept. 7, 1988; rep. and new added filed May 23, 2011 eff. June 8, 2011.

Section 384.7. Palisades Region

(a) State parks.

Bear Mountain	Orange and Rockland
Blauvelt	Rockland
Bristol Beach	Ulster
Franny Reese Preserve	Ulster
Goose Pond Mountain	Orange
Harriman	Orange and Rockland
Haverstraw Beach	Rockland
Highland Lakes	Orange
High Tor	Rockland
Hook Mountain	Rockland
Lake Superior	Sullivan
Minnewaska State Park Preserve	Ulster
Nyack Beach	Rockland
Palisades	Rockland

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Rockland Lake	Rockland
Schunemunk	Orange
Sterling Forest	Orange
Storm King	Orange
Tallman Mountain	Rockland

(b) Boat launches.
None

(c) Parkways.

Long Mountain	Orange
Palisades Interstate	Rockland
Perkins Memorial	Rockland

(d) State historic sites.

Fort Montgomery	Orange
Knox Headquarters	Orange
New Windsor Cantonment	Orange
Senate House	Ulster
Stony Point Battlefield	Rockland
Washington's Headquarters	Orange

(e) Trails and miscellaneous.

Appalachian Trail	Orange and Rockland
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Sec. added by renum. 221.7, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 381.7, filed Aug. 17, 1988; amd. filed Nov. 8, 1999 eff. Nov. 24, 1999; rep. and new added filed May 23, 2011 eff. June 8, 2011; amd. filed Oct. 11, 2016 eff. Oct. 26, 2016.

Section 384.8. Long Island Region

(a) State parks.

Alfred E. Smith/Sunken Meadow	Suffolk
Amsterdam Beach	Suffolk
Bayard Cutting Arboretum	Suffolk
Belmont Lake	Suffolk
Bethpage Nassau and	Suffolk
Brentwood	Suffolk
Brookhaven	Suffolk
Caleb Smith State Park Preserve	Suffolk
Camp Hero	Suffolk
Captree	Suffolk
Caumsett State Historic Park Preserve	Suffolk
Cold Spring Harbor	Suffolk
Connetquot River State Park Preserve	Suffolk
Gilgo	Suffolk
Heckscher	Suffolk
Hempstead Lake	Nassau

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Hither Hills	Suffolk
Hallock State Park Preserve	Suffolk
Jones Beach	Nassau
Montauk Downs	Suffolk
Montauk Point	Suffolk
Napeague	Suffolk
Nissequogue River	Suffolk
Orient Beach	Suffolk
Planting Fields Arboretum State Historic Park	Nassau
Robert Moses	Suffolk
Sag Harbor Golf Course	Suffolk
Shadmoor	Suffolk
Trail View	Nassau and Suffolk
Valley Stream	Nassau
Wildwood	Suffolk

(b) Boat launches.

None

(c) Parkways.

Bay	Nassau
Bethpage	Nassau
Heckscher	Suffolk
Loop	Nassau
Meadowbrook	Nassau
Montauk	Suffolk
Northern	Nassau and Suffolk
Ocean	Nassau and Suffolk
Robert Moses Causeway	Suffolk
Sagtikos	Suffolk
Southern	Nassau and Suffolk
Sunken Meadow	Suffolk
Wantagh	Nassau

(d) State historic sites.

Walt Whitman Birthplace	Suffolk
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(e) Trails and miscellaneous.

Hither Woods	Suffolk
Ploch Property	Suffolk

Sec. added by renum. 221.8, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 381.8, filed Aug. 17, 1988; amd. filed Oct. 8, 1992 eff. Oct. 28, 1992; rep. and new added filed May 23, 2011 eff. June 8, 2011.

Section 384.9. Thousand Islands Region

(a) State parks.

Burnham Point	Jefferson
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Canoe Picnic Point	Jefferson
Cedar Island	St. Lawrence
Cedar Point	Jefferson
Coles Creek	St. Lawrence
Crab Island	Clinton
Croil Island	St. Lawrence
Cumberland Bay	Clinton
DeWolf Point	Jefferson
Eel Weir	St. Lawrence
Galop Island	St. Lawrence
Grass Point	Jefferson
Higley Flow	St. Lawrence
Jacques Cartier	St. Lawrence
Keewaydin	Jefferson
Kring Point	Jefferson
Long Point	Jefferson
Macomb Reservation	Clinton
Mary Island	Jefferson
Point au Roche	Clinton
Robert Moses	St. Lawrence
Robert G. Wehle	Jefferson
Rock Island Lighthouse	Jefferson
St. Lawrence	St. Lawrence
Southwick Beach	Jefferson
Waterson Point	Jefferson
Wellesley Island	Jefferson
Westcott Beach	Jefferson
Whetstone Gulf	Lewis

(b) Boat launches.

Black Lake	St. Lawrence
Brandy Brook	St. Lawrence
Chaumont	Jefferson
Great Chazy	Clinton
Stony Creek	Jefferson
Wilson Hill	St. Lawrence

(c) Parkways.

None

(d) State historic sites.

Sackets Harbor	Jefferson
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(e) Trails and miscellaneous.

Black River Trail	Jefferson
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*Sec. added by renum. 221.9, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed,
filed Aug. 10, 1972; new added by renum. 381.9, filed Aug. 17, 1988 eff. Sept. 7, 1988; rep. and
new added filed May 23, 2011 eff. June 8, 2011.*

Section 384.10. Saratoga-Capital District Region

(a) State parks.

Cherry Plain	Rensselaer
Grafton Lakes	Rensselaer
Hudson River Islands	Columbia
John Boyd Thacher	Albany
Lake Lauderdale	Washington
Max V. Shaul	Schoharie
Mine Kill	Schoharie
Mohawk River	Schenectady
Moreau Lake	Saratoga and Warren
Pebbles Island	Saratoga
Saratoga Spa	Saratoga
Schodack Island	Columbia, Greene and Rensselaer

(b) Boat launches.

Athens	Greene
Coxsackie	Greene
Saratoga Lake	Saratoga

(c) Parkways.

None

(d) State historic sites.

Bennington Battlefield	Rensselaer and Washington
Crailo	Rensselaer
Grant Cottage	Saratoga
Guy Park	Montgomery
Johnson Hall	Fulton
Schoharie Crossing	Montgomery
Schuyler Mansion	Albany
Susan B. Anthony	Washington

(e) Trails and miscellaneous.

Hudson-Mohawk Trail	Albany, Schenectady, Montgomery, Herkimer
Washington County Trail	Washington County
Albany Pine Bush Preserve	Albany
Rexford Aqueduct*	Schenectady

(listed on National and State Registers of Historic Places)

*Sec. added by renum. 221.10, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed,
filed Aug. 10, 1972; new added by renum. 381.10, filed Aug. 17, 1988; amd. filed Nov. 2, 1999 eff.
Nov. 17, 1999; rep. and new added filed May 23, 2011 eff. June 8, 2011; amd. filed Oct. 11, 2016
eff. Oct. 26, 2016.*

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Section 384.11. New York City Region

(a) State parks.

Bayswater Point	Queens
Clay Pit Ponds State Park Preserve	Richmond
Marsha P. Johnson [East River]	Kings
FDR Four Freedoms	New York
Gantry Plaza	Queens
Riverbank	New York
Roberto Clemente	Bronx

(b) State Historic Sites

Stonewall Inn	New York
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(c) Trails and miscellaneous

Hudson River Park	New York
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Sec. added by renum. 221.11, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 381.11, filed Aug. 17, 1988 eff. Sept. 7, 1988; rep. and new added filed May 23, 2011 eff. June 8, 2011; amd. filed Oct. 11, 2016 eff. Oct. 26, 2016. amd filed July 22, 2020 eff. Dec. 09, 2020

Section 384.12. Major facilities

Lake George Battlefield Park	Warren
Lake George Beach	Warren
Belleayre Mountain Ski Center	Ulster
Prospect Mountain Parkway	Warren

Sec. filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 381.12, filed Aug. 17, 1988 eff. Sept. 7, 1988; rep. and new added filed May 23, 2011 eff. June 8, 2011.

Section 384.13. Facilities located in the Adirondacks and managed by ORDA

Olympic Sports Complex - Mt. Van Hoevenberg	Essex
Olympic Center	Essex
Olympic Jumping Complex	Essex
Whiteface Mountain Ski Center	Essex
Whiteface Mtn. Veteran's Memorial Highway	Essex
Gore Mountain Ski Center	Warren

Sec. added by renum. 381.13, filed Aug. 17, 1988 eff. Sept. 7, 1988; rep. and new added filed May 23, 2011 eff. June 8, 2011.

Section 384.14. Historic sites located in the Adirondacks and managed by OPRHP

Crown Point	Essex
John Brown Farm	Essex

Sec. added by renum. 381.14, filed Aug. 17, 1988 eff. Sept. 7, 1988; rep. and new added filed May 23, 2011 eff. June 8, 2011.

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Section 384.15. Campgrounds and picnic areas

Alger Island	Herkimer
Ausable Point	Clinton
Bear Spring Mountain	Delaware
Beaverkill	Sullivan
Belleayre Mountain Day Use Area	Ulster
Brown Tract Pond	Hamilton
Buck Pond	Franklin
Caroga Lake	Fulton
Cranberry Lake	St. Lawrence
Crown Point Reservation	Essex
Devil's Tombstone	Greene
Eagle Point	Warren
Eighth Lake	Hamilton
Fish Creek Pond	Franklin
Forked Lake	Hamilton
Fourth Lake Picnic Area	Herkimer
Golden Beach	Hamilton
Hearthstone Point	Warren
Hinckley Reservoir Picnic Area	Herkimer
Indian Lake Islands	Hamilton
Kenneth L. Wilson	Ulster
Lake Durant	Hamilton
Lake Eaton	Hamilton
Lake George Battlefield Day Use Area	Warren
Lake George Battleground	Warren
Lake George Beach Day Use Area	Warren
Lake George Islands	Warren
Lake Harris	Essex
Lewey Lake	Hamilton
Limekiln Lake	Hamilton and Herkimer
Lincoln Pond	Essex
Little Pond	Delaware
Little Sand Point	Hamilton
Luzerne	Warren
Meacham Lake	Franklin
Meadowbrook	Essex
Moffit Beach	Hamilton
Mongaup Pond	Sullivan
Nick's Lake	Herkimer
Northampton Beach	Fulton
North-South Lake	Greene
Paradox Lake	Essex
Point Comfort	Hamilton
Poke-O-Moonshine	Essex
Poplar Point	Hamilton
Prospect Mountain Day Use Area	Warren
Putnam Pond	Essex

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Rogers Rock	Warren
Rollins Pond	Franklin
Sacandaga	Hamilton
Saranac Lake Islands	Franklin
Scaroon Manor	Essex and Warren
Sharp Bridge	Essex
Taylor Pond	Clinton
Tioga Point	Hamilton
Whey Pond (Rollins Pond)	Franklin
Wilmington Notch	Essex
Woodland Valley	Ulster

Sec. filed May 23, 2011 eff. June 8, 2011.

Section 384.16. Boat launches at campgrounds

Ausable Point	Clinton
Brown Tract Pond	Hamilton
Buck Pond (Access to Buck Pond)	Franklin
Buck Pond (Access to Lake Kushaqua)	Franklin
Caroga Lake	Fulton
Crown Point	Essex
Eighth Lake	Hamilton
Fish Creek Pond	Franklin
Forked Lake	Hamilton
Forth Lake—Alger Island	Warren
Fourth Lake—Luzerne	Warren
Indian Lake Islands	Hamilton
Lake Durant	Hamilton
Lake Eaton	Hamilton
Lake George—Rogers Rock	Warren
Lake Harris	Essex
Lewey Lake	Hamilton
Limekiln Lake	Hamilton
Lincoln Pond	Essex
Meacham Lake	Franklin
Northampton Beach	Fulton
Paradox Lake	Essex
Piseco Lake—Little Sand Point	Hamilton
Piseco Lake—Point Comfort	Hamilton
Piseco Lake—Poplar Point	Hamilton
Putnam Pond	Essex
Racquette Lake—Golden Beach	Hamilton
Rogers Rock	Warren
Rollins Pond	Franklin
Sacandaga Lake—Moffit Beach	Hamilton
Schroon Lake—Eagle Point	Warren

Sec. filed May 23, 2011 eff. June 8, 2011.

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Section 384.17. Boat launches and fishing access sites located outside of campgrounds

Alder Lake	Ulster
Allegheny River	Cattaraugus
Allen Lake	Allegheny
Alma Pond	Allegheny
Balsam Pond	Chenango
Basher Kill Marsh	Sullivan
Bear Lake	Chautauqua
Bear Swamp Pond	Otsego
Black Creek	Monroe
Black Pond	Franklin
Black River (x3)	Lewis
Black River (Turin)	Lewis
Bog River Flow	St. Lawrence
Brant Lake	Warren
Brown Tract Pond	Hamilton
Buffalo River (x2)	Erie
Butterfield Lake	Jefferson
Canadice Lake	Ontario
Canandaigua Lake (x2)	Ontario
Canandaigua Lake (Outlet)	Ontario
Carmans River/Shirley	Suffolk
Caroga Lake	Fulton
Carters Pond	Washington
Cascade Lakes (Upper and Lower)	Essex
Case Lake	Cattaraugus
Cassadaga Lake	Chautauqua
Cattaraugus Creek	Cattaraugus
Cayuga Lake	Cayuga
Cayuta Lake	Schuyler
Chautauqua Lake (Bemus Point)	Chautauqua
Chautauqua Lake (Prendergast Point)	Chautauqua
Chazy Lake	Clinton
Chemung River (Botchers Landing)	Chemung
Chemung River (Dunn Field Stadium)	Chemung
Chemung River (Elmira)	Chemung
Chemung River (Botchers Landing)	Chemung
Chemung River (Golden Glo)	Chemung
Chemung River (Minier Park)	Chemung
Chemung River (Toll Bridge Park)	Chemung
Chemung River (Corning)	Steuben
Chemung River	Steuben
Chenango River (Greene)	Chenango
Chenango River (Halfway House)	Chenango
Chenango River (Norwich)	Chenango
Chenango River (Sherburne)	Chenango
Chittning Pond	Oneida
Chodikey Lake	Ulster

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Clear Pond	Lewis
Cleveland Lake	Lewis
Cliff Lake	Sullivan
Colwell Pond	Jefferson
Conesus Inlet	Livingston
Conesus Lake (Pebble Beach)	Livingston
Conesus Lake (Sand Point)	Livingston
Cossayuna Lake	Washington
Cranberry Lake	St. Lawrence
Crusoe Creek	Wayne
Crystal Lake	Sullivan
Cuba Lake	Allegany
Deep Pond/Riverhead	Suffolk
Delaware River (East Branch)	Delaware
Delaware River (Hancock)	Delaware
Delaware River (West Branch x2)	Delaware
Delaware River (Sparrowbush)	Orange
Delaware River (Callicoon)	Sullivan
Delaware River (Highland)	Sullivan
Delaware River (Narrowsburg)	Sullivan
Delaware River (Skinners Falls)	Sullivan
Dryden Lake	Tompkins
Eagle Lake	Essex
East Pine Pond	Franklin
Eaton Brook Reservoir	Madison
Eighth Lake	Hamilton
Findley Lake	Chautauqua
Fish Creek (West Branch)	Oneida
Follensby Clear Pond	Franklin
Forestport Reservoir	Oneida
Forge Pond (Peconic River)/Calverton	Suffolk
Forked Lake	Hamilton
Fort Pond/East Hampton	Suffolk
Fourth Lake	Hamilton
Francis Lake	Lewis
Franklin Falls Flow	Essex
Genesee River (Avon)	Livingston
Genesee River	Monroe
Genesee River (Brown's Bridge)	Monroe
Goodyear Lake	Otsego
Grass Lake	St. Lawrence
Grass River	St. Lawrence
Great Sacandaga Lake (Broadalbin)	Fulton
Great Sacandaga Lake (Northampton)	Fulton
Great Sacandaga Lake (Northville)	Fulton
Great Sacandaga Lake	Saratoga
Greens Lake	Greene
Guilford Lake	Chenango

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Guyanoga Creek	Yates
Harwood Lake	Cattaraugus
Hemlock Lake (Livonia)	Livingston
Hemlock Lake (Canadice)	Ontario
Honeoye Creek	Monroe
Hoosic River/Buskirk	Rensselaer
Horseshoe Lake	St. Lawrence
Hudson River (Bethlehem)	Albany
Hudson River (Coeymans)	Albany
Hudson River (Germantown)	Columbia
Hudson River (Tivoli Bays)	Dutchess
Hudson River (Ulster-Charles Rider Park)	Ulster
Hudson River	Warren
Hyde Lake	Jefferson
Indian Lake	Hamilton
Indian River	Jefferson
Indian River (Rossie)	St. Lawrence
Kinderhook Lake	Columbia
Lake Bonaparte	Lewis
Lake Colby	Franklin
Lake Champlain	Clinton
Lake Champlain (Crown Point Reservation)	Essex
Lake Champlain (Port Douglas)	Essex
Lake Champlain (Port Henry)	Essex
Lake Champlain (Ticonderoga)	Essex
Lake Champlain (Westport)	Essex
Lake Champlain (Willsboro Bay)	Essex
Lake Champlain (South Bay)	Washington
Lake Erie (Hanover)	Chautauqua
Lake Flower	Franklin
Lake George (Mossy Point)	Essex
Lake George (Northwest Bay Brook)	Warren
Lake George (Million Dollar Beach)	Warren
Lake Huntington	Sullivan
Lake-of-the-Woods	Jefferson
Lake Ontario (Black River Bay, Lloyds Landing)	Jefferson
Lake Ontario (Black River Bay, Muskellunge Crk.)	Jefferson
Lake Ontario (Lyme)	Jefferson
Lake Ontario (Perch River)	Jefferson
Lake Ontario (Sandy Creek)	Monroe
Lake Ontario (Slater Creek)	Monroe
Lake Ontario (East Bay x2)	Wayne
Lake Ontario (Port Bay South)	Wayne
Lake Ontario (Port Bay West)	Wayne
Lake Ozonia	St. Lawrence
Lake Placid	Essex
Lake Ronkonkoma/Islip	Suffolk
Lake Superior	Sullivan

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Lakeview Pond	Jefferson
Lamoka Lake	Schuyler
Laurel Lake/Southold	Suffolk
Lebanon Reservoir	Madison
Lime Lake	Cattaraugus
Little Clear Pond	Franklin
Little Green Pond	Franklin
Little Long Lake	Oneida
Little Pond	Delaware
Long Island Sound/Mattituck Creek	Suffolk
Long Island Sound	Suffolk
Long Lake	Hamilton
Long Pond (x2)	Chenango and Lewis
Long Pond	Chenango
Lower Yaphank Lake/Yaphank	Suffolk
Madison Reservoir	Madison
Millsite Lake	Jefferson
Mirror Lake	Essex
Mohawk River/Barge Canal (Frankfort)	Herkimer
Mohawk River/Barge Canal (Herkimer)	Herkimer
Mohawk River/Barge Canal (Little Falls)	Herkimer
Mohawk River/Barge Canal (Mohawk)	Herkimer
Mohawk River/Barge Canal (Amsterdam x2)	Montgomery
Mohawk River/Barge Canal (Canajoharie)	Montgomery
Mohawk River/Barge Canal (Nelliston)	Montgomery
Mohawk River/Barge Canal (Rome)	Oneida
Mohawk River/Barge Canal (Utica x3)	Oneida
Mohawk River/Barge Canal	Schenectady
Mongaup Falls Reservoir	Sullivan
Mongaup Pond	Sullivan
Moon Lake	Jefferson
Moose Pond	Essex
Moshier Reservoir	Herkimer
Nanticoke Lake	Broome
New Albion Lake	Cattaraugus
Nicks Lake	Herkimer
North Lake	Greene
Oatka Creek	Monroe
Olean Creek	Cattaraugus
Oneida Lake	Madison
Oneida Lake (Godfrey Point)	Oneida
Oneida Lake (Toad Harbor)	Oswego
Oneida River	Onondaga
Onteora Lake	Ulster
Oswegatchie River (West Branch)	Lewis
Oswegatchie River (Edwards x2)	St. Lawrence
Oswegatchie River	St. Lawrence
Oswegatchie River (Antwerp)	Jefferson

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Otis Pike Preserve/Calverton	Suffolk
Otisco Lake	Onondaga
Otselic River (x2)	Cortland
Oyster Bay Harbor	Nassau
Papish Pond	Cortland
Payne Lake (x2)	Jefferson and Lewis
Payne Lake	Jefferson
Peconic River (Lower)/Riverhead	Suffolk
Peconic River (Upper)/Calverton	Suffolk
Portaferry Lake	St. Lawrence
Roundout Creek	Ulster
Rio Reservoir	Sullivan
Queechy Lake	Columbia
Quiver Pond	Herkimer
Racquette Lake	Hamilton
Racquette River	Franklin
Red Lake	Jefferson
Rock Pond	Lewis
Salmon River Reservoir	Oswego
Salmon River Reservoir (Little America)	Oswego
Salmon River Reservoir (Redfield x2)	Oswego
Sangerfield River	Chenango
Santa Clara Flow	Franklin
Saranac Lake (Lower)	Franklin
Saranac Lake (Middle)	Franklin
Saranac Lake (Upper/Indian Carry)	Franklin
Saranac Lake (Upper/Saranac Inn)	Franklin
Schoharie Creek (x2)	Montgomery and Schoharie
Schoharie Creek (Central Bridge)	Schoharie
Schroon Lake	Essex
Seneca River (x2)	Cayuga and Seneca
Seneca River (Port Byron)	Cayuga
Seneca Lake	Yates
Seventh Lake	Hamilton
Sixberry Lake	Jefferson
Sixtown Pond	Jefferson
Sixtown Pond (Crystal Lake)	Jefferson
Skaneateles Lake	Onondaga
Soft Maple Reservoir	Lewis
South Lake	Herkimer
South Sandy Creek	Jefferson
Spruce Pond	Onondaga
St. Regis River	St. Lawrence
Star Lake	St. Lawrence
Stillwater Reservoir	Herkimer
Sucker Lake	St. Lawrence
Susquehanna River (Johnson City)	Broome
Susquehanna River (Nineveh)	Broome

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Susquehanna River (Afton)	Chenango
Susquehanna River (Otego)	Delaware
Susquehanna River (Unadilla)	Delaware
Susquehanna River (Colliersville)	Otsego
Susquehanna River (Crumhorn)	Otsego
Susquehanna River (Emmons)	Otsego
Susquehanna River (Oneonta)	Otsego
Susquehanna River (Sidney)	Otsego
Susquehanna River (Apalachin)	Tioga
Susquehanna River (Barton)	Tioga
Susquehanna River (Nichols East)	Tioga
Susquehanna River (Nichols West)	Tioga
Susquehanna River (Oswego)	Tioga
Sylvia Lake	St. Lawrence
Taylor Pond	Clinton
Thompsons Lake	Albany
Tioughnioga River (Chenango Forks)	Broome
Tioughnioga River (Itasca)	Broome
Trout Pond	Lewis
Tully Lake	Cortland
Tupper Lake	Franklin
Twitchell Lake	Herkimer
Unadilla River (Guilford)	Chenango
Unadilla River (South New Berlin x2)	Chenango
Upper Chateaugay Lake	Clinton
Upper Leland Pond	Madison
Wallkill River	Ulster
Walton Lake	Orange
Waneta Lake	Schuyler
Weaver Lake	Herkimer
West Lake	Fulton
West River	Yates
White Lake	Sullivan
White Pond	Putnam
Whitney Point Reservoir (Dorchester Park)	Broome
Whitney Point Reservoir (Triangle)	Broome
Wildwood Lake/Southampton	Suffolk
Yellow Lake	St. Lawrence

Sec. filed May 23, 2011 eff. June 8, 2011.

Section 384.18. Other State land by geographical area

(a) Long Island.

Accabonac Marsh Tidal Wetland Area	Suffolk	
Babylon Marsh-Elder and Petteanger Island Tidal Wetland Area		Suffolk
Baiting Hollow Tidal Wetland Area	Suffolk	
Barcelona Neck Conservation Area	Suffolk	
Browns River Tidal Wetland Area	Suffolk	

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Conscience Bay Little Bay Tidal Wetland Area	Suffolk	
Currans Road Pond Wildlife Management Area	Suffolk	
David A. Sarnoff Pine Barrens Preserve	Suffolk	
Fireplace Neck Tidal Wetlands Area	Suffolk	
Flax Pond Tidal Wetland Area	Suffolk	
Fox Point Tidal Wetland Area	Suffolk	
H.J. Isbrandtsen Tidal Wetland Area	Suffolk	
Havens Point Tidal Wetland Area	Suffolk	
Henry's Hollow Preserve	Suffolk	
Inwood Bay Tidal Wetland Area	Nassau	
Isbrandtsen Marsh Tidal Wetland Area	Suffolk	
Jakobson Shipyard Tidal Wetland Area	Nassau	
Johns Neck Tidal Wetland Area	Suffolk	
Kings Park Unique Area	Suffolk	
Lido Beach Tidal Wetland Area	Nassau	
Linda Gronlund Memorial Nature Preserve at Barcelona Neck, Sag Harbor	Suffolk	Suffolk
Little Northeast Tidal Wetland Area	Suffolk	
Long Beach Tidal Wetland Area	Suffolk	
Long Island Pine Barrens Preserve	Suffolk	
Ludlows Creek Tidal Wetlands Preserve	Suffolk	
Lymans Marsh Tidal Wetlands Preserve	Suffolk	
Manorville Pine Barrens Preserve	Suffolk	
Middle Island Environmental Education Center	Suffolk	
Moneyboque Bay Tidal Wetland Area	Suffolk	
Mount Sinai Tidal Wetland Area	Suffolk	
Namkee Creek Tidal Wetland Area	Suffolk	
Napeague Harbor Tidal Wetland Area	Suffolk	
North Haven Tidal Wetland Area	Suffolk	
Northwest Harbor Tidal Wetland Area	Suffolk	
Oak Brush Plains State Preserve	Suffolk	
Old Westbury Conservation Unique Area	Nassau	
Oregon Marsh Tidal Wetland Area	Suffolk	
Otis Pike Wildlife Preserve	Suffolk	
Pepperidge Hall Marsh Tidal Wetland Area	Suffolk	
Pickman-Rimmer Tidal Wetland Area	Suffolk	
Rocky Point Natural Resource Management Area	Suffolk	
Sag Harbor Tidal Wetland Area	Suffolk	
Shelter Island Tidal Wetland Area	Suffolk	
Shinnecock Bay Tidal Wetland Area	Suffolk	
Stillman Creek Tidal Wetland Area	Suffolk	
Timber Point Tidal Wetland Area	Suffolk	
Tuthill Cove Tidal Wetland Area	Suffolk	
West Hampton Management Area	Suffolk	
Young's Island Wildlife Management Area	Suffolk	

(b) New York City.

Arden Heights Woods	Richmond
Bloesser's Pond	Richmond

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Bronx River Trail	Bronx
Goethal's Pond Complex	Richmond
Lemon Creek Tidal Wetlands	Richmond
Mount Loretto Unique Area	Richmond
North Mount Loretto State Forest	Richmond
Norton Basin Natural Resource Mgmt. Area	Queens
Oakwood Beach	Richmond
Old Place Creek	Richmond
St. Francis Woodlands	Richmond
Sawmill Creek Wetland	Richmond
Todt Hill Woodlands	Richmond
Udall's Cove & Ravine Natural Resource Management Area	Queens
Zuckerman Natural Resource Area	Richmond

(c) Lower Hudson Valley.

Balsam Lake Mountain Wild Forest	Ulster
Bashakill Wildlife Management Area	Sullivan
Big Buck Mountain State Forest	Putnam
Big Indian Wilderness	Ulster
Bluestone Wild Forest	Ulster
Bog Brook Unique Area	Putnam
California Hill State Forest	Putnam
Castle Rock Unique Area	Putnam
Cherry Island Wildlife Management Area	Orange
Cranberry Mountain Wildlife Management Area	Putnam
Croton Gorge Unique Area	Westchester
Crystal Lake Wild Forest	Sullivan
DeBruce Environmental Education Camp	Sullivan
Depot Hill Multiple Use Area	Dutchess
Great Swamp Wildlife Management Area	Putnam
Hawk Watch Trailway	Orange
Hemlock Ridge State Forest	Ulster
High Woods State Forest	Ulster
Hickok Brook State Forest	Sullivan
Huckleberry Ridge State Forest	Orange
Indian Head Wilderness	Ulster
Kaaterskill Wild Forest	Ulster
Kowawese Unique Area	Orange
Lafayetteville Multiple Use Area	Dutchess
Mongaup Valley Wildlife Management Area	Sullivan
Montrose Point State Forest	Westchester
Middle Mountain Wild Forest	Sullivan
Minisceongo Tidal Wetland Area	Rockland
Neversink River Unique Area	Sullivan
Nimham Mountain State Forest	Putnam
Oak Ridge State Forest	Ulster
Overlook Mountain Wild Forest	Ulster
Painter Hill State Forest	Sullivan

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Phoenicia Wild Forest	Ulster
Piermont Marsh Tidal Wetland	Rockland
Pochuck State Forest	Orange
Roeliff Jansen Kill Multiple Use Area	Dutchess
Roosa Gap State Forest	Sullivan
Shandaken Wild Forest	Ulster
Shawangunk State Forest	Ulster
Slide Mountain Wilderness	Ulster
Stewart State Forest	Orange
Stissing Mountain Multiple Use Area	Dutchess
Stony Kill Environmental Education Center	Dutchess
Sundown Wild Forest	Sullivan and Ulster
Taconic Hereford State Forest	Dutchess
Titus Mill Pond Tidal Wetland Area	Westchester
Tivoli Bay Wildlife Management Area	Dutchess
Turkey Point State Forest	Ulster
Vernooykill State Forest	Ulster
Wassaic Multiple Use Area	Dutchess
West Mountain State Forest	Dutchess
White Pond Multiple Use Area	Putnam
Willowemoc Wild Forest	Sullivan and Ulster
Witches Hole State Forest	Ulster
Wolf Brook State Forest	Sullivan
Wurtsboro Ridge State Forest	Sullivan

(d) Capital District.

Albany Pine Bush Preserve	Albany
Armlin Hill State Forest	Schoharie
Arnold Lake State Forest	Otsego
Artic China State Forest	Delaware
Ashland Pinnacle State Forest	Greene
Barbour Brook State Forest	Delaware
Basswood Pond State Forest	Otsego
Bates State Forest	Schoharie
Beals Pond State Forest	Delaware
Bear Spring Mtn. Wildlife Management Area	Delaware
Bear Swamp State	Otsego
Forest/Calhoun Creek Forest	State
Bearpen Mountain State Forest	Delaware and Greene
Beebe Hill State Forest	Columbia
Berlin State Forest	Rensselaer
Black Creek Marsh Wildlife Mgmt. Area	Albany
Blackhead Range Wild Forest	Greene
Blenheim Hill State Forest	Schoharie
Brandow Point Unique Area	Greene
Burnt-Rossman Hills State Forest	Schoharie
Capital District Wildlife Mgmt. Area	Rensselaer
Cairo Lockwood State Forest	Greene

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Charleston State Forest	Montgomery
Cherry Valley State Forest	Otsego
Clapper Hollow State Forest	Schoharie
Cole Hill State Forest	Albany
Colgate Lake Wild Forest	Greene
Columbia Lake State Forest	Delaware
Cotton Hill State Forest	Schoharie
Crumhorn Mountain Wildlife Management Area	Otsego
Decatur State Forest	Otsego
Delaware Wild Forest	Delaware, Sullivan and Ulster
Diamond Notch Primitive Bicycle Corridor	Greene
Dutcher Notch-Colgate Lake Primitive Bicycle Corridor	Greene
Dry Brook Ridge Wild Forest	Delaware and Ulster
Dutch Settlement State Forest	Schoharie
Dutton Ridge State Forest	Schoharie
Elm Ridge Wild Forest	Greene
Exeter State Forest	Otsego
Featherstonhaugh State Forest	Schenectady
Five Rivers Environmental Education Center	Albany
Franklinton Vlaie Wildlife Management Area	Schoharie
Gates Hill State Forest	Schoharie
General Jacob Morris State Forest	Otsego
Great Vly Wildlife Management Area	Greene and Ulster
Halcott Mountain Wild Forest	Greene
Hannacroix Unique Area	Greene
Hartwick State Forest	Otsego
Harvey Mountain State Forest	Columbia
High Knob State Forest	Schoharie
Honey Hill State Forest	Otsego and Schoharie
Hooker Mountain State Forest	Otsego
Hooker Mtn. Wildlife Management Area	Otsego
Hunter-Westkill Wilderness	Greene and Ulster
Huntersfield State Forest	Greene
Indian Head Wilderness	Greene
Kaaterskill Wild Forest	Greene and Ulster
Kerryville State Forest	Delaware
Keyserkill State Forest	Schoharie
Leonard Hill State Forest	Schoharie
Lennox State Forest	Delaware
Lost Valley State Forest M	ontgomery
Louise E. Keir Wildlife Management Area	Albany
Lutheranville State Forest	Schoharie
Mallet Pond State Forest	Schoharie
Maple Valley State Forest	Otsego
Margaret Burke Wildlife Management Area	Albany
Michigan Hill State Forest	Delaware
Middle Ground Flats Unique Area	Greene
Milford State Forest	Otsego

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Mink Hollow Primitive Bicycle Corridor	Greene
Mount Pisgah State Forest	Greene
Murphy Hill State Forest	Delaware
New Forge State Forest	Columbia
Nutten Hook Unique Area	Columbia
Overlook Turnpike Primitive Bicycle Corridor	Greene and Ulster
Partridge Run State Forest	Albany
Partridge Run State Wildlife Management Area	Albany
Patria State Forest	Schoharie
Petersburg State Forest	Schoharie
Phoenicia Wild Forest	Greene and Ulster
Pine Hill State Forest	Delaware
Pittstown State Forest	Rensselaer
Plainfield State Forest	Otsego
Plattekill State Forest	Delaware
R. Milton Hick Memorial State Forest	Otsego
Relay State Forest	Delaware
Rensselaerville State Forest	Albany and Schoharie
Roger's Island Wildlife Management Area	Columbia
Roseboom State Forest	Otsego
Rural Grove State Forest	Montgomery
Rusk Mountain Wild Forest	Greene
Scott Patent State Forest	Albany and Schoharie
Shandanken Wild Forest	Greene and Ulster
South Hill State Forest	Delaware and Otsego
South Mountain State Forest	Schoharie
Steam Mill State Forest	Delaware
Stockport Wildlife Management Area	Columbia
Stone Store State Forest	Schoharie
Susquehanna State Forest	Otsego
Taconic Ridge State Forest	Rensselaer
Texas School House State Forest	Otsego
Tibbetts State Forest	Rensselaer
Tomannex State Forest	Delaware
Vinegar Hill Wildlife Management Area	Greene
Wagner Farm State Forest	Otsego
Windham-Blackhead Range Wilderness	Greene
Wolf Hollow Wildlife Management Area	Delaware
Yatesville Falls State Forest	Montgomery

(e) Eastern Adirondacks/Lake Champlain.

Adirondack Fish Hatchery	Franklin
Ampersand Primitive Area	Franklin
Ausable Marsh Wildlife Management Area	Clinton
Bald Ledge Primitive Area	Essex
Battenkill State Forest	Washington
Blue Mountain Wild Forest	Essex and Hamilton
Blue Ridge Wilderness	Hamilton

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Bombay State Forest	Franklin
Boquet River Primitive Area	Essex
Burnt Hill State Forest	Clinton
Cadyville State Forest	Clinton
Camp Santanoni State Historic Area	Essex
Carters Pond Wildlife Management Area	Washington
Cathead Mountain Primitive Area	Hamilton
Champlain II - Submerged Heritage Preserve Area	Essex
Champlain Islands Wild Forest	Clinton and Essex
Chateaugay Fish Hatchery	Franklin
Chestnut Woods State Forest	Washington
Daketown State Forest	Saratoga
Dannemora State Forest	Clinton
Debar Mountain Wild Forest	Franklin
Deer River State Forest	Franklin
Deer River Primitive Area	Franklin
Dix Mountain Wilderness	Essex
Dug Mountain Primitive Area	Hamilton
Dunkin's Reserve State Forest	Clinton
East Bay Wildlife Management Area	Washington
Eldridge Swamp State Forest	Washington
Ferris Lake Wild Forest	Fulton, Hamilton and Herkimer
Flat Rock State Forest	Clinton
Forward - Underwater Classroom Submerged Heritage Preserve	Warren
Franklin 10 State Forest	Franklin
Giant Mountain Wilderness	Essex
Goose Egg State Forest	Washington
Gooseneck Pond Primitive Area	Essex
Hague Brook Primitive Area	Warren
Hammond Pond Wild Forest	Essex
High Peaks Wilderness	Essex, Franklin and Hamilton
Hoffman Notch Wilderness	Essex
Hudson Gorge Primitive Area	Essex and Hamilton
Hurricane Mountain Historic Area	Essex
Hurricane Mountain Primitive Area	Essex
Hurricane Mountain Wilderness	Essex
Jay Mountain Wilderness	Essex
Jessup River Wild Forest	Hamilton
John Brook Primitive Area	Essex
Kings Bay Wildlife Management Area	Clinton
Lassellville State Forest	Fulton
Lake Alice Wildlife Management Area	Clinton
Lake Colby Environmental Education Camp	Franklin
Lake Desolation State Forest	Saratoga
Lake George Battlefield Day Use Area	Warren
Lake George Beach	Warren
Lake George Wild Forest	Warren and Washington
Land Tortoise—Submerged Heritage Preserve	Warren

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Lewis Preserve Wildlife Management Area	Clinton
Lincoln Mountain State Forest	Saratoga
Little Moose Mountain Wilderness	Hamilton
McKenzie Mountain Wilderness	Essex
Macomb Reservation State Forest	Clinton
Madawaska Flow-Quebec Brook Primitive Area	Franklin
Middle Grove State Forest	Saratoga
Monty's Bay Wildlife Management Area	Clinton
Moon Pond State Forest	Clinton
Moose River Plains Wild Forest	Hamilton and Herkimer
Moose River Plains Camping Area	Hamilton and Herkimer
Mount Tom State Forest	Washington
Parcel 45 Wildlife Management Area	Saratoga
Pauline Murdock Wildlife Management Area	Essex
Peck Hill State Forest	Fulton
Pharaoh Lake Wilderness	Essex and Warren
Pigeon Lake Wilderness	Hamilton and Herkimer
Schuyler Island Primitive Area	Essex
Prospect Mountain Day Use Area	Warren
Putts Creek Wildlife Management Area	Essex
Ralph Road State Forest	Warren
Rockwood State Forest	Fulton
Saint Regis Canoe Area	Franklin
Saint Regis Historic Area	Franklin
Saint Regis State Forest	Franklin
Saranac Lakes Wild Forest	Essex and Franklin
Saratoga Sand Plains Wildlife Management Area	Saratoga
Saratoga State Tree Nursery	Saratoga
Sargent Ponds Wild Forest	Hamilton
Sentinel Range Wilderness	Essex
Shaker Mountain Wild Forest	Fulton and Hamilton
Siamese Ponds Wilderness	Hamilton and Warren
Silver Lake Wilderness	Hamilton
Split Rock Mountain Wild Forest	Essex
Spring Brook State Forest	Clinton
Sunken Fleet of 1758 — Submerged Heritage Area	Warren
Tahawas Primitive Area	Essex
Taylor Pond Wild Forest	Clinton, Essex and Franklin
Terry Mountain State Forest	Clinton
The Gulf Unique Area	Clinton
Titusville Mountain State Forest	Franklin
Tomar Pond Primitive Area	Hamilton
Trout River State Forest	Franklin
Ushers Road State Forest	Saratoga
Valcour Island Primitive Area	Clinton
Vanderhacker Mountain Wild Forest	Essex and Warren
Victory Mills Wildlife Management Area	Saratoga
Wakely Mountain Primitive Area	Hamilton

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West Canada Mountain Primitive Area	Hamilton
West Canada Lake Wilderness	Hamilton and Herkimer
Wickham Marsh Wildlife Management Area	Essex
Wilcox Lake Wild Forest	Fulton, Hamilton, Saratoga and Warren
William C. Whitney Wilderness Area	Hamilton

(f) Western Adirondacks/Upper Mohawk Valley/Eastern Lake Ontario.

Albert J Woodford Memorial Forest	Oneida
Aldrich Pond Wild Forest	Herkimer and St. Lawrence
Alice Brook Primitive Area	St. Lawrence
Ashland Flats Wildlife Management Area	Jefferson
Balsam Creek State Forest	Lewis
Beartown State Forest	Lewis
Beaver Creek State Forest	St. Lawrence
Big Brook State Forest	Lewis
Black Creek State Forest	Herkimer
Black Pond Wildlife Management Area	Jefferson
Black River Wild Forest	Herkimer, Lewis, and Oneida
Bog River Flow (Lows Lake)	St. Lawrence
Bonner Lake State Forest	St. Lawrence
Bonaparte's Cave State Forest	Lewis
Brasher State Forest	St. Lawrence
Buck Hill State Forest	Oneida
Buckton State Forest	St. Lawrence
California Road State Forest	St. Lawrence
Canada Creek State Forest	Oneida
Catherineville State Forest	St. Lawrence
Clark Hill State Forest	Oneida
Cobb Brook State Forest	Oneida
Cobb Creek State Forest	Lewis
Cold Spring Brook State Forest	St. Lawrence
Collins Landing Wildlife Management Area	Jefferson
Cottrell State Forest	Lewis
Coyote Flats State Forest	Jefferson
Cranberry Creek Wildlife Management Area	Jefferson
Cranberry Lake Wild Forest	St. Lawrence
Crary Mills State Forest	St. Lawrence
Degrasse State Forest	St. Lawrence
Dexter Marsh Wildlife Management Area	Jefferson
Downerville State Forest	St. Lawrence
East Branch Fish Creek State Forest	Lewis
East Osceola State Forest	Lewis
Eastern Five Ponds Access Primitive Area	St. Lawrence and Hamilton
Fall Brook State Forest	Oneida
Ferris Lake Wild Forest	Herkimer
Fire-Fall State Forest	St. Lawrence
Fish Creek Marsh Wildlife Management Area	St. Lawrence
Fish Creek State Forest	Oneida

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Five Ponds Wilderness	Hamilton, Herkimer, St. Lawrence
Florence Hill State Forest	Oneida
Fort Jackson State Forest	St. Lawrence
Frank E. Jadwin State Forest	Lewis
French Creek Wildlife Management Area	Jefferson
Fulton Chain Wild Forest	Herkimer
Furnace Creek State Forest	Oneida
Glenmeal State Forest	St. Lawrence
Gould Corners State Forest	Jefferson
Granger State Forest	Lewis
Grant Powell State Forest	Lewis
Grantville State Forest	St. Lawrence
Grass River Wild Forest	St. Lawrence
Greenwood Creek State Forest	St. Lawrence
Ha-De-Ron-Dah Wilderness	Herkimer and Lewis
Henderson Shores Unique Area	Jefferson
Hickory Lake State Forest	St. Lawrence
High Flats State Forest	St. Lawrence
High Towers State Forest	Lewis
Hinckley State Forest	Herkimer
Hitchens Pond Primitive Area	St. Lawrence
Hogsback State Forest	Lewis and Oneida
Honeyville Wildlife Management Area	Jefferson
Horseshoe Lake Wild Forest	Franklin and St. Lawrence
Independence River State Forest	Lewis
Independence River Wild Forest	Herkimer and Lewis
Indian Pipe State Forest	Lewis
Indian River Wildlife Management Area	Jefferson
Jackson Hill State Forest	Oneida
Knapp Station State Forest	St. Lawrence
Lake Ontario Islands Wildlife Management Area	Jefferson and St. Lawrence
Lakeview Marsh Wildlife Management Area	Jefferson
Lesser Wilderness State	Lewis
Line Brook State Forest	Lewis
Lonesome Bay State Forest	St. Lawrence
Lookout State Forest	Lewis
Lost Nation State Forest	St. Lawrence
Lowville Demonstration Area	Lewis
Mad River State Forest	Oneida
Mohawk Springs State Forest	Lewis
Mount Hunger State Forest	Oneida
Ohisa State Forest	Herkimer
Onjebonge State Forest	Lewis
Ore Bed Creek State Forest	St. Lawrence
Oriskany Flats Wildlife Management Area	Oneida
Otsquago State Forest	Herkimer
Otter Creek State Forest	Lewis
Penn Mountain State Forest	Oneida

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Pepperbox Wilderness	Herkimer and Lewis
Perch River Wildlife Management Area	Jefferson
Pigeon Lake Wilderness	Herkimer
Pinckney State Forest	Jefferson and Lewis
Plantation Island Wildlife Management Area	Herkimer
Pleasant Lake State Forest	St. Lawrence
Point Peninsula Wildlife Management Area	Jefferson
Point Rock State Forest	Oneida
Popple Pond State Forest	Oneida
Pulpit Rock State Forest	Jefferson
Raquette-Jordan Boreal Primitive Area	St. Lawrence
Raquette River Wild Forest	St. Lawrence
Raymondville State Forest	St. Lawrence
Raywood Unique Area	Lewis
Rome Sand Plains Unique Area	Oneida
Rome State Fish Hatchery	Oneida
Rome Wildlife Management Area	Oneida
Sand Bay State Forest	Lewis
Sand Flats State Forest	Lewis
Sears Pond State Forest	Lewis
Silver Hill State Forest	St. Lawrence
Snow Bowl State Forest	St. Lawrence
Sodom State Forest	St. Lawrence
South Hammond State Forest	St. Lawrence
South Hill State Forest	Oneida
Southville State Forest	St. Lawrence
Stammer Creek State Forest	St. Lawrence
Steuben Hill State Forest	Herkimer
Stillwater Reservoir	Herkimer
Stone Barn State Forest	Oneida
Swancott Hill State Forest	Oneida and Lewis
Swancott Mill State Forest	Lewis
Tassell Hill State Forest	Oneida
Taylor Creek State Forest	St. Lawrence
Toothaker Creek State Forest	St. Lawrence
Tri-County State Forest	Oneida
Trout Lake State Forest	St. Lawrence
Tug Hill State Forest	Jefferson and Lewis
Tug Hill Wildlife Management Area	Lewis
Upper and Lower Lakes Wildlife Mgmt. Area	St. Lawrence
Utica Marsh Wildlife Management Area	Oneida
Van Hornesville Fish Hatchery	Herkimer
Wanakena Primitive Area	St. Lawrence
Watson East Triangle Wild Forest	Herkimer and Lewis
Webster Hill State Forest	Oneida
West Branch State Forest	Oneida
West Canada Lake Wilderness	Herkimer

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West Parishville State Forest	St. Lawrence
Whippoorwill Corners State Forest	St. Lawrence
Whiskey Flats State Forest	St. Lawrence
White Hill Wild Forest	St. Lawrence
Wilson Hill Wildlife Management Area	St. Lawrence
Winona State Forest	Jefferson
Wolf Lake State Forest	St. Lawrence
Woodhull State Forest	Oneida
Yellow Lake State Forest	St. Lawrence

(g) Central New York.

Altmar State Forest	Oswego
Ambler State Forest	Chenango
Anderson Hill State Forest	Tompkins
Baker School House State Forest	Cortland
Balsam Swamp State Forest	Chenango
Basswood State Forest	Chenango
Battlehill State Forest	Oswego
Bear Swamp State Forest	Cayuga
Beaver Creek State Forest	Madison
Beaver Dam State Forest	Tioga
Beaver Flow State Forest	Broome
Beaver Meadow State Forest	Chenango
Beaver Pond State Forest	Broome
Bobell State Forest	Chenango
Brookfield Railroad State Forest	Madison
Bucks Brook State Forest	Chenango
Bumps Creek State Forest	Chenango
Camillus Forest Unique Area	Onondaga
Carpenter Falls Unique Area	Cayuga
Cascade Valley State Forest	Broome
Cat Hollow State Forest	Broome
Charles E. Baker State Forest	Madison
Chateaugay State Forest	Oswego
Cicero Swamp Wildlife Management Area	Onondaga
Cliffside State Forest	Tompkins
Connecticut Hill Wildlife Management Area	Tompkins
Coventry State Forest	Chenango
Cross Lake Islands Wildlife Management Area	Cayuga and Onondaga
Curtiss Gale Wildlife Management Area	Oswego
Cuyler Hill State Forest	Cortland
Danby State Forest	Tompkins
Deer Creek Marsh Wildlife Management Area	Oswego
Deruyter State Forest	Madison
Dog Hollow State Forest	Cortland
Donahue Woods State Forest	Cortland
Earlville State Forest	Madison

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Fairfield State Forest	Tioga
Five Streams State Forest	Chenango
Frenchman’s Island Wildlife Management Area	Onondaga and Oswego
Frozen Ocean State Forest	Cayuga
Gee Brook State Forest	Cortland
Genegantslet State Forest	Chenango
Gorton Lake State Forest	Madison
Griggs Gulf State Forest	Cortland
Hall Island State Forest	Oswego
Hamlin Marsh Wildlife Management Area	Onondaga
Hammond Hill State Forest	Tompkins
Happy Valley Wildlife Management Area	Oswego
Hawkins Pond State Forest	Broome
Hewitt State Forest	Cortland
Hoxie Gorge State Forest	Cortland
Hunt’s Pond State Forest	Chenango
Jenksville State Forest	Tioga
Kasoag State Forest	Oswego
Kennedy State Forest	Cortland
Ketchumville State Forest	Tioga
Kettlebail State Forest	Cortland
Klondike State Forest	Oswego
Labrador Hollow Unique Area	Cortland and Onondaga
Lebanon State Forest	Madison
Lincklaen State Forest	Chenango
Little John Wildlife Management Area	Oswego
Long Pond State Forest	Chenango
Ludlow Creek State Forest	Chenango
Lyon Brook State Forest	Chenango
McDonough State Forest	Chenango
Mariposa State Forest	Chenango and Madison
Marsh Pond State Forest	Broome
Maxon Creek State Forest	Cortland
Melondy Hill State Forest	Broome and Chenango
Michigan Hill State Forest	Tioga
Morgan Hill State Forest	Cortland and Onondaga
Morrow Mountain State Forest	Madison
Muller Hill State Forest	Madison
Nanticoke Lake Multiple Use Area	Broome
Nelson Swamp Unique Area	Madison
New Michigan State Forest	Chenango
Newfield State Forest	Tompkins
O’Hara State Forest	Oswego
Oak Ridge State Forest	Chenango
Oakley Corners State Forest	Tioga
Oneida State Hatchery	Oswego
Orton Hollow State Forest	Oswego
Otselic State Forest	Chenango

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Papish Pond State Forest	Cortland
Perkins Pond State Forest	Chenango
Pharsalia State Wildlife Management Area	Chenango
Pigeon Hill State Forest	Chenango
Pine Ridge State Forest	Chenango
Pitcher Springs State Forest	Chenango
Potato Hill State Forest	Tompkins
Red Brook State Forest	Chenango
Robinson Hollow State Forest	Tioga
Rogers Environmental Education Center	Chenango
Salmon River Falls Unique Area	Oswego
Salmon River Fish Hatchery	Oswego
Salmon River State Forest	Oswego
Sandy Creek State Forest	Oswego
Shindagin Hollow State Forest	Tompkins
Skinner Hill State Forest	Chenango
Skyline Drive State Forest	Broome
South Hill State Forest	Chenango
Split Rock Unique Area	Onondaga
Stone Hill State Forest	Oswego
Stoney Pond State Forest	Madison
Summer Hill State Forest	Cayuga
Taylor Valley State Forest	Cortland
Texas Hill State Forest	Madison
Three Mile Bay Wildlife Management Area	Oswego
Three Rivers Wildlife Management Area	Onondaga
Three Springs State Forest	Madison
Tioughnioga Wildlife Management Area	Madison
Tracy Creek State Forest	Broome
Triangle State Forest	Broome
Trout Brook State Forest	Oswego
Tuller Hill State Forest	Cortland
Turkey Hill State Forest	Tioga
West Osceola State Forest	Oswego
Whaupaucau State Forest	Chenango
Whitney Point Multiple Use Area	Broome
Whittacker Swamp State Forest	Broome
Wiley Brook State Forest	Chenango
Yellow Barn State Forest	Tompkins

(h) Rochester/Western Finger Lakes.

Bare Hill Unique Area	Yates
Bath Fish Hatchery	Steuben
Beaver Dams State Forest	Steuben
Birdseye Hollow State Forest	Steuben
Braddock Bay Wildlife Management Area	Monroe
Burt Hill Multiple Use Area	Steuben
Caledonia Fish Hatchery	Livingston

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Cameron Mills State Forest	Steuben
Cameron State Forest	Steuben
Canacadea State Forest	Steuben
Canaseraga State Forest	Livingston
Catharine Creek Wildlife Management Area	Schuyler
Canoga Marsh Wildlife Management Area	Seneca
Catlin State Forest	Chemung
Cayuga Lake Wildlife Management Area	Seneca
Cedar Springs Fish Hatchery	Monroe
Cinnamon Lake State Forest	Schuyler and Steuben
Cold Brook Wildlife Management Area	Steuben
Conesus Inlet Wildlife Management Area	Livingston
Connecticut Hill Wildlife Management Area	Schuyler and Tompkins
Cooper's Hollow State Forest	Schuyler
Dry Run State Forest	Steuben
Erwin Hollow State Forest	Steuben
Erwin Mountain State Forest	Steuben
Erwin Wildlife Management Area	Steuben
Galen Wildlife Management Area	Wayne
Goundry Hill State Forest	Schuyler
Greenwood State Forest	Steuben
Helmer Creek Wildlife Management Area	Steuben
Hemlock-Canadice State Forest	Livingston and Ontario
High Tor Wildlife Management Area	Ontario and Yates
Honeoye Creek Wildlife Management Area	Ontario
Honeoye Inlet Wildlife Management Area	Ontario
Italy Hill State Forest	Yates
John White Wildlife Management Area	Genesee
Junius Ponds Unique Area	Seneca
Lake Shore Marshes Wildlife Management Area	Wayne
McCarthy Hill State Forest	Steuben
Maple Hill State Forest	Chemung
Meads Creek State Forest	Steuben
Moss Hill State Forest	Steuben
Mount Washington Multiple Use Area	Steuben
Northern Montezuma Wildlife Management Area	Seneca, Wayne and Cayuga
Oak Orchard Wildlife Management Area	Genesee
Ossian State Forest	Livingston
Pigtail Hollow State Forest	Steuben
Rattlesnake Hill Wildlife Management Area	Livingston
Rock Creek State Forest	Steuben
Rush Oak Openings Unique Area	Monroe
Sandy Creek Wetland	Monroe
Sonyea State Forest	Livingston
South Bradford State Forest	Steuben
Squaw Island State Unique Area	Ontario
Stid Hill Multiple Use Area	Ontario
Sugar Hill State Forest	Schuyler

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Texas Hollow State Forest	Schuyler
Tonawanda Wildlife Management Area	Genesee, Orleans and Niagara
Tracy Creek State Forest	Steuben
Turkey Ridge State Forest	Steuben
Urbana State Forest	Steuben
Waneta-Lamoka Wildlife Management Area	Schuyler
West Cameron Wildlife Management Area	Steuben
West Hill State Forest	Steuben
Willard Wildlife Management Area	Seneca

(i) Western New York.

Alder Bottom Wildlife Management Area	Chautauqua
Allegheny Reservoir Wildlife Management Area	Cattaraugus
Allen Lake State Forest	Allegany
Bald Mountain State Forest	Allegany
Bear Creek State Forest	Cattaraugus
Boutwell Hill State Forest	Chautauqua
Boyce Hill State Forest	Cattaraugus
Brokenstraw State Forest	Chautauqua
Bryant Hill State Forest	Cattaraugus
Bucktooth State Forest	Cattaraugus
Bully Hill State Forest	Allegany
Bush Hill State Forest	Cattaraugus
Canadaway Creek Wildlife Management Area	Chautauqua
Carlton Hill Multiple Use Area	Wyoming
Cattaraugus State Forest	Cattaraugus
Chautauqua Gorge State Forest	Chautauqua
Chautauqua Fish Hatchery	Chautauqua
Chautauqua Lake Wildlife Management Area	Chautauqua
Clay Pond Wildlife Management Area	Chautauqua
Cold Creek State Forest	Allegany
Conewango Swamp Wildlife Management Area	Cattaraugus
Coyle Hill State Forest	Allegany
Crab Hollow State Forest	Allegany
Dobbins Memorial State Forest	Cattaraugus
East Otto State Forest	Cattaraugus
Elkdale State Forest	Cattaraugus
English Hill State Forest	Allegany
Farmersville State Forest	Cattaraugus
Gas Springs State Forest	Allegany
Genesee Valley Wildlife Management Area	Allegany
Gillies Hill State Forest	Allegany
Golden Hill State Forest	Cattaraugus
Great Baehre Swamp Wildlife Management Area	Erie
Hampton Brook Woods Wildlife Mgmt. Area	Erie
Hanging Bog Wildlife Management Area	Allegany
Harris Hill State Forest	Chautauqua
Hartland Swamp Wildlife Management Area	Niagara

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Hartson Swamp Wildlife Management Area	Chautauqua
Harwood Lake Multiple Use Area	Cattaraugus
Hatch Creek State Forest	Chautauqua
Hill Higher State Forest	Chautauqua
Hiltonville State Forest	Allegany
Jaquins Pond Wildlife Management Area	Chautauqua
Jersey Hill State Forest	Allegany
Kabob Wildlife Management Area	Chautauqua
Karr Valley Creek State Forest	Allegany
Keaney Swamp Wildlife Management Area	Allegany
Keeney Swamp State Forest	Allegany
Klipnocky State Forest	Allegany
Lost Nation State Forest	Allegany
McCarty Hill State Forest	Cattaraugus
Motor Island Wildlife Management Area	Erie
Mount Pleasant State Forest	Chautauqua
Nine Mile Creek State Forest	Cattaraugus
North Harmony State Forest	Chautauqua
Onondaga Escarpment Unique Area	Erie
Palmer's Pond State Forest	Allegany
Panama State Forest	Chautauqua
Phillips Creek State Forest	Allegany
Pine Hill State Forest	Cattaraugus
Plum Bottom State Forest	Allegany
Raecher Hill State Forest	Cattaraugus
Randolph Fish Hatchery	Cattaraugus
Rattlesnake Hill Wildlife Management Area	Allegany
Reinstein Woods Nature Preserve Unique Area	Erie
Rock City State Forest	Cattaraugus
Rush Creek State Forest	Allegany
Silver Lake Wildlife Management Area	Wyoming
Slader Creek State Forest	Allegany
Spicer Creek Wildlife Management Area	Erie
South Valley State Forest	Cattaraugus
Stockton State Forest	Chautauqua
Swift Hill State Forest	Allegany
Tillman Road Wildlife Management Area	Erie
Tonawanda Wildlife Management Area	Niagara
Turnpike State Forest	Allegany
Vandermark State Forest	Allegany
Watt's Flats Wildlife Management Area	Chautauqua
Wellman State Forest	Chautauqua
Whalen Memorial State Forest	Chautauqua
Windfall Creek State Forest	Cattaraugus
Zoar Valley Multiple Use Area	Cattaraugus and Erie

Sec. filed May 23, 2011 eff. June 8, 2011.

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Part 385. Alcoholic Beverages

Section 385.1. Alcoholic beverages

- (a) *Prohibition.* It is prohibited for any person to consume, possess with intent to consume, transport in an open container or sell any alcoholic beverage on property under the jurisdiction of the office.
- (b) *Exceptions.* The prohibition in subdivision (a) shall not apply to an alcoholic beverage:
- (1) sold by or purchased from a concessionaire or a lessee under the terms and conditions of a concession license, lease, or permit issued by the office, provided that the alcoholic beverage is consumed in the area delineated in the agreement;
 - (2) consumed or possessed by an individual or member of a group pursuant to terms and conditions of a standard permit issued by the office after receipt of an application; or
 - (3) consumed or possessed within an area of a State park, historic site, or other property that the commissioner has designated as exempt from the requirement for a standard permit under paragraph (2) of this subdivision. The designations may be limited to specific temporary periods of time. The exception in this paragraph does not extend to an alcoholic beverage in a container that holds more than one gallon. The commissioner shall approve a statewide list of the designated areas and update it at least annually. The list shall be published on the office's public website. Notice of the designated areas shall be posted in the appropriate regional, park and historic site offices and entrances;
 - (4) Upon recommendation of the director of law enforcement or a regional director and when necessary to protect public health, safety and welfare during any special event or incident on property under the office's jurisdiction, the commissioner may temporarily suspend any of the exceptions listed in this subdivision and shall provide public notice of the suspension by appropriate signage.
- (c) *Minimum age.* It is prohibited for any person under the age of 21 years to possess, possess with intent to consume, consume, or transport in an open container any alcoholic beverage on property under the jurisdiction of the office. No person shall provide, sell to, give, or otherwise transfer an alcoholic beverage to a person under the age of 21.
- (d) *Enforcement.*
- (1) On property under the office's jurisdiction a police officer, or peace officer acting pursuant to his or her special duties, as defined in section 1.20 of the Criminal Procedure Law, or park ranger delegated authority by the commissioner may confiscate an alcoholic beverage from any person if the alcoholic beverage is not authorized under this Part to be possessed, possessed with intent to consume, consumed, transported in an open container or sold. Any alcoholic beverage confiscated shall be deemed a nuisance and shall be disposed of in accordance with the established procedures of the law enforcement agency that confiscates it.
 - (2) Failure to comply with this Part may result in revocation of any standard permit issued under paragraph (b)(2) of this section.
 - (3) Failure to comply with this Part is also a violation under section 27.11 of the Parks, Recreation and Historic Preservation Law and sections 10.00(3) and 80.05(4) of the Penal Law, and a petty offense under section 1.20(39) of the Criminal Procedure Law. The uniform ticket issued to a violator is adjudicated in the local court that has jurisdiction over the geographic area where the State park,

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historic site or other OPRHP property is located. Upon conviction the local court may impose a sentence of up to 15 days in jail or a fine of up to \$250 and payment of any additional local surcharge required by section 27.12 of the Parks, Recreation and Historic Preservation Law.

(e) *Severability*. If a court of competent jurisdiction determines that any provision of this Part or its application to any person or circumstance is contrary to law that determination shall not affect or impair the validity of the other provisions of this Part or the application to other persons and circumstances.

Secs. filed May 1, 1962; repealed, new filed Dec. 1, 1967; renum. 235.1-235.6, Title 17, new added by renum. 222.1-222.6, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; renum. 397.1-397.6, filed Feb. 25, 1988; new filed July 15, 2011 eff. Aug. 3, 2011.

Part 386. No Smoking Areas

Section 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.

Sec. filed Feb. 12, 2013 eff. Feb. 27, 2013.

Part 387. Use of Buildings under the Jurisdiction of the Office

Section 387.1. Use of buildings under the jurisdiction of the office

(a) *Exemptions*. This policy shall not apply to buildings whose use is governed by the provisions of any statute or of any other regulation, including but not limited to the following:

(1) State-owned housing rented to employees of the office pursuant to section 135 of the Civil Service Law;

(2) structures occupied pursuant to land acquisition agreements entered into under the provisions of subdivision 14 of section 3.19 of the Parks, Recreation and Historic Preservation Law;

(3) recreational facilities covered by usage fees established pursuant to section 13.15 of the Parks, Recreation and Historic Preservation Law;

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

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

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

(b) Rental policy.

(1) It shall be the policy of the office that a fair rental shall be charged for the use of any building or portion of any building under the jurisdiction of the office.

(2) In setting such rental, the commissioner may take into account the value of any maintenance, improvements, custodial services, security and other in-kind considerations which may be provided by the tenant.

(3) The commissioner shall not be required to consider any request for rental which, in the opinion of the commissioner, would not be appropriate for the space sought or would interfere with the public's use and enjoyment of the park, parkway, historic site or recreational site in which it is located.

Sec. added by renum. 232.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new added by renum. 373.1, filed April 16, 1991 eff. May 1, 1991; amd. filed Apr. 6, 2015 eff. Apr. 22, 2015.

Section 387.2. Resident curator program

(a) Purpose of this section.

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

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

(b) Definitions.

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

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

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

(c) Criteria for selection of a resident curator.

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

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- (i) Compatibility of proposed rehabilitation concept. The proposed concept for rehabilitation and work plan for the improvements to the property shall be compatible with the office's mission and management of the state park where the property is located, the surrounding environment, and the historic character of the property, and shall consider the use of environmentally sustainable products and practices in rehabilitation, maintenance, and management.
 - (ii) Feasibility of work plan. The proposed work plan and concept for rehabilitation must be feasible in light of proposed capital investments and capable of being performed within the lease term as determined by the office.
 - (iii) Experience and qualifications. An applicant shall demonstrate the appropriate experience and qualifications and/or access to resources required to undertake, implement, and supervise the work plan as well as maintain the property and improvements for the duration of the lease as determined by the office.
 - (iv) Financial capability. The work plan shall demonstrate adequate sources of funding to finance the schedule of improvements, and to maintain adequate insurance coverage throughout the duration of the lease. Additionally, the applicant shall be capable of paying all fees or other costs, including any permit fees, maintenance costs, and utility charges, which may arise under the lease.
- (d) Criteria for establishing length of lease term and amount of rent. Length of lease term and Rent. The length of the lease shall take into account the financial investment proposed by the resident curator, and the amount of time required to complete the rehabilitation of the property. The term of any lease shall not exceed 40 years. Rent, which may be nominal, and length of term shall reflect estimated post-renovation market value and capital investments by the resident curator, and shall consider geographic location, future maintenance obligations and other considerations.
- (e) Criteria for use and restrictions of the leased property.
- (1) The only allowable use for the property shall be as a single family residence.
 - (2) Restrictions on use of the property:
 - (i) All work on historic structures shall comply with the Secretary of the Interior's Standards for Rehabilitation;
 - (ii) No work shall be performed on the property or a specific building or structure without the resident curator having first obtained or caused to be obtained all relevant permits and approvals from the office and state and/or federal agencies, as required by law;
 - (iii) No work shall be performed on the property until the resident curator has provided evidence of satisfactory insurance coverage to the office;
 - (iv) No occupancy of any building shall occur until a certificate of occupancy or other relevant approval is obtained and the resident curator has provided evidence of satisfactory insurance coverage to the office;
 - (v) The assignment, sub-lease, including any sub-lease via any for "rent by owner," transfer, conveyance, or disposal of the resident curator's lease interest in the property in whole or in part is prohibited, except where specifically approved in writing by the Commissioner;
 - (vi) The property shall not be used as security for any debt.

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- (3) The resident curator shall document the rehabilitation work and improvements to the property and make this information available to the public in a manner approved by the office.
- (4) The office shall determine whether there shall be public access to the leased premises, and if so, such determination shall be documented in the lease.
- (5) Upon termination of any lease executed pursuant to this section, full use and enjoyment of the property reverts automatically to the State.

Secs. added by renum. 232.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974 eff. June 10, 1974; new adopted filed Apr. 6, 2015 eff. Apr. 22, 2015.

Part 390. Membership in Counsel of Contracting Agencies

Section 390.1. Purposes

The purpose of this Part is to provide for the participation by the Office of Parks, Recreation and Historic Preservation as a member of the Council of Contracting Agencies (the council) established by Executive Order No. 125, dated May 22, 1989, in order to enhance the availability of and access to information relevant to the statutory determination by the various contracting agencies of the responsibility and reliability of low bidders for the award of construction contracts and certain service contracts and the approval of subcontractors relative to such contracts.

Sec. added by renum. 233.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 16, 1991 eff. May 1, 1991.

Section 390.2. Procedures

The Office of Parks, Recreation and Historic Preservation, as a member of the council, will participate in and comply with the activities and procedures of the council pursuant to its implementing procedures entitled "Council of Contracting Agencies, Executive Order No. 125, Procedures for Collection and Exchange of Information Relating to Contractor Responsibility" and its attachments (the procedures), which was adopted and published by the council on January 11, 1990.

(a) The procedures were filed with the Secretary of State on March 27, 1990 as materials incorporated by reference in its rule making number 0780 and were assigned file number M-90-2.

(b) Copies of the procedures may be obtained from the publisher at the following address:

Council of Contracting Agencies
Office of the Chair
The Commissioner of General Services
Mayor Erastus Corning 2nd Tower
The Governor Nelson A. Rockefeller Empire State Plaza
Albany, NY 12242

(c) The procedures are available for public inspection and copying at the following office:

Counsel's Office
Office of Parks, Recreation and Historic Preservation
Agency Building 1
Empire State Plaza
Albany, NY 12238

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Sec. added by renum. 233.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 16, 1991 eff. May 1, 1991.

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Subchapter B. First Park Region

Part 397. Niagara Frontier State Parks, Recreation and Historic Preservation Commission

Section 397.1. Territorial scope

The rules and regulations contained in this Subchapter shall be effective within the First Park Region only.

Sec. added by renum. 244.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; renum. 401.1, new added by renum. 385.1, filed Feb. 25, 1988 eff. March 16, 1988.

Section 397.2. Vehicle speed limits

(a) A rate of speed in excess of 30 miles an hour, except where otherwise posted, on any park road or drive is prohibited and a rate of speed over 25 miles an hour in a parking field is prohibited except where otherwise posted.

(b) Where the rate of speed is reduced by signs posted by the office, a rate of speed greater than that indicated on such signs is prohibited.

Sec. added by renum. 244.2, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; renum. 401.2, new added by renum. 385.2, filed Feb. 25, 1988 eff. March 16, 1988.

Section 397.3. Use of parkways by recreational and commercial vehicles

(a) The term *parkway* shall include the Robert Moses State Parkway, West River State Parkway and the South State Parkway.

(b) Except as provided in subdivisions (c) and (d) of this section, the use of parkways is restricted to vehicles registered as passenger vehicles by the Commissioner of Motor Vehicles, excluding, however, such vehicles when adapted to or used for the carrying of commercial goods or materials. Recreational vehicles, including but not limited to motor homes, self-propelled campers, travel trailers and recreational equipment are permitted on parkways under the jurisdiction of the office the First Park Region.

(c) The use of all commercial, industrial and farm vehicles on parkways under the jurisdiction of the office in the First Park Region is prohibited, except that any vehicle with a commercial license plate equipped with recreational equipment and buses will be permitted on a parkway, providing the immediate destination is a park facility under the jurisdiction of the office, and also except where the office determines an immediate emergency exists and it is in the best interests of the public to temporarily use such parkway until the emergency subsides.

(d) Nothing contained in this section shall apply to the trucks and apparatus of a fire department, police department or ambulance, or to emergency repair wagons, when reporting for emergency work in case of fire, accident, public disaster or impending danger or emergency on the parkways or in the parks. Licensed ambulances for sick or injured persons shall be permitted to operate over parkways when on emergency service, but subject to all the provisions of the section regulating traffic and including limitations on the rate of speed.

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(e) The following are prohibited from using the parkways: pedestrians, bicycles, motorized bicycles including safety-cycles, whizzer bikes and similar types of vehicles; scooters, motorettes and other similar small power-propelled vehicles of two or three wheels, and any vehicle having two or three wheels any one of which has an overall diameter of less than 15 inches, excluding the tire.

Sec. added by renum. 244.3, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; renum. 401.3, new added by renum. 385.3, filed Feb. 25, 1988; amd. filed March 7, 2000 eff. March 15, 2000.

Section 397.5. Fishing

Fishing is prohibited in all bathing areas, boat basins, boat channels, streams, ponds or lakes or from any bridge, pier, dock, bulkhead, or other structure along the edge of or extending into or over any waters under the jurisdiction of the office except during such times and in such areas as may be plainly designated therefor by signs. Fishing shall be permitted by angling and trolling only, or in the case of shellfish, by devices or instruments operated solely by hand power. No device operated by machinery, or by power, or with the aid of power other than hand power, shall be used in taking fish of any kind from waters under the jurisdiction of the office. Fish shall not be taken contrary to law or any order of the Department of Environmental Conservation.

Sec. added by renum. 244.5, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; amd. filed July 3, 1987; renum. 401.5, new added by renum. 385.5, filed Feb. 25, 1988 eff. March 16, 1988.

Section 397.6. Possession of pets

(a) No person shall cause or permit any animal owned by him or in his custody or under his control, other than hunting dogs during the hunting season in designated areas, except a dog when restrained by a leash not exceeding six feet in length, to roam, go, or be at large in, on or through any park, and any such animal so found at large may be seized and impounded or disposed of as provided by the law or section covering the disposal of stray animals on highways or in other public places then in effect at the place where such stray animals may be seized. Dogs restrained by such leash may be brought into park areas except buildings, bathing areas, improved walks and boardwalks. Any animals seized as above may be delivered to a public pound.

(b) Household pets, with rabies immunization, are permitted on a leash in a campsite, but if causing a disturbance must be removed from the campsite.

(c) No person shall permit any pet to enter or remain in any area or structure where prohibited by a sign or by the lawful order of an employee of the Office.

(d) No pet shall be permitted to enter or remain on park property unless the owner or custodian thereof is able to furnish proof of a rabies inoculation when requested by the Office.

Sec. added by renum. 244.6, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; new added by renum. 385.6, filed Feb. 25, 1988 eff. March 16, 1988.

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Subchapter C. Second Park Region

Part 398. Allegany State Park, Recreation and Historic Preservation Commission

Section 398.1. Applicability

All rules and regulations within this Subchapter shall be effective within the Second Park Region only.

Sec. added by renum. 245.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new added by renum. 388.1, filed Feb. 25, 1988 eff. March 16, 1988

Section 398.2. Fishing

(a) Fishing shall terminate in all waters on the last day of the trout season each year, except in either Quaker Lake or Red House Lake where fishing is permitted pursuant to the Environmental Conservation Law.

(b) Ice fishing.

(1) All ice fishing shelters on Cuba Lake shall be removed prior to 12 o'clock noon on March 15th of each year.

(2) Ice fishing is permitted only at Quaker Lake in Allegany State Park except that Red House Lake will be open for ice fishing if for any reason Quaker Lake should not be available for ice fishing. No structures or shelters may be erected or maintained on the frozen surface of the lakes except that wind breaks of a temporary nature may be erected for the time period during which the occupant is fishing. All such devices must be removed prior to the departure of the person using them.

(c) In the waters of Quaker Run Creek from Cain Hollow Bridge easterly to the Coon Run Road, fishing shall be permitted using artificial lures only. The possession or use of any natural bait shall be prohibited. Additionally, such waters will be regulated by a delayed harvest management program requiring that any trout caught from April 1st through May 20th must be released unharmed. Possession of trout on this section is prohibited between April 1st and May 20th.

(1) As used in this section, *artificial lures* shall mean manmade flies, spinners, spoons, plugs, jigs and other lures, even though there may be some natural substances contained in such lures, such as deer hair and feathers, and artificial imitations of natural bait.

(2) As used in this section, *natural bait* shall mean all baits which entice or might be ingested or swallowed by fish, including, but not limited to, fish (dead or alive), fish eggs, worms, shellfish, crustacea, amphibians (salamanders, frogs and toads), insects (including all stages of development such as larvae, pupae, etc.) pork rinds, liver, meat, corn or other vegetable matter, tapioca, candy, cheese and bread.

Sec. added by renum. 245.2, Title 6, filed Sept. 1971; repealed, new filed Jan. 3, 1974; repealed, filed June 6, 1974; new added by renum. 388.2, filed Feb. 25, 1988; ams. filed: July 17, 1990; Feb. 15, 2002; July 19, 2005 eff. Aug. 3, 2005. Amended (c).

Section 398.3. Limitations on the taking of fish from waters within the Allegany State Park

(a) *Trout.* No person shall take more than five trout on any one day.

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(b) *Minnows or bait-fish angling.* No person shall take minnows or bait-fish of any kind by means of a seine, scap net, wire or glass trap or by any other means, except angling.

Sec. added by renum. 245.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new added by renum. 388.3, filed Feb. 25, 1988 eff. March 16, 1988.

Section 398.6. Pets

(a) Persons are allowed to bring pets into any park under the jurisdiction of the Office within the Second Park Region provided the following conditions are conformed with:

- (1) Pets must be confined in all areas of the park where they might interfere with or disturb the general public; *i.e.*, cabin areas, tent and trailer areas, etc. *Confined* shall be in a cage or on a leash not exceeding 10 feet.
- (2) Persons bringing dogs into any park must have proof of current rabies vaccination, and have the dog licensed as required by the laws of the state of residence.
- (3) No pets are allowed at any swimming facility, within any public building or, in Allegany State Park, on any portion of the cross-country ski trails or the trails of the Art Roscoe Cross-Country Ski Area.
- (4) No pet is allowed to interfere with the rights of any patron of the park.
- (5) No pet shall be allowed to disturb wildlife. Dogs shall not be allowed for hunting except as prescribed by the Environmental Conservation Law.

(b) Any person whose pet violates any of the above conditions is subject to immediate ejection from the park, with no refund, and may also be subject to prosecution.

Sec. added by renum. 388.6, filed Feb. 25, 1988; amd. filed June 30, 1988 eff. July 20, 1988. Amended (b); rep. and renumbered from § 398.7 amd. filed July 15, 2011 eff. Aug. 3, 2011.

Section 398.7. Speed limits

(a) No person shall operate, or cause to be operated, any snowmobile, motor or other vehicle over or upon park roads at a rate of speed in excess of 35 miles per hour.

(b) Notwithstanding the provisions of subdivision (a) of this section, no person shall operate, or cause to be operated, any snowmobile, motor or other vehicle at a rate of speed in excess of 25 miles per hour over or upon any of the following roads or portions of roads:

- (1) Lake Erie State Park—all roads;
- (2) Long Point on Lake Chautauqua State Park—all roads;
- (3) Allegany State Park:
 - (i) ASP Route 2, beginning at a point 300 feet west of Sugarbush Trail, easterly to a point 600 feet east of the intersection with ASP Route 2A;
 - (ii) ASP Route 1, beginning at a point 600 feet north of the intersection with ASP Route 2 southerly to a point one-half mile south of the intersection with ASP Route 2A;
 - (iii) ASP Route 2A, entire length;
 - (iv) ASP Route 3, beginning at a point 600 feet east of Kaiser Trail westerly to a point 1,200 feet west of Weller Trail; and

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(v) all cabin and campsite trails.

Sec. added by renum. 388.7, filed Feb. 25, 1988 eff. March 16, 1988; renumbered to § 398.6 and renumbered from § 398.8 amd. filed July 15, 2011 eff. Aug. 3, 2011.

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Subchapter D. Third Park Region

Part 399. Genesee State Park, Recreation and Historic Preservation Commission

Section 399.1. Applicability

All rules and regulations of the office within this Subchapter shall be effective within the Third Park Region only.

Sec. added by renum. 246.1, Title 6, filed Sept. 1971; repealed, filed Aug. 10, 1972; new added by renum. 391.1, filed Feb. 25, 1988 eff. March 16, 1988.

Section 399.3. Fishing

Fishing shall be permitted in all waters under the jurisdiction of the office by persons lawfully licensed by the State, by angling and trolling only, and adhering to State fishing laws, except that fishing is prohibited in the following areas:

- (a) in all bathing-swimming areas;
- (b) in all areas closed to the public; and
- (c) from any bridge.

Sec. added by renum. 246.3, Title 6, filed Sept. 1971; repealed, filed Aug. 10, 1972; new added by renum. 391.3, filed Feb. 25, 1988 eff. March 16, 1988.

Section 399.4. Speed limit

No person shall operate a motor vehicle in any park at a rate of speed in excess of 40 miles per hour on any park road or in excess of 15 miles per hour in any parking field, except where specifically modified by signs.

Sec. added by renum. 246.4, Title 6, filed Sept. 1971; repealed, filed Aug. 10, 1972; new added by renum. 391.4, filed Feb. 25, 1988 eff. March 16, 1988.

Section 399.5. Parkway restrictions

Parkways may be used for all vehicles except the following: commercial vehicles, horses, snowmobiles and any vehicles having two or three wheels any of which has an overall diameter of less than 15 inches excluding the tire. Pedestrians are prohibited from walking on the pavement and/or hitchhiking.

Sec. added by renum. 246.5, Title 6, filed Sept. 1971; repealed, filed Aug. 10, 1972; new added by renum. 391.5, filed Feb. 25, 1988 eff. March 16, 1988.

Section 399.6. Animals and pets

- (a) Animals and pets are not permitted in cabin areas, swimming areas and buildings, except seeing-eye dogs accompanying a handicapped person.
- (b) (1) Animals and pets are permitted in designated areas of camp grounds and in day-use areas if restrained by a leash not exceeding six feet.
 - (2) Notwithstanding paragraph (1) of this subdivision, pets are not permitted in the day-use area of Darien Lakes State Park.

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*Sec. added by renum. 246.6, Title 6, filed Sept. 1971; repealed, filed Aug. 10, 1972; new added by
renum. 391.6, filed Feb. 25, 1988 eff. March 16, 1988.*

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Subchapter E. Fourth Park Region

Part 400. Finger Lakes State Park, Recreation and Historic Preservation Commission

Section 400.1. Territorial scope

All rules and regulations within this Subchapter shall be effective only within the Fourth Park Region.

Sec. filed Aug. 16, 1961; renum. 475.1, filed June 1962; new filed June 6, 1974; renum. 402.1, new added by renum. 394.1, filed Feb. 25, 1988 eff. March 16, 1988.

Section 400.2. Vehicle speed limits

The rate of speed for any motor vehicle being operated within a park shall not exceed:

- (a) 40 miles per hour on the Fair Haven Beach entrance road between Route 104A and a point 500 feet south of the entrance booth;
- (b) 35 miles per hour on the Taughannock Falls Park Road between Route 89 and the intersection of county road 143;
- (c) 25 miles per hour on any other park road;
- (d) 15 miles per hour in any parking area; and
- (e) the posted limit in other areas specially designated and posted by the office.

Sec. filed June 6, 1974; ams. filed: Aug. 10, 1976; Nov. 13, 1975 eff. Nov. 1, 1975.

Section 400.3. Fishing

Fishing in compliance with the Environmental Conservation Law shall be permitted in all waters under the jurisdiction of the office within the Fourth Park Region except in marinas, mooring areas, boat launching areas, swimming areas or other designated areas.

Sec. filed June 6, 1974; renum. 402.3, new added by renum. 394.3, filed Feb. 25, 1988 eff. March 16, 1988.

Section 400.5. Animals

- (a) Domesticated household pets are allowed in the parks of the Fourth Region provided that:
 - (1) not more than one pet shall be allowed at a camping site, boat slip or cabin unless an exception is specifically authorized by the commissioner; and
 - (2) the pet shall at all times be caged or restrained by a leash or other device not more than six feet in length.
- (b) Animals shall at all times be under the constant supervision and control of the owner or person having custody of the animal.
- (c) Animals are specifically prohibited from any swimming area.
- (d) Animals which are unattended or otherwise in violation of the above rules are subject to immediate seizure and/or disposal by employees of the office.
- (e) Animals needed by the physically handicapped are excluded from these rules.

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Sec. filed June 6, 1974; repealed, new filed Jan. 28, 1977; ams. filed: April 7, 1983; April 22, 1986; renum. 402.5, new added by renum. 394.5, filed Feb. 25, 1988; amd. filed Aug. 4, 1988 eff. Aug. 24, 1988. Amended (a), (c), (d); rep. and renumbered from § 400.6 amd. filed July 15, 2011 eff. Aug. 3, 2011.

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Subchapter F. Fifth Park Region

Part 401. Central New York State Park, Recreation and Historic Preservation Commission

Section 401.1. Territorial scope

All rules and regulations within this Subchapter shall be effective on property under the jurisdiction of the Office in the Fifth Park Region only.

Sec. filed Aug. 16, 1961; renum. 476.1 filed June 1962; new added by renum. 250.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new added by renum. 397.1, filed Feb. 25, 1988 eff. March 16, 1988.

Section 401.2. Fishing

No person shall fish in any waters except at such times and such places where fishing shall be permitted, and then only in accordance with existing State fish and game laws, rules and regulations.

Sec. filed Aug. 16, 1961; renum. 476.2, filed June 1962; new added by renum. 250.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new added by renum. 397.2, filed Feb. 25, 1988 eff. March 16, 1988; amd. filed April 22, 2016 eff. May 11, 2016.

Section 401.3. Speed limit

No person shall operate a motor vehicle at a rate of speed in excess of 30 miles per hour, or in excess of any lesser rate posted in any zone or portion of a park road, parking area or any other travelable way.

Sec. added by renum. 250.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new added by renum. 397.3, filed Feb. 25, 1988 eff. March 16, 1988.

Section 401.4. Animals at large

No person shall cause or permit any animal owned by him, in his custody, or under his control, except a domesticated household pet restrained by a leash not exceeding six feet in length, to enter any park; and such animal found at large may be seized and disposed of as provided by the law or ordinance covering disposal of stray animals on highways or public property therein in effect at the place where such stray animal may be seized. Pets shall not be allowed in bathing areas under any circumstances.

Sec. added by renum. 250.4, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new added by renum. 397.4, filed Feb. 25, 1988 eff. March 16, 1988.

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Subchapter G. Seventh Park Region

Part 402. Taconic State Park, Recreation and Historic Preservation Commission

Section 402.1. Territorial scope

The rules and regulations contained in this Subchapter shall be effective within the Seventh Park Region only.

Sec. filed Aug. 16, 1961; renum. 477.1, filed June 1962; new added by renum. 251.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new added by renum. 400.1, filed Feb. 25, 1988 eff. March 16, 1988.

Section 402.2. Fishing

(a) No person shall fish at any State historic site within the Seventh Park Region (Taconic region), or at James Baird State Park, except as otherwise provided in this subdivision.

- (1) Bass fishing shall be permitted in the pond at the Olana historic site during such times that may be designated therefor.
- (2) Open season, size and limits shall be regulated by the Environmental Conservation Law.
- (3) Manner of fishing shall be regulated by the Environmental Conservation Law.

(b) Trout fishing in Stillwater Lake, Iron Mine Pond, Ore Pit Pond, and Weed Mines Pond within the Seventh Park Region (Taconic region), shall be governed by the following regulations:

- (1) Open season and size shall be regulated by Environmental Conservation Law.
- (2) Daily limit shall be three fish per person.
- (3) Manner of fishing shall be restricted to the use of any legal bait or lure other than bait fish.

Sec. filed Aug. 16, 1961; amd. filed Sept. 8, 1961; renum. 477.2, filed June 1962; new added by renum. 400.2, filed Feb. 25, 1988 eff. March 16, 1988; amd. filed April 22, 2016 eff. May 11, 2016.

Section 402.3. Speed limits

(a) No person shall operate any motorized vehicles upon the lands under the jurisdiction of the Seventh Park Region (Taconic region), in excess of 25 miles per hour except as otherwise posted.

Sec. filed Aug. 16, 1961; renum. 477.3, filed June 1962; new added by renum. 400.3, filed Feb. 25, 1988 eff. March 16, 1988.

Section 402.4. Pets

(a) Persons are allowed to bring pets in or on any land under the jurisdiction of the Seventh Park Region (Taconic region), providing the following conditions are conformed with:

- (1) No pet is allowed within the general proximity of any bathing area, picnic area or within any public building.
- (2) Dogs are not allowed in any camping area during periods of public use.
- (3) Pets must be confined in all areas of the park where they might interfere with or disturb the general public. *Confined* shall be in a cage or on a leash not exceeding 10 feet.
- (4) No pet is allowed to interfere with the rights of any person.

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(5) No pet shall be allowed to disturb wildlife. Dogs shall not be allowed for hunting except as prescribed by the Environmental Conservation Law.

(b) Any person whose pet violates any of the above conditions is subject to immediate ejection from the park, with no refund of any fee paid, and may be subject to prosecution.

*Sec. filed Aug. 16, 1961; renum. 477.4, filed June 1962; new added by renum. 400.4, filed Feb. 25, 1988 eff.
March 16, 1988.*

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Subchapter H. Palisades Interstate Park Commission – New York Rules and Regulations

RESOLUTION

Acting pursuant to the provisions of section 9.05 of the Parks and Recreation Law, and in accordance with section 88 of the Public Officers Law, the Palisades Interstate Park Commission, at a special meeting held on August 23, 1974, duly adopted the following resolution:

RESOLVED, That inasmuch as the "Freedom of Information Law," constituting article 6 of the Public Officers Law, becomes effective September 1, 1974 and requires the governing body of an agency to publish rules in relation to the availability for public inspection and copying of agency records, the Palisades Interstate Park Commission hereby temporarily adopts as its rules issued pursuant to the provisions of section 88 of such law for its operations within the State of New York, the rules and regulations promulgated by the Commissioner of Parks and Recreation, effective September 1, 1974, until such time as the Palisades Interstate Park Commission shall, itself, adopt and promulgate its own rules and regulations in relation thereto pursuant to its powers under section 9.05 of the Parks and Recreation Law.

I, Nash Castro, Assistant Secretary of the Palisades Interstate Park Commission, do hereby certify that the foregoing is a true and exact copy of a resolution duly adopted by the Palisades Interstate Park Commission at a special meeting thereof held on the 23rd day of August, 1974.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the 23rd day of August, 1974.

S/NASH CASTRO

ASSISTANT SECRETARY

PALISADES INTERSTATE PARK COMMISSION

Approved pursuant to Subdivision 7 of Section 9.05 of the Parks and Recreation Law

S/ALEXANDER ALDRICH

Commissioner of Parks and Recreation

Date: August 27, 1974

Filed: August 30, 1974

Part 403. Statement of Policy

Section 403.1. Statement of policy

(a) The State of New York is abundant in natural, scenic and recreational sources. The magnificent State parks, recreational and historic sites administered by the Office of Parks, Recreation and Historic Preservation and the Palisades Interstate Park Commission encourage and facilitate the use and enjoyment of such resources by the public and thereby promote and enhance the well-being of each individual.

(b) State parks, however, contain waterfalls, waterways, chasms, slopes and other natural features which, by their nature, may constitute hazards and present dangers to persons approaching them.

(c) In addition to the dangers presented by natural hazards, the use of State parks and historic sites by the public for varied and divergent purposes may also, if not controlled, endanger the safety of members thereof and tend to deny certain individuals equality of opportunity in the use and enjoyment of these resources.

(d) Therefore, to enhance and promote the safety, well-being and enjoyment of each individual in the use of a State park, recreational and historic site and to assure to each individual equality of opportunity

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in the use and enjoyment of such system, the rules and regulations set forth in this Subchapter are hereby established to govern the conduct of the public with respect thereto.

Sec. filed Aug. 16, 1961; renum. 478.1, filed June 1962; new added by renum. 252.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; amd. filed May 7, 1982 eff. May 7, 1982.

Part 404. Definitions and Construction of Terms; Territorial Application; Validity

Section 404.1. Definition of terms

Whenever used in this Subchapter, the following terms shall mean and include the meanings expressly set forth in this section, unless otherwise expressly defined.

- (a) **Commission** shall mean the Palisades Interstate Park Commission, established by compact by the States of New York and New Jersey, approved by the Congress of the United States. See also article 9 of the Parks, Recreation and Historic Preservation Law.
- (b) **Commissioner** shall mean the Commissioner of Parks, Recreation and Historic Preservation.
- (c) **Motor vehicle** shall mean any vehicle designed or maintained for use primarily on a highway and powered by any power other than muscular power, other than a snowmobile, all-terrain vehicle or similar wheeled or air cushioned vehicle designed or equipped to operate outside of roadways.
- (d) **Office** shall mean the State Office of Parks, Recreation and Historic Preservation.
- (e) **Personal property** shall mean any property, or interest therein, other than real property.
- (f) **Property** shall mean real or personal property.
- (g) **Real property** shall mean lands, improvements and structures thereon, rights, franchises and interests therein, lands under water and riparian rights, and any and all interests in lands less than full title, including, without limitation, temporary or permanent easements (including scenic or conservation easements), divided or undivided interests, rights-of-way, uses, leases, licenses, and any other estate, interest or right in lands, legal and equitable.
- (h) **Region or park region** shall mean a park region as established by the provisions of section 7.01 of the Parks, Recreation and Historic Preservation Law.
- (i) **Rule or regulation** shall mean any rule or regulation duly adopted as a Palisades Interstate Park Commission rule or regulation.

Sec. added by renum. 253.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; amd. filed May 7, 1982 eff. May 7, 1982.

Section 404.2. Construction of terms

Any term contained in this Subchapter shall be construed as follows:

- (a) Any term in the singular shall include the plural.
- (b) Any term in the masculine shall include the feminine and neuter.
- (c) The prohibition of any act shall extend to and include an attempt to commit such act and the causing and/or the procuring, directly or indirectly, of such act.
- (d) No provision contained in this Subchapter shall cause to be deemed unlawful any act performed by an officer or employee of the office or the commission in the line of duty or in the scope of employment,

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or any act performed by a person, his agents or employees in the performance or execution of the terms of an agreement with the office or the commission.

Sec. added by renum. 253.2, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974 eff. June 10, 1974.

Section 404.3. Territorial application

The provisions of this Subchapter shall be effective within, upon and in the airspace above all property that is presently or shall in the future be under the jurisdiction, custody or control of the commission within the eighth park region unless otherwise provided.

Sec. added by renum. 253.3, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974 eff. June 10, 1974.

Section 404.4. Validity

If any Part, section, subdivision, paragraph or provision of this Subchapter shall be determined to be invalid, such determination shall apply to the particular Part, section, subdivision, paragraph or provision, and all other provisions of this Subchapter shall remain valid and in effect.

Sec. added by renum. 253.4, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974 eff. June 10, 1974.

Part 405. Permits

Section 405.1. Permits

(a) A written permit issued by the commission, to do any act, shall authorize the same only insofar as it may be performed in strict accordance with the terms and conditions thereof.

(b) Any act authorized pursuant to a permit may be performed only by the person named therein, and any such authorization may not be assigned or delegated, unless and except as provided in such permit.

(c) Any permit may be revoked at the option of the commission, which action shall be final. In case of such revocation, all monies paid for or on account thereof shall, at the option of the commission, be forfeited to and retained by the commission.

(d) In any case where the holder of a permit or his agent or employee shall have been found to have violated a term or condition thereof, such holder and his agent or employee who has violated such terms and conditions shall be jointly and severally liable to the State of New York and the commission for any damages or loss suffered by it in excess of money forfeited and retained by the commission.

(e) Neither the forfeiture and retention of any such money by the commission nor the recovery or collection of any damages or both shall preclude the prosecution of any person for a violation of a rule or regulation of the commission or the violation of any other State or local law, ordinance, rule or regulation.

Sec. added by renum. 254.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974 eff. June 10, 1974.

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Part 406. Cash Deposits, Bonds, Fees and Refunds

Section 406.1. Cash deposits, bonds

In any case where the commission may require a cash deposit or indemnity bond as security to protect property of the commission against loss or damage, or to limit the extent of duration of the use of such property, or to guarantee compensation to the commission for property rented or engaged, such cash deposit or indemnity bond shall be forfeited:

- (a) in the case of loss of or damage to property of the commission, provided that no such forfeiture shall prevent the commission from recovering any damages over and above the amount of the deposit or bond resulting from loss or damage of property;
- (b) in the case of a violation of any agreement or condition upon which the requirement of a cash deposit or indemnity bond is based.

Sec. added by renum. 255.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974 eff. June 10, 1974.

Section 406.2. Refund of fees

In any case where the commission has established a fee or charge for the use of any facility under its jurisdiction, custody or control, a refund of such charge or fee may be made under the following circumstances, provided that a service charge to be established by the commission shall be deducted and withheld from any refund:

- (a) where no financial loss occurs to the commission through the cancellation of reservations for the use of space or property, or when such cancellation is received by the commission 30 days in advance of the occupancy;
- (b) where, in the judgment of the commission, the cancellation is predicated on circumstances beyond the control of the reserving party;
- (c) where, in the judgment of the commission, it is clear that there has been a misunderstanding on the part of the patron as to space or facilities reserved;
- (d) where an error has been made by an employee of the commission as to the property or space reserved.

Sec. added by renum. 255.2, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974 eff. June 10, 1974.

Part 407. Lost Articles

Section 407.1. Return of lost articles

Any person, finding or taking possession of personal property not his own, of the value of \$20 or more, shall immediately return such property to its lawful owner or custodian. If the lawful owner or custodian cannot be immediately found or ascertained, the property shall be turned over to a member of the regional park police, or if no member of the regional park police can be located, an employee of the office, who shall issue a receipt therefor.

Sec. added by renum. 256.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; ams. filed: June 24, 1975; July 13, 1987 eff. July 15, 1987.

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Part 408. Prohibited Activities

Section 408.1. Activities absolutely prohibited

The activities and uses enumerated in this section shall be absolutely prohibited on property under the jurisdiction, custody and control of the commission.

(a) [Reserved]

(b) Pollution of waters. No person shall in any manner cause to be placed in waters or into any storm sewer, drain or stream flowing into such waters any sewage, garbage, trash, litter, debris, waste material or any nauseous or offensive matter.

(c) Littering. No person shall in any manner cause any rubbish, garbage, refuse, organic or inorganic waste, diseased or dead animal, or other offensive matter or any abandoned property or material to be placed or left in or on any property, except in receptacles provided for that purpose.

(d) Drains and sewers. No person shall discharge into any openings or gutter leading into any sewer, receiving basin or drain in or leading into any property any gas or vapor, or any substance which may form a deposit tending to choke same, or any volatile liquid which may emit an inflammable vapor at a temperature below 160 degrees Fahrenheit, or any steam or water above 100 degrees Fahrenheit.

(e) Injury to property. No person shall make an excavation on or injure, destroy, deface, remove, fill in, tamper with or cut any real or personal property, tree or other plant life, and no person shall erect or maintain any structure except as otherwise provided in this Subchapter.

(f) Disorderly conduct. No person shall do any of the following:

- (1) disobey a lawful order of any officer or employee of the commission or the directions of any sign erected by or at the direction of the commission;
- (2) use abusive or obscene language or make an obscene gesture;
- (3) throw stones or other objects or missiles which may inflict bodily injury or damage to property;
- (4) obstruct vehicular or pedestrian traffic;
- (5) climb upon any wall, fence, structure or monument;
- (6) engage in or encourage fighting or violent or threatening behavior;
- (7) spit upon grounds or other surfaces;
- (8) make any unreasonable noise;
- (9) throw away or discard any lighted match, cigar, cigarette, charcoal or other burning object other than in a receptacle provided for that purpose;
- (10) operate any watercraft, wheeled vehicle, snowmobile or other equipment in such a manner as to endanger other persons or property or in such a manner as to create an unreasonable noise or disturbance;
- (11) commit an act which may result in injury to any person or damage or loss to real or personal property or create a hazardous or offensive condition by any act which serves no legitimate purpose;
- (12) without lawful authority, disturb any lawful assembly or meeting of persons;
- (13) congregate with other persons and refuse to comply with a lawful order to disperse.

(g) *Charges*. No person shall enter upon or use any facility or property for the use of which a charge or fee is imposed, unless he shall have first paid such charge or fee.

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(h) *Property closed to public.* No person shall enter or remain upon any property or within any structure during such hours, seasonal or indefinite periods that such property or structure has been designated as closed by a sign or by an employee of the commission.

(i) *Use of established ways.* No person shall use other than trails, overlooks, roads and other ways established and provided for public use by the commission. No liability shall attach to the State or commission, its officers, employees or agents for injuries to persons resulting from the use of other than such established trails, overlooks, roads or ways.

(j) *Minors.* No person having custody or control of a minor shall permit such minor to do any act in violation of a rule or regulation of the commission. Minors under 10 years of age shall at all times be under the supervision and control of a parent, guardian or responsible custodian.

(k) *Hitchhiking.* No person shall solicit a ride or hitchhike. No person shall pick up a hitchhiker.

(l) *Gambling.*

(1) Gambling, lotteries, games of chance and fortune-telling are prohibited.

(2) Notwithstanding paragraph (1) of this subdivision, the sale of tickets for the New York State Lottery by concessioners approved by the commission shall be permitted where the approval of the commission has been given.

(m) *Hunting and preservation of fish and wildlife.* No person shall, without a permit from the commission, hunt, trail with dogs, kill, wound, molest, trap, snare, or in any other way pursue, take or remove any animal, fowl, bird, reptile, amphibian, fish or shellfish, or the eggs of any of the above found within the confines of the park. Notwithstanding the foregoing general prohibition, the commission may, from time to time, specifically allow one or more of such activities within designated parks or portions of designated parks.

(n) No person shall introduce, possess or use any axe, machete or cutting tool other than a hatchet or sheath knife for the purpose of preparing wood for a cooking fire.

(o) *Animals.* No person shall introduce or possess any animal except as otherwise provided in this Subchapter.

(p) *All-terrain vehicles.* No person shall use or operate an all-terrain vehicle or other similar wheeled or air-cushioned vehicle designed or equipped to operate outside of highways. This prohibition shall not be interpreted to include snowmobiles unless equipped with a wheeled conversion to an all-terrain vehicle.

(q) *Firearms and weapons.* No person, other than a member of a Federal, State or municipal law enforcement agency, shall introduce or possess, either upon the person or within a vehicle, or use any firearm or any instrument or weapon the propelling force of which is a spring, rubber or air or any ammunition or propellant therefor, or a bow and arrow, except as permitted by a rule or regulation of the commission.

(r) *Attire.* No person shall appear nude in public as defined in section 235.20(2) of the Penal Law, dress or undress other than in facilities provided therefor, enter or remain in any area or facility in such attire as may be prohibited by a sign or by an employee of the commission or bathe in other than a bathing suit safe and suitable for such purpose.

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(s) *Artificial swimming aids.* No person shall use tubes, floats, swim fins, Aqua-lungs or skin diving equipment of any kind, or any other inflated or buoyant objects or artificial or mechanical aids for swimming or diving, except under the following circumstances:

- (1) when the use of skin or scuba diving equipment is authorized in accordance with the terms of a permit issued by the commission; or
- (2) when the use of personal flotation devices at designated facilities is specifically authorized by the commission. Only United States Coast Guard-approved personal flotation devices of types I, II and III shall be allowed.

(t) *Protection of bathing areas.* No person shall bring into or have any food or beverage in any bathing area, except those parts thereof designated for picnicking or refreshment. No person shall throw, cast, lay or deposit any glass bottle or piece of crockery, nor any glass or glassware or any part thereof, or metallic or any other substance that might cause injury on any bathing area in, on or adjoining any park.

Sec. added by renum. 257.1, Title 6, filed Sept. 1971; amd. filed Jan. 25, 1972; repealed, filed Aug. 10, 1972; new filed June 6, 1974; amds. filed: June 30, 1981; May 31, 1985; July 13, 1987 eff. July 15, 1987. Amended (f)(11), (s)(2).

Part 409. Activities or Uses Prohibited Except when Undertaken Pursuant to a Permit

Section 409.1. Activities or use prohibited except when undertaken pursuant to a permit

No person shall engage in any of the following activities or uses on property under the jurisdiction, custody or control of the commission, except pursuant to a permit issued by the commission and in accordance with the terms thereof and any other conditions contained in this section.

(a) *Meetings, public exhibitions, etc.* The holding of any meeting, ceremony, religious service, parade, procession, speech, lecture or any form of entertainment, performance, motion picture, contest or other such event, the distribution or posting of handbills or advertisements in connection therewith, or the erection of any structure, stand or platform in connection therewith.

(b) *Fireworks and explosives.* The introduction, possession or use of fireworks, gunpowder, powder used in blasting, high explosives, blasting materials, detonating fuses, detonators and other detonating agents, smokeless powder or any chemical compound or any mechanical mixture containing any oxidizing and combustible units, or other ingredients in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion or detonation of any part thereof may cause an explosion.

(c) *Commercial activities.* The selling or offering for sale, hire or lease of any merchandise, service or other thing of value.

(d) The taking of moving pictures or photographs for commercial, publicity or educational purposes or the purchasing or selling of negatives thereof or prints therefrom or the exhibition of the same in public.

(e) The receiving or discharge of passengers from or upon any wharf, dock or other property under the jurisdiction of the commission by a vessel or aircraft which carries such passengers for hire.

(f) *Aviation.* The voluntary introduction, takeoff, or landing of any aircraft, parachute, balloon or other weight carrying machine or device designed for flight in or navigation of the air, other than in an emergency.

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(g) *Advertising.*

(1) The posting or distributing of advertising matter or the oral advertising for sale of any merchandise, article, service or other thing of value, or soliciting in connection with the sale of the same outside a park.

(2) The use of an aircraft for the purpose of advertising by means of towing banners, signs or other devices, dropping or distributing advertising materials or advertising through a loud speaker or other device.

(h) The promotion of any event, belief or philosophy either by means of the posting or distribution of printed or written matter or orally.

(i) *Camping.* Camping at authorized sites, cabins or other structures, except trail shelters which are for overnight use by trail hikers only.

(1) No picnic table, garbage receptacle, woodpile and other equipment supplied by the commission shall be placed at any location other than those approved by an officer or employee of the commission.

(2) No laundry shall be hung or spread on trees, shrubs or lawns.

(3) No campsite or cabin shall be sublet.

(4) Campsites shall be kept in a neat, clean and sanitary condition.

(5) No person shall wash dishes, clothes or his person at a water fountain or other outlet.

(6) Trailer campers shall provide suitable receptacles to prevent the discharge of waste from sink outlets onto real property.

(7) Ditching around tents is prohibited in grassed areas. Ditching is permitted in gavelled areas, provided that such ditches are filled in upon vacating the site.

(8) No person under the age of 18 will be permitted to camp unless accompanied and supervised by a person 18 years of age or older who has been issued a permit.

(9) No person shall make any structural change or alteration in any campsite or cabin.

(10) Failure to occupy a reserved site at the time specified in the permit may result in the cancellation of such permit without refund.

(11) No person shall occupy a site after the time specified in the permit or renewal thereof.

(12) No person shall attach a rope, line or other device to a tree, shrub or structure.

(13) All temporary mirrors used for extra trailering safety shall be removed immediately after unhooking trailers at campsites;

(14) Campers shall respect the rights and privacy of others and shall maintain quiet on the campsite between the hours of 10 p.m. and 7 a.m.

(15) Campsites shall be closed to all persons who are not registered as occupants thereof between the hours of 10 p.m. and 7 a.m.

(j) *Toy or model rockets or aircraft.* The use or operation of toy or model rockets or aircraft. Persons may be required to produce evidence of insurance against property damage or personal injury in the discretion of the commission.

(k) *Research and educational projects.* The conducting of a research or educational project.

(l) The conducting of a picnic or outing by a group or organization in excess of 25 persons.

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(m) *Private boats.* Private boats, including canoes and sailboats, may be used on designated park waters, subject to the following conditions:

- (1) Craft that meet certain established standards of safety and construction, as determined by a physical inspection of the craft by an authorized park representative, will be issued a permit.
- (2) The craft must be launched and removed only at designated places.
- (3) All applicable State laws and rules and regulations of the commission must be observed.
- (4) Outboard motors are not permitted on any park lake except small, battery-powered motors, capable of propelling the craft at no more than four miles per hour, to be used for trolling by licensed fishermen only.
- (5) No person shall leave any boat or canoe overnight on any lake in the park, except campers or camp organizations who have obtained a permit from the commission.

(n) *Alms.* The soliciting of alms or contributions.

(o) *Archaeological excavations.* The exploration for and excavation and gathering of archaeological or paleontological objects. Permits shall be subject to the approval of the Education Department.

(p) *Metal detectors.* The use or operation of a metal detector or other mechanical device to locate buried or concealed metal. Permits shall be granted for use of metal detectors in designated areas only.

(q) *Bows and arrows and muzzle-loading weapons.* The use or possession of any bow and arrow or muzzle-loading weapon.

- (1) The use of bows and arrows shall be restricted to areas specifically designated and established for that purpose. Such use shall at all times be under the direction of a qualified supervisor.
- (2) The use of muzzle-loading weapons shall be limited to demonstrations and interpretive programming conducted by staff members at State historic sites and to special events sponsored by the commission, such as the reenactment of Revolutionary or Civil War battles. The weapons shall be loaded with blanks only.

Sec. added by renum. 258.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; amsd. filed: Nov. 16, 1976; May 31, 1985; July 13, 1987 eff. July 15, 1987. Amended (i), added (o)—(q)

Part 410. Regulated Activities

Section 410.1. Regulated activities

The following activities are prohibited on property under the jurisdiction, custody and control of the commission, except in areas specifically designated therefor, during such hours or seasonal periods specifically authorized and subject to such conditions as may be contained herein.

- (a) The throwing, striking, kicking or catching of any ball, horseshoe or other object or the conduct of any game or athletic activity, or the use of any device or equipment used in any such game or athletic activity.
- (b) The engaging in toy or model boating or automobiling.
- (c) The use or riding of saddle horses.
 - (1) No horse shall be left unattended or in an unenclosed space without being securely fastened to a device provided for such purpose.

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- (2) Saddle horses shall be used or ridden in such a manner so as not to endanger the safety of the public or interfere with the use and enjoyment of a park by others.
- (d) The building, kindling, lighting or maintaining of any fire. Fires may be built and maintained only in fireplaces, grills or stoves suitable for cooking purposes, and no fire shall be started or maintained unless under the constant supervision of a responsible person.
- (e) The use of a sled, skis, skates or other vehicle, equipment or device used for the purpose of moving over snow or ice on runners, wheels or other means.
- (f) Roller skating.
- (g) Kite flying.
- (h) Swimming, diving, bathing or wading in swimming pools or other waters or walking upon the frozen surface thereof.
- (i) The use, launching, beaching, docking, mooring or anchoring of a boat or watercraft used as a means of transportation on water.
- (1) No boat or watercraft shall be operated within a bathing area.
- (2) No boat or watercraft shall be operated at a speed greater than five miles per hour in any area designated as a boat basin or anchorage area.
- (3) If any boat or watercraft shall burn, submerge or become disabled, such boat or watercraft shall be removed immediately by its owner or other person having custody thereof. If such boat or watercraft is not removed within 24 hours, the commission may have it removed and charge the owner or other person having custody thereof with any expense incurred in relation thereto.
- (j) The towing of persons on waterskis, aquaplanes or the use of a surfboard.
- (k) The use or operation of a snowmobile as defined in subdivision 3 of section 21.05 of the Parks, Recreation and Historic Preservation Law.
- (1) Notwithstanding the above, the operation of a snowmobile during the period beginning one-half hour after sunset and ending at sunrise, or the holding of a special event for snowmobiles, including but not limited to races and competitions, shall be permitted only pursuant to a written permit issued by the commission and subsequently approved by the commissioner.
- (2) The operator of any snowmobile shall carry liability insurance in an amount equal to that prescribed by law for such operation on highways and carry evidence of same.
- (3) No person shall operate a snowmobile in any area where the snow cover is less than three inches.
- (4) No person under 10 years of age may operate a snowmobile on property under the jurisdiction, custody or control of the commission.
- (5) No person under 16 years of age may operate a snowmobile without having received and in his possession a snowmobile safety certificate issued by the commissioner or unless such person is accompanied by a person at least 18 years of age.
- (l) *Golf*. Engaging in the game of golf or in practice therefor:
- (1) Golfers and caddies must register before play.
- (2) Only registered golfers and their caddies may enter upon a golf course or practice area or search for lost balls in adjacent areas.
- (3) No person shall commence play at other than designated starting tees.

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(m) *Possession of pets.* No person owning or being custodian or having control of any animal shall cause or permit such animal to enter the park, and any such animal found at large may be impounded except, however, that dogs properly muzzled and restrained by a leash not exceeding six feet in length, may be brought into parks areas, except buildings, camping, picnic and bathing areas and improved walks. Riding horses may enter certain designated parks, by written permit only. Any animals seized as above provided will be delivered to a public pound.

(n) Alcoholic beverages.

(1) Alcoholic beverages, including beer, wine, whiskey or other intoxicating beverages may not be dispensed, sold or possessed with intent to consume except pursuant to a permit issued by the commission, and then only in accordance with conditions and limitations specified in the permit.

(2) Unless accompanied by a parent or guardian no person under 21 years of age shall consume or possess with intent to consume alcoholic beverages and no person except a parent or guardian shall provide alcoholic beverages to a person under 21 years of age, as permitted by law.

(o) Fishing, subject to the regulations of the New York State Department of Environmental Conservation, except as follows:

(1) Fishing is not permitted in the following lakes which are designated exclusively for water supply: Queensboro and Turkey Hill Lakes and the Letchworth Reservoirs.

(2) Fishing is not permitted between June 15th and Labor Day in the following lakes which are designated exclusively for camping: Upper and Lower Cohasset, Upper and Lower Twin, Summit, and Breakneck Pond. In other lakes designated for camping, fishing is not permitted between June 15th and Labor Day from 10 p.m. to 5 a.m.

(3) Fishing or crabbing off any dock or property of the commission shall be permitted only at points designated for that purpose.

(4) Fishing contests and similar events shall be permitted only pursuant to a written permit issued by the commission.

(p) Climbing or descending cliffs at points other than those designated for that purpose.

*Sec. filed June 6, 1974; amd. filed: May 7, 1982; July 13, 1987; Nov. 7, 1988; Oct. 7, 1992 eff. Oct. 7, 1992.
Amended (n).*

Part 411. Traffic

Section 411.1. Use and operation of motor vehicles on property under the jurisdiction, custody and control of the commission

(a) No person shall cause or permit a vehicle to be towed or pushed by another vehicle, except that a disabled vehicle may be towed to the nearest park or parkway exit by a tow truck operated for such purpose. Disabled vehicles shall be moved off the paved portion of a parkway or road so as to prevent obstruction of traffic, but a disabled vehicle shall be permitted to remain off the pavement only until temporary repairs are made or until power can be obtained to remove it. If such vehicle is not removed within 24 hours, it may be removed by the commission at the expense of the owner or person in charge thereof. Any vehicle left on the paved portion of a parkway or park road may be immediately removed by the commission at the expense of the owner or person in charge thereof.

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- (b) No motor vehicle shall contain any person or object protruding or hanging outside or on the top thereof except that sports and recreation equipment may be carried on the rear of such vehicle or on a rack designed for such purpose and attached to the top thereof. Fastenings shall be secure and substantial, and in no case shall any such equipment be permitted to protrude to the extent that it may create a hazard to other vehicles.
- (c) No person shall operate a motor vehicle unless duly licensed in accordance with the laws of the State of New York, and no person having custody or control of a motor vehicle shall permit the same to be operated by another person not duly licensed in accordance with the laws of the State of New York. Persons having a learner's permit issued in accordance with the provisions of section 501 of the Vehicle and Traffic Law shall be permitted to operate a motor vehicle on such parkways or park roads specifically designated for such purpose.
- (d) No person shall cause or permit a motor vehicle to be closed from view, except those vehicles designed for camping purposes and then only when being used for camping.
- (e) No person shall cause or permit a motor vehicle to be driven or otherwise moved off the improved or paved portion of a parkway, park road or designated parking area except by designated access drive or except as otherwise provided in this Subchapter.
- (f) No person shall cause or permit a motor vehicle to be parked or to stand, except in designated areas. All occupied vehicles parked within the confines of the park during hours of darkness shall display parking lights at all times.
- (g) No person shall cause or permit a motor vehicle to enter or leave property under the jurisdiction, custody or control of the commission, except by designated routes.
- (h) No person shall cause or permit a motor vehicle to make a U-turn, except around a plaza or other place where designated.
- (i) No person shall cause or permit a motor vehicle to unnecessarily stop or obstruct traffic.
- (j) No person shall cause or permit a motor vehicle to be driven at such a slow speed as to impede or block the normal and reasonable movement of traffic, except where such reduced speed is necessary for safe operation or in compliance with the directions of an employee of the commission.
- (k) No person shall cause or permit a motor vehicle to cross a solid longitudinal traffic line, except when directed to do so by an employee of the commission.
- (l) No person shall cause or permit a motor vehicle to weave in and out of traffic, change its course, enter or change traffic lanes in such a manner or at such a speed as to unreasonably interfere with the operation of any other vehicle.
- (m) No person shall cause or permit a motor vehicle to be driven or backed on a traffic lane opposite to that of the movement of traffic in such lane.
- (n) No person shall cause or permit a motor vehicle to be stopped on the improved or paved portion of any parkway or other road for the purpose of removing or replacing a tire or making any repair to a vehicle.
- (o) During any period declared to be a snow emergency by the commission, any motor vehicle determined by the commission to be abandoned shall be removed by the commission at the expense, including towing and storage, of the owner or other person in charge of such vehicle.

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(p) During any period declared to be a snow emergency by the commission, no person shall cause or permit a vehicle to be operated, unless the powered wheels of such vehicle are equipped with chains or snow tires. Worn or damaged tires which no longer provide effective traction or which fail to meet the requirements of the Commissioner of Motor Vehicles established pursuant to the Vehicle and Traffic Law shall not constitute snow tires regardless of their original classification.

(q) All persons shall heed and comply with the directions of the regional park police and other employees of the commission and the directions of all traffic signs and signals.

Sec. added by renum. 260.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974 eff. June 10, 1974.

Part 412. Vehicles

Section 412.1. Vehicles permitted to use parkways and park roads

(a) Vehicles registered by the Commissioner of Motor Vehicles as passenger vehicles.

(b) Motorcycles, providing they have no wheel which has an overall diameter of less than 15 inches, excluding the tire.

(c) A vehicle known as a "jeep" if it is equipped with a passenger seat in the rear of the driver's seat.

(d) Licensed ambulances, police, fire and civil defense vehicles when responding to or returning from an emergency or when acting in the line of duty.

(e) Suburban type vehicles, including van types, provided they have side windows, rear seats and the passenger carrying capacity as defined in section 412.3(e) of this Part is not exceeded and the vehicle displays no advertising.

(f) Subject to sections 412.2(i) and 412.3(e) of this Part, an omnibus, known as a taxi or limousine, providing that in no case will cruising or soliciting of passengers be permitted.

Sec. added by renum. 261.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; amd. filed March 7, 2000 eff. March 15, 2000. Amended (a).

Section 412.2. Vehicles not permitted to use parkways and park roads

The following are prohibited from using park roads, except as specifically authorized in this Part:

(a) any motor vehicle, trailer or semitrailer designed, used or maintained for the transportation of commercial goods or materials, or drawing a semitrailer, or designed, constructed or adapted primarily for use as a dwelling or sleeping quarters, including but not limited to vehicles designated as: commercial; agricultural; truck, including panel truck, and van truck, hearse, trailer or semitrailer; boat or snowmobile trailer; coach or house trailer; camp or travel trailer; self-propelled motor home; fifth wheel travel trailer; and utility trailer;

(b) pedestrians, except at designated crossings;

(c) riders and drivers of horses;

(d) animal-drawn vehicles;

(e) motorized bicycles; scooters, motorettes and other similar small power-propelled vehicles of two or three wheels, any of which has an overall diameter of less than 15 inches, excluding the tires;

(f) bicycles, except on designated bikeways;

(g) all terrain vehicles or similar vehicles designed to be used outside of roadways;

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- (h) snowmobiles, except where an unplowed parkway or road has been designated for such use; and
- (i) any vehicle displaying any advertising matter.

Sec. added by renum. 261.2, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; ams. filed: June 21, 1976; March 7, 2000 eff. March 15, 2000. Amended opening para., (a).

Section 412.3. Vehicles permitted to use parkways or park roads by written permit only

- (a) Outing or recreational buses, which make no intermediate stops from their point of origin to their destination, for the purpose of receiving or discharging passengers at a park under the jurisdiction of the commission.
- (b) Other public omnibuses operating under a franchise or permit, for the purpose of receiving or discharging passengers at a park under the jurisdiction of the commission.
- (c) School buses when transporting students or children to and from a school or children's camp or during an educational or cultural field trip.
- (d) A vehicle designed or equipped for towing or pushing of disabled vehicles.
- (e) Any vehicle owned and operated by a utility and used in the construction, maintenance or repair of its facilities when actually engaged in the construction, maintenance or repair of facilities located on property under jurisdiction of the commission.
- (f) Any vehicle carrying, or adapted for carrying, more than 15 passengers in addition to the driver.

Sec. added by renum. 261.3, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; ams. filed: Dec. 9, 1980; July 13, 1987 eff. July 15, 1987.

Part 413. Vehicle Speed Limits

Section 413.1. Vehicle speed limits

- (a) A rate of speed in excess of 55 miles an hour on the Palisades Interstate Parkway from the north side of the Governor Thomas E. Dewey Thruway (interchange 9) to the Bear Mountain Bridge circle is prohibited.
- (b) A rate of speed in excess of 50 miles an hour on the Palisades Interstate Parkway from the New York - New Jersey state line to the north side of the Governor Thomas E. Dewey Thruway (interchange 9) is prohibited.
- (c) A rate of speed in excess of 40 miles an hour on park roads is prohibited.
- (d) On park roads, parkways, entrance or exit roads, traffic circles, approaches, and in parking areas where different speed limits are determined to be appropriate by the commission, and signs are posted indicating such speed, a rate of speed greater than that indicated on such signs is prohibited.
- (e) In bad weather or when special hazards exist, signs may be posted indicating lower allowable speeds. A rate of speed greater than that indicated on such signs is prohibited.

Sec. added by renum. 262.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974 eff. June 10, 1974.

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Part 414. Payments to an Owner or Tenant of Residential Property or Commercial Property upon Their Application for Allowance of Moving Expenses in Vacating Property Acquired by the Palisades Interstate Park Commission, for Supplemental Relocation Payments, for Loss of Favorable Mortgage Financing and for Closing Costs

Section 414.1. Purpose

The laws stated above provide that the Palisades Interstate Park Commission, with the approval of the Director of the Budget, shall establish and may amend rules and regulations authorizing the payment of reasonable and necessary moving expenses, supplemental relocation payments, loss of favorable mortgage financing and closing costs to occupants of property acquired pursuant to such laws. The following rules and regulations shall apply to moving expenses, supplemental relocation payments, loss of favorable mortgage financing and closing costs to eligible persons caused by their displacement from real property acquired pursuant to such laws.

Sec. added by renum. 263.1, Title 6, filed Sept. 1971; repealed, new filed: Nov. 22, 1971; June 6, 1974 eff. June 10, 1974.

Section 414.2. Definitions

For the purpose of this Part, the following terms shall mean:

- (a) **Commission.** Palisades Interstate Park Commission.
- (b) **Department.** The Executive Department.
- (c) **Individual.** A person who is not a member of a family as hereinafter defined.
- (d) **Family.** The term **family** means two or more individuals, one of whom is the head of a household, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit. Where two or more individuals occupy the same dwelling with no identifiable head of a household, they shall be treated as one family.
- (e) **Business.** The term **business** means any lawful activity, excepting a farm operation, conducted primarily:
 - (1) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing or marketing of products, commodities, or any other personal property;
 - (2) for the sale of services to the public;
 - (3) by a nonprofit organization; or
 - (4) solely for the purpose of moving and related expenses, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.
- (f) **Nonprofit organization.** A corporation, partnership, individual or other public or private entity, engaged in a business, professional or instructional activity on a nonprofit basis, necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, profession or institutional activity on the premises.
- (g) **Farm operation.** The term **farm operation** means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use

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and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(h) **Moving expenses.** The reasonable necessary expenses of moving personal property, including the costs of dismantling, disconnecting, crating, loading, insuring, temporary storage, transporting, unloading and reinstalling such personal property. Reimbursement for necessary moving expenses is also intended to include payment for temporary lodging and transportation and the cost of transferring licenses, exclusive of legal fees. Moving expense reimbursement is exclusive of any betterments or improvements (except when required by law) or additives to the replacement site.

(i) **Counted rooms.** That space in the appropriated structure containing a substantial and usual quantity of household furniture, equipment and personal property. They shall include the usual acceptable defined rooms such as bedrooms, living rooms, kitchens, etc., but will exclude vestibules, hallways, bathrooms and powder rooms.

(j) **Dwelling.** Any single family house, a single family unit in a multi-family building, a unit of a condominium or cooperative housing project, a mobile home, or any other residential unit.

(k) **Comparable replacement dwelling.** One which is:

- (1) decent, safe and sanitary as otherwise defined in this Part;
- (2) functionally equivalent and substantially the same as the acquired dwelling with respect to:
 - (i) number of rooms,
 - (ii) area of living space,
 - (iii) type of construction,
 - (iv) age,
 - (v) state of repair;
- (3) fair housing (open to all persons regardless of race, color, religion, sex or national origin);
- (4) in areas not generally less desirable than the dwelling to be acquired in regard to:
 - (i) public utilities and
 - (ii) public and commercial facilities;
- (5) reasonably accessible to the relocatee's place of employment;
- (6) adequate to accommodate the relocatee;
- (7) in an equal or better neighborhood;
- (8) available on the market to the displaced person, and
- (9) within the financial means of the displaced family or individual.

(l) **Mortgage.** Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State, together with the credit instruments, if any, secured thereby.

(m) **Owner.** An individual owning, legally or equitably, the fee simple estate, a life estate, a 99 year lease; the contract purchaser of any of the foregoing estates or interests or who has succeeded to any of the foregoing interests by devise, bequest, inheritance or operation of law.

(n) **Loss of favorable mortgage financing.** The amount to compensate a displaced person for the increased interest costs he is required to pay for financing a replacement dwelling based on the existing and replacement housing mortgage.

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- (o) **Incidental expenses.** The amount necessary for the actual reasonable and necessary costs incurred incident to the purchase of a replacement dwelling, not including prepaid expenses.
- (p) **Hardship case.** A situation determined by the commission to represent an extenuating or unusual circumstance where serious financial, social or personal hardship would be imposed upon an owner/tenant because of a delay in receiving payment of moving expenses, supplemental housing benefits, or related eligible expenses.
- (q) **Initiation of negotiations for the parcel.** The date of the first personal contact with the owner of any property to be acquired or his designated representative where price is discussed.
- (r) **Initiation of negotiations for the project.** The date of the first personal contact with the owner of any property or his designated representative where price is discussed except where such contact is made solely for protective buying or because of hardship.
- (s) **Date of eligibility for benefits.** Eligibility for the payments enumerated in this Part are specified under the respective subdivision hereof. However, no eligibility will accrue to any person moving onto any project subsequent to the date of initiation of negotiations for the project, except for the payment of moving expenses, unless it be determined by the commission to be in the public interest to so make a finding of eligibility.
- (t) **Standards for decent, safe and sanitary housing.** A decent, safe and sanitary dwelling is one which meets all of the following minimum requirements:
- (1) Conforms to State and local housing codes and ordinances. Conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations.
 - (2) Water. Has a continuing and adequate supply of potable safe water.
 - (3) Kitchen requirements. Has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and connected to hot and cold water, and an adequate sewage system. A stove and refrigerator in good operating condition shall be provided when required by local codes, ordinances or custom. When these facilities are not so required by local codes, ordinances or custom, the kitchen area or area set aside for such use shall have utility service connections and adequate space for the installation of such facilities.
 - (4) Heating system. Has an adequate heating system in good working order which will maintain a minimum temperature of 70 degrees Fahrenheit in the living area under local outdoor design temperature conditions. A heating system will not be required in those geographical areas where such is not normally included in new housing. Bedrooms are not included in the "living area" as referred to in this paragraph.
 - (5) Bathroom facilities. Has a bathroom, well lighted and ventilated and affording privacy to a person within it, containing a lavatory, basin and a bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush closet, all in good working order and properly connected to a sewage disposal system.
 - (6) Electric system. Has an adequate and safe wiring system for lighting and other electrical services. When the utility is not reasonably accessible and is not required by local codes, ordinances or

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custom, an exception may be approved by the Regional Federal Highway Administrator or other designated official on a project basis.

(7) Structurally sound. Is structurally sound, weathertight, in good repair and adequately maintained.

(8) Egress. Each building used for dwelling purposes shall have a safe unobstructed means of egress leading to safe open space at ground level. Each dwelling unit in a multi-dwelling building must have access either directly or through a common corridor to a means of egress to open space at ground level. In buildings of three stories or more, the common corridor on each story must have at least two means of egress.

(9) Habitable floor space. Has 150 square feet of habitable floor space for the first occupant in a standard living unit and at least 100 square feet (70 square feet for mobile home) of habitable floor space for each additional occupant. The floor space is to be subdivided into sufficient rooms to be adequate for the family. All rooms must be adequately ventilated. Habitable floor space is defined as that space used for sleeping, living, cooking or dining purposes and excludes such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries and unfurnished attics, foyers, storage spaces, cellars, utility rooms and similar spaces.

(10) The standards for decent, safe and sanitary housing as applied to rental of sleeping rooms shall include the minimum requirements contained in paragraphs (1), (4), (6), (7) and (8) of this subdivision and the following:

(i) Habitable floor space. At least 100 square feet of habitable floor space for the first occupant and 50 square feet of habitable floor space for each additional occupant.

(ii) Bathroom facilities. Lavatory, bath and toilet facilities that provide privacy including a door that can be locked if such facilities are separate from the room.

(11) A mobile home is to be considered to be decent, safe and sanitary if it meets the standards set forth above except that the space requirements are reduced to a minimum of 150 square feet of habitable floor space for the first occupant and a minimum of 70 square feet of habitable floor space for each additional occupant and that one means of egress is available.

Sec. added by renum. 263.2, Title 6, filed Sept. 1971; repealed, new filed: Nov. 22, 1971; June 6, 1974; amd. filed May 7, 1982 eff. May 7, 1982.

Section 414.3. General provisions applicable to residential and commercial moving expenses

The provisions stated herein apply to eligible persons occupying property on or after July 1, 1971. Application for payment of moving expenses shall be made by an eligible person in writing to the commission upon forms prescribed and shall be accompanied by such information, evidence and executed vouchers as may be required. Such application shall be submitted to the commission and payment of such moving expenses will be made to eligible persons under the circumstances and to the extent set forth herein.

(a) Any individual, family, business, or farm operator is eligible to receive payment for the reasonable expense of moving his personal property subsequent to the earlier of the following two dates:

(1) he is in occupancy at the initiation of negotiations for the acquisition of the real property in whole or in part; or

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- (2) he is in occupancy at the time he is given a written notice by the State that it is their intent to acquire the property by a given date or he is given notice to vacate the property by a specific date.
- (b) Where the acquisition of real property used for a business or farm operation which is eligible for a payment under subdivision (a) of this section causes a person to vacate a dwelling from other real property not acquired, the additional expenses of moving such personalty are eligible for the appropriate moving payments.
- (c) Moving expenses shall not exceed the cost of transportation beyond 50 miles, except in the case of a business or farm when the State determines that relocation cannot be accomplished within the 50-mile area; such exceptions may only be allowed to the nearest adequate and available site.
- (d) The cost of insurance premiums covering loss and damage of personal property while in storage or transit will be eligible for reimbursement. Moving expenses shall not include any direct losses or losses due to negligence.
- (e) The type of interest acquired does not affect the eligibility of relocation costs for reimbursement provided the interest acquired is sufficient to cause displacement. If, in the opinion of the commission, the acquisition of a portion of an entire premises or of access thereto renders all or the remainder of such premises unsuitable for continued use and occupation or renders it without suitable access the removal of personal property from the entire property may be considered eligible for the payment of moving expenses.
- (f) Moving expenses shall not include the cost of moving any fixtures or equipment considered part of the realty from the acquired property nor will reimbursement be made for any cost of construction or improvement to the new location or for any remodeling, redecorating or reinforcing of the new structure to accommodate the eligible person or his personal property, unless required by law, or deemed to be in the public interest by the commission.
- (g) Reimbursement for electrical wiring and plumbing charges and communication systems work covers only that work which is directly related to the personal property being relocated. Reimbursement is to exclude any costs of bringing electrical or plumbing services to the new site but may include costs of labor and materials of distributing these services to the personal property relocated. Reimbursement under this category excludes costs of installing basic electrical wiring or plumbing to a new structure or that normally found and expected in an existing structure and is intended to cover only those costs necessary to provide sufficient and adequate but not super-adequate utilities to operate the displaced business.
- (h) No reimbursement for overtime payments will be allowed unless prior approval is received in writing from the department.
- (i) It is expected that in anticipation of moving, the business or farm will reduce their inventories of stock or merchandise as much as practicable in order to have the removal accomplished in the most businesslike and economical manner.
- (j) Application for payment of moving expenses must be made within 12 months after vacating of acquired premises or six months after final award determination in a case litigated in the courts of the State, whichever is the later. Such limitation shall include any eligible storage period.

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(k) In case a building or structure acquired by the State is returned to the owners under an agreement, an eligible person will be entitled to the moving expenses for any personal effects, furniture and household equipment remaining in the building or structure at the time of removal of such building or structure; however, the cost of moving the structure is not eligible for moving expenses. The eligible person, at his option, may accept a room count allowance or receive reimbursement on the actual cost basis.

(l) In the case where the acquisition of real property causes the displacement of an advertising sign and such sign constitutes the only improvement to the property acquired or where the acquisition causes a person to remove his advertising sign from real property not acquired, the owner of the advertising sign is eligible for appropriate moving payments. However, where the advertising sign is owned by and located on the business or farm displaced, there will be no separate moving or related expenses considered.

(m) *Moving junkyards and automobile graveyards.* The State will pay the cost to put the junk or automobile bodies in an acceptable condition for delivery to the nearest reasonable salvage collection point, together with the transportation costs from the appropriated property to said salvage collection point. In the case of moving the material from an appropriated junkyard to a substitute location, the State will pay the processing cost to prepare the junk for removal by the most economical means. The State will not pay the cost of disassembly for resale of parts.

(n) An advertising sign, junkyard or automobile graveyard that is otherwise eligible for moving payments will not be eligible when it is moved to a site in violation of State, Federal or local regulations.

(o) An otherwise eligible owner of an advertising sign or a nonprofit business is not entitled to an "in lieu of" moving expense payment.

(p) If the actual costs incurred by the eligible person exceed the department's approved limit of moving expenses, the eligible person may submit to the department a fully detailed explanation for the excess costs. The department's approval limit may be adjusted accordingly.

(q) The cost of necessary storage for a period not to exceed six months may be considered as part of moving expenses and will be subject to the following provisions:

(1) Moving expenses may include the cost of moving into dead storage at the prevailing rate in a commercial storage facility or warehouse; no payment will be made for storage on premises owned or occupied by the eligible person, members of his immediate family, or his legal or financial representative.

(2) If personal property is subsequently sold or delivered from storage to third parties, reimbursement for storage or moving out of storage will not be allowed.

(r) The costs of storage or moving out of storage will not be considered in calculating a figure for determining the extent of participation in any other benefits defined herein.

(s) The State will not participate in more than one move of a displaced person unless in the opinion of the commission it is in the public interest to do so.

(t) In the case of a hardship where advance payment of moving expenses is requested, the eligible person must submit in advance a written application setting forth the full extent and circumstances of the hardship. A written determination will be made by the department. If the department determines a hardship exists, an advanced payment of reasonable necessary moving expenses may be made.

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(u) In unusual or hardship situations, when determined to be in the public interest, the commission may authorize a payment even though the strict requirements of eligibility specified herein are not met.

Sec. added by renum. 263.3, Title 6, Sept., 1971; repealed, new added, filed: Nov. 22, 1971; June 6, 1974 eff. June 10, 1974.

Section 414.4. Residential moving expenses

All eligible residential occupants will be entitled to reimbursement of actual, reasonable and necessary moving expenses or may elect a fixed amount in accordance with the counted room allowance.

(a) (1) If the eligible person elects to receive a scheduled payment in lieu of actual, reasonable and necessary moving expenses, the following schedules will apply:

ROOM COUNT SCHEDULE					
Unfurnished units (including mobile homes)					
1st Room	2nd	3rd	4th	5th	6th & over
\$50	\$110	\$150	\$190	\$225	\$25 each
Mobile homes					
Sq. ft.					
300	300/500	500/700	700/800	800 over	
\$100	\$150	\$200	\$250	\$300	
Furnished units, sleeping rooms (including mobile homes)					
1st room	2nd and remaining				
\$25	\$15				

(1) In addition to the amounts specified in (1) above, each relocated individual or family will be entitled \$200 dislocation allowance. When garages, sheds and outbuildings are acquired and the eligible person's place of residence is not disturbed, or when the eligible person's principal place of residence is not the appropriate site, a fixed allowance may be applied per the aforementioned room count schedules less the \$200 dislocation allowance.

(b)

(1) If the eligible residential occupant elects to receive reimbursement on the basis of actual, reasonable and necessary moving expenses, he shall submit to the department at least four weeks prior to the moving date at least one estimate or bid from a recognized household furniture concern, together with a detailed inventory of all personal property to be removed. Such estimate or bid is to be in a form as prescribed in section 414.6 of this Part. After receipt of the estimate in acceptable form, an amount will be deemed reasonable and necessary by the department and the eligible person notified in writing to commence moving. Upon completion of the move, actual, reasonable and necessary moving expenses will be paid based upon receipted bills submitted to the department in an acceptable form consistent with section 414.6 of this Part, limited to an amount not to exceed the approved estimate.

(2) In the case of a residential self move performed by the eligible person, his family and others not normally in the moving business, the move must be in compliance with all applicable State and Federal laws. All charges must be detailed in the form of a summary affidavit. In the event of failure to meet any of the above requirements as provided, payment will be limited to a lump sum amount based on the counted room schedule plus the dislocation allowance.

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*Sec. added by renum. 263.4, Title 6, Sept., 1971; repealed, new added, filed: Nov. 22, 1971; June 6, 1974 eff.
June 10, 1974.*

Section 414.5. Commercial moving expenses

An eligible person occupying a business, farm operation or a nonprofit organization will be reimbursed for actual, reasonable and necessary moving expenses, actual, reasonable and necessary expenses in searching for a replacement site and actual direct losses of tangible personal property in moving or discontinuing the operation or activity.

(a) The eligible person shall notify the department eight weeks prior to the starting date of the move of his definite intentions regarding the manner and method of moving. At the option of the department, personnel of the department may conduct an inventory of personal property and merchandise to be moved, including a description of each phase of the work to be performed and an explanation of any unusual or peculiar circumstances that will be pertinent to arriving at a comprehensive cost of moving figure. The address of the appropriated property, address the eligible person is moving to and the approximate distance between is to be included therein. This inventory is to be signed by the eligible person and is to be supplied to all estimators and bidders for each phase of the work and they are to base their estimates and bids on removal of the items listed therein. The occupant may, at his own expense, obtain competitive bids on the costs of moving and may submit a competitive self-move bid on all or a portion of the removal.

(b) Actual costs must be documented upon receipted, detailed bills from recognized movers, skilled craftsmen and are not to exceed the total of the lowest acceptable bids or estimates obtained on each phase of the move.

(c) Estimates and bids on each phase of the move shall be obtained by the department from generally recognized, qualified movers and skilled craftsmen. Upon receipt and review of all estimates and bids, the department will determine the lowest acceptable bid. This bid will be sent to the eligible person advising him to commence moving and setting forth the limits of reimbursement and the time and manner in which payment will be made. After the removal has been accomplished, actual costs must be documented by detailed, receipted bills from recognized movers, skilled craftsmen and are not to exceed the approved amount based on a total of the lowest acceptable bids or estimates obtained on each phase of the move. All bids from movers and craftsmen must be submitted in accordance with section 414.6 of this Part.

(d) In the case of a self move, the owner of a relocated business may be paid an amount to be negotiated between the State and the business not to exceed the lower of two firm bids or estimates obtained by the State from qualified moving firms.

(e) When personal property which is used in connection with the business to be moved is of low value and high bulk and the estimated cost of moving would be disproportionate in relation to the value, the State may negotiate with the owner for an amount not to exceed the difference between the cost of replacement of comparable item(s) on the market and the amount which would probably have been received for the item(s) on liquidation.

(f) All books and records kept by eligible persons shall be subject to review and audit by a State representative during reasonable business hours.

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(g) Payment of moving expenses is based upon the pre-approval of estimates and bids submitted to the department before commencing the move. If, due to extraordinary circumstances, a move is completed without submitting necessary bids, the commission may, upon receipt of sufficient written justification for failure to submit estimates, pay reasonable and necessary actual expenses upon verification and support for the expenses incurred.

Sec. added by renum. 263.5, Title 6, Sept., 1971; repealed, new added, filed: Nov. 22, 1971; June 6, 1974 eff. June 10, 1974.

Section 414.6. Procedure for actual cost basis moving expense

On an actual cost basis, all bids, estimates and final bills being submitted on each phase of the move by moving concerns or skilled craftsmen, herein referred to as contractors, shall contain as a minimum, the following information:

- (a) Name and address of the contractor and date prepared.
- (b) If estimates, bids or bills are to be made on an hourly rate or some other basis, then such method must contain sufficient data and explicit details to expedite meaningful analysis.
- (c) An itemized list of the estimated or actual charges for packing, unpacking, crating, dismantling, disconnecting, reassembling and reconnection.
- (d) If any material is required, it must be itemized together with the costs. No reimbursement will be made for the use of new materials in the reinstallation of the personalty except when it is in the best interest of the State.
- (e) In cases where use of trucks and other equipment are necessary, an itemized list of charges shall be based upon an hourly, daily, weekly or monthly rate, whichever total amount is lesser, based upon the number of estimated hours equipment will be used. The estimated equipment rate or hourly wage rate shall not exceed the prevailing industry rate for such equipment or labor. If the eligible person utilized equipment or labor at a rate less than the rates paid by commercial movers, the lesser rate will be used.
- (f) If it is determined by the commission that the bids, estimates or bills submitted appear unreasonable, unnecessary or noncompensable, the eligible person may be required to submit additional information considered necessary to determine the reasonable and necessary cost of moving.

Sec. added by renum. 263.6, Title 6, Sept., 1971; repealed, new added, filed: Nov. 22, 1971; June 6, 1974 eff. June 10, 1974.

Section 414.7. "In lieu of" moving expenses for business or farm equipment

In lieu of actual, reasonable and necessary moving expenses, searching fees and actual direct losses of tangible personal property, a business or farm operation is eligible for a payment equal to the average annual net earnings of the displaced business or farm, except such payment shall not be less than \$2,500 nor more than \$10,000 providing the following requirements are met:

- (a) *Business.* The owner of the business eligible for relocation expenses must submit a written application as prescribed by the commission with eligibility for payment contingent upon the State's determination that the business:

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(1) cannot be relocated without a substantial loss of patronage, herein defined as the average dollar volume of business transacted during the two taxable years immediately preceding the year in which the business is relocated,

(2) is not part of a commercial enterprise having at least one other establishment which is not being acquired by the State or the United States and which is engaged in the same or similar business and

(3) the business contributes materially to the income of the displaced owner.

(b) *Farm.* The owner of a displaced farm operation must submit a written application as prescribed by the commission with eligibility for payment contingent upon the State's determination that:

(1) the farm operator has discontinued or relocated his entire operation at the present location and

(2) in the case of a partial taking, the property remaining after the acquisition is no longer an economic unit as determined by the State in its appraisal process.

(c) The department will calculate a payment "in lieu of" moving expenses equivalent to the average annual net earnings. The term "average annual net earnings" means one-half of any net earnings of the business or farm before Federal, State and local income taxes during the two taxable years immediately preceding the taxable year in which the business or farm is relocated. Such earnings shall include any compensation paid by the business or farm to the owner and his immediate family during the base year period. In the case of a corporation, earnings shall include any compensation paid by the corporation to the owner of a majority interest in the corporation. For purposes of determining majority ownership, stock held by a husband and his immediate family shall be treated as one unit.

(d) If the business or farm affected can show that it was in business 12 consecutive months during the two taxable years prior to the taxable year in which it is required to relocate; had income during such period and is otherwise eligible, the owner of a business is eligible to receive the "in lieu of" payment. Where the business was in operation during the entire two preceding taxable years, the payment shall be computed by dividing the net earnings by the number of months the business was operated and multiplying by 12. A taxable year is defined as any 12 month period used by the business in filing income tax returns.

(e) For the owner of a business or farm to be entitled to this payment, the business or farm must provide information to support the net earnings. State or Federal income tax returns for the years in question are acceptable as evidence of earnings. Any commonly accepted method of verifying earnings may be offered provided it grants the State the right to review the records and accounts of the business or farm. The eligible person will be notified in writing by the department regarding his eligibility and the amount of the "in lieu of" payment, if any, will be set forth therein.

Sec. added by renum. 263.7, Title 6, Sept., 1971; repealed, new added, filed: Nov. 22, 1971; June 6, 1974 eff. June 10, 1974.

Section 414.8. Actual, reasonable and necessary searching fees

(a) In the case of a business, farm operation or nonprofit organization, the eligible person or his qualified representative may be reimbursed for the actual, reasonable and necessary expenses in searching for a replacement site not to exceed \$500. The owner of a displaced advertising sign eligible under section 414.3 of this Part, may be reimbursed his actual, reasonable expenses in searching for a replacement

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sign site not to exceed \$100. Reimbursement will be limited to the above amounts unless in exceptional cases the commission deems otherwise.

(b) The expenses in searching for a replacement site may include transportation expenses, meals and lodging away from home and the reasonable value of time actually spent in searching for a replacement site, including the actual, reasonable fees of realtors or real estate brokers in such searching but not including any commission for the sale of a property.

(c) The application for reimbursement shall take the form of a summary affidavit which is to include the name and address of the eligible person, a detailed summary of the work performed, dates and hours worked and wage rate applied not to exceed \$10 per hour. Lodging, mileage and subsistence charges will be allowed according to and consistent with the prevailing rates approved for State travel and expense purposes by the State Comptroller for those types of expenditures.

(d) All actual, reasonable and necessary expenses directly related to the search for replacement property must be documented by detailed, receipted bills.

Sec. added by renum. 263.8, Title 6, Sept., 1971; repealed, new added, filed: Nov. 22, 1971; June 6, 1974 eff. June 10, 1974.

Section 414.9. Actual direct losses of tangible personal property

(a) Actual direct losses of tangible personal property are allowed in the case of a business, farm or nonprofit organization when an eligible person who is displaced is entitled to relocate such personal property but elects not to do so. Payments for such losses may only be made after a bona fide effort has been made by the owner to sell the item(s) involved. When the item(s) is sold, payment will be made according to the following standards:

(1) If the business, farm, etc. is reestablished, but the personal property is replaced with a comparable item at the new location, payment shall be the lesser of:

- (i) the replacement cost less the net proceeds of the sale or
- (ii) the estimated cost of moving the item.

(2) If the business, etc. is discontinued or the item is not replaced in the reestablished business, payment shall be the lesser of:

- (i) the depreciated value of the item in place less the net proceeds of the sale or
- (ii) the estimated cost of moving the item.

(b) If a bona fide sale is not effected above because no offer is received for the personalty, the owner shall be entitled to the reasonable expenses of the sale plus the estimated cost of moving the item(s). Payment to the owner for losses for the item involved in this circumstance will not be made unless and until the owner thereof submits a suitable declaration of abandonment of the item(s) involved. Upon receipt of this abandonment notice, the item(s) become the property of the State, subject to disposal in the most economical manner. If the person makes no attempt to dispose of the property by sale or removal, the owner will not be entitled to payment of any moving expenses or losses for the item involved.

(c) (1) Under the above conditions, the eligible person shall notify the department at least three months prior to the starting date of the move of his definite intentions toward application for a payment for

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direct losses of tangible personal property. Upon receipt of this notice, an inventory will be compiled by the department distinguishing the realty and the personalty and the eligible person will sign this inventory. The department will further obtain estimates on the costs of moving the personal property to the new location. Upon written notification from the department, the eligible person may make arrangements for a public sale, advertising to be accomplished in the most economical manner and with provision for adequate notification through the media appropriate for the sale of the personalty. The sale will be held publicly during reasonable hours and in the presence of representatives of the department.

(2) The sale price, if any, and the actual reasonable costs of advertising costs or related costs in conducting the sale incurred by an auctioneer or sales manager, shall be supported by a copy of the bill of sale or similar documents and by copies of any advertisements, offers to sell, auction records and other data supporting the bona fide nature of the sale are to be presented to the department when making application for payment under this subdivision.

(3) The eligible owner of an advertising sign may be reimbursed for actual direct losses when he is entitled to relocate the sign but does not do so; the owner need not attempt to conduct a bona fide sale; the loss will be the lesser of

- (i) the depreciated reproduction cost of the sign as determined by the State or
- (ii) the estimated cost of moving the sign.

Sec. added by renum. 263.8, Title 6, Sept., 1971; repealed, new added, filed: Nov. 22, 1971; June 6, 1974 eff. June 10, 1974.

Section 414.10. Supplemental relocation payments, loss of favorable mortgage financing, incidental expenses

In addition to other payments and benefits authorized by State Law, individuals and families displaced from dwellings on real property acquired by the department, who were in occupancy on or after July 1, 1971, are entitled to supplemental relocation payments, payment for loss of favorable mortgage financing and incidental expenses in accordance with the following criteria and eligibility standards.

(a) General requirements to receive replacement housing payments.

(1) In addition to the occupancy requirements as specifically enumerated herein, a displaced person is otherwise eligible for the appropriate payments when he relocates and occupies a decent, safe and sanitary dwelling within one year, beginning on the later of the following dates: the date on which he receives final payment from the State for legal damages directly connected with the acquisition of his dwelling unit; or the date required to move from the dwelling acquired; or the date on which he actually moves from the dwelling acquired, if in fact this latter date is earlier than the date required to move. The date required to move is here defined and elsewhere in this section as that date specified in writing by the State, by which the property must be vacated.

(2) Application for payments under this section shall be in writing on forms prescribed by the commission. The application must be filed no later than six months after the expiration of the one-year period specified immediately above, except that in cases litigated in the Court of Claims, the six-month period shall start from the date of final judgment of that court.

(3) If two or more eligible families occupy the same single family dwelling unit, each family is eligible for a replacement housing payment if they relocate to separate dwelling units.

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(4) If two or more eligible individuals with no identifiable head of household occupy the same single family dwelling unit, they are considered as one "family" for replacement housing payment purposes. When all individuals do not relocate to decent, safe and sanitary housing, the department shall determine and pay those individuals who do relocate into decent, safe and sanitary housing a prorata share of the amount that would have been received if all of the individuals had relocated together.

(b) *Supplemental payments; owner-occupants over 180 days who repurchase.*

(1) (1) A displaced owner-occupant of a dwelling may receive additional payments, the combined total of which may not exceed \$15,000, for the additional cost necessary to purchase replacement housing; to compensate the owner for the loss of favorable financing on his existing mortgage in the financing of replacement housing; and to reimburse the owner for incidental expenses incident to the purchase of replacement housing when such costs are incurred as specified herein.

(2) The owner-occupant is eligible for such payments when:

(i) he is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or in part; or

(ii) he is in occupancy at the time he is given a written notice by the State that it is their intent to acquire the property by a given date; and

(iii) such occupancy has been for at least 180 consecutive days immediately prior to the date of vacation or initiation of negotiations whichever is earlier; and

(iv) he purchases and occupies a decent, safe and sanitary dwelling within the time period specified in paragraph (a)(1).

(3) The replacement housing payment is the amount, if any, which when added to the amount for which the State acquired his dwelling, equals the actual cost which the owner is required to pay for a decent, safe and sanitary dwelling, or the amount determined by the department as necessary to purchase a comparable dwelling, whichever is less. The State's determination of the amount necessary to purchase a comparable dwelling may be made on the basis of either of the two following methods:

(i) The State may establish a schedule of probable selling prices of comparable dwellings in the various types of dwellings being acquired. Such schedule may be prepared from an analysis of the current probable selling prices of dwellings available on the market.

(ii) The State may determine the probable selling price of a comparable dwelling by analyzing those selected comparable dwellings available for sale which are most nearly comparable to the property being acquired by the State.

All calculations or supplemental relocation payments are to be predicated on the basis of the probable selling price of the available comparable housing, not the asking prices.

(4) An owner-occupant desiring to retain his acquired dwelling may be paid a replacement housing payment according to the following computations:

(i) If the dwelling to be moved is decent, safe and sanitary, the payment shall be the amount by which the cost to relocate the dwelling exceeds the acquisition price of the dwelling. The costs to relocate may include the reasonable costs of acquiring the dwelling, acquiring a new site and other

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expenses incident to retaining, moving the dwelling and restoring it to a condition comparable to that before the move.

(ii) If the dwelling to be moved is not decent, safe and sanitary, the payment shall be computed as above except that the costs to cure the decent, safe and sanitary deficiencies shall be included in the costs to relocate.

(iii) The payments computed under (i) or (ii) above may not exceed the amount which the owner would have obtained had he purchased a replacement dwelling and his payment computed as per paragraph (b)(3) above.

(c) *Owner-occupant over 180 days who rents replacement housing.* An owner-occupant eligible for a replacement housing payment under subdivision (b) above who elects to rent a replacement dwelling is eligible for a rental replacement housing payment not to exceed \$4,000. The payment shall be computed and disbursed according to the following criteria:

(1) The payment shall be determined by subtracting from the amount necessary to rent a comparable dwelling for the next four years, 48 times the economic rental of the dwelling unit occupied as computed by the State.

(2) In cases where the economic rental of the acquired dwelling exceeds 25 percent of the owner's gross monthly income and he elects to relocate into public subsidized rental housing, the computation of benefits will be in accordance with subdivision (c)(3).

(3) The State may determine the rental rates of comparable housing by a schedule or an individual analysis of comparable available rentals.

(4) The payment under this section may not exceed the maximum amount the owner would have received had he elected to repurchase a dwelling unit under the provisions of subdivision (b) above.

(d) *Owner-occupant; less than 180 days, but more than 90 days who purchases.* A displaced owner-occupant otherwise eligible under subdivision (b) except that he has owned and occupied the dwelling for less than 180 days but more than 90 days may receive an amount, not to exceed \$4,000, to enable him to make a down payment on the purchase of a replacement dwelling and reimbursement for actual expenses incident to such purchase; or for additional costs to relocate his retained dwelling in accordance with the following regulations:

(1) The amount of the down payment shall be determined by the State as the amount required as a down payment on a comparable dwelling if such purchase was financed with a conventional loan.

(2) The expenses incident to the purchase of replacement housing as described in subdivision (j) succeeding.

(3) Upon purchase and occupancy of a decent, safe and sanitary dwelling by the relocatee within the time limits specified in paragraph (a)(1), the relocatee may be reimbursed:

(i) the full amount of the down payment determined in paragraph (1) of this subdivision and the eligible incidental expenses if such total amount does not exceed \$2,000; or, if more than \$2,000;

(ii) \$2,000 plus 50 percent of the amount in excess of \$2,000 providing the relocatee contributes 50 percent of the amount in excess of \$2,000.

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(4) The full amount of the down payment must be applied to the purchase price of the replacement property and any down payment and incidental costs claimed must be shown in the closing statement.

To process for payment, the State must be furnished a copy of the closing statement.

If the owner elects to retain his dwelling, the replacement housing payment will be determined in accordance with paragraph (b)(4), except that such payment shall not exceed \$4,000. If the owner first elects to rent a replacement property, but later decides to apply for a down payment on a purchase of a replacement property, any payments made under the rental provisions are to be deducted from the payments authorized under this paragraph.

(e) *Owner-occupant; less than 180 days, but more than 90 days who rents.* An owner-occupant otherwise eligible under subdivision (b) except that he has owned and occupied the dwelling for less than 180 days but more than 90 days and elects to rent a replacement dwelling, is eligible for a rental housing payment not to exceed \$4,000. The specific payment will be determined in accordance with the provisions of paragraphs (c)(1), (2) and (3).

(f) *Tenant-occupant; over 90 days, renting replacement housing.*

(1) A displaced tenant is eligible for a rental replacement housing payment, not to exceed \$4,000, when:

- (i) he is in occupancy at the beginning of negotiations for the acquisition of the real property; or
- (ii) he is in occupancy at the time he is given a written notice by the State that it is their intent to acquire the property by a given date; and
- (iii) such occupancy has been for at least 90 consecutive days immediately prior to the date of vacation or initiation of negotiations, whichever is earlier; and
- (iv) he rented and occupied a decent, safe and sanitary dwelling within the time period specified in paragraph (a)(1).

(2) The payment, not to exceed \$4,000, shall be determined by subtracting from the amount necessary to rent a comparable dwelling for the next four years, the following amount:

- (i) 48 times the average monthly rental paid by the relocated individual or family during the last three months; or
- (ii) if such average monthly rental is not reasonably equal to market rentals for similar dwellings, the economic rent as established by the State shall be used;
- (iii) the "rent being paid" shall include any rent supplements supplied by others except when, by law, such supplement is to be discontinued upon vacation of the property.

(3) When the average monthly rental being paid by the relocatee, not including supplemental rent by public agencies, exceeds 25 percent of the monthly gross income of such individual or family, the payment, not to exceed \$4,000, shall be determined by subtracting 12 times the average monthly income of the relocatee from:

- (i) 48 times the monthly rental determined by the State as necessary to rent a private comparable dwelling if the relocatee moves into private housing; or
- (ii) if the relocatee moves into public subsidized housing, the lesser of:

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(a) 48 times the monthly rental determined by the State as necessary to rent a private comparable dwelling; or

(b) 48 times the monthly rental the relocatee is required to pay if he relocates in the subsidized housing.

(4) The State may determine the rental rates of comparable housing by a schedule or an individual analysis of comparable rentals.

(g) *Tenant-occupant; over 90 days; down payment for purchase.* A tenant-occupant eligible for a rental replacement payment under subdivision (f) who elects to purchase a replacement dwelling is eligible to receive an amount, not to exceed \$4,000, to enable him to make a down payment on the purchase of a replacement dwelling, including the incidental expenses incident to such purchase. The payment will be computed in accordance with the provisions of subdivision (d).

(h) *Sleeping room tenant; over 90 days.* A displaced tenant of a sleeping room who is eligible for a replacement housing payment under subdivision (f) receives an amount, not to exceed \$4,000, as a rental replacement housing payment or to enable him to make a down payment on a replacement dwelling in accordance with the following regulations:

(1) For rental replacement housing, the payment, not to exceed \$4,000, shall be determined by subtracting from the amount necessary to rent a comparable sleeping room for the next four years, the following amount:

(i) 48 times the average monthly rental paid by the displaced tenant during the last three months; or

(ii) if such average monthly rental is not reasonably equal to market rentals for similar sleeping rooms, the economic rent as established by the State.

(2) The State may determine the rental rates of comparable housing by a schedule or an individual analysis of comparable available rentals.

(3) The down payment amount, including the expenses incident to purchase of the replacement dwelling, are to be computed in accordance with the provisions of subdivision (d).

(i) *Increased interest payments; owner-occupant over 180 days, who purchases.*

(1) An owner-occupant, otherwise eligible under subdivision (b), is entitled to a payment for the loss of favorable financing on his existing mortgage in the financing of replacement housing, providing such payment falls within the \$15,000 limit established in subdivision (b), and further providing that the following conditions are met:

(i) the dwelling acquired was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the established eligibility date as specified in subdivision (b); and

(ii) the mortgage on the replacement dwelling bears a higher rate of interest than the mortgage interest rate on the acquired dwelling.

(2) The increased interest payment will be based on and limited to the lesser of the following amounts:

(i) the present worth of the right to receive the monthly difference in mortgage payments on the existing mortgage using the old and new interest rates; or

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(ii) the present worth of the right to receive the monthly difference in mortgage payments on the new mortgage using the old and new interest rates.

(3) Payment computation. The amount of increased interest payment will be computed in accordance with the following procedures:

(i) The monthly principal and interest payment differences caused by the change in interest rates is computed for both the existing mortgage and new mortgage for their respective remaining terms and amounts. The old and new interest rates are used in each case.

(ii) The present worth of the monthly interest difference found in subparagraph (i) of this paragraph is computed for each mortgage by discounting the annual difference (the sum of the monthly difference for one year) at the savings deposit interest rate for the remaining term of each mortgage. The lesser of the amounts so derived is the increased interest payment.

(4) (i) Interest rate of replacement dwelling mortgage. The interest rate on the mortgage for the replacement dwelling to be used in the computation shall be the actual rate but may not exceed the prevailing interest rate currently charged by mortgage lending institutions in the vicinity.

(ii) When the lending agency imposes debt service charges as an incident to the extension of credit, and such charges are normal to the market, the annual percentage rate shown in the truth in lending statement shall be used in lieu of the mortgage interest rate in computing the monthly principal and interest payments.

(5) Discount rate. The discount rate shall be the prevailing rate of interest paid on passbook savings account deposits by commercial banks in the general area in which the replacement dwelling is located.

(6) To whom payment made. The payment described in this paragraph may be made directly to the relocated individual or family, or upon written instruction from the relocated individual or family, directly to the mortgagee of the replacement dwelling.

(7) (i) Partial acquisition. Where the dwelling is located on a tract normal for residential use in the area, the interest payment shall be reduced to the percentage ratio that the acquisition price bears to the before value; except, the reduction shall not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition, and it is necessary to refinance.

(ii) Where a dwelling is located on a tract larger than normal for residential use in the area, the interest payment shall be reduced to the percentage ratio that the value of the residential portion bears to the before value. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

(8) Multi-use properties. The interest payment on multi-use properties shall be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.

(9) Other highest and best use. If a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, and if the mortgage is based on residential value, the interest payment shall be computed as provided above. If the mortgage is obviously based on the higher use, however, the interest payment shall be reduced to the percentage ratio that the estimated residential value of the parcel bears to the before value.

(j) *Incidental expenses.*

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(1) An otherwise eligible owner-occupant or tenant-occupant who purchases a replacement dwelling, is entitled to a payment for the incidental expenses incident to the purchase of the replacement dwelling, providing such payment falls within the \$15,000 and \$4,000 limits as otherwise established in this section. The following expenses, insofar as they do not constitute prepaid expenses, are eligible for reimbursement on an actual cost basis:

- (i) Legal, closing and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings or plats, and charges paid incident to recordation;
- (ii) lenders, FHA or VA appraisal fees;
- (iii) FHA or VA application fee;
- (iv) certification of structural soundness;
- (v) credit report;
- (vi) owner's title policy or abstract of title;
- (vii) escrow agent's fee;
- (viii) State revenue stamps;
- (ix) sales or transfer taxes.

(2) No fee, cost, charge or expense is reimbursable as an incidental expense which is part of the debt service, or finance, charge under the Federal Truth in Lending Act.

(3) Reimbursement for these eligible incidental expenses shall be contingent upon showing the actual expense and shall be accompanied by a copy of the closing statement for the replacement dwelling.

(k) *Mobile homes; replacement housing payments; general provisions.*

(1) A mobile home is considered to be decent, safe and sanitary if it meets the defined standards in this Part.

(2) Where the department determines that a sufficient portion of a mobile home park is taken to justify the operator of such park to move his business or go out of business and the operator does in fact move or go out of business, the owners and occupants of the mobile home dwellings not within the actual taking but who are forced to move are eligible to receive the same payments as though their dwellings were within the actual taking.

(3) When a comparable home dwelling is not available, the supplemental relocation payment is to be calculated on the basis of the next higher type dwelling that is available and meets the applicable requirements and standards; *i.e.*, a higher type mobile home or a conventional dwelling.

(l) *Mobile homes; owner-occupants over 180 days.* A displaced owner of a mobile home who has occupied, for at least 180 days, the mobile home on the site from which he is being displaced and is otherwise eligible under the provisions of paragraph (b)(2), is eligible for payments, the total of which may not exceed \$15,000, for the additional costs necessary to purchase replacement housing under the following circumstances:

(1) When owner-occupant owns both mobile home and site, the replacement housing payment will be the amount, if any, when added to the amount for which the State acquired his mobile home and site equals the lesser of:

- (i) the amount the owner is required to pay for a decent, safe and sanitary conventional dwelling or a decent, safe and sanitary replacement mobile home and site; or

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(ii) the amount determined by the State as necessary to purchase a comparable mobile home and site.

If the owner-occupant decides to rent, the rental replacement payment shall be the difference between the State's determination of the amount necessary to rent a comparable mobile home and site for a period of four years and 48 times the economic rent of the existing mobile home and site. The calculated rental replacement payment may not exceed the amount determined by the State in subparagraphs (i) and (ii) of this paragraph, or \$4,000, whichever is lesser.

(2) Owner-occupant acquisition of site only. Upon acquisition of the site, and the mobile home is required to be moved, the replacement housing payment will be determined as follows: the amount, if any, when added to the amount for which the State acquired his mobile home site, equals the lesser of:

(i) the amount the owner is required to pay for a comparable home site; or

(ii) the amount determined by the State as necessary to purchase a comparable mobile home site.

If the owner elects to rent, the rental replacement payment shall be the difference in the amount determined by the State as necessary to rent a comparable mobile home site for a period of four years and 48 times the economic rent of the site acquired. The calculated rental replacement payment may not exceed the amount determined by the State in subparagraph (2)(ii) of this paragraph, or \$4,000, whichever is lesser.

(3) *When owner-occupant owns mobile home; rents site.* The replacement housing payment will be the amount, if any, when added to the amount for which the State acquired his mobile home, equals the lesser of:

(i) the amount the owner is required to pay for a replacement dwelling or

(ii) the amount determined by the State as necessary to purchase a comparable mobile home, plus the difference in the amount determined by the State as necessary to rent a comparable mobile home site for a period of four years and 48 times the rent being paid on the site acquired.

If the owner elects to rent a replacement mobile home. the rental replacement housing payment, not to exceed \$4,000, shall be the difference in the amount determined by the State as necessary to rent a comparable mobile home and site for four years and 48 times the economic rent of the mobile home plus the actual rent of the site acquired.

(4) In addition to the replacement housing payments specified above the owner-occupant is entitled to a payment to compensate him for the loss of favorable financing on his existing mortgage in the financing of replacement housing and payment for incidental expenses incident to the purchase of replacement housing. These payments will be calculated and paid in accordance with subdivisions (i) and (j) of this section.

(m) *Mobile homes; owner-occupants less than 180 days, but more than 90 days.* A displaced owner of a mobile home who has occupied, for less than 180 days but more than 90 days, the mobile home on the site from which he is displaced and who is otherwise eligible under the provisions of paragraph (b)(2), is eligible for an amount, not to exceed \$4,000, to enable him to make a down payment on the purchase of replacement housing and to reimburse him for the actual expenses incident thereto in accordance with the following provisions:

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(1) *Owner-occupant owning both mobile home and site.* If the owner purchases a replacement dwelling, the replacement housing payment will be determined in accordance with the heretofore defined provisions relating to down payment calculations, except that the amount of the down payment shall be determined by the State as the amount required on the purchase of a comparable mobile home and site. If the owner-occupant elects to rent, the rental replacement payment, not to exceed \$4,000, shall be the difference in the amount determined by the State as necessary to rent a comparable mobile home and site for a period of four years and 48 times the economic rental of the mobile home and site.

(2) *Owner-occupant; acquisition of site only.* If the owner purchases convention housing or a site to which the mobile home is moved, the replacement housing payment will be in an amount determined in accordance with the provisions relating to down payment calculations except that the amount of the down payment shall be determined by the State as the amount required as a down payment on the purchases of a comparable site. If the owner-occupant elects to rent, the rental replacement payment, not to exceed \$4,000, shall be the difference in the amount determined by the State as necessary to rent a comparable site for four years and 48 times the economic rent of the site acquired.

(3) *Owner-occupant owns mobile home; rents site.* If the owner purchases replacement housing, the replacement housing payment, not to exceed \$4,000, will be:

- (i) an amount determined in accordance with the provisions relating to down payment calculations, except that the amount of the down payment shall be determined by the State as the amount required as a down payment on the purchase of a comparable mobile home, plus
- (ii) the difference in the amount determined by the State as necessary to rent a comparable mobile home site for four years and 48 times the rent being paid on the site acquired.

If the owner elects to rent, the rental replacement payment shall be the difference in the amount determined by the State as necessary to rent a comparable mobile home and site for four years and 48 times the economic rent of the mobile home and the actual rent of the site acquired.

(n) *Mobile homes; tenants over 90 days.* A displaced tenant of a mobile home who has occupied for at least 90 days the mobile home on the site from which he has been displaced and is otherwise eligible under the provisions of paragraph (f)(1), is eligible for a replacement housing payment, not to exceed \$4,000.

(1) to enable him to make a down payment on the purchase of a replacement dwelling and to reimburse him for the expenses incident to such purchase; or

(2) if he elects to rent, payment shall be the difference in the amount determined by the State as necessary to rent a comparable mobile home and site for four years and 48 times the actual rent being paid for the mobile home and site acquired.

(o) *Supplemental replacement housing payments; miscellaneous provisions.*

(1) *Inspection of replacement dwelling.* In order to be eligible for and receive any supplemental relocation payments, the State must inspect the replacement dwelling and determine that it meets the decent, safe and sanitary standards as defined in section 414.2 of this Part. In any application for payment, the individual or family must indicate that, to the best of their knowledge and belief, the replacement dwelling meets the defined standards for decent, safe and sanitary housing.

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(2) *Advanced replacement housing payments in litigated cases.* An advance replacement housing payment can be authorized and paid to a property owner if the determination of the State's acquisition price will be delayed pending the outcome of a trial in the Court of Claims. A provisional replacement housing payment may be calculated by deeming the State's maximum offer for the property as the acquisition price. Payment of such amount may be made upon the owner-occupant's agreement that:

(i) upon final judgment of the Court of Claims the replacement housing payment will be recomputed using the acquisition price determined by the court as compared to the actual price paid or the amount determined by the State necessary to acquire a comparable decent, safe and sanitary dwelling;

(ii) if the amount awarded by the court as the fair market value of the property acquired plus the amount of the recomputed replacement housing payment exceeds the price paid for, or the State's determined cost of a comparable dwelling, the owner will refund to the State from the judgment amount an amount equal to the excess. In no event, however, shall he be required to refund more than the amount of the replacement housing payment advanced; and

(iii) if the property owner does not agree to such adjustment, the replacement housing payment shall be deferred until the case is finally adjudicated and computed on the basis of the final determination, using the award as the acquisition price.

(3) *Ownership of replacement dwelling prior to displacement.* Any person who has obtained legal ownership of a replacement dwelling any time after the initiation of negotiations on the project and occupies the replacement dwelling after being displaced but within the time limit specified in paragraph (a)(1) of this section, is eligible for a replacement housing payment if the replacement dwelling meets decent, safe and sanitary standards.

(4) *Partial taking situations.*

(i) Where a dwelling is located on a tract normal for residential use in the area, the maximum replacement housing payment shall be determined by subtracting the "before value" of the property from the estimated selling price of a comparable dwelling on a lot typical for the area.

(ii) Where a dwelling is located on a tract larger than normal for residential use in the area, the maximum replacement housing payment shall be determined by estimating the value of the dwelling at the present location on a home site typical in size for the area and deducting this amount from the selling price of a comparable dwelling on a site typical for the area.

(5) *Dwelling on land with higher and better use.* Where a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, the maximum replacement housing payment shall be determined by estimating the value of the dwelling at the present location on a home site typical for the area and zoned for residential use and deducting this amount from the selling price of a comparable dwelling on a typical residential home site for the area.

(6) *Joint residential and business use.* Where displaced individuals or families occupy living quarters on the same premises as a displaced business, farm or nonprofit organization, such individuals or families are separate displaced persons for purposes of determining entitlement to relocation payments.

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(7) Payments on assignments. Payments described herein may be made, upon written instructions and assignment from the displaced person, directly to a lessor for rent or to a seller for application on a payment for a decent, safe and sanitary dwelling.

(8) Owner-occupant; prohibitions on double payments. If an owner-occupant eligible for maximum \$15,000 payment elects initially not to repurchase a replacement dwelling, but rather to claim benefits on the four year rent differential basis, he cannot receive double payment in excess of \$15,000 if he later decides (within the allowable period) to purchase a replacement house. The amount of any payment made on the rent differential basis is to be deducted from the calculated differential necessary to purchase a replacement dwelling.

(9) All rental replacement housing payments in excess of \$500 will be made in four equal installments on an annual basis, except that prior to receiving such installment payment, the tenant must certify to the State that he is occupying decent, safe and sanitary housing.

Sec. added by renum. 263.10, Title 6, filed Sept. 1971; repealed, new filed: Nov. 22, 1971; June 6, 1974 eff. June 10, 1974.

Section 414.11. Appeals procedure

(a) An applicant for a moving expense and/or replacement housing payment shall be notified promptly in writing concerning his eligibility for the payment claimed; the amount, if any, he is entitled to receive, and the time and manner in which such payment will be made. If any or all of the amounts claimed are disallowed or require additional documentation, the eligible person will be so notified in writing to this effect.

(b) If the claimant is not satisfied with the payment offered, he may, within 18 months of vacating or six months after final award determination by the courts of the State, request an informal conference to present his case. When requested, such a conference is scheduled in the regional office. The claimant may bring whomever he wishes to represent him or present some facet of his claim. The decision of the commission will be made in writing directed to the claimant or his representative and may be appealed to the Commissioner of Parks, Recreation and Historic Preservation.

(c) The Commissioner of Parks, Recreation and Historic Preservation shall then make an independent determination according to the data submitted to him by the claimant and the commission. This determination will be made in writing to the claimant.

(d) In the event the claimant is not satisfied with the results achieved at this stage, he may then request a formal hearing. This request will be directed to the Commissioner of Parks, Recreation and Historic Preservation. The formal hearing will be conducted by a hearing officer designated by the commission at a time and place to be determined by the hearing officer. Minutes of the proceedings will be taken.

(e) Based upon all the evidence produced at the hearing, the hearing officer will make his recommendation to the Commissioner of Parks, Recreation and Historic Preservation who will then make a final determination regarding the claim presented.

(f) In the instance of an appeal, no payment of such calculated moving expenses or supplemental housing and related benefits is to be made until a decision has been rendered by the Commissioner of Parks, Recreation and Historic Preservation. In the instance where an owner files a claim in the Court of

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Claims for adjudication of the fair market value of the property acquired, and similarly files for an appeal hearing disputing the amount of the supplemental payment preferred, no appeal hearing will be held until final award determination by the courts of the State.

*Sec. added by renum. 263.11, Title 6, filed Sept. 1971; repealed, new filed: Nov. 22, 1971; June 6, 1974 amd.
filed May 7, 1982 eff. May 7, 1982*

Section 414.12. Hardship cases

(a) Notwithstanding any other provisions contained in this Part, the commission is authorized in hardship cases to make advance payments in anticipation of the eligible person actually completing his moving of personal property or actually purchasing or renting and occupying decent, safe and sanitary replacement housing. The commission may authorize the advance payment of the amount determined to represent reasonable and necessary moving expenses or the amount of the approved supplemental relocation payment deemed necessary to purchase or rent, decent, safe and sanitary replacement housing. In the case of a supplemental relocation payment, payment can only be made if there is a signed contract for the purchase of a replacement property, or in the case of a replacement rental unit, if there is a signed lease or some other firm commitment. In both instances, the proposed replacement housing must be inspected prior to payment for a determination of compliance with decent, safe and sanitary standards.

Sec. added, filed Nov. 22, 1971; repealed, new filed June 6, 1974 eff. June 10, 1974.

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Subchapter I. Ninth Park Region

Part 415. Long Island State Park, Recreation and Historic Preservation Commission

Section 415.1. Territorial scope

All rules and regulation contained in this Subchapter shall be effective within the Ninth Park Region only.

Sec. filed June 6, 1974 eff. June 10, 1974.

Section 415.2. Animals

No person owning or being custodian or having control of any animal shall cause or permit such animal to enter any park, and any such animal found at large may be impounded. Notwithstanding the above, dogs restrained by a leash not exceeding six feet in length may be brought into park areas; provided, however, that they shall not be permitted in buildings, camping, bathing and picnic areas or on improved walks or boardwalks. Horses may enter parks as provided in this Chapter. Such animals shall be properly attended to at all times, and the owner or custodian thereof shall upon request present proof of current rabies inoculation.

Sec. filed June 6, 1974; repealed, new filed July 12, 1977; amd. filed April 7, 1983; repealed, new filed Jan. 8, 1987; ams. filed: July 14, 1988; May 6, 1996 as emergency measure; July 16, 1996 eff. July 31, 1996. Amended (c)(3); rep. and renumbered from § 415.3 amd. filed July 15, 2011 eff. Aug. 3, 2011.

Section 415.4. Fishing

Fishing is prohibited in all bathing areas, boat channels, streams, ponds or lakes, or from any bridge, pier, dock, bulkhead or other structure along the edge of or extending into or over any waters under the jurisdiction of the office, except during such times and in such areas as may be plainly designated therefor. Fishing in certain designated locations is permitted only when undertaken pursuant to the issuance of a permit.

Sec. filed June 6, 1974 eff. June 10, 1974; renumbered to § 415.3 and renumbered from § 415.5 amd. filed July 15, 2011 eff. Aug. 3, 2011.

Section 415.5. Authorized vehicles

(a) The use of parkways is limited to motor vehicles registered as passenger vehicles by the Commissioner of Motor Vehicles, excluding, however, such vehicles when adapted to or used for the carrying of commercial goods or materials or any vehicle which is of an overall height of more than 94 inches. Except as otherwise provided in this section or under written permit issued by the commissioner, the use of any other vehicle on a parkway is prohibited.

(b) Pedestrians, horses, bicycles, limited use vehicles, limited use motorcycles and other motor vehicles having a maximum performance speed of less than 55 miles per hour are prohibited from using any parkway.

(c) Taxis and limousines will be permitted to operate over a parkway but in no case will cruising or soliciting of passengers en route be permitted.

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- (d) Outing buses will be permitted to operate by the shortest possible route from outside a park to discharge or pick up their passengers from a picnic or bathing area only if a permit to enter the park has been issued by the commissioner to the organization sponsoring the outing, picnic, etc. Buses must proceed over the route and to the parking field designated in the permit.
- (e) Public omnibuses will be permitted to operate only under special permit.
- (f) Trucks or trailers will be permitted to operate on the Montauk Loop, Bay, and Ocean Parkways, on the Meadowbrook Parkway south of Merrick Road (State Route 27A) and on the Robert Moses Causeway, Hecksher Spur, and Wantagh Parkway South of Sunrise Highway (State Route 27), where it is necessary for them to do so to service and supply such areas or contiguous areas. Any vehicle or equipment or combination thereof exceeding 8 feet in width, 13 feet in height, 50 feet in length or having a weight greater than 22,400 pounds on any one axle shall not be operated over the aforesaid parkways, including bridges incidental thereto, except under written permit issued by the commissioner.
- (g) Nothing contained in this section shall apply to the wagons, trucks and apparatus of a fire department, insurance patrol, police department, or ambulance, or to emergency repair wagons, when responding for emergency work in case of fire, accident, public disaster, impending danger or emergency on the parkways or in the parks.
- (h) Vehicles having any name, insignia or sign painted or displayed thereon for business or advertising purposes are prohibited on parkways except as provided herein. For purposes of identification, name and address only of the owner of a vehicle, on the sides thereof, in letters not more than two inches in height, shall not be construed as being displayed for business or advertising purposes. Vehicles owned and operated by governmental agencies, buses permitted to operate on the parkways, and trucks permitted in accordance with subdivision (i) of this section, are excepted from the provisions of this subdivision.
- (i) Licensed ambulances for sick or injured persons shall be permitted to operate over parkways when on emergency service, but subject to all the provisions of this Chapter regulating traffic, including limitations on the rate of speed.
- (j) *Towing and pushing.* No person shall cause or permit a vehicle to be towed or pushed by another vehicle on any parkway, except that a disabled vehicle may be towed by a tow truck authorized by the Department of Transportation in accordance with the provisions of 17 NYCRR Part 190.

Sec. filed June 6, 1974 eff. June 10, 1974; renumbered to § 415.4 and renumbered from § 415.6 amd. filed July 15, 2011 eff. Aug. 3, 2011.

Section 415.6. Speed limits

A rate of speed in excess of 30 miles per hour on a park road or park drive, or in excess of 20 miles per hour in a parking field, by a motor vehicle is prohibited, except as otherwise designated therefor by sign.

Sec. filed June 6, 1974; amds. filed: Jan. 15, 1980; Feb. 2, 1982; Sept. 16, 1982; April 29, 1983; March 15, 1985; May 20, 1986; July 14, 1988; Dec. 13, 2005 eff. Dec. 28, 2005. Amended (f); renumbered to § 415.5 and renumbered from § 415.7 amd. filed July 15, 2011 eff. Aug. 3, 2011.

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Subchapter J. Tenth Park Region

Part 416. Thousand Islands State Park, Recreation and Historic Preservation Commission

Section 416.1. Territorial scope

All rules and regulations within this Subchapter shall be effective only within the Tenth Park Region.

Sec. added by renum. 270.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new added by renum. 418.1, filed Feb. 25, 1988 eff. March 16, 1988.

Section 416.3. Fishing

No person shall engage in fishing, spearing or netting in any park except at such times and in such places when such use shall be permitted and then only by persons lawfully licensed by the State.

Sec. added by renum. 270.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new added by renum. 418.3, filed Feb. 25, 1988 eff. March 16, 1988.

Section 416.4. Vehicle speed limits

(a) A rate of speed by a motor vehicle in excess of 25 miles per hour is prohibited, except where specifically permitted by signs or as stated in subdivision (b) of this section.

(b) On Barnhart Island, Robert Moses State Park, the Island Road, Long Sault Road and Massena Point Road and other roads connecting with park facilities a rate of speed in excess of 40 miles per hour is prohibited.

(c) A rate of speed by motor vehicles in excess of 15 miles per hour is prohibited on campsite driveways or parking fields.

Sec. added by renum. 418.4, filed Feb. 25, 1988 eff. March 16, 1988.

Section 416.5. Possession of pets

(a) No person shall cause or permit any animal owned by him, except household pets on leash less than six feet in length or in cages, or horses on authorized bridle paths, to enter any park or property under jurisdiction of the office. Household pets shall not be permitted on bathing or picnic areas at any time and when harbored or possessed in a camping area shall at all times be confined in a cage or on a leash restricting them to the campsite area occupied by the harborer or possessor. The harborer or possessor must also have proof of a currently effective rabies inoculation of the pet. The number of such pets ordinarily permitted is one per camping permit. Exceptions to this limitation may be made by the park superintendent providing no annoyance to others is created thereby. Any such animal found at large may be seized or disposed of by employees of the office.

(b) Animals needed by the physically handicapped are excluded from this rule.

Sec. added by renum. 418.5, filed Feb. 25, 1988 eff. March 16, 1988.

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Subchapter K. Eleventh Park Region

Part 417. Saratoga-Capital District State Park, Recreation and Historic Preservation Commission

Section 417.1. Territorial scope

The rules and regulations contained in this Subchapter shall be effective within the Eleventh Park Region only.

Sec. added by renum. 271.1, Title 6, filed Sept. 1971; repealed, filed Jan. 6, 1974; new added by renum. 421.1, filed Feb. 25, 1988 eff. March 16, 1988.

Section 417.3. Fishing

Fishing shall be permitted in all waters under the jurisdiction of the office by persons lawfully licensed by the State, by angling, trolling and through the ice only, except that fishing is prohibited in the following areas:

- (a) in all bathing areas;
- (b) in all areas closed to fishing by officially posted signs;
- (c) through the ice in Shaver Pond, Rensselaer County.

Sec. added by renum. 271.3, Title 6, filed Sept. 1971; repealed, filed Jan. 6, 1974; new added by renum. 421.3, filed Feb. 25, 1988 eff. March 16, 1988; added 417.3(c), filed Feb. 13, 2019 eff. May 8, 2019.

Section 417.4. Vehicle speed limits

- (a) A rate of speed in excess of 30 miles per hour on a park road or park drive is prohibited.
- (b) Where the speed limit is reduced by signs posted by the office a rate of speed greater than that indicated on such signs is prohibited.

Sec. added by renum. 271.4, Title 6, filed Sept. 1971; repealed, filed Jan. 6, 1974; new added by renum. 421.4, filed Feb. 25, 1988 eff. March 16, 1988.

Section 417.5. Possession of pets

- (a) No person shall introduce or permit the introduction of any animal on property under the jurisdiction of the office.
- (b) Notwithstanding subdivision (a) of this section, dogs and domestic cats shall be permitted in areas other than buildings and bathing areas, provided they are kept under constant control and restrained by a leash not exceeding six feet in length or in a cage.
- (c) Notwithstanding subdivision (a) of this section, horses shall be permitted on property under the jurisdiction of the office in accordance with the provisions of this Chapter.

Sec. added by renum. 271.5, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new added by renum. 421.5, filed Feb. 25, 1988 eff. March 16, 1988.

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Subchapter L. Twelfth Park Region

Part 418. State Park, Recreation and Historic Preservation Commission for the City of New York

Section 418.1. Territorial scope

The rules and regulations contained in this Subchapter shall be effective within the Twelfth Park Region.

Sec. added by renum. 272.1, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; renum. 416.1, new added by renum. 424.1, filed Feb. 25, 1988 eff. March 16, 1988.

Section 418.2. Animals

No person shall introduce or possess any animal or property under the jurisdiction of the office unless authorized by permit issued by the office.

Sec. added by renum. 272.2, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; renum. 416.2, new added by renum. 424.2, filed Feb. 25, 1988; amd. filed Feb. 16, 1989 eff. March 8, 1989; rep. and renumbered from § 418.3 amd. filed July 15, 2011 eff. Aug. 3, 2011.

Section 418.3. Fishing

Fishing is prohibited on property under the jurisdiction of the office, except in such areas as specifically designated.

Sec. added by renum. 272.3, Title 6, filed Sept. 1971; repealed, new filed June 6, 1974; renum. 416.3, new added by renum. 424.3, filed Feb. 25, 1988 eff. March 16, 1988; renumbered to § 418.2 and renumbered from § 418.4 amd. filed July 15, 2011 eff. Aug. 3, 2011.

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Chapter II. General Rules

Subchapter A. New York Conservation Corps

Part 419. General Provisions

Section 419.1. Authority

These regulations implement chapter 478 of the Laws of 1983, as amended by chapter 128 of the Laws of 1987 and Chapter 717 of the Laws of 1988, which enacted section 3.23 of the Parks, Recreation and Historic Preservation Law and established the New York State Conservation Corps. In accordance with the statute, the Office is authorized to provide for the use of such State and Federal appropriations and private funds as are available:

- (a) to coordinate Conservation Corps participants in doing projects on land owned by the State, a municipality, the Federal government or an Indian nation, or at sites owned or operated by not-for-profit corporations, or activities taking place at nonproject sites, where appropriate; and
- (b) to enter into agreements with any municipality, State agency, not-for-profit corporation or Indian nation which will agree to do projects consistent with the program.

Sec. added by renum. 273.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 11, 1988; amd. filed May 10, 1989 eff. May 31, 1989.

Section 419.2. Program purpose and goals

- (a) The purpose of the New York State Conservation Corps is to further the development and enhancement of the natural, cultural and historic resources of the State by its young men and women and, in doing so, to prepare them to manage the resources and their own lives.
- (b) *Goals of the program.*
 - (1) To provide needed community services in urban, suburban and rural settings by the conservation, rehabilitation and enhancement of the State's natural, historic, environmental, cultural and recreational resources.
 - (2) To develop in participating youth basic employment skills and an understanding of the State's natural environment and cultural heritage.
- (c) These goals will be accomplished in such a way that young people will be provided with an opportunity to acquire increased self-dignity and self-discipline, be better able to work with peers and supervisors, and learn to work with and relate to people of various social, ethnic, racial and economic backgrounds.
- (d) To the maximum extent possible, each Conservation Corps project will have the following characteristics:
 - (1) a balanced work/learning program in which environmental awareness and work skills are learned primarily through meaningful work activities on public lands or facilities;
 - (2) a mixture of youth of both sexes from various social, economic, ethnic and racial backgrounds which is representative of youth residing within the recruiting area;
 - (3) an enrollment of size sufficient to permit group learning and social interaction;

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- (4) components that will educate the enrollees about our natural environment and cultural heritage, teach first aid and basic employment skills and encourage them to further their education; and
- (5) crews which are easily recognized as members of the New York State Conservation Corps regardless of the identity of project sponsors.

Sec. added by renum. 273.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 11, 1988 eff. April 27, 1988.

Section 419.3. Definitions

Whenever used in this Part, the following terms shall mean and include:

- (a) **Basic employment skills** shall mean those attributes that assist people in seeking and securing permanent employment, such as promptness, dependability, ability to take direction and cooperation with peers at the worksite, as well as job search techniques, interviewing skills and career exploration techniques.
- (b) **Corps** or **Conservation Corps** shall mean the New York State Conservation Corps established by section 3.23 of the Parks, Recreation and Historic Preservation Law.
- (c) **Indian nation** shall mean any Native American tribe or group residing in New York State which is recognized by treaty with the United States of America.
- (d) **Municipality** shall mean a city, county, town or village, school district or improvement district within a city, county, town or village which has the authority to apply for and receive State grants.
- (e) **Not-for-profit corporation** shall mean a corporation, qualified for tax-exempt status under section 501(c)(3) of the Federal Internal Revenue Code, with demonstrable experience in conducting work, education, youth development or environmental programs.
- (f) **Project** shall mean that component of the Conservation Corps program undertaken by a municipality, local government, State agency, Indian nation or not-for-profit corporation pursuant to an agreement with the Office and in accordance with this Subchapter. A project may consist of work performed on one or more worksites.
- (g) **Project sponsor** shall mean a municipality, local government, State agency, Indian nation or not-for-profit corporation which has received a grant from the Office to operate a Conservation Corps project.
- (h) **Time of enrollment** shall mean the day an enrollee reports to work for the first time.

Sec. added by renum. 273.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 11, 1988 eff. April 27, 1988.

Section 419.4. Funding

- (a) Funds made available for Conservation Corps projects shall be allocated as follows:
 - (1) not less than 50 percent for projects administered by municipalities and not-for-profit corporations;
 - (2) not less than 25 percent for projects administered by the office;
 - (3) not less than 12 1/2 percent for projects administered by the Department of Environmental Conservation;
 - (4) not less than five percent for projects administered by Indian nations; and

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- (5) the balance for projects administered by State agencies other than the Office and the Department of Environmental Conservation.
- (b) Not less than 10 percent of the total program funds in a given fiscal year will be spent on summer projects.
- (c) If all money within a project sponsor category is not awarded in a given fiscal year due to the lack of applications meeting minimum requirements, the Office may reassign the funds to project sponsors in other categories or may carry them over into the total program allocation for the next fiscal year.
- (d) The office may accept supplementary public and private funds to assist in meeting the costs of operating the Conservation Corps.

Sec. added by renum. 273.4, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 11, 1988 eff. April 27, 1988.

Section 419.5. Advisory council

- (a) There shall be a New York State Conservation Corps Advisory Council consisting of the commissioner, the Commissioner of Environmental Conservation, the Commissioner of Labor, the Commissioner of Education, the Director of the Division for Youth, and 10 additional members appointed by the Governor. Of the appointed members, three are to be appointed upon the recommendation of the Temporary President of the Senate, three upon the recommendation of the Speaker of the Assembly, two upon the recommendation of the Minority Leader of the Senate and two upon the recommendation of the Minority Leader of the Assembly.
- (b) The term for each appointed member of the advisory council shall be three years.
- (c) The commissioner shall be the chairman of the advisory council.
- (d) The advisory council shall meet at the direction of the commissioner, no less than annually.
- (e) The function of the advisory council will be to:
 - (1) identify and review issues and current State policies and programs which directly or indirectly affect the Conservation Corps, and make recommendations to the commissioner regarding these matters;
 - (2) advise the commissioner in the planning, development and management of the corps;
 - (3) review implementation and make recommendations regarding the law creating the corps;
 - (4) provide assistance as requested by the commissioner; and
 - (5) assist in the development of the annual report.
- (f) It is understood that the role of the advisory council is to advise the commissioner and make recommendations regarding the overall management of the Conservation Corps and this Subchapter, not to review or make recommendations relating to individual project sponsor or enrollee applications or be responsible for the expenditure of program funds.

Sec. added by renum. 273.5, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 11, 1988 eff. April 27, 1988.

Section 419.6. Annual report

The commissioner shall prepare an annual report on the Conservation Corps and shall submit such report to the Governor and the New York State Legislature.

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*Sec. added by renum. 273.6, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 11, 1988
eff. April 27, 1988.*

Section 419.7. Coordination

To the greatest extent possible, the Office and each project sponsor will cooperate and coordinate its efforts with the Job Training Partnership Council, Department of Labor, Department of Environmental Conservation, State Education Department, Division for Youth and local youth agencies in the conduct of the recruiting, education and training components of the program.

*Sec. added by renum. 273.7, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 11, 1988
eff. April 27, 1988.*

Part 420. Conservation Corps Projects

Section 420.1. Project sponsors

(a) Any municipality, State agency, Indian nation or not-for-profit corporation, as described in section 419.3 of this Title, which has the authority to apply for and receive State grants, is eligible to apply to serve as a project sponsor.

(b) A project sponsor must provide at least 20 percent of the project costs in the form of cash or documented in-kind services.

*Sec. added by renum. 274.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 11, 1988
eff. April 27, 1988.*

Section 420.2. Project requirements

(a) *Classification of projects.* The Conservation Corps program shall be made up of the following classes of projects:

- (1) summer projects operated during the months of June, July and August;
- (2) seasonal projects which may be operated at any time of the year and are less than a full year in duration;
- (3) year-round projects which are projects of at least a full year's duration; and
- (4) a residential program operated by the Office.

(b) *Project sites.*

- (1) A project may be undertaken on any public lands, waters or structures under the jurisdiction of the project sponsor or in accordance with a written agreement between the project sponsor and the public entity.
- (2) A project may be undertaken by a not-for-profit corporation or Indian nation on any lands, waters or structures owned or administered by such corporation or Indian nation, provided that:
 - (i) these facilities are open to the public on a reasonable basis; and
 - (ii) there is a public value or benefit to the project.

(c) *Types of projects.* Projects must be cost-efficient and consistent with the purposes of the Conservation Corps, and may include, but need not be limited to, projects which:

- (1) protect air, fish, forest, land, water and wildlife;

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- (2) help maintain and improve botanical gardens, historic sites, libraries, museums, parks, parkways, refuges, trails, zoos and other recreational investments;
- (3) aid agricultural, fishing, forestry and tourist industries;
- (4) reinforce the "I Love New York" campaign;
- (5) provide disaster relief, increase energy conservation, improve fire prevention, beautify highways, control insects and rodents, upgrade public lands, revitalize urban areas and in other ways further the goals of community renewal, protection and enhancement of natural resources and economic development;
- (6) help the Department of Economic Development, Olympic Regional Development Authority, Adirondack Park Agency and local agencies in their tourist development activities; and
- (7) help support activities such as the Empire State Games and the State Fair.

(d) *Special requirements.*

(1) Projects shall be designated to further the Conservation Corps' purposes and goals as set forth in section 419.2 of this Title and shall have the characteristics described in subdivision (d) of such section.

(2) Project sponsors shall be responsible for providing educational opportunities for Conservation Corps enrollees by:

- (i) providing training and reference materials;
- (ii) arranging with educational institutions for the awarding of academic credit for competencies developed;
- (iii) encouraging enrollees to improve educational competencies during nonworking hours through basic skills enhancement, high school equivalency preparation, participation in skill-training programs or matriculation in degree-granting or non-degree higher education programs; and
- (iv) accessing the services available from schools, colleges, boards of cooperative educational services and all other agencies and institutions in the University of the State of New York.

(3) Project sponsors shall ensure that all project sites conform to appropriate health and safety standards and legal requirements.

(4) Prohibited activities. The following activities are prohibited in the conduct of any Conservation Corps project:

- (i) the discrimination against any employment or enrollee applicant because of the individual's race, color, religion, creed, ancestry, sex, national origin or nonjob-related handicap or disability;
- (ii) the displacement or substitution for an existing employee by a Conservation Corps participant or the replacement of a seasonal employee normally hired by the project sponsor;
- (iii) the participation by the Conservation Corps participants in the removal or cleaning up of any toxic or hazardous waste or toxic or hazardous waste site; and
- (iv) the assignment of Conservation Corps participants to general work activities, including but not limited to routine lawn-mowing, litter pickup, custodial duties and clerical tasks.

(e) *Casualty and disaster.* A project sponsor, subject to the approval of the commissioner, may use existing Conservation Corps crews for casualty and disaster relief.

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*Sec. added by renum. 274.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 11, 1988
eff. April 27, 1988.*

Section 420.3. Conservation Corps participants

(a) Participants in the Conservation Corps shall include the following:

- (1) Enrollees shall be individuals who meet the minimum qualifications and are selected by a project sponsor to participate in a Conservation Corps project.
- (2) Enrollee leaders shall be enrollees at least 18 years of age who serve in a leadership position.
- (3) Crew supervisors shall generally be employees of the project sponsor who are the supervisors of crews of enrollees and are responsible for the daily worksite operations of Conservation Corps projects.

(b) *Eligibility requirements for enrollees.* Enrollment in the program shall be limited to individuals who, at the time of enrollment, are:

- (1) citizens or lawful permanent residents or legally admitted aliens; and
- (2) unemployed; and
- (3) for seasonal or year-round projects, not less than 16 nor more than 24 years of age; or
- (4) for summer projects, not less than 14 nor more than 18 years of age; or
- (5) for the residential program, not less than 18 nor more than 25 years of age.

(c) *Selection of enrollees.* Recruitment and selection of the enrollees will be the responsibility of the project sponsors.

(1) Special efforts shall be made to recruit applicants who are economically, socially, physically or educationally disadvantaged as follows:

- (i) *Economically disadvantaged* are those individuals who meet the criteria for disadvantaged established by the Job Training Partnership Act or section 6451 of the Education Law, or those receiving services provided by the Department of Social Services such as cash welfare payments, food stamps and aid to families with dependent children.
- (ii) *Socially disadvantaged* are individuals including, but not limited to, those who have been classified as persons in need of supervision by the Family Court system, have been referred by the Juvenile or Criminal Court system or have been identified by local officers of the Office of Vocational Rehabilitation as being socially disadvantaged.
- (iii) *Physically disadvantaged* are those individuals that have been identified as having special needs by local committees on the handicapped or public agencies that deal with employment advocacy for the disabled.
- (iv) *Educationally disadvantaged* are those individuals who have dropped out of school or are at risk of dropping out of school because of poor academic achievement or other factors and those with learning disabilities or in need of special education classes.

(2) For summer and seasonal projects, applicants for enrollee positions shall be chosen for interview as follows:

- (i) Every application shall be reviewed to determine whether the applicant meets the eligibility requirements provided in subdivision (b) of this section.

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- (ii) The names of those applicants meeting the eligibility requirements will be listed in a random order based on selection by a computer or by hand-drawings.
- (iii) The project sponsor shall interview the candidates in the order they appear on the list until all enrollee positions are filled.
- (iv) Project sponsors may choose not to interview the candidates if there are more enrollee positions than candidates and all candidates are offered positions, or if the positions are offered to the candidates in the order their names appear on the random list.

(d) *Terms and conditions of enrollment.*

- (1) Enrollees will be paid at rates set by the office, but in no case at less than the minimum wage, except that incentive step increases up to twice the rate of the minimum wage may be paid for leadership and length of time in service.
- (2) The length of an enrollee's employment shall be determined by the duration of the work project in which the enrollee is participating.
- (3) The maximum accumulated length of service for which an enrollee may be enrolled, including the total duration of all projects in which the enrollee participates, shall not exceed 24 months.
- (4) For year-round and residential projects, enrollees must serve in the corps for an initial probationary period of six weeks, but may continue upon the recommendation of the crew supervisor.

(e) *Use of volunteers.*

- (1) Project sponsors may use organized volunteer groups which have proper leadership and insurance in the conduct of Conservation Corps projects.
- (2) Program funds may be expended to provided for services or costs incidental to the utilization of volunteers, including transportation, supplies, lodging, recruiting, training and supervision.
- (3) Volunteers may not be used for hazardous duties or law enforcement work.

Sec. added by renum. 274.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 11, 1988; amd. filed May 10, 1989 eff. May 31, 1989. Amended (d).

Part 421. Project Applications

Section 421.1. Project applications

At the beginning of the annual project cycle, the commissioner will announce the availability of applications for Conservation Corps projects. The commissioner's announcement will include where to obtain application information and the date by which applications must be submitted.

Sec. added by renum. 275.1, Title 6, filed Sept. 1971; repealed, new filed: Jan. 26, 1972; Aug. 29, 1973; June 6, 1974; renum. 417.1, filed Feb. 25, 1988; new filed April 11, 1988 eff. April 27, 1988.

Section 421.2. Evaluation of applications

- (a) Applications will be reviewed and evaluated by the Office to determine how well the project attains the goals of the Conservation Corps as described in sections 419.2 and 420.2 of this Title.
- (b) Additional factors related to the proposed project which will be considered are:
 - (1) the anticipated long-term public benefit of the project, resulting from the rehabilitation or renovation of existing facilities or resources or the development of new facilities or resources;

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- (2) the meaningfulness to the enrollees of the work to be performed;
- (3) the meaningfulness of the project to the community;
- (4) the potential for the project to enhance the basic employment skills of the enrollees as well as to increase their appreciation of the State's natural environment and cultural heritage; and
- (5) the degree to which the work is labor-intensive and not more appropriately performed using heavy equipment.

(c) *Distribution of projects.*

- (1) The distribution of projects will, as far as practicable, reflect the following factors:

- (i) the distribution of the population of the State as a whole;
- (ii) the amount of use of project sites; and
- (iii) the population of and unemployment rates among the target age group.

- (2) Exceptions can be made by the commissioner for special needs arising from disasters or casualty.

(d) The process of evaluation of project applications will consider the proposed overall project administrative structure as well as the proposed work project.

(e) Potential project sponsors, including State agencies, will compete only for funds within their specific categories. Projects must meet minimum standards, however, and if there are not sufficient applications for projects meeting minimum requirements within a given category, the Office may reallocate the remaining funds available in that category in accordance with section 419.4(c) of this Title.

Sec. added by renum. 275.2, Title 6, filed Sept. 1971; repealed, new filed Jan. 26, 1972; repealed, filed Aug. 29, 1973; new filed June 6, 1974; renum. 417.2, filed Feb. 25, 1988; new filed April 11, 1988 eff. April 27, 1988.

Section 421.3. Project agreement

A successful applicant shall enter into an agreement with the Office for the expenditure of State funds in accordance with the Conservation Corps program. The application to conduct a Conservation Corps project, with such modifications as may be required by the Office, shall be made a part of the agreement, along with any other provisions required by State law, the Attorney General, the State Comptroller and the Office.

Sec. added by renum. 275.3, Title 6, filed Sept. 1971; repealed, new filed Jan. 26, 1972; repealed, filed Aug. 29, 1973; new filed June 6, 1974; renum. 417.3, filed Feb. 25, 1988; new filed April 11, 1988 eff. April 27, 1988.

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Chapter III. Historic Preservation

Subchapter A. Certifying Rehabilitation of Historic Property

Part 425. Fees for Processing, Reviewing and Certifying Rehabilitation of Historic Properties

Section 425.1. Homeowner historic property historic rehabilitation

(a) The Office of Parks, Recreation and Historic Preservation (Office) shall use the following schedule to assess and collect fees for processing, reviewing and certifying an application from a homeowner for rehabilitation of his or her historic residential property and for approving the homeowner's rehabilitation expenditure under the New York State tax credit program.

(b) The application submitted to the Office shall consist of three parts. An initial application fee of \$25 shall be submitted with part 2 and that amount shall be deducted from the final fee that shall be submitted with part 3.

(c) An applicant with a household adjusted gross income of \$60,000 or less is exempt from paying any fee to the Office.

(d) The applicant shall submit any receipts and documents requested by the Office to assist it in determining the amount of the fee or exemption and in issuing the certification.

(e) Final Fee.

Rehabilitation Expenditure Fee

- (1) \$5,000 - \$9,999 \$50
- (2) \$10,000 - \$49,999 \$100
- (3) \$50,000 - \$99,999 \$200
- (4) \$100,000 - \$149,999 \$300
- (5) \$150,000 - \$199,999 \$400
- (6) \$200,000 - \$250,000 \$500

Secs. added by renum. 281.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed March 4, 2011 eff. March 23, 2011.

Section 425.2. Commercial, office, industrial, rental historic property rehabilitation

(a) The Office shall use the following schedule to assess and collect fees for processing, reviewing and certifying an application from a taxpayer for rehabilitation of a historic commercial, office, industrial or residential rental (income producing) property and for approving the taxpayer's rehabilitation expenditure under the New York State tax credit program.

(b) The application submitted to the Office shall consist of three parts. An initial application fee shall be submitted with part 2 and that amount shall be deducted from the final fee that shall be submitted with part 3.

(c) For projects up to \$100,000 in rehabilitation expenditure, the initial application fee shall be \$50; for projects above \$100,000 in rehabilitation expenditure the initial application fee shall be 10 percent of the estimated final fee.

(d) The applicant also shall submit any receipts and documents requested by the Office to assist in determining the amount of the fee and in issuing the certification.

(e) Final Fee.

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Rehabilitation Expenditure Fee

- (1) Under \$20,000 \$100
- (2) \$20,000 - \$99,999 \$500
- (3) \$100,000 - \$499,999 \$1,000
- (4) \$500,000 - \$999,999 \$1,500
- (5) \$1,000,000 - \$2,499,999 \$2,500
- (6) \$2,500,000 - \$4,999,999 \$3,000
- (7) \$5,000,000 - \$9,999,999 \$4,000
- (8) \$10,000,000 or more \$5,000

*Secs. added by renum. 281.1-281.15, Title 6, filed Sept. 1971; repealed, filed June 6, 1974 eff. June 10, 1974;
new adopted filed Mar. 4, 2011 eff. Mar. 23, 2011.*

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Subchapter B. New York State Historic Preservation Act of 1980

Part 426. Authority and Purpose; Definition of Terms; Notification and Inquiries

Section 426.1. Authority and purpose

- (a) These regulations implement article 14 of the Parks, Recreation and Historic Preservation Law, which was enacted by the New York State Historic Preservation Act of 1980 (chapter 354 of the Laws of 1980). The act became effective on August 22, 1980.
- (b) The purpose of the State Historic Preservation Act is to continue and advance the State's historic preservation programs and activities, to continue the responsibility for the coordination of such programs and activities with the Commissioner of Parks, Recreation and Historic Preservation, to foster consistency of State activities with historic preservation policy, to encourage and assist local governments in local preservation programs and activities, and to encourage and assist private agencies and individuals undertaking preservation by private means.
- (c) The act declares it to be the public policy and in the public interest of this State to engage in a comprehensive program of historic preservation.
- (d) The act authorizes the Commissioner of Parks, Recreation and Historic Preservation, in consultation with the State Board for Historic Preservation, to establish the New York State Register of Historic Places, consisting of sites, districts, structures, buildings, areas or objects above or below the surface of the earth whether on land or in the waters of the State, together with any designated improvements thereon, significant in the history, architecture, archeology or culture of the State, its communities or the nation.
- (e) The act requires State agencies to consult with the commissioner if it appears that any project which is being planned may or will cause any change, beneficial or adverse, in the quality of any historic, architectural, archeological or cultural property that is listed on the National Register of Historic Places or property listed on the State Register of Historic Places or that is determined by the commissioner to be eligible for listing on the State Register of Historic Places. It requires State agencies, to the fullest extent practicable, consistent with other provisions of the law, to avoid or mitigate adverse impacts to such properties, to fully explore all feasible and prudent alternatives and to give due consideration to feasible and prudent plans which would avoid or mitigate adverse impacts to such property. It establishes agency preservation officers for the purpose of implementing these provisions.
- (f) In addition, the act reinforces and expands the role of the State Board for Historic Preservation as an advisory body to the commissioner.
- (1) It continues the board's existing functions of:
- (i) advising the commissioner on policy matters affecting historic preservation and the historic site system;
 - (ii) providing consultation to the commissioner on historic site management, development and interpretation;
 - (iii) reviewing and making recommendations to the commissioner on whether properties meet the criteria for listing on the State and National Registers of Historic Places; and

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- (iv) reviewing and advising the commissioner on the statewide survey and plan for historic preservation.
- (2) It adds to the board's existing duties, new functions consisting of:
- (i) reviewing and making recommendations to the commissioner on grant applications and use of Federal and State grants-in-aid; and
 - (ii) reviewing and commenting on selected projects which are being reviewed by the commissioner under section 106 of the National Historic Preservation Act of 1966 and section 14.09 of the Parks, Recreation and Historic Preservation Law, and commenting on environmental impact assessments or statements, or as otherwise provided by law, on undertakings which may have an impact on historic resources.

Sec. added by renum. 282.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981 eff. Sept. 23, 1981.

Section 426.2. Definition of terms

Whenever used in these regulations, the following terms shall have the following meanings unless the context otherwise requires:

- (a) **Agency preservation officer (APO)** shall mean the commissioner, director or chairperson of any State department, agency, board, commission, public benefit corporation or public authority, or a representative identified in accordance with the provisions of subdivision 2 of section 14.05 of the Parks, Recreation and Historic Preservation Law.
- (b) **Board** shall mean the State Board for Historic Preservation established pursuant to article 11 of the Parks, Recreation and Historic Preservation Law.
- (c) **Chairman** shall mean the chairman of the State Board for Historic Preservation.
- (d) **Eligible property** shall mean any place or property within the State which the commissioner determines meets the criteria for listing in the **State Register** found at section 427.3 of this Subchapter, or which is deemed eligible pursuant to section 427.6 of this Title.
- (e) **Historic preservation** shall mean the study, designation, protection, restoration, rehabilitation and use of buildings, structures, historic districts, areas and sites significant in the history, architecture, archeology or culture of this State, its communities or the nation.
- (f) **Historic place** or **property** shall mean any building, structure, district, area, site or object, including underground and underwater sites, that is of significance in the history, architecture, archaeology or culture of the State, its communities or the nation.
- (g) **Interested party** shall mean any State or municipal official or member of the public.
- (h) **Inventoried property** shall mean:
 - (1) any property listed on the statewide inventory of historic property established under subdivision 2 of section 14.07 of the Parks, Recreation and Historic Preservation Law;
 - (2) any property within the areas specified on the statewide archeological inventory map; and
 - (3) any property listed on the Office of General Services inventory of properties under the jurisdiction or control of, or otherwise owned or used by, any State agency.

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These lists, or information pertaining to properties included in the inventory, may be obtained from the commissioner pursuant to section 426.3 of this Part.

(i) **Municipality** shall mean any county, city, town or village.

(j) **Municipal official** shall mean the chief executive officer of any municipality or his or her designated representative.

(k) **National Register** shall mean the National Register of Historic Places established under the National Historic Preservation Act of 1966.

(l) **Project impact area** shall mean the geographic area or areas within which a proposed undertaking may cause any change, beneficial or adverse, in the character or use of an eligible or registered property.

(m) **Project Review Data Sheet (PRDS)** shall mean the information required by the commissioner to make an informed and reasonable determination as to whether or not a proposed undertaking may have an adverse impact on a registered or eligible property. A suggested form is provided in Appendix I-8 of this Title.

(n) **Registered property** shall mean any place or property within the State nominated by the commissioner for listing on the National Register of Historic Places or listed on the New York State Register of Historic Places established pursuant to section 14.07 of the Parks, Recreation and Historic Preservation Law.

(o) **Register** shall mean the New York **State Register** published by the Secretary of State under article 6-A of the Executive Law.

(p) **State agency** shall mean any State department, agency, board or commission of the State, or a public benefit corporation or public authority at least one of whose members is appointed by the Governor.

(q) **State Register** shall mean the State Register of Historic Places established under section 14.07 of the Parks, Recreation and Historic Preservation Law.

(r) **Undertaking** shall mean any of the following:

- (1) any physical activity undertaken by a State agency, including the alteration or demolition of property, and the transfer, lease or sale of property;
- (2) the funding by a State agency of any physical activity, including the alteration or demolition of property, and the transfer, lease or sale of property; and
- (3) the approval, licensing, permitting or any other entitlement by a State agency of any activity, including the alteration, demolition, transfer, lease or sale of property.

Sec. added by renum. 282.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981; amd. filed June 3, 1991 eff. June 19, 1991.

Section 426.3. Notification and inquiries

(a) All notices required by these regulations and all inquiries and requests for documents and forms referred to in these regulations should be addressed to:

Commissioner of Parks, Recreation and Historic Preservation
Attention: Historic Preservation Field Services Bureau
Agency Building 1, Empire State Plaza
Albany, NY 12238

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(b) Notices to the State Board for Historic Preservation should be addressed to:

State Board for Historic Preservation
Attention: Chairman, Division of Historic Preservation
Agency Building 1, Empire State Plaza
Albany, NY 12238

*Sec. added by renum. 282.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981
eff. Sept. 23, 1981.*

Part 427. State Register of Historic Places

Section 427.1. Concurrent consideration of properties for listing on the State and National Registers

All historic places within the State listed on or nominated by the commissioner for inclusion on the National Register shall be listed on the State Register.

(a) Except as provided for in subdivision (b) of this section, all proposals for the listing of properties on both the National Register and State Register shall be submitted, reviewed and acted upon in accordance with the regulations governing the National Register (36 CFR 1202), including any amendments to these regulations and any regulations which shall subsequently take the place of these regulations.

(b) At certain points in the listing process, the statutory requirements for the two registers are different. In these instances, and only in these instances, the procedures for listing a property on the National Register and those for listing it on the State Register shall be followed separately. The procedures which the commissioner shall follow for listing a property on the State Register that differ from National Register procedures are as follows:

(1) Those regulations which prohibit listing on the National Register when property owners object shall not apply to nominations for the State Register.

(2) Notice of a proposed listing on the State Register and the provision of a comment period shall be made in accordance with the provisions of section 427.4 of this Part.

(3) A decision on listing a property on the State Register shall be made no later than 180 days from receipt of the nomination and sufficient supporting documentation in accordance with the provisions of section 427.5(b) of this Part.

(4) Any statutory provision or other procedure established subsequent to the effective date of this Part for listing a property on the National Register which differs from the New York State Historic Preservation Act of 1980 or the provisions of this Part shall not apply to listings on the State Register.

(c) On the date that the commissioner signs a nomination for listing on the National Register, the property will be listed on the State Register, and all benefits and protections of listing shall accrue in full force and effect from that date. Following the listing of a property on the State Register, the commissioner shall provide notification as required in section 427.5 (d) of this Part.

(d) If a property is withdrawn from consideration for nomination to the National Register due to the recommendation of a local historic preservation commission or municipal official, or because the property owner has filed an objection to the listing, it will continue to be considered for listing on the State Register according to the provisions of section 427.5 of this Part.

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*Sec. added by renum. 283.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981
eff. Sept. 23, 1981.*

Section 427.2. Nomination of properties to the State Register only

- (a) Nomination proposals may be submitted by an APO, municipal official, local historic preservation board or commission or a member of the public.
- (b) All nomination proposals to the State Register are to be made on standard National Register forms, as revised. The forms and standards for their completion are available pursuant to section 426.3 of this Subchapter.
- (c) If the commissioner determines that the nomination form is incomplete and the supporting documentation is insufficient, he shall ask the party submitting the nomination proposal to provide such additional documentation as is required to make a decision on listing the property on the State Register.
- (d) Completed proposals should be submitted to the commissioner and must be accompanied by a letter stating that the nomination is to be considered for listing only on the State Register.

*Sec. added by renum. 283.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981
eff. Sept. 23, 1981.*

Section 427.3. Criteria for listing

The following criteria shall be used by the commissioner when determining if properties are eligible for listing on the State Register and by the commissioner, in consultation with the board, in determining which eligible properties should be listed on the State Register:

- (a) The quality of significance in American history, architecture and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association, and:
 - (1) that are associated with events that have made a significant contribution to the broad patterns of our history; or
 - (2) that are associated with the lives of persons significant in our past; or
 - (3) that embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
 - (4) that have yielded, or may be likely to yield, information important in prehistory or history.
- (b) *Special considerations.* Ordinarily, cemeteries, birthplaces or graves of historic figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the State Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:
 - (1) a religious property deriving primary significance from architectural or artistic distinction or historical importance;

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- (2) a building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with an historic person or event;
- (3) a birthplace or grave of an historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life;
- (4) a cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;
- (5) a reconstructed building, when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived;
- (6) a property primarily commemorative in intent if design, age, tradition or symbolic value has invested it with its own historical significance; or
- (7) a property achieving significance within the past 50 years if it is of exceptional importance.

Sec. added by renum. 283.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981; amd. filed June 3, 1991 eff. June 19, 1991.

Section 427.4. Notice and comment

- (a) Upon receipt of a nomination proposal with sufficient documentation, and no later than 30 calendar days prior to the review of the proposal by the board, the commissioner shall provide notice of the proposed listing to the APO and/or municipal official having jurisdiction over the property and, except as provided in subdivision (b) of this section, shall provide such notice by mail to each owner, if privately owned, at his last known address.
- (b) Whenever a listing is proposed where there are more than 50 property owners, or the owner or owners cannot be ascertained, the notice of pending listing shall be made by publication in a newspaper of general circulation in the area where the property is located.
- (c) No later than 30 calendar days prior to the review of the proposal by the board, the commissioner shall cause notice of the proposed listing to be published in the *Register*. Such notice shall state when the board will review the proposal and how an interested party may submit comments on it.
- (d) If the municipal official and/or APO with jurisdiction over any property, or the owner or owners of such property, advises the commissioner in writing within 20 calendar days of mailing or publishing of notification that the official or owner questions the eligibility of the proposed property, the commissioner and the board shall postpone consideration of the proposal for no more than 60 days to allow the official or owner a reasonable opportunity to present a written statement to the commissioner and the board.
- (e) Any interested party may submit comments relating to a nomination proposal. Comments should be addressed to the commissioner who shall cause them to be appended to the nomination form and reviewed along with the proposal. In addition, any interested party may appear before the board to present comments relating to a nomination proposal. Such party should notify the board of his intention to present comments no later than 10 calendar days prior to the board meeting.

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*Sec. added by renum. 283.4, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981
eff. Sept. 23, 1981.*

Section 427.5. Review and listing

- (a) The nomination proposal, together with all comments, shall be reviewed by the board which shall consult with and make recommendations to the commissioner as to whether the property meets the criteria for listing on the State Register.
- (b) After consideration of the recommendations of the board, the commissioner shall include on the State Register all places he determines to be of significance.
- (c) The commissioner shall make such determination no later than 180 calendar days after receipt of the proposal with sufficient supporting documentation as provided for in section 427.2 of this Part, including all written comments provided for in subdivision (d) of section 427.4.
- (d) The commissioner shall issue his decision on listing the property, with an appropriate finding in support, in writing.
- (e) In addition, the commissioner shall specify whether a listed property is primarily of national, State or local significance.
- (f) (1) Promptly, and in no case later than 45 calendar days after the commissioner makes a decision relating to the listing of a property on the State Register, the commissioner shall:
- (i) notify the appropriate APO and/or municipal official and, except as provided for in paragraph (2) of this subdivision, each owner of privately owned property at his last known address;
 - (ii) publish a notice of the decision in a newspaper of general circulation in the area where the property is located; and
 - (iii) publish a notice of the listing in the *Register*.
- (2) Whenever a listing would affect property in which there are more than 50 property owners, or the owner or owners cannot be ascertained, the notice published pursuant to subparagraph (ii) of paragraph (1) of this subdivision shall be in lieu of the personal notice provided for in subparagraph (i) of paragraph (1).
- (g) A property which the commissioner has decided not to list on the State Register may be repropoed for nomination if additional pertinent information, not previously considered, regarding the property's historical and cultural significance can be provided to the commissioner. A reproposal for nomination should be submitted and will be considered in the same manner as a new proposal.

*Sec. added by renum. 283.5, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981
eff. Sept. 23, 1981.*

Section 427.6. Effect of National Register eligibility determination on State Register eligibility

- (a) Properties which have not been nominated by the commissioner for listing on the National Register, but which have been determined eligible for such listing by the Department of the Interior of the United States shall also be deemed eligible for listing on the State Register and may be nominated thereto in accordance with this Part.

*Sec. added by renum. 283.6, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981;
amd. filed June 3, 1991 eff. June 19, 1991.*

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Section 427.7. Revisions to listings

The commissioner may remove a property from the State Register if he determines, after consultation with the board, that the qualities that gave it significance and for which it was initially listed no longer exist. The provisions of sections 427.4 and 427.5 of this Part shall be complied with for the proposed deletion of a property from the State Register in the same manner as for a proposed listing.

Sec. filed Sept. 23, 1981 eff. Sept. 23, 1981.

Section 427.8. Public access to information

The commissioner shall make available information relating to properties proposed for listing or listed on the State Register of Historic Places in accordance with the Freedom of Information Law, article 6 of the Public Officers Law, and Part 463 of this Title. Information on archaeological sites that may be damaged by unauthorized investigators if their location be generally known may be withheld from the public at the discretion of the commissioner in consultation with the Commissioner of Education, and will be released, where appropriate, in a format approved by such commissioners.

Sec. filed Sept. 23, 1981 eff. Sept. 23, 1981.

Part 428. State Agency Activities Affecting Historic or Cultural Properties

Section 428.1. Responsibilities of State agencies with regard to registered and eligible property

To the fullest extent practicable, it is the responsibility of every State agency, consistent with other provisions of law, to avoid or mitigate adverse impacts to registered or eligible property. Every agency shall fully explore all feasible and prudent alternatives and give due consideration to feasible and prudent plans which avoid or mitigate adverse impacts on such property.

Sec. added by renum. 284.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981 eff. Sept. 23, 1981.

Section 428.2. Coordination with other review procedures

(a) No project requiring review by the commissioner acting in his capacity as State Historic Preservation Officer in accordance with section 106 of the National Historic Preservation Act of 1966, as implemented by the regulations of the Federal Advisory Council on Historic Preservation, "Protection of Historic and Cultural Properties" (36 CFR 800), shall be reviewed in accordance with these procedures.

(b) A draft environmental impact statement (DEIS) prepared in compliance with the State Environmental Quality Review Act (SEQR) shall be submitted to the commissioner and to the chairman of the board and may be accepted for the purpose of complying with subdivisions (b) and (c) of section 428.8 of this Part, provided that the commissioner determines that the DEIS contains sufficient detailed information to satisfy the requirements of those subdivisions.

Sec. added by renum. 284.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981; amd. filed June 3, 1991 eff. June 19, 1991.

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Section 428.3. Activities undertaken by more than one State agency

(a) If more than one State agency is involved in an undertaking which is subject to review under this Part, a single consolidated review will be acceptable, provided that it encompasses all agency activities associated with the undertaking which are subject to review.

(b) The primary responsibility for complying with the provisions of this Part is on the agency initiating the undertaking. However, the involved agencies may agree among themselves which agency shall act as lead agency for purposes of this Part.

(c) Notwithstanding the provisions of subdivisions (a) and (b) of this section, every State agency involved in an undertaking shall be responsible for ensuring that the provisions of this Part are complied with.

Sec. added by renum. 284.3, Title 6. filed Sept. 1971; repealed, filed June 6, 1974; new filed Sept. 23, 1981; amd. filed June 3, 1991 eff. June 19, 1991.

Section 428.4. Undertakings subject to review

(a) As early in the planning process as possible, and in any case prior to the preparation or approval of any final design or plan or the permitting or approval of an undertaking the APO shall determine if the undertaking is subject to review under this Part. APO's are strongly encouraged to consult with the commissioner when making this determination.

(b) Except as provided in sections 428.11 through 428.13 of this Part such review is mandatory whenever it appears that any aspect of the proposed undertaking may or will cause any change, beneficial or adverse, in the quality of any eligible or registered property in the project impact area. For purposes of this Part a *change* includes but is not limited to; the whole or partial restoration or rehabilitation of the property, or landscape or improvements to the site; any action which might lead to the destruction or alteration of all or part of the property; alteration of the property's surrounding environment; the introduction of any visual, audible or atmospheric elements or any other actions which might cause or contribute to the destruction, alteration or neglect of the property.

(c) If it appears that any property in the project impact area, including but not limited to inventoried property as defined in section 426.2(h) of this Title, may meet any of the criteria for listing set forth in section 427.3 of this Title the APO shall request an eligibility determination in accordance with section 428.5 of this Part. This request shall be made prior to or concurrently with the notice and request for determination of impact made pursuant to subdivision (d) of this section.

(d) If it is determined that an undertaking is subject to review under this Part, the APO shall notify the commissioner in writing and request that the impact of the undertaking on eligible or registered property be determined. This notice must list all State agencies participating in the undertaking and review and indicate if a single consolidated review is being conducted pursuant to section 428.3 of this Part.

(e) The APO shall provide sufficient documentation for the commissioner to make an informed and reasoned determination concerning the impact of the undertaking on eligible or registered property. Submission of a completed PRDS will generally be deemed sufficient for this purpose. However, the commissioner may determine that the PRDS is not adequate and require the agency to submit any additional studies or documentation deemed necessary.

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*Sec. added by renum. 284.4, Title 6, filed Sept. 1981; repealed, filed June 6, 1974; new filed Sept. 23, 1981;
repealed, new filed June 3, 1991 eff. June 19, 1991.*

Section 428.5. Request for determination of eligibility

- (a) At the request of an APO or any other interested party, the commissioner shall determine if any property which may be affected by an undertaking is eligible for the *State Register*.
- (b) Except as provided in section 428.4(c) of this Part a request for an eligibility determination shall be made at a reasonable time prior to the implementation of the undertaking. The commissioner, after notifying the APO in accordance with the provisions of subdivision (d) of this section, will determine on a case-by-case basis what constitutes a reasonable time, and this determination shall be conclusive.
- (c) The request, whether made by an APO or an interested party, shall be accompanied by sufficient information concerning the property for the commissioner to make an informed and reasoned determination of eligibility. The commissioner may require submission of whatever additional information is deemed necessary to this determination. When an APO requests a determination of eligibility a completed PRDS should accompany the request.
- (d) If an interested party requests a determination of eligibility the commissioner shall notify the APO of any agency having jurisdiction over the property or known to be involved in the undertaking. The commissioner may ask the APO to submit a completed PRDS or any other information relating to the undertaking and give the APO an opportunity to comment on the request.

*Sec. added by renum. 284.5, Title 6, filed Sept. 1981; repealed, filed June 6, 1974; new filed Sept. 23, 1981;
repealed, new filed June 3, 1991 eff. June 19, 1991.*

Section 428.6. Determination of eligibility pursuant to request

- (a) Within 30 days of receiving sufficient information pursuant to section 428.5 of this Part, the commissioner shall determine if the property meets any of the criteria for listing found in section 427.3 of this Title and is therefore eligible for the *State Register*. Notice of the commissioner's ruling shall be given to the party who requested the determination and to the relevant APO.
- (b) If the commissioner identifies eligible properties or resources, the APO must comply with the provisions of section 428.4.

Sec. filed Sept. 23, 1981; repealed, new filed June 3, 1991 eff. June 19, 1991.

Section 428.7. Assessment of impact

- (a) In determining whether an undertaking will have an adverse impact on eligible or registered property, the commissioner shall consider whether the undertaking is likely to cause:
- (1) destruction or alteration of all or part of the property;
 - (2) isolation or alteration of the property's environment;
 - (3) introduction of visual, audible or atmospheric elements which are out of character with the property or alter its setting;
 - (4) neglect of the property resulting in its deterioration or destruction.
- (b) When a determination of eligibility is made pursuant to section 428.6 of this Part following the submission of a completed PRDS and any other information requested pursuant to section 428.5 the

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commissioner shall determine the impact of the undertaking at the same time eligibility is determined. Both determinations shall be included in the notice given to the APO under section 428.6(a) of this Part.

(c) In all other cases the commissioner shall determine if the project will have an adverse impact on eligible or registered property and notify the APO of this determination within 30 days of receiving a completed PRDS and any other information requested pursuant to section 428.4(e) of this Part.

(d) If, upon reviewing a project as proposed by the undertaking agency, the commissioner is satisfied that it will cause no adverse impact on eligible or registered property, notice of this determination shall be given to the APO and no further review or consultation under this Part shall be required.

Sec. filed Sept. 23, 1981; repealed, new filed June 3, 1991 eff. June 19, 1991.

Section 428.8. Consultation process: exploration of feasible and prudent alternatives

To the fullest extent possible it is the duty of every State agency to avoid or mitigate the adverse impacts of its undertakings on eligible or registered properties. To protect these irreplaceable assets and meet their legal obligations, agencies must make every effort to reconcile their programs with the public policy of the State regarding historic preservation by finding a feasible and prudent means to avoid or mitigate any adverse impact of the undertaking identified by the commissioner. To this end, the following procedures shall be followed:

(a) If the commissioner determines that an undertaking will have an adverse impact on eligible or registered property recommendations shall be formulated which the undertaking agency must consider when exploring all feasible and prudent alternatives. These recommendations shall accompany the notice of adverse impact given by the commissioner pursuant to section 428.7. When appropriate, the commissioner's recommendations shall include methods and standards for the curation and/or disposition of archaeological finds produced as a result of the undertaking.

(b) Unless the agency elects to abandon the project, it shall fully explore and give thorough consideration to the commissioner's recommendations and respond to them in writing within a reasonable time. The agency's response must specify if it agrees or disagrees with the commissioner's recommendations and, if it disagrees, give the factual basis for its position.

(c) If the agency disagrees with one of the commissioner's recommendations. its response under subdivision (b) of this section must also include an alternative proposal which, in the agency's opinion, would avoid or mitigate to the greatest extent possible the adverse impacts identified by the commissioner. Any such proposal must include a statement of the facts which support it.

(d) In formulating recommendations or alternatives, both the commissioner and the undertaking agency must give primary consideration to the State's historic preservation policy as expressed in article 14.00 of the Parks, Recreation and Historic Preservation Law. Other factors such as cost, program needs, safety, efficiency, code requirements or alternate sites may also be considered. However, none of these factors standing alone shall be determinative of whether a particular proposal is feasible or prudent.

Sec. filed Sept. 23, 1981; repealed, new filed June 3, 1991 eff. June 19, 1991.

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Section 428.9. Consultation process: public participation

- (a) The agency proposing the undertaking is responsible, through the State Environmental Quality Review process or similar procedures, for obtaining the views of the public concerning the undertaking.
- (b) At the commencement of the consultation process, the APO shall confer with the commissioner to establish a process for appropriate public notification and participation which may include public hearings at which representatives of local government and interested citizens may express their views on the undertaking or on any alternatives which would avoid or mitigate the adverse impacts of the undertaking on eligible or registered properties. If it is determined that a public hearing is appropriate it should, whenever possible, be conducted concurrently with other public hearings which the undertaking agency might be required to hold under other provisions of law. If the commissioner and the APO do not agree on the need for a public hearing or the adequacy of hearings held under other provisions of law either of them may unilaterally decide to conduct a public hearing. Notice of any public hearing held pursuant to this section shall be given at least 15 days in advance of the hearing date.

Sec. filed Sept. 23, 1981; repealed, new filed June 3, 1991 eff. June 19, 1991.

Section 428.10. Consultation process: letter of resolution

The dialogue contemplated by sections 428.8 and 428.9 of this Part should, if at all possible, culminate in the execution of a Letter of Resolution between the commissioner and the undertaking agency. To this end, the following procedure shall be followed:

- (a) After reviewing all information regarding the proposed undertaking and after any on-site inspection or public hearings, the agency and the commissioner shall determine if there are feasible and prudent alternatives which would avoid or mitigate any adverse impact of the undertaking on eligible or registered property.
- (b) If the commissioner and the agency agree on a course of action which would avoid or satisfactorily mitigate an adverse impact, their agreement shall be embodied in a Letter of Resolution, executed by both parties, and specifying how the undertaking will proceed. Except for submission of the certification of completion described in subdivision (c) of this section execution of a Letter of Resolution will conclude the consultation process.
- (c) At the conclusion of the undertaking the agency shall certify in writing that the undertaking has been completed in accordance with a Letter of Resolution. The commissioner may request drawings, photographs or other materials to document satisfactory completion of the undertaking.
- (d) If the agency determines that there are no feasible and prudent alternatives which would avoid or satisfactorily mitigate adverse impacts and also determines that it is nevertheless in the public interest to proceed with the undertaking, it may unilaterally terminate consultation by declaring that no feasible and prudent alternative exists. The agency must give the commissioner written notice of this determination which shall include the reasons for the agency's decision and the facts supporting it.
- (e) The agency and the commissioner may agree that there are no feasible and prudent alternatives which would avoid or mitigate adverse impacts but that it is nonetheless in the public interest to proceed with the undertaking. In such event, the agency and the commissioner shall make a joint written declaration to this effect which shall include the factual basis for their decision.

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Sec. filed Sept. 23, 1981; renum. 428.11, new filed June 3, 1991 eff. June 19, 1991.

Section 428.11. Individual undertakings exempt from review

When an undertaking is exempt, the agency shall have no further obligations under these procedures.

The following undertakings shall be exempt:

- (a) an undertaking which has been certified by the Director of the Budget, pursuant to section 10 of the New York State Historic Preservation Act of 1980 (chapter 354 of the Laws of 1980), as one on which substantial time, work and money have been expended prior to the effective date of the act; and
- (b) an undertaking which is a State project necessary to prevent an immediate and imminent threat to life or property.

Sec. filed Sept. 23, 1981; renum. 428.12, new added by renum. 428.10, filed June 3, 1991 eff. June 19, 1991.

Section 428.12. Designation of categories of undertakings exempt from review

At the request of an APO, the commissioner shall consider the designation of certain categories of undertakings as being exempt from review pursuant to this Part. In order to be designated by the commissioner as an exempt category, the category of undertaking must not be likely to change the quality of historic resources. The designation of exempt categories will occur in the following manner:

- (a) The APO shall make a written request to the commissioner for designation. The request must be accompanied by the following documentation:
 - (1) a complete description of the nature of all activities that would be implemented in the particular category of undertaking; and
 - (2) a statement from the APO concerning the reason(s) for believing that activities implemented in the particular category of undertaking will not cause a change to any registered or eligible property.
- (b) If the commissioner determines that the documentation submitted is insufficient, the agency shall provide additional documentation requested by the commissioner in order for the commissioner to make a determination.
- (c) The commissioner shall consider the information provided pursuant to subdivisions (a) and (b) of this section, and shall respond whether the category of undertaking will be exempt from review pursuant to these regulations. The commissioner shall provide the reason(s) for this determination.
- (d) The commissioner shall respond to the request within 30 calendar days of receipt. If the commissioner requests that additional information be submitted pursuant to the provisions of subdivision (b) of this section, the commissioner shall respond within 30 calendar days of the receipt of the additional material.
- (e) If an agency makes a request to the commissioner for certification of an exempt category, until such time as the commissioner issues a written determination that the category is exempt the agency shall comply with the provisions of this Part as if the category of undertaking is not exempt.

Sec. filed Sept. 23, 1981; renum. 428.13, new added by renum. and amd. 428.11, filed June 3, 1991 eff. June 19, 1991.

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Section 428.13. Establishment of standards for a series of similar undertakings

(a) If an agency anticipates a series of similar undertakings that are not exempt from review pursuant to section 428.11 of this Part and are not in an exempt category designated pursuant to section 428.12, but would otherwise require individual reviews, the APO may request the establishment of overall standards for the implementation of the undertakings, eliminating the need for a review of such undertakings on a case-by-case basis. The APO shall provide:

- (1) a request for consultation with the commissioner; and
- (2) a description of the series of similar undertakings under consideration.

(b) If the commissioner concurs with the APO that establishment of standards for the purpose of eliminating the need for review on a case-by-case basis would be appropriate, then the commissioner and APO will confer further for the purpose of defining the series of undertakings and establishing mutually acceptable standards for their implementation.

(c) For as long as the standards are strictly conformed to by the agency in the implementation of each undertaking of the series of similar undertakings, the undertakings will be exempt from further review. However, if the commissioner determine that an agency is not conforming to standards established pursuant to subdivision (b) of this section, he will so notify the agency, and the agency will be required to comply with the provisions of this Part for each undertaking in the series as if it were a separate undertaking.

(d) Until such time as standards have been agreed to pursuant to subdivision (b) of this section, the agency will comply with the provisions of this Part for each undertaking in the series as if it were a separate undertaking.

Sec. filed Sept. 23, 1981; renum. 428.14, new added by renum. and amd. 428.2, filed June 3, 1991 eff. June 19, 1991.

Section 428.14. Changes different from those normally occurring

Notwithstanding the provisions of sections 428.12 and 428.13 of this Part, if an APO learns that any activity in an exempt category, or in a series of undertakings for which standards have been agreed upon, shall have a result different from the result contemplated in designating the category or establishing the standards, the agency shall review the activity as a separate undertaking pursuant to the provisions of sections 428.4 through 428.10 of this Part.

Sec. filed Sept. 23, 1981; renum. 428.15, new added by renum. and amd. 428.13, filed June 3, 1991 eff. June 19, 1991.

Section 428.15. State Board for Historic Preservation

(a) The board may review and comment in writing to the commissioner on projects of its choosing which are being reviewed by the commissioner. It may review and comment on environmental assessments or statements submitted to it pursuant to subdivision (b) of section 428.2 of this Part. In addition, the board may review and comment, as otherwise provided by law, on undertakings where it appears that any aspect of the undertaking may or will cause any change, beneficial or adverse, in the

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quality of the historic, architectural, archaeological or cultural character that qualifies an historic or cultural place for listing on the State Register.

(b) At the request of the board, the commissioner shall provide the board with the PRDS and other documentation relating to any project selected by it for review.

(c) The board may submit its comments to the commissioner for his consideration and inclusion in the record relating to the project.

Sec. filed Sept. 23, 1981; renum. 428.16, new added by renum. 428.4, filed June 3, 1991 eff. June 19, 1991.

Section 428.16. Written record;report

(a) The commissioner shall maintain a written record of all materials submitted to him, all documents and all findings and comments thereon, and shall make them available pursuant to the Freedom of Information Law and Part 463 of this Title.

(b) An APO shall provide the reasons for a determination that an undertaking is not subject to the review of the commissioner, pursuant to section 428.4 of this Part, to any interested party requesting this information in writing.

(c) The commissioner shall issue an annual report of State agency undertakings on which comment has been requested and issued, including the results of the review process and alternatives proposed or implemented by State agencies.

Sec. added by renum. 428.15, filed June 3, 1991 eff. June 19, 1991.

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Subchapter C. Collections

Part 429. Disposition of Works of Art of Historic Objects

Section 429.1. Purpose

- (a) The commissioner shall maintain a written record of all materials submitted to him, all documents and all findings and comments thereon, and shall make them available pursuant to the Freedom of Information Law and Part 463 of this Title.
- (b) An APO shall provide the reasons for a determination that an undertaking is not subject to the review of the commissioner, pursuant to section 428.4 of this Part, to any interested party requesting this information in writing.
- (c) The commissioner shall issue an annual report of State agency undertakings on which comment has been requested and issued, including the results of the review process and alternatives proposed or implemented by State agencies.

Sec. added by renum. 428.15, filed June 3, 1991 eff. June 19, 1991.

Section 429.2. Determination of need

Prior to the disposition of a work of art or historic object the commissioner shall determine based upon the recommendation of the office's division for historic preservation that it is surplus and fits one or more of the following criteria:

- (a) The work of art or historic object is not relevant to the purposes, functions or interpretive goals and policies of the office;
- (b) The work of art or historic object is one of several examples of a particular type or class of art or historic object in the custody of the office, and these other examples adequately fulfill the interpretive goals and policies of the office; or
- (c) The work of art or historic object has deteriorated beyond usefulness or has become wholly or partially comprised of material that may be hazardous to the health or safety of staff or damaging to another work of art or historic object.

Sec. added by renum. 285.2, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 430.2, filed Aug. 19, 1997 eff. Sept. 3, 1997; repealed, new added filed May 20, 2014 eff. June 4, 2014.

Section 429.3. Manner of disposition

- (a) Deteriorated or hazardous conditions. A work of art or historic object that has been determined to be surplus in accordance with the provisions of section 429.2(c) of this Part may be destroyed and disposed of in an environmentally-responsible manner subject to industry standards under a process known as witnessed destruction.
- (b) A work of art or historic object that has been determined to be surplus in accordance with the provisions of section 429.2(a) or (b) of this Part may be disposed of in the following manner, after being properly documented in accordance with the office's collections guidelines:

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(1) it shall first be offered to the New York State Museum and if the State Museum fails to accept this offer within 30 days, it shall be offered to State agencies allowed to acquire, exhibit, preserve or interpret it; and if no State agency accepts this offer within 30 days it may be:

- (i) donated to a public corporation;
- (ii) donated to a not-for-profit corporation authorized to acquire, exhibit, preserve or interpret it;
- (iii) sold for fair market value;
- (iv) sold for less than fair market value provided the office makes a written justification on a case-by-case basis that it would be in the best interests of the State; or
- (v) transferred to the Office of General Services with or without conditions for disposition either by public sale as provided in section 167 of State Finance Law or by private sale.

Sec. added by renum. 285.3, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 430.3, filed Aug. 19, 1997 eff. Sept. 3, 1997; repealed, new added filed May 20, 2014 eff. June 4, 2014.

Section 429.4. Terms and conditions

The commissioner may impose such terms or conditions upon the disposition of a work of art or historic object as the commissioner deems appropriate to encourage its conservation and preservation for the public benefit.

Sec. added by renum. 285.4, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 430.4, filed Aug. 19, 1997 eff. Sept. 3, 1997; repealed, new added filed May 20, 2014 eff. June 4, 2014.

Section 429.5. Restrictions on dispositions

- (a) A work of art or historic object shall not be disposed of under this Part within 10 years of its acquisition by the State.
- (b) A work of art or historic object that is undocumented may be disposed of under this Part between 10 and 20 years after acquisition by the State provided the disposition is first approved by a court of competent jurisdiction. The office shall attempt to notify the previous owner or heirs or legal representatives, however, this requirement shall be deemed waived if the office is unsuccessful after making reasonable efforts to locate and notify such persons.
- (c) A work of art or historic object that is undocumented may be disposed of under this Part without court approval 20 years or more after its acquisition by the State.
- (d) If disposal of a documented work of art or historic object is inconsistent with the terms or conditions of the instrument by which title was conveyed to the State, it may, nevertheless, be disposed of under this Part provided the disposition is first approved by a court of competent jurisdiction. The office shall attempt to notify the previous owner or heirs or legal representatives, however, this requirement shall be deemed waived if the office is unsuccessful after making reasonable efforts to locate and notify such persons.
- (e) A work of art or historic object determined to be surplus under section 429.2(c) of this Part may be disposed of under this Part at any time after its acquisition without court approval.

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Sec. added by renum. 285.5, Title 6, filed Sept. 1971; repealed, new filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new added by renum. 430.5, filed Aug. 19, 1997 eff. Sept. 3, 1997; repealed, new added filed May 20, 2014 eff. June 4, 2014.

Section 429.6. Proceeds from disposition

Proceeds derived from the disposition of any property from the collections of the office shall be deposited into the state park infrastructure fund established pursuant to section 97-mm of the State Finance Law and shall be used only for the acquisition of collections or for the preservation, protection and care of the collections or both, including related capital projects.

Secs. added by renum. 285.6, Title 6, filed Sept. 1971; repealed, filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new filed May 20, 2014 eff. June 4, 2014.

Section 429.7. Definitions

(a) **Deteriorated beyond usefulness** means the work of art or historic object lacks significance and is in poor physical condition or has suffered a substantial loss of integrity and has no intrinsic historic, artistic, scientific or cultural value.

(b) **Disposal** means the removal of works of art or historic objects from the office through transfer, gift or sale; or the witnessed destruction of works of art or historic objects that have deteriorated beyond usefulness or are hazardous.

(c) **Surplus** means does not support a mission of the office and does not provide any current or future public benefit.

(d) **Witnessed destruction** means two qualified staff persons from the office's division for historic preservation:

- (1) document the work of art or historic object;
- (2) make the appropriate finding or findings under section 429.2(c) of this Part;
- (3) determine the work of art or historic object cannot be reconstituted or does not merit extraordinary remediation or conservation efforts;
- (4) witness the destruction and disposal or the transfer for disposal; and
- (5) make and keep on file sworn and notarized affidavits outlining the findings, determination and process.

Secs. added by renum. 285.7, Title 6, filed Sept. 1971; repealed, filed Dec. 1, 1971; repealed, filed Aug. 10, 1972; new filed May 20, 2014 eff. June 4, 2014.

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Chapter IV. Environmental Assistance Programs

Subchapter A. Clean Water/Clean Air Bond Act of 1996

Part 430. General Program Provisions

Section 430.1. Authority and purpose

These regulations implement the Clean Water/Clean Air Bond Act of 1996, title 3 of article 56 of the Environmental Conservation Law. The adoption of this act represents the commitment of the Legislature, the Governor and the people of the State of New York to affirm New York's rightful place as a national leader in environmental protection and economic growth. Title 3 authorizes the expenditure of funds to support a wide range of park and heritage areas projects which contribute to the public's enjoyment and understanding of water and historic preservation projects which contribute to our cultural heritage and the environment.

Sec. filed Jan. 10, 1989; renum. 429.1, new filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 430.2. Definition of terms

Whenever used in this Subchapter, the following terms shall mean and include:

- (a) **Commissioner** shall mean the Commissioner of Parks, Recreation and Historic Preservation.
- (b) **Cost** shall mean the cost of an approved project, which shall include appraisal, surveying, engineering and architectural services, plans and specifications, consultant and legal services, construction and other direct expenses incident to such project less any Federal or State funds, other than those provided pursuant to this Title, for such project received or to be received.
- (c) **Federal assistance** shall mean funds available, other than by loan, from the Federal government, either directly or through allocation by the State for construction or program purposes pursuant to any Federal law or program.
- (d) **Governing body** shall mean:
 - (1) in the case of a county outside of the city of New York, the county board of supervisors or other elective governing body;
 - (2) in the case of a city or village, the local legislative body thereof, as the term is defined in the Municipal Home Rule Law;
 - (3) in the case of a town, the town board;
 - (4) in the case of a school district, the board of education thereof;
 - (5) in the case of a supervisory district, the board of cooperative educational services thereof;
 - (6) in the case of a public benefit corporation, the board of directors, members or trustees thereof;
 - (7) in the case of a public authority, the governing board of directors, members or trustees thereof;
 - (8) in the case of a not-for-profit corporation, the board of directors thereof or such other body designated in the certificate of incorporation to manage the corporation; and
 - (9) in the case of an Indian tribe, any governing body recognized by the United States or the State of New York.

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- (e) **Heritage area project** shall mean a project undertaken by or through a municipality, public benefit corporation or a not-for-profit corporation identified in a management plan approved by the commissioner in accordance with section 35.05 of the Parks, Recreation and Historic Preservation Law. Heritage area projects shall develop, expand or enhance public access to water bodies, promote water based recreation, or enhance the natural, cultural or historic aspects of water bodies.
- (f) **Historic preservation project** shall mean a project undertaken by a municipality or a not-for-profit corporation to acquire, improve, restore or rehabilitate property listed on the State or National Register of Historic Places, including, but not limited to, projects at zoos, botanical gardens and aquaria, to protect the historic, cultural, archeological or architectural significance thereof.
- (g) **Match (matching share)** shall mean the portion of the total cost of a project which the project sponsor must provide. The match shall be no less than the amount of State assistance provided.
- (h) **Municipality** shall mean a local public authority or public benefit corporation, a county, city, town, village, school district, supervisory district, district corporation, improvement district within a county, city, town or village, or Indian nation or tribe recognized by the State or the United States with a reservation wholly or partly within the boundaries of New York State, or any combination thereof.
- (i) **National Register of Historic Places** shall mean the list of districts, sites, buildings, structures or objects significant in American history, architecture, archaeology, engineering or culture established in the National Historic Preservation Act of 1966 as amended (16 USC §§ 470 **et seq.**).
- (j) **Not-for-profit corporation** shall mean a corporation formed pursuant to or subject to the Not-for-Profit Corporation Law and qualified for tax-exempt status under the Federal Internal Revenue Code.
- (k) **Office** shall mean the Office of Parks, Recreation and Historic Preservation.
- (l) **Park project** shall mean a project undertaken by a municipality, a State agency, public benefit corporation, public authority, or a not-for-profit corporation for the acquisition, development or improvement of parks, preserves, beaches, shorefronts, recreational sites and facilities including construction of structures, roads and parking facilities. Park projects shall develop, expand or enhance public access to water bodies, promote water based recreation, or enhance the natural, cultural, or historic aspects of water bodies.
- (m) **Project applicant** or **applicant** shall mean a municipality or not-for-profit corporation, or in the case of a park project, a State agency, public benefit corporation or public authority, which applies for State assistance pursuant to this Subchapter.
- (n) **Project sponsor** or **sponsor** shall mean a municipality or not-for-profit corporation, or in the case of a park project, a State agency, public benefit corporation or public authority, which has been awarded State assistance and, pursuant to contract, will undertake and assume responsibility for a project authorized by this Subchapter.
- (o) **Public benefit corporation** shall generally mean a corporation organized or created by a unit of government to construct or operate a public improvement, the profits from which inure to the benefit of the State or the people thereof, or to perform some other function on behalf of the establishing body.
- (p) **Secretary of the Interior's Standards** shall mean the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as set out in the **Federal Register**, volume 48, number 190, pages 44716 through 44742 (September 29, 1983). The office previously incorporated the

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Secretary of the Interior's Standards by reference in rules implementing the Environmental Quality Bond Act of 1986 (see 9 NYCRR 435.2[n]). The Secretary of the Interior's Standards were filed with the Secretary of State on April 13, 1987. They are available for inspection and copying at the Counsel's Office, Office of Parks, Recreation and Historic Preservation, Agency Building No. 1, Governor Nelson A. Rockefeller Empire State Plaza, Albany, NY 12238; the 11 regional offices of the Office of Parks, Recreation and Historic Preservation; or at the Albany office of the New York State Department of State. As applied to projects undertaken under this Subchapter, the commissioner's interpretation of the Secretary of the Interior's Standards shall be controlling.

(q) **State assistance payment** shall mean the payment of monies by the State for projects authorized by title 3 of the Clean Water/Clean Air Bond Act of 1996.

(r) **State Register of Historic Places** shall mean the list of districts, sites, buildings, structures or objects significant in the architecture, archeology, engineering or culture of New York State, its communities or the nation established by section 14.07 of the Parks, Recreation and Historic Preservation Law.

(s) **Water bodies** shall mean lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial limits of the State of New York and all other bodies of surface or underground water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction, except private waters which do not provide public access.

Sec. filed Jan. 10, 1989; renum. 429.2, new filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 430.3. Allocation of funds

The distribution of funds for park, historic preservation and heritage area projects shall be requested annually by the office for inclusion in the executive budget and action by the New York State Legislature.

(a) The commissioner shall determine the types of projects to be funded from the allocation for each fiscal year based on factors which shall include, but need not be limited to:

- (1) consistency with the requirements and intent of the Clean Water/Clean Air Bond Act of 1996;
- (2) demand as evidenced by number and type of applications previously received for this and other grant programs administered by the office;
- (3) the Open Space Conservation Plan, the Statewide Comprehensive Outdoor Recreation Plan, coastal zone management plans, local waterfront revitalization plans, maritime area plans and other applicable planning documents;
- (4) public comments and requests received by the office or other appropriate evidence of need;
- (5) the availability of other programs and funding resources;
- (6) allocations for various types of projects in previous funding cycles;
- (7) State and Federal mandates;
- (8) emergencies or disasters; and
- (9) the recommendations of the Environmental Assistance Advisory Task Force established by section 430.4(c) of this Part.

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(b) Consistent with the number of applications and the funds appropriated, the commissioner may limit the maximum amount of State assistance available for any one project.

Sec. filed Jan. 10, 1989; renum. 429.3, new filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 430.4. Public participation

(a) *Program reports.* The office shall participate in and contribute to such reports as may be prepared in relation to the status of the Clean Water/Clean Air Bond Act Program.

(b) *Public workshops.* Prior to the announcement of the commissioner's annual programmatic and funding priorities pursuant to section 430.3 of this Part and the initiation of each annual grant cycle, the office may conduct one or more public workshops to identify public concerns and recommended improvements in program administration, regulations and ranking or review procedures. A summary of input received at the workshop(s) will be made available to participants and other interested parties and will be evaluated as revisions to these regulations are considered by the office.

(c) *Environmental Assistance Advisory Task Force.*

(1) The Environmental Assistance Task Force established by sections 435.8(f) and 439.4(b) of this Title is continued and shall also encompass the Clean Water/Clean Air Bond Act of 1996. The task force shall consist of eight members representing the following interests: conservation, environment, preservation, recreation, heritage areas and municipal parks. Members shall be appointed by the commissioner and serve at the commissioner's discretion.

(2) The task force shall meet at the direction of the commissioner but in no event shall it meet less than once each year.

(3) The chairperson of the task force shall be designated from among its members by the commissioner.

(4) It shall be the responsibility of the task force to review any program reports issued pursuant to subdivision (a) of this section, to attend the public workshop conducted by the office pursuant to subdivision (b) of this section and to make recommendations to the commissioner regarding the implementation of title 3 of article 56 of the Environmental Conservation Law. Such recommendations may address topics which shall include, but not be limited to, project eligibility criteria, application procedures, project rating and ranking criteria, approval guidelines, revisions to regulations, criteria for funding distribution, coordination with title 9 of article 54 of the Environmental Conservation Law and Parts 439-443 of this Title, and additional public participation in the implementation of these regulations which the commissioner may wish to seek. It is understood that the purpose of the Environmental Assistance Advisory Task Force is to make recommendations regarding the overall implementation of title 3 of article 56 of the Environmental Conservation Law and this Title; not to review or make recommendations relating to specific project applications.

(d) *Changes to rules and regulations.* Substantive changes to the regulations or the ranking and review procedures will be subject to review under the State Environmental Quality Review Act.

Sec. filed Jan. 10, 1989; renum. 429.4, new filed Aug. 19, 1997 eff. Sept. 3, 1997.

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Part 431. Provisions Relating to All Projects

Section 431.1. General project requirements

Approved projects will be financed with State general obligation bond proceeds, and therefore, must meet legal requirements for tax exempt bond financing, including, but not limited to, a determination that they are capital projects. In addition, in order to be eligible for State assistance under this Part, the entire project must:

- (a) have a probable life of no less than 23 years from the date on which the final payment on the project is issued by the State Comptroller to assure compliance with the requirements of section 61 of the State Finance Law;
- (b) be recommended to the commissioner by the governing body of the project sponsor, except that in the event the project sponsor is a State agency, public authority or public benefit corporation, the project must be recommended by the head of that agency, authority or corporation; and
- (c) be located within the physical boundaries of the State of New York.

*Sec. added by renum. 290.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997
eff. Sept. 3, 1997.*

Section 431.2. Not-for-profit corporation requirements

A not-for-profit corporation must demonstrate to the satisfaction of the office that it is capable of operating and maintaining the completed project for the benefit of the public. The following documents will be required to verify a corporation's not-for-profit, tax-exempt status and provide evidence of such capability:

- (a) a copy of the corporation's certificate of incorporation, by-laws, amendments and other operative organizational documents;
- (b) a copy of a determination letter from the United States Internal Revenue Service verifying the corporation's tax-exempt status;
- (c) verification of charities registration;
- (d) financial statements, for the corporation's previous three fiscal years, audited when available, showing all expenditures and sources of income; and
- (e) copies of IRS form 990 for the last complete fiscal year.

*Sec. added by renum. 290.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997
eff. Sept. 3, 1997.*

Section 431.3. Project sponsor's interest in real property for development projects

If the project sponsor is not the sole owner of the unencumbered fee of land on which a development project will be undertaken, the following documents will be required to qualify the project sponsor's interest in the property for State assistance:

- (a) the agreement of the owner to execute the project agreement and public benefit agreement as guarantor; and
- (b) a copy of a lease, easement, contract or memorandum of understanding establishing the project sponsor's interest in the property. Such document shall:

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- (1) be of sufficient duration and stability to assure that the project sponsor will be able to comply with this Subchapter; and
- (2) contain terms and conditions sufficient to ensure a period of public use of at least 23 years from the date on which the final payment on the project is issued by the State Comptroller.

Sec. filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 431.4. Funding provisions

- (a) State assistance towards the cost of a project shall not exceed 50 percent of the approved project cost. This limitation does not apply to municipal park projects for which a State agency, public benefit corporation or public authority is the project sponsor.
- (b) For determining the amount of State assistance available for the project, the cost of a project shall be the amount approved by the commissioner. The State shall not be responsible for any increases in the cost of the project.
- (c) State assistance will be available on a reimbursement basis. Project sponsors shall submit periodic invoices and requests for payment as work is performed and costs incurred. The amount of each State assistance payment will be in the same proportion as the State assistance bears to total project cost.
- (d) A project sponsor may request an advance payment in an amount not to exceed 25 percent of the total amount of State assistance for the project or the amount of the sponsor's match which can be documented at the time of the request, whichever is smaller.

Sec. filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 431.5. Project sponsor's match

The project sponsor's match may consist of the following:

- (a) the fair market value in the project location of material which is procured by purchase or donation during the project term or within one year prior to the application deadline date;
- (b) the fair market value in the project location of equipment which is procured by purchase or donation during the project term;
- (c) rental expenses incurred at customary rental rates for the use of equipment in development and construction during the project term. The donated value at customary rental rate of equipment will qualify if used during the project term;
- (d) the cost of labor employed in project development and construction during the project term;
- (e) the cost of services, including professional services, or the value of donated services provided during the project term or within one year prior to the application deadline date; and
- (f) the fair market value of real property or an interest in real property acquired by purchase or donation during the project term or within one year prior to the application deadline date. The value of previously owned lands converted from unrelated use to project purposes may qualify as the sponsor's match only if such conversion occurred during the project term or within one year prior to the application deadline date. The value of real property shall be established by an appraisal in accordance with section 431.6 of this Part.

Sec. filed Aug. 19, 1997 eff. Sept. 3, 1997.

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Section 431.6. Appraisals

Appraisals shall be prepared according to the following requirements:

- (a) Appraisals shall be prepared by a qualified appraiser in accordance with the guidelines of the office.
- (b) Appraisers shall either be licensed or certified by the State of New York or appear on the New York State Department of Transportation's list of qualified appraisers.
- (c) Appraisals must be conducted no more than 12 months prior to the acquisition of the property by the project sponsor.
- (d) If the property is valued at \$300,000 or more, two appraisals must be obtained.
- (e) If the property is valued at less than \$300,000, one appraisal is required.
- (f) If the property is valued at less than \$25,000, a shortform appraisal may be used at the discretion of the office.
- (g) The office may change appraisal requirements to conform to any guidelines which may be issued by the State Comptroller.

Sec. filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 431.7. Application information and procedures

- (a) *Outreach and technical services.* The office will provide outreach and technical services to assist project applicants in preparing applications that are complete and which address the commissioner's annual funding priorities. Applicants may contact the appropriate representative of the office to schedule a pre-application conference.
- (b) *Performance timelines.*
 - (1) The office and the project sponsor will develop specific performance timelines for inclusion in the project agreement that are feasible for the project sponsor and acceptable to the office. Timelines will address the steps necessary to initiate, progress or complete a project, including raising the project sponsor's match; submitting appraisals, plans and specifications; obtaining permits or other approvals; submitting documents necessary to verify compliance with article 15-A of the Executive Law; or submitting interim and final project reports.
 - (2) Timelines must provide that a development project will be initiated no later than six months after a project agreement is executed and approved by the State Comptroller, and completed no later than two years subsequent to such approval. Acquisitions are required to be completed within one year of the State Comptroller's approval of the project agreement. The office may vary these timelines when it is deemed appropriate for a particular project.
 - (3) The office, in its discretion, may cancel projects which do not adhere to mutually established timelines. Sponsors of projects which are so cancelled may reapply in the next appropriate funding cycle.
- (c) *Forms.* Applications shall be made on forms to be provided by the office. Forms may be obtained from the headquarters of any of the office's 11 park regions or, for projects within the Catskill or Adirondack Parks, the Department of Environmental Conservation.
- (d) *Application documentation.* The application shall include the following minimum documentation:
 - (1) general applicant information;

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- (2) a narrative description of the proposed project, its expected public benefit, the applicant's commitment to maintaining or operating the project and how the project conforms to the commissioner's funding priority for the cycle in which the application is submitted;
 - (3) a budget detailing the total cost of the project, and sources of the applicant's match;
 - (4) the agreement of any co-owner of the land and of the holder of any mortgage or other lien on the project site to subordinate that interest to assure compliance with the public benefit agreement required by sections 431.10(b)(8), 432.4, 433.5 and 434.4 of this Title;
 - (5) anticipated performance timelines for initiating and completing the project;
 - (6) for projects other than acquisitions, either the deed to the property or documentation of the project sponsor's interest in the project site as set forth in section 431.3 of this Part, together with an affidavit of title (if the applicant is a not-for-profit corporation) or an opinion letter of counsel (if a municipality);
 - (7) for projects where the project sponsor is a municipality or a State agency, public authority or public benefit corporation, environmental information including a description of existing natural and cultural resources, an evaluation of the project's environmental impact and documentation showing compliance with the State Environmental Quality Review Act (SEQRA); for projects where the project sponsor is a not-for-profit corporation, environmental information including a description of existing natural and cultural resources, an evaluation of the project's environmental impact and such other information as the office shall require to make a final SEQRA determination;
 - (8) a copy of a resolution or other document of the governing body of the project sponsor, or if the project sponsor is a State agency, public authority or public benefit corporation, a letter from its head, recommending the application to the commissioner and authorizing an official of the project sponsor to execute documents necessary to the project;
 - (9) program specific information required by sections 432.2, 433.3 and 434.2 of this Title respectively; and
 - (10) such other information as may be required by the commissioner in order to accommodate requirements arising from annual program priorities.
- (e) The complete application shall be submitted to the appropriate regional park office of the office listed in section 461.6 of this Title. For projects within the Catskill or Adirondack Parks, the application should be submitted to the Department of Environmental Conservation, Division of Lands and Forests, 50 Wolf Road, Albany, NY 12233. Applications should be submitted as early as possible but in no event later than the deadline specified in the announcement and application for any given funding cycle. Applications received after the specified deadline will not be accepted.

Sec. filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 431.8. Rating criteria

- (a) All applications will be rated in accordance with the rating system established by the commissioner. Criteria used to rate projects will generally include the following:
- (1) the extent to which the project site has suffered from physical deterioration, decay, vandalism, neglect or disinvestment or may be threatened with closure, demolition or inappropriate development;

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- (2) the relationship of the project to a local, regional and/or statewide planning document or other assessment of need;
 - (3) the extent to which the project protects, enhances or interprets natural, cultural or historic resources;
 - (4) the ability of the project sponsor to initiate and complete the project on a timely basis and operate or maintain the completed project; and
 - (5) program-specific factors established for park, historic preservation and heritage area projects and found in sections 432.3, 433.4 and 434.3 of this Title respectively.
- (b) In addition, ratings shall take into account annual programmatic and funding priorities as established by the commissioner pursuant to section 430.3 of this Title. Specific rating factors for each grant cycle and their relative weights will be published in the *State Register* and made available with project applications.

Sec. filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 431.9. Review procedures

- (a) Within each program category, applications will be rated against applications for similar projects.
- (b) Applications will receive staff review, including review at the regional level. The final decision on all applications will be made by the commissioner.
- (c) In addition to the rating criteria listed in section 431.8 of this Part, the commissioner may consider the following factors in determining which projects to fund:
 - (1) the geographic distribution of other fundable projects in any given application cycle;
 - (2) the extent to which the project will maximize the use and accessibility of a facility;
 - (3) special engineering, environmental and historic preservation concerns or benefits; and
 - (4) the past performance, if any, of the project sponsor on previous projects, including its compliance with equal employment opportunity and minority- and women-owned business enterprise programs.
- (d) The office will use its best efforts to review applications and announce the commissioner's funding decision within 120 days of the announced application deadline.

Sec. filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 431.10. Project agreements

- (a) All projects must be undertaken pursuant to a project agreement with the office.
- (b) All project agreements will require:
 - (1) a project term which shall commence on the date of the letter advising a project sponsor that its application has been selected for State assistance;
 - (2) performance standards, reporting requirements and timelines for initiating and completing project elements;
 - (3) that all contracts be publicly bid in accordance with section 103 of the General Municipal Law;
 - (4) that the project sponsor comply with the provisions of article 15-A of the Executive Law regarding equal employment opportunities for women and minorities and contracting opportunities

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for minority- and women business enterprises, as well as the Omnibus Procurement Act regarding participation of New York State businesses;

(5) that the project be accessible in accordance with the New York State Uniform Fire Prevention and Building Code and the Americans with Disabilities Act Guidelines (ADAAG—appendix A to 28 CFR part 36). The project sponsor is responsible for determining which of these standards, guidelines or codes apply to the project when there is a discrepancy with regard to a particular accessibility requirement;

(6) that changes will not be made to the project without the approval of the office. The office may re-rate a project if the sponsor proposes any changes and may disapprove changes which would cause the revised project rating to fall below the level at which it would have received funding;

(7) that a project sign or other suitable acknowledgment in a form to be determined by the office be installed on the property;

(8) provisions which assure that the expenditure of public funds on the project will result in a public benefit. Such provisions may include:

(i) a requirement that the public have reasonable access to or use of the project as specified by the office;

(ii) a requirement that the project sponsor not alter, demolish, sell, lease or otherwise convey the project, in whole or in part, without the prior written approval of the commissioner;

(iii) a requirement that all plans for restoration, rehabilitation, improvement, demolition or other physical change to the completed project be approved in writing by the office before work commences; or

(iv) program or project specific requirements which the office deems necessary.

Sec. filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 431.11. Maintenance of effort

Each recipient of funds made available under this Subchapter may be required to demonstrate to the satisfaction of the commissioner that the project will result in a net gain in public park, conservation, recreation, historic preservation or heritage area facilities.

Sec. filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 431.12. Alternative grant awards

In a given funding cycle, applications which rate highly but for which insufficient funds are available may be reserved as alternate grant awards. These applications will be retained by the office and may be used to select alternate projects to fund in the event that a project is cancelled by the office, abandoned by its sponsor or funds become otherwise available.

Sec. filed Aug. 19, 1997 eff. Sept. 3, 1997.

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Part 432. Park Projects

Section 432.1. Eligibility criteria

(a) Eligible projects shall included the acquisition, improvement, development, preservation, restoration or rehabilitation of lands, waters or structures to develop, expand or enhance public access to water bodies, promote water based recreation or enhance the natural, cultural or historic aspects of water bodies.

(b) Eligible acquisition projects shall include, but are not limited to, acquisition during the project term or within one year prior to the application deadline date of a permanent easement in or fee title to lands which:

- (1) are appropriate for use as parks, preserves, beaches, shorefronts, waterway access and recreational sites and facilities;
- (2) comprise buffer zones or viewsheds if, in the opinion of the office, the acquisition is necessary to enhance or protect the value of existing recreational or environmental resources; or
- (3) contain natural, scenic or open space resources that are unique, rare, or of statewide or regional significance.

(c) Eligible development projects include but are not limited to:

- (1) facilities for swimming, boating, fishing, picnicking and camping;
- (2) playing fields, playgrounds, trails, greenways;
- (3) interpretive and educational facilities such as arboretums, botanical gardens, zoos, aquaria, and nature interpretive facilities; and
- (4) infrastructure and ancillary facilities, provided that such facilities support the operation of the resource at which they are located.

*Sec. added by renum. 291.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997
eff. Sept. 3, 1997.*

Section 432.2. Supplemental application requirements

In addition to the general application requirements listed in section 431.7 of this Title, applications under this Part shall contain the following additional information:

(a) a project site plan and a map which clearly shows the location of the proposed project within the municipality;

(b) photographs or images which show the current condition of the project site as directed by the office; and

(c) for projects where the sponsor is a not-for-profit corporation, the approval of the governing body of each municipality in which the project will be located.

*Sec. added by renum. 291.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997
eff. Sept. 3, 1997.*

Section 432.3. Suuplemental rating criteria

In addition to the criteria listed in section 431.8 of this Title, the following criteria will be considered in rating park projects:

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- (a) the degree to which the project will develop, expand or enhance public access to water bodies, promote water based recreation or enhance the natural, cultural or historic aspects of water bodies;
- (b) the degree to which local recreation, conservation or open space deficiencies will be addressed by the project; and
- (c) the degree to which the project will primarily serve either a densely populated area where recreational opportunities have sustained physical deterioration, decay, neglect or disinvestment or an area where a substantial proportion of the population is of low income or otherwise disadvantaged and underserved with respect to existing recreational opportunities.

Sec. added by renum. 291.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 432.4. Public benefit provision

To assure that a sufficient public benefit shall accrue from the expenditure of public funds for the project, the following provisions shall be included in the project agreement as appropriate:

- (a) For projects undertaken by municipalities:
 - (1) a provision that no rule or regulation of a municipality shall restrict the use of or access to a project by non-residents of the municipality or impose a fee for such use without the prior written approval of the commissioner; and
 - (2) a requirement that facilities acquired or developed by a municipality pursuant to this Part shall not be sold, disposed of or used for other than public park purposes without the prior written approval of the commissioner and the express authority of an act of the Legislature as provided in section 432.5 of this Part.
- (b) For acquisition projects undertaken by not-for-profit corporations:
 - (1) a requirement that the project sponsor make and keep the project accessible to the public unless the commissioner determines that public accessibility would be detrimental to the land or any natural or historic resources contained therein;
 - (2) a requirement that the project sponsor shall not sell, lease, exchange or donate the project to any entity other than a State agency, local government or other qualifying tax-exempt not-for-profit corporation which will operate and maintain the project for recreation or conservation purposes consistent with title 3 of article 56 of the Environmental Conservation Law and approved by the commissioner and that any such sale, lease, exchange or donation or other disposal shall require the express authorization of an act of the Legislature; and
 - (3) a requirement that the project sponsor execute and convey to the State, at no charge, a conservation easement pursuant to title 3 of article 49 of the Environmental Conservation Law over the land or facility being acquired by the sponsor.

Sec. added by renum. 291.4, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 432.5. Alienation of park projects

- (a) Project boundary map.

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(1) Upon completion of a park project, the project sponsor shall submit a dated and signed project boundary map showing the location of the project and all related support facilities acquired or developed pursuant to this Part. The map shall also indicate all structures, facilities and encroachments on the property which are used for non-park purposes, such as power lines, easements, school buildings or clubhouses.

(2) In cases where the project is a discrete portion of the park, the project boundary map shall include as much of the park as would be required for the project to be operated by itself, including all support facilities such as roadways, parking lots, comfort stations and landscaping, except that utilities for the facility may be provided from elsewhere in the park.

(3) The office shall review the proposed project boundary map to determine its compliance with this section and any guidelines of the office and shall notify the project sponsor of its determination. The project boundary map shall define the public park facilities for which State assistance was provided pursuant to this Subchapter.

(b) *Alienation mitigation.* The act of the Legislature authorizing the alienation of facilities acquired or developed by a municipality pursuant to this Part shall require the substitution of other lands and any other requirements which the commissioner deems appropriate.

(c) *Substitute property.* Substitute property must meet the following criteria to the satisfaction of the commissioner:

(1) the fair market value of the substitute property must be no less than the fair market value of the property being alienated;

(2) the substitute property must be of reasonably equivalent usefulness and location to the lands being alienated; and

(3) the substitute property must be of equal environmental value and usefulness to the lands being alienated. A determination of equivalent environmental value and usefulness will include an evaluation of how the substitute parcel develops, expands or enhances public access to water bodies, promotes water based recreation, or enhances the natural, cultural or historic aspects of water bodies.

(d) *Leasing of State-funded facilities.* The lease of facilities acquired or developed pursuant to this Subchapter is an alienation and requires the express authority of an act of the Legislature. However, substitution of other lands is not necessary if the lease provides for the following:

(1) the leased premises must be operated as a public park and/or recreational facility; that is, all programs and activities must be offered to all members of the public on the same terms and conditions which shall be subject to the approval of the office;

(2) the leased premises must be identified in signage, public records and publicity as a public park and/or recreational facility;

(3) at any time the facility ceases to be operated as a public park and/or recreational facility, the lease will terminate and the facility shall immediately revert to the project sponsor; and

(4) all revenues received by the project sponsor from the lease of the facility shall be used for the acquisition of other park facilities or capital improvements to municipal park and recreational facilities and shall not supplant monies otherwise appropriated. The project sponsor shall submit to

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the office certified copies of budget documents showing its anticipated expenditures for capital park purposes from all revenue sources with the use of the lease proceeds as a segregated item.

(e) *Granting of an easement over project lands.* If an act of the Legislature grants an easement over parkland for utility purposes and requires that the lands continue to be used for public park and recreation purposes, substitute property will not be required.

(f) *Review of alienation proposals by the office.*

(1) The project sponsor shall submit to the office a proposal pertaining to the alienation of parklands receiving State assistance under this Part as early in the planning process as possible.

(2) The material submitted shall include:

(i) complete parkland alienation information as required by the office;

(ii) a map showing the location of the parkland being alienated and the proposed substitute property;

(iii) appraisals of both the property being alienated and the substitute property. The qualifications of the appraiser and the format of the appraisals shall be in accordance with section 431.6 of this Title;

(iv) documentation establishing the project sponsor's compliance with the State Environmental Quality Review Act;

(v) a complete summary of public input supporting or opposing both the decision to alienate and the adequacy of the substitute property; and

(vi) additional material such as the proposed deed for the substitute property, plans and drawings of developed or proposed facilities or an archeological survey.

(3) The office will review the proposal and provide its comments and recommendation to the project sponsor along with such additional information as it deems relevant in sufficient time for the proposal to be considered by the Legislature at its next regular session.

(g) *Legislative approval.* It shall be the responsibility of the project sponsor to contact its legislative representatives with regard to the introduction of legislation authorizing the alienation of parklands. The project sponsor shall give such legislative representatives the comments and recommendations of the office.

(h) *Revised project boundary map.* If the project sponsor receives legislative approval for the alienation, it shall file a revised project boundary map with the office showing the corrected boundaries of the project and including any substitute property. Upon approval of the alienation all restrictions and requirements pertaining to the project shall apply to the substitute property.

*Sec. added by renum. 291.5, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997
eff. Sept. 3, 1997.*

Part 433. Historic Preservation Projects

Section 433.1. Eligibility criteria

(a) A property shall be eligible for grant assistance if, prior to the award of the grant, it is:

(1) individually listed on the State or National Register of Historic Places; or

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(2) located within a historic district which is listed on the State or National Register of Historic Places and which is identified in the district nomination form as contributing to the significance of the district. If the nomination does not clearly identify the property as contributing, the commissioner shall make this determination.

(b) Eligible projects include:

(1) Acquisition. The acquisition during the project term or within one year prior to the application deadline date of a permanent easement in or fee title to all or part of a property listed on the State or National Register or of buffer zones, viewsheds or other ancillary property if, in the opinion of the office, the acquisition is necessary to protect the significance of the listed property.

(2) Development. Improvement, restoration, preservation, rehabilitation, protection, reconstruction, or archaeological surveys. All work must conform to the Secretary of the Interior's Standards.

(c) Costs incurred to plan and implement an acquisition or development project are also eligible for funding. Examples of such costs include:

(1) predevelopment plans, specifications, cost estimates and other contract documents;

(2) planning or feasibility studies;

(3) historic structure reports, cultural landscape reports, archaeological, architectural or historic research reports;

(4) project completion or archaeological investigation reports, audit reports and project signs.

Sec. added by renum 292.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 433.2. Archeological development projects

(a) All identification, evaluation, curation, interpretation and protection activities shall be conducted under the supervision of a professional archaeologist meeting the requirements of the office. Disturbance of archaeological sites will be kept to a minimum and funded only if one of the following criteria is met:

(1) data recovery is necessary to determine the presence of significant archaeological deposits that might be disturbed by a project; or

(2) data recovery and/or other mitigative measures are necessary because a development project will unavoidably disturb an area that has archaeological value; or

(3) testing is necessary to design and perform an approved development activity which is dependent upon information that can be obtained only through archaeological investigation; or

(4) public interpretation of a property is dependent upon the information that can only be obtained by archaeological testing.

(b) Whenever archaeological activities are funded under this Subchapter, appropriate research notes, maps, sketches, photographs, profiles, and field notes recording information about the archaeological resources and the methods and techniques employed must be submitted to the office together with a written report of the investigation. All information and reports must meet the professional requirements of the office for archaeological documentation.

(c) Archaeological collections and accompanying data and records must be curated in a repository meeting the requirements of the office.

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Sec. added by renum. 292.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 433.3. Supplemental application requirements

In addition to the general application requirements found in section 431.7 of this Title, applications under this Part shall include the following additional information:

- (a) the location of the property shown on a map as directed by the office;
- (b) photographs or images showing the existing condition of the property as directed by the office; and
- (c) a narrative description of the property's historic significance.

Sec. added by renum. 292.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 433.4. Supplemental rating criteria

In addition to the criteria listed in section 431.8 of this Title, the following criteria will be considered in rating historic preservation projects:

- (a) this historic significance of the property in the national, State or local context; and
- (b) the degree to which the project will increase public stewardship or awareness of historic resources.

Sec. added by renum 292.4, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 433.5. Public benefit provision

In order to assure the preservation and maintenance of projects funded under this Part and to assure that a public benefit accrues from the expenditure of public funds, the office will require the project sponsor to convey a preservation or maintenance restriction, easement or other protective agreement to the office or such other entity as the office deems appropriate.

Sec. added by renum 292.5, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997 eff. Sept. 3, 1997.

Part 434. Heritage Area Projects

Section 434.1. Eligibility criteria

For the purposes of this Part, the terms *heritage area* and *urban cultural park* shall be deemed to have the same meaning.

- (a) Projects, sites or facilities must be identified in a heritage area or urban cultural park management plan which has been approved by the commissioner in accordance with section 35.05 of the Parks, Recreation and Historic Preservation Law.
- (b) Heritage area projects may be for the acquisition or development of historically or culturally significant sites, districts, buildings, structures or natural features to develop, expand or enhance public access to water bodies, promote water based recreation or enhance the natural, cultural or historic aspects of water bodies.
- (c) Eligible acquisition projects include the acquisition during the project term or within one year prior to the application deadline date of a permanent easement in or fee title to all or part of an historically or

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culturally significant site, district, building, structure, facility or natural feature identified in a heritage area or urban cultural park management plan.

(d) Eligible development projects include, but are not limited to:

- (1) improvement, restoration, preservation, rehabilitation, reconstruction, or protection of sites, districts, buildings, structures, facilities or natural resources in accordance with the Secretary of the Interior's Standards;
- (2) new construction which complies with the Secretary of the Interior's Standards;
- (3) infrastructure and ancillary facilities, provided that such facilities support the operation of the project;
- (4) development and installation of interpretive, recreational or theme-related facilities, areas, greenways, trail systems, exhibits and signage and associated projects; and
- (5) development of buildings, facilities, sites and associated projects which address the need for multi-lingual or multi-cultural accommodation in the implementation of a project.

(e) Costs incurred to plan and implement a development or acquisition project are also eligible for funding. Examples of such costs include:

- (1) preparation of predevelopment plans, specifications, cost estimates and other contract documents;
- (2) feasibility studies, including planning and economic development studies;
- (3) historic structure reports, cultural landscape reports, archaeological, architectural or historic research reports; and
- (4) project completion or archaeological investigation reports, audit reports and project signs.

Sec. added by renum. 293.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 434.2. Supplemental application requirements

In addition to the general application requirements listed in section 431.7 of this Title, applications under this Part shall include the following additional information:

- (a) a narrative description of the project's significance in the context of existing heritage area resources and how it will develop, expand or enhance public access to water bodies, promote water based recreation or enhance the natural, cultural or historic aspects of water bodies;
- (b) the approval/endorsement of the project by the local heritage area management entity if it is not the project sponsor; and
- (c) the commitment of the local heritage area management entity either to operate or to cause to be operated any public facilities which are developed as part of a project.

Sec. added by renum. 293.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 434.3. Supplemental rating criteria

(a) In addition to the criteria found in section 431.8 of this Title, the following criteria will be used to rate heritage area projects:

- (b) the degree to which the project will develop, expand or enhance public access to water bodies, promote water based recreation or enhance the natural, cultural or historic aspects of water bodies;

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- (c) the degree to which the project contributes to the preservation, restoration or enhancement of natural, historic or cultural resources related to the local heritage area's interpretive theme(s) as established in its approved management plan;
- (d) the degree to which the project enhances the function and visual quality of the local heritage area;
- (e) the degree to which the project directly serves or benefits heritage area visitors and users; and
- (f) the impact of the facility on the local economy or its contribution to established economic development plans.

*Sec. added by renum. 293.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997
eff. Sept. 3, 1997.*

Section 434.4. Public benefit provisions

In order to assure the preservation and maintenance of projects funded under this Part, and to assure that a public benefit accrues from the expenditure of public funds for the project, the following provisions shall be included in the project agreement as appropriate:

- (a) the project sponsor shall not prohibit the use of or access to the project to nonresidents of the heritage area or impose a fee for any use of and access to the project without the prior written approval of the commissioner;
- (b) the project sponsor will be required to convey a preservation or maintenance restriction, easement or other protective agreement to the office or other such entity as the office deems appropriate; and
- (c) where real property is acquired for park, conservation, open space or recreation purposes, the project agreement shall include the provisions of section 432.4(a) of this Title when the project sponsor is a municipality and the provisions of section 432.4(b) of this Title when the project sponsor is a not-for-profit corporation.

*Sec. added by renum. 293.4, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed Aug. 19, 1997
eff. Sept. 3, 1997.*

Part 435. General Provisions

Section 435.1. Authority and purpose

These regulations implement title 9 of article 52 of the Environmental Conservation Law which implements the Environmental Quality Bond Act of 1986. The act provides for the Commissioner of Parks, Recreation and Historic Preservation to be responsible for the administration of a program of State assistance for State, municipal, and not-for-profit historic preservation projects, municipal park projects and urban cultural park projects.

*Sec. added by renum. 294.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 13, 1987
eff. May 4, 1987.*

Section 435.2. Definition of terms

Whenever used in this Subchapter, the following terms shall mean and include:

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- (a) **Acquisition** shall mean acquiring title or a lesser interest in real property including development rights, an easement or a remainder interest. For purposes of Part 436 of this Title, **acquisition** shall also include leasehold.
- (b) **Certified minority- or women-owned business enterprise** shall mean a business which has been verified as a minority- or women-owned business enterprise by the director of the Governor's Office of Minority and Women's Business Development pursuant to the provisions of section 314 of the Executive Law.
- (c) **Commissioner** shall mean the Commissioner of Parks, Recreation and Historic Preservation.
- (d) **Federal assistance** shall mean funds available, other than by loan, from the Federal government, either directly or through allocation by the State for construction or program purposes pursuant to any Federal law or program.
- (e) **Governing body** shall mean:
- (1) in the case of a town, a town board;
 - (2) in the case of a county outside of the City of New York, the county board of supervisors or other elective governing body;
 - (3) in the case of a city or village, the local legislative body thereof, as the term is defined in the Municipal Home Rule Law;
 - (4) in the case of a public benefit corporation, the board of directors, members or trustees thereof;
 - (5) in the case of a school district, the board of education thereof; and
 - (6) in the case of a supervisory district, the board of cooperative educational services thereof.
- (f) (1) **Historic preservation project** shall mean:
- (i) **State historical preservation project.** A project undertaken by the Office of Parks, Recreation and Historic Preservation on historic property under the jurisdiction of the office.
 - (ii) **Municipal historic preservation project.** A project undertaken by a municipality to improve, restore or rehabilitate municipal historic property.
 - (iii) **Not-for-profit historic preservation project.** A project undertaken by a not-for-profit corporation for the acquisition or improvement, restoration or rehabilitation of historic property in which the not-for-profit corporation has an interest.
- (2) As used in Part 436 of this Title in relation to historic preservation projects the following terms shall mean:
- (i) **Curation** shall mean the care of artifacts and records associated with historic properties assisted with funds made available pursuant to this Subchapter.
 - (ii) **Historic property** shall mean a district, site, building, structure or object listed in the National or State Register of Historic Places.
 - (iii) **Historic structure report** shall mean the report which may be necessary for the development of a historic resource when the rehabilitation, restoration or reconstruction work involves fabricating significant missing architectural or landscape features, recapturing the appearance of a property at one particular period of its history or removing significant later additions. The report shall include, at a minimum, historical and documentary research, physical investigation, including archeology, and recommendations for action.

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(iv) **Improvement** shall mean the act of upgrading the basic physical condition of a property in a manner consistent with the Secretary of the Interior's Standards. This includes upgrading mechanical systems, providing appropriate barrier-free access and bringing a property into conformance with building codes.

(v) **National Register of Historic Places** shall mean the national list of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering or culture maintained by the Secretary of the Interior under authority of the National Historic Preservation Act, as amended (16 U.S.C. §§ 470 **et seq.**).

(vi) **Preservation** shall mean the act or process of applying measures to sustain the existing form, integrity and material of a historic property. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic materials, the existing vegetative cover of a site or associated archeological deposits.

(vii) **Professional** shall mean an individual practicing in the areas of architecture, engineering, landscape, architecture, archeology or historic preservation. In the following definitions a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of one year of full-time experience. The following qualifications define the minimum education and experience required. In some cases, additional areas or levels of expertise may be determined by the commissioner to be necessary, depending on the complexity of the project and the nature of the property involved.

(a) Archeology—a graduate degree in archeology, anthropology or a closely related field plus:

(1) at least one full year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

(2) at least four months of supervised field and analytic experience in general North American archeology;

(3) demonstrated ability to carry research to completion; and

(4) in addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

(b) Architecture, engineering or landscape architecture—a professional degree in architecture, engineering or landscape architecture plus at least three years of full-time professional experience; or a State license to practice.

(c) Historic architecture, historic engineering or historic landscape architecture—a professional degree in architecture, engineering or landscape architecture, or a State license to practice, plus one of the following:

(1) a graduate degree in historic preservation, architectural history, preservation planning or a closely related field and at least two years of full-time professional experience on historic preservation projects; or

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(2) at least three years of full-time professional experience on historic preservation projects.

(d) **Historic preservation:**

(1) a graduate degree in preservation, architectural history, art history, historic preservation planning or a closely related field, plus two years of full-time professional experience on historic preservation projects; or

(2) a bachelor's degree in historic preservation, architectural history, art history, preservation planning or a closely related field, plus four years of full-time professional experience on historic preservation projects; or

(3) completion of a recognized training program in historic preservation, or a bachelor's degree in an unrelated field, plus five years of full-time professional experience on historic preservation projects; or

(4) ten years of full-time work experience on historic preservation projects.

(viii) **Protection** shall mean the act or process of applying measures designed to affect the physical condition of a historic property by defending or guarding it from deterioration, loss or attack or to cover or shield the property from danger or injury. In the case of buildings, structures and objects, such treatment is generally of a temporary nature and anticipates future historic preservation treatment; in the case of archeological sites, the protective measure may be temporary or permanent.

(ix) **Reconstruction** shall mean the act or process of reproducing by new construction the exact form and detail of a vanished building, structure, object or site or a part thereof, as it appeared at a specific period of time.

(x) **Rehabilitation** shall mean the act of returning a historic property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historic, architectural, engineering, archeological and cultural values.

(xi) **Restoration** shall mean the act of accurately recovering the form and details of a historic property and its setting as it appeared at a particular period of time by means of the removal of later work or by replacement of missing earlier work.

(xii) **State Register of Historic Places** shall mean the New York State lists of districts, sites, buildings, structures and objects significant in New York State history, architecture, archeology, engineering or culture maintained by the Commissioner of Parks, Recreation and Historic Preservation under authority of PRHPL, section 14.07.

(g) **Local urban cultural park resource project** shall mean a project which is within the boundaries of a designated urban cultural park and identified in a urban cultural park management plan as defined in this Part, and is not an interpretive/visitor center project.

(h) **Minority** shall mean a member of any of the following groups:

(1) Black persons having origins in any of the black African racial groups not of Hispanic origin;

(2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American origin, regardless of race;

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(3) Asian and Pacific Islander persons having origins in the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands; and

(4) America Indian or Alaskan natives having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

(i) **Minority-owned business enterprise** shall mean any business enterprise which is at least 51 percent owned by, or in the case of a publicly owned business, at least 51 percent of the stock of which is owned by, citizens or permanent resident aliens who are minorities and such ownership interest is real, substantial and continuing. The minority-owned ownership must have and exercise the authority to independently control the day-to-day business decisions of the entity and must have had and exercised such authority for at least one year.

(j) **Municipal park project** shall mean a project undertaken by a municipality for the acquisition, development or improvement of outdoor or indoor recreation facilities, including but not limited to site acquisition, improvement, construction, reconstruction and improvement of structures, roads and parking facilities.

(k) **Municipality** shall mean, a city, county, town, village, public benefit corporation or school district or an improvement district within a city, county, town or village, or Indian tribe residing within New York State, or any combination thereof.

(l) **Not-for-profit corporation** shall mean a corporation subject to the Not-For-Profit Corporation Law and qualified for tax-exempt status under the Federal Internal Revenue Code.

(m) **Office** shall mean the Office of Parks, Recreation and Historic Preservation.

(n) **Secretary of the Interior's Standards** shall mean the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation as set out in 48 Federal Register 44716 **et seq.** (September 29, 1983). This reference is available for inspection and copying at the Counsel's Office, Office of Parks, Recreation and Historic Preservation, Agency Building No. 1, Empire State Plaza, Albany, NY 12238 or at the Albany office of the New York State Department of State.

(o) **State share** shall mean only those funds made available pursuant to title 9 of article 52 of the Environmental Conservation Law and these regulations.

(p) **Urban cultural park (UCP)** shall mean an urban cultural park established pursuant to the provisions of PRHPL, article 31, title G, and enumerated at a State-designated urban cultural park in section 35.03 of such law as amended.

(q) **Urban cultural park management plan** shall mean a document prepared and approved by the Commissioner of Parks, Recreation and Historic Preservation in conformance with the provisions of PRHPL, section 35.05, which includes but is not limited to, a comprehensive statement in words, maps, illustrations or other media of communication, setting forth objectives, policies and standards to guide public and private uses for the preservation, interpretation, development and use of cultural, archeological, historic, natural and architectural resources of an urban cultural park.

(r) **Women-owned business enterprise** shall mean any business enterprise which is at least 51 percent owned by, or in the case of a publicly owned business, at least 51 percent of the stock of which is owned by, citizens or permanent resident aliens who are women, and such ownership interest is real, substantial

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and continuing. The women-owned ownership must have and exercise the authority to independently control the day-to-day business decisions of the entity and must have had and exercised such authority for at least one year.

Sec. added by renum. 294.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 13, 1987; ams. filed: Aug. 8, 1989; Feb. 2, 1990 eff. Feb. 21, 1990. Amended (g).

Section 435.3. Distribution of funds

- (a) The distribution of funds for municipal park projects, each type of historic preservation project and urban cultural park projects shall be requested annually by the office for inclusion in the executive budget and action by the State Legislature.
- (b) Consistent with the number of applications and the funds appropriated, the commissioner may, at his discretion, limit the maximum amount of money which may be made available for any one project. This amount shall be announced at the beginning of each grants cycle.
- (c) The commissioner, at his discretion, may determine that funds made available pursuant to this Subchapter for any one project may be distributed to the grant recipient from more than one annum appropriation. This determination will be based on the number of applications received, the funds appropriated to the office and the ranking of the project. Subject to the appropriation of funds, the office shall set aside from subsequent years' appropriations the amount necessary to complete the project prior to the award of any new grant.

Sec. added by renum. 294.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 13, 1987 eff. May 4, 1987.

Section 435.4. General applicant information

- (a) Application procedures for funds under this Subchapter shall depend on the type of project for which funds are sought. Applicants for funds for State, municipal or historic preservation projects should refer to Part 436 of this Title, applicants for funds for municipal park projects should refer to Part 437 of this Title and applicants for funds for urban cultural park projects should refer to Part 438 of this Title.
- (b) It shall be the responsibility of the applicant to evaluate the proposed project using the eligibility criteria found in each Part and to determine under which program to apply for assistance.
- (c) Some projects may consist of several elements which fit into different categories; for example, a historic property, such as a stone bridge, in a municipal park. Applicants are advised to divide the project into these elements and to submit a separate application for each element under the appropriate program.
- (d) An applicant shall not submit an application for the same project to different programs for consideration during the same grants cycle. However, applications for separate elements of the same project may be submitted simultaneously. In our example, a municipality may simultaneously apply for a historic preservation grant to repair the stone bridge in the municipal park and a municipal park grant to develop a picnic area and playground.
- (e) If an application does not receive funds in two consecutive grants cycles in one program, it may be submitted for funds under another program. The application should be refiled using the procedures of the second program.

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Sec. filed April 13, 1987 eff. May 4, 1987.

Section 435.5. Affirmative actions and equal opportunity programs

Each grant recipient under this Subchapter shall be responsible for carrying out or for causing to be carried out a program for providing affirmative action and equal employment opportunity as described in this section. This section shall be applicable to grants awarded prior to June 1, 1989. For grants awarded after June 1, 1989, the provisions of article 15-A of the Executive Law, Participation by Minority Group Members and Women with Respect to State Contracts, shall apply.

(a) The office may direct each grant recipient to submit for approval either an affirmative action policy statement or an affirmative action plan as a condition for grant assistance. The plan or policy statement will be required with respect to employees of the grant recipient who will be providing design, construction and other services on the project.

(b) The grant recipient shall include and require that all contracts pursuant to this Subchapter and all documents soliciting bids or proposals therefor shall contain or make reference to the following provisions:

(1) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

(2) At the request of the office or the grant recipient the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the grant recipient to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder.

(3) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract with the grant recipient, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(4) The contractor will include the provisions of paragraphs (1) through (3) of this subdivision in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract with the grant recipient.

(c) (1) The grant recipient shall determine for each prime contractor whether an affirmative action policy statement or an affirmative action plan shall be submitted for approval. Such determination shall be based on guidelines to be established by the office. Further, every subcontractor with a contract whose value is \$10,000 or greater shall be required to submit to the grant recipient for its approval an affirmative action policy statement within 10 days of selection as a subcontractor. The grant recipient

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shall require every contractor and subcontractor with a contract whose value is \$50,000 or more to submit for approval an affirmative action plan.

(2) The office may require or cause to be required that such policy statement or plan be submitted prior to the award of the contract. Such requirement shall be indicated in the notice for bid solicitation.

(d) The office may establish overall goals for project agreements to implement the affirmative action and equal employment opportunity programs. Goals shall be a quantitative objective for employment of minority and women workers. Goals shall be based on the following criteria:

- (1) relevant demographic data;
- (2) availability of minorities and women with the requisite skills;
- (3) possibilities for recruitment of minorities and women;
- (4) training which a contractor can reasonably be able to undertake as a means of making all job titles required for contract performance available to minorities and women;
- (5) past performance in regard to affirmative action and equal employment opportunity; and
- (6) other relevant facts or circumstances.

(e) *Procedures.*

(1) The office shall establish procedures and guidelines to ensure that the grant recipients and their contractors and subcontractors undertake programs of affirmative action and equal employment opportunity as required in this Part.

(2) Every contractor and every subcontractor with a contract whose value is \$10,000 or greater shall be required to submit to the grant recipient such compliance reports relating to the operation and implementation of its affirmative action and equal employment opportunity plan as shall be determined by the office.

(f) Every grant recipient and its contractors and subcontractors shall be required to make good faith efforts to meet goal requirements. Good faith efforts may include:

- (1) advertisement in appropriate general circulation, trade and minority and women-oriented media;
- (2) timely notice of job opportunities;
- (3) the development and maintenance of lists for purposes of notifying minorities and women of employment opportunities; and
- (4) maintenance of records required by the office for documenting the contractor's actions which identify minorities and women soliciting employment opportunities.

(g) Sanctions may be imposed by the office for failure to meet goal requirements unless the office determines that goal requirements should be waived because a grant recipient has made a good faith effort to comply with such requirements. Sanctions may include the following:

- (1) reduction of the agreement price;
- (2) suspension or termination of the agreement;
- (3) retention of payments until compliance is achieved; and
- (4) other penalties of which a grant recipient has notice in writing prior to or during the performance of an agreement.

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(h) Any person having a question about any determination made pursuant to this Part may contact the Commissioner of Parks, Recreation and Historic Preservation, Office of Parks, Recreation and Historic Preservation, Agency Building No. 1, Empire State Plaza, Albany, NY 12238, (518) 474-0443.

Sec. filed April 13, 1987; amd. filed Aug. 8, 1989 eff. Aug. 23, 1989.

Section 435.6. Minority and women-owned business enterprise program

(a) The office shall establish procedures and guidelines to ensure that grant recipients and their contractors and subcontractors undertake programs to utilize minority and women-owned business enterprises on projects undertaken pursuant to this Subchapter. This section shall be applicable to grants awarded prior to June 1, 1989. For grants awarded after June 1, 1989, the provisions of article 15-A of the Executive Law, Participation by Minority Group Members and Women with Respect to State Contracts, shall apply.

(b) Each grant recipient shall be responsible for requiring each contractor to submit a minority and women-owned business enterprise utilization plan prior to the award of a contract.

(c) *Goals.*

(1) The goals for the participation of minority and women-owned business enterprises on projects under this Subchapter shall be as follows:

(i) for minority-owned business enterprises, a goal of at least 12 percent of the total dollar value of contracts awarded; and

(ii) for women-owned business enterprises, a goal of at least five percent of the total dollar value of contracts awarded.

(2) These goals may be adjusted on the basis of the following criteria:

(i) relevant demographic data;

(ii) availability of minority and women-owned business enterprises selling services or goods needed for contract performance;

(iii) possibilities for solicitation of minority and women-owned business enterprises;

(iv) past performance in regard to minority and women-owned business programs;

(v) the office's ability to identify minority and women-owned businesses which can be used by contractors to comply with the goal requirements of the office; and

(vi) other relevant facts or circumstances.

(d) The grant recipient shall include and require that all contracts pursuant to this Subchapter and all documents soliciting bids or proposals therefor shall contain and make reference to the following provisions:

(1) that the contractor comply with the recordkeeping, reporting and notice requirements of this section; and

(2) that sanctions will be imposed for a contractor's failure to comply with the requirements of this section.

(e) Every grant recipient and its contractors and subcontractors shall be required to make good faith efforts to meet goal requirements. Good faith efforts may include:

(1) advertisement in appropriate general circulation, trade and minority and women-oriented media;

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- (2) timely notice of contract opportunities;
 - (3) the development and maintenance of lists for purposes of notifying minorities and women of contracting opportunities; and
 - (4) maintenance of records required by the office for documenting the contractor's actions, which identify minority and women contract opportunities.
- (f) Sanctions may be imposed by the office for failure to meet goal requirements unless the office determines that goal requirements should be waived because a grant recipient has made a good faith effort to comply with such requirements. Sanctions may include the following:
- (1) reduction of the agreement price;
 - (2) suspension or termination of the agreement;
 - (3) retention of payments until compliance is achieved; and
 - (4) other penalties of which a grant recipient has notice in writing prior to or during the performance of an agreement.
- (g) Any person having a question about any determination made pursuant to this Part may contact the Commissioner of Parks, Recreation and Historic Preservation, Office of Parks, Recreation and Historic Preservation, Agency Building No. 1, Empire State Plaza, Albany, NY 12238, (518) 474-0443.
- (h) In the implementation of this section, the office shall consider compliance by any contractor with the requirements of any Federal, State or local law concerning minority and women-owned business enterprises, which may effectuate the requirements of this section. If the office determines that by virtue of the imposition of the requirements of any such law, in respect to capital project contracts, the provisions thereof duplicate or conflict with such law, the office will waive the applicability of this section to the extent of such duplication or conflict.
- (i) In order to implement the requirements and objectives of this section, the office shall establish procedures to monitor all contractors' compliance with provisions of this section, provide assistance in obtaining competing certified minority and women-owned business enterprises to perform contracts proposed to be awarded, and take other appropriate measures to improve the access of minority and women-owned business enterprises to these contracts.

Sec. filed April 13, 1987; amd. filed Aug. 8, 1989 eff. Aug. 23, 1989. Amended (a).

Section 435.7. Project agreements; maintenance of effort

- (a) Each grant recipient shall enter into a project agreement with the office for the funding of the project. Such project agreement shall contain provisions which shall include, but not be limited to, the following:
- (1) The proposal or application which was submitted to the office and approved by the commissioner, with such modifications as may be required by the commissioner for such approval, shall be made a part of the project agreement. No changes may be made to such proposal or application, as modified, without the written approval of the commissioner.
 - (2) The agreement shall provide for the public to have such access to the facility or property, and for such period of time, as shall be determined by the commissioner to be appropriate to that project.
 - (3) There shall be barrier-free access for disabled patrons in accordance with applicable New York State statutes.

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(4) A project sign in a form to be determined by the office shall be installed on the property.

(5) All contracts for work under this Subchapter shall be publicly bid in accordance with section 103 of the General Municipal Law.

(6) The agreement shall contain a project term.

(7) The provisions of sections 435.5 and 435.6 of this Part shall be a part of the agreement. Further, the grant recipient will include the provisions of sections 435.5 and 435.6 in every contract in relation to the project agreement in such a manner that such provisions will be binding upon each contractor and subcontractor as to its work in connection with the project agreement.

(8) The agreement shall include such other provisions as shall be required by State law, the Attorney General, the State Comptroller and the office.

(b) *Maintenance of effort.* Each recipient of funds made available under this Subchapter shall be required to certify that such assistance will supplement and not supplant funds already appropriated or identified by the applicant for the implementation of the project.

Sec. filed April 13, 1987 eff. May 4, 1987.

Section 435.8. Public participation

(a) *Annual report.* The office shall prepare and make available an annual report on the implementation of title 9 of article 52 of the Environmental Conservation Law and these regulations.

(1) Such report shall include, but not be limited to, the following:

(i) the distribution of all funds during the preceding fiscal year and since the enactment of title 9 of the Environmental Conservation Law, by program and by category of project;

(ii) the distribution of funds by county and by State park region;

(iii) the distribution of funds among projects that are related to natural resource protection/interpretation and passive recreation; facility development or construction; or a combination of resource protection and facility development;

(iv) the distribution of funds for the acquisition of land or facilities, development of new facilities or rehabilitation of existing facilities; and

(v) the distribution of funds between indoor and outdoor municipal park projects.

(2) The report will be available to the general public for review and comment. Notice of its availability will be provided through a statewide press release and publication in the *Environmental Notice Bulletin*. Copies of the report will be distributed by direct mailing to interest groups and organizations.

(b) *Workshop.* Following distribution of each annual report, the office will conduct a workshop(s) for discussion of the implementation of title 9 of the Environmental Conservation Law and issues raised by the report, for identification of concerns and for recommendations for improvements in program administration and changes to the regulations and ranking and review procedures. Results from the workshop(s) will be summarized and made available to participants and other interested parties.

(c) The analysis of the distribution of grants in the annual report and the comments made at the workshop(s) will be evaluated by the office in the preparation of revisions to the regulations and ranking and review procedures.

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(d) Proposed changes to the regulations and ranking and review procedures will be submitted to the State Board for Historic Preservation; the State Council of Parks, Recreation and Historic Preservation; the New York State Urban Cultural Parks Advisory Council; and the EQBA Advisory Task Force for review and comment.

(e) Substantive changes to the regulations and the ranking and review procedures will be subject to review under the State Environmental Quality Review Act.

(f) *EQBA advisory task force.*

(1) Within three months of the adoption of this Subchapter, the commissioner shall form an EQBA advisory task force. The task force shall consist of twelve members: two members with expertise in each of the program areas of historic preservation, municipal parks and urban cultural parks, two members representing the Department of Environmental Conservation, two members representing the environmental community and two members from the public at large. Members shall be appointed by the commissioner and serve at his discretion, except that the members representing the Department of Environmental Conservation shall be appointed by the Commissioner of Environmental Conservation.

(2) The task force shall meet at the direction of the commissioner but in no event shall it meet less than once each year following completion of the annual report.

(3) The chairman of the task force shall be designated from among its members by the commissioner.

(4) It shall be the responsibility of the EQBA advisory task force to review the annual report and to make recommendations to the commissioner regarding the implementation of title 9 of article 52 of the Environmental Conservation Law. Such recommendations may address topics which shall include, but not be limited to, project eligibility criteria, application procedures, project rating and ranking criteria, approval guidelines, revisions to regulations, criteria for funding distribution, coordination with title 7 of article 52 of the Environmental Conservation Law and additional public participation in the implementation of these regulations which the commissioner may wish to seek. It is understood that the purpose of the EQBA advisory task force is to make recommendations regarding the overall implementation of title 9 and this Subchapter; not to review or make recommendations relating to specific project applications.

Sec. filed April 13, 1987; amd. filed Aug. 8, 1989 eff. Aug. 23, 1989. Amended (f)(1).

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Subchapter B. Environmental Quality Bond Act of 1986

Part 436. State, Municipal and Not-for-Profit Historic Preservation Projects

Section 436.1. Eligible properties

- (a) A property shall be eligible for grant assistance if, prior to the date of application it is:
- (1) individually listed on the National or State Register; or
 - (2) located within a listed historic district and identified in the nomination form as contributing to the significance of the district. In the cases where the nominating document does not clearly identify the contributing properties, the commissioner shall determine which properties are contributing.
- (b) A property which meets the requirements of subdivision (a) of this section but which is privately owned, owned by a Federal agency, or owned by New York State but under the jurisdiction of an agency other than the Office of Parks, Recreation and Historic Preservation is not eligible for grant assistance unless an interest in the property is granted to the office, a municipality or a not-for-profit corporation and such interest is, in the opinion of the commissioner, of sufficient duration to guarantee a public benefit from the grant. Property interests which satisfy this requirement may include, but are not limited to, a lease or easement with an unexpired term of at least 23 years from the date on which the check for final payment on the project is issued by the State Comptroller.

Sec. added by renum. 295.1, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 13, 1987; amd. filed Jan. 9, 1989 eff. Jan. 30, 1989. Amended (b).

Section 436.2. Eligible activities

The following activities are allowable as State, municipal or not-for-profit projects, except as noted:

- (a) *Acquisition.*
- (1) Historic property may be acquired only by a not-for-profit corporation. The boundaries of the real property to be acquired may not exceed the boundaries as listed in the Register nomination, except that the acquisition of a contiguous buffer zone or ancillary property which, in the opinion of the commissioner, is essential to the protection of the listed property shall be considered eligible for grant assistance.
 - (2) Priority will be given to those acquisition proposals which are necessary in order to prevent an immediate threat to the property. Such threats include demolition, impairment, erosion, slumping, vandalism and relic collecting.
 - (3) Eligible costs related to acquisition include legal and other professional fees, appraisal fees, purchase options and project signs when part of an approved scope of work and within the approved period of the acquisition project.
 - (4) Appraisals must be performed no more than 12 months prior to the acquisition of real property. The cost of obtaining an appraisal is an allowable cost if an acquisition grant is subsequently awarded. If a property is valued at \$100,000 or more, two appraisals must be obtained. If the property is valued at less than \$100,000, one appraisal is sufficient. If the property is valued at less than \$5,000, a short form appraisal may be used at the discretion of the commissioner. Appraisals shall be prepared by an active consultant appraiser in accordance with the requirements of the office.

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(5) For acquisition at less than the appraised market value, the buyer must provide to the commissioner a signed and notarized statement from the seller indicating that the buyer has been informed of the appraised market value and is satisfied with the price even though it is less than the appraised fair market value.

(b) *Development.*

(1) Eligible development activities include improvement, restoration, preservation, rehabilitation, protection, reconstruction, archeology and interpretation of historic properties. The development of an archeological site shall have as its principal objective the protection, stabilization or preservation of the site and its archeological resources. All work undertaken on a historic property must conform to the Secretary of the Interior's standards.

(i) Relocation of a historic building, structure or object shall be allowable only when necessary for its preservation, and with the written approval of the commissioner prior to relocation. The commissioner will grant approval only if it appears the relocation will not result in removal of the property from the National or State Register.

(ii) Costs of landscaping are allowable as follows:

(a) historically documented restoration or reconstruction of gardens, plantings, grounds and grading to attain historic appearance and a compatible setting for the historic property;

(b) grading and site work for purposes of drainage, safety and protection;

(c) improvements necessary to facilitate access for disabled patrons.

(iii) Costs of project furnishings are allowable as part of a development project as follows:

(a) when furnishings are original pieces of furniture or permanently attached items that are integral to the property; or

(b) when furnishings are of documented historical design or are reconstructions based upon documented original furnishings.

(iv) For all development projects, adequate documentation for the work must be prepared as follows:

(a) Drawings, plans, specifications and requests for proposals must detail the exact scope of any work to be performed. Drawings must be accurately drawn to scale so that measurements can be verified at the project site.

(b) Provisions of all qualified professional services necessary for design, construction monitoring and contract administration shall be the responsibility of the grant recipient.

(c) Review of plans and specifications and requests for proposals by the office is only for the purpose of determining project conformance with the Secretary of the Interior's standards.

(d) All predevelopment research and design (including for archeology) must be completed, reviewed and approved by the office prior to the commencement of construction work.

(2) Nonconstruction development activities are those which relate directly to the development, implementation, operation and monitoring of development projects, whether they are funded with grant assistance or are associated costs used as matching share. They include the following:

(i) preparation of predevelopment plans, specifications, cost estimates and other contract documents;

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- (ii) preparation of feasibility studies;
 - (iii) preparation of historic structure reports, historic landscape reports, archeological, architectural and historic research reports;
 - (iv) preparation of project completion reports, and archeological investigation reports; and
 - (v) project signs and a limited number of interpretive signs or plaques.
- (3) Archeological development activities. All identification, evaluation, curation, interpretation and protection activities shall be conducted under the supervision of a professional archeologist as defined in Part 435 of this Title.
- (i) Because disturbance of archeological sites is in general discouraged by the office, such disturbance will only be funded if it meets the following criteria.
 - (a) Data recovery may be required to determine the presence of significant archeological deposits that might be disturbed by a project.
 - (b) If a development project for a property will disturb an area that has archeological value and the development project cannot be altered so as to avoid such disturbance, data recovery or other mitigative measures will be required.
 - (c) If a development project is dependent upon information that can only be obtained through archeological investigation, the area may be tested to the extent necessary to design and perform the approved development activity.
 - (d) If public interpretation of a property is dependent upon the information that would be obtained by archeological testing, such testing may be carried out only to the extent essential for that interpretation.
 - (ii) Preparation of reports and documentation, and curation or exhibition of artifacts or other materials are activities eligible for funding only during the project period.
 - (a) Appropriate maps, sketches, profiles, and field notes must be completed to record information about the archeological resources and the methods and techniques employed.
 - (b) A written report of all results of the investigation meeting contemporary professional standards must be prepared. Copies must be provided to the commissioner upon request.
 - (c) Archeological collections and accompanying data and records must be curated in a repository meeting contemporary professional standards and the Secretary of the Interior's standards. Such arrangements must be negotiated among the property owner, the commissioner and the qualified professional archeologist prior to the start of work.
- (c) Ineligible acquisition and development activities include the following:
- (1) Acquisition.
 - (i) acquisition, either by purchase, gift or donation which occurs outside the approved project period. An acquisition that has occurred prior to project approval by the commissioner shall not be eligible for grant assistance or as matching share; and
 - (ii) phased acquisition.
 - (2) Development.

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- (i) development work (except minor investigative activity undertaken as part of approved predevelopment work) done outside the approved project period. This includes construction, report writing, curation and exhibition;
 - (ii) work not included in the approved scope of work as outlined in the project agreement (and as may be subsequently amended);
 - (iii) work which in the opinion of the commissioner does not conform to the Secretary of the Interior's standards;
 - (iv) work which has not been advertised or competitively bid as required;
 - (v) routine maintenance work on those portions of historic properties which have been previously repaired or rehabilitated with grant assistance provided under these regulations or through the Federal historic preservation fund; and
 - (vi) archeological data recovery or extensive testing conducted under conditions other than those described in paragraph (b) (3) of this section.
- (3) The cost of borrowing funds is not eligible for reimbursement.

Sec. added by renum. 295.2, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 13, 1987 eff. May 4, 1987.

Section 436.3. Measures to assure future preservation

(a) In order to assure the preservation of grant-assisted historic properties and to assure that a public benefit shall accrue from the use of public funds, the commissioner shall not make grant assistance available until a project agreement is in place. The commissioner's requirements shall be incorporated into the project agreement and may include:

- (1) limitations on the right of the owner and/or grant recipient to alter, demolish or convey the property;
- (2) provisions for public access, where appropriate; and
- (3) granting of exterior or interior easements to the State or an approved municipality or not-for-profit corporation. Easements shall require that any proposals for subsequent alterations, additions or other physical changes be approved by the commissioner.

(b) The period of the easement shall be no less than 23 years from the date on which the check for final payment on the project is issued by the State Comptroller.

Sec. added by renum. 295.3, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 13, 1987; amd. filed Jan. 9, 1989 eff. Jan. 30, 1989. Amended (b).

Section 436.4. Application procedures

(a) Application forms will be available from, and are to be returned to, the respective regional offices of the office which are listed in section 461.6 of this Title or by contacting the commissioner. For projects within the Catskill or Adirondack forest preserves, applications may be obtained from the appropriate regional offices of the Department of Environmental Conservation or from the Division of Operations, Department of Environmental Conservation, 50 Wolf Road, Room 611, Albany, NY 12233.

(b) Applications will be received throughout the year. Up to three grant application cycles per year may occur. Starting and closing dates will be established and publicized widely by the commissioner.

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(c) *Application form.* Each project application must contain sufficient information to ensure that the commissioner is able to conduct an adequate and thorough review. Applications shall be on forms provided by the office and shall contain at least the following information:

- (1) a narrative description of proposed project;
- (2) cost estimates for proposed work;
- (3) black and white photographs and color slides;
- (4) evidence of matching funds commitment or a fund-raising plan for generating the match in a timely manner;
- (5) a statement of willingness to comply with appropriate measures to ensure the future preservation of property; and
- (6) a copy of a resolution of the governing body of the municipality or not-for-profit corporation recommending the project to the commissioner.

(d) Grant awards shall be announced by the commissioner before the close of the following application cycle. The commissioner may attach conditions to grant awards.

(e) Applications not funded in a grant cycle will be automatically reconsidered in the following cycle. Applications not funded after two grant cycles will be withdrawn from consideration. This does not preclude an applicant from resubmitting the project or from submitting a revised or new project application.

(f) Application materials from projects not funded in two consecutive grant cycles shall be retained by the office for 90 days following the announcement of grant awards. The materials shall be returned if the applicant submits a written request to the commissioner within the 90 days. After 90 days the commissioner may discard all application materials.

*Sec. added by renum. 295.4, Title 6, filed Sept. 1971; repealed, filed June 6, 1974; new filed April 13, 1987
eff. May 4, 1987.*

Section 436.5. Ranking and review process

(a) All eligible municipal and not-for-profit projects in a given grant cycle shall be reviewed using the same ranking criteria. In assessing the merit of a proposed project the following criteria will be considered:

- (1) physical needs of the property, including any immediate threat from demolition, impairment, slumping, vandalism and relic collecting, and how well the proposed project addresses them;
- (2) significance of the property in the national, State or local context;
- (3) evidence of adequate planning, including the preparation of planning documents, the use of qualified professionals on whose recommendations the project proposal has been based and consistency with other State and local programs;
- (4) the local and statewide impact of the project;
- (5) the financial need of the applicant, including the fund-raising plan and the evidence of matching funds commitment;
- (6) factors ensuring the property's immediate and future protection. This may include the ability of the project sponsor and involved professionals to successfully complete the project and to assure

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operation of the facility; the preparation of a maintenance plan; or designation under a local preservation law which has been approved by the commissioner as providing adequate protection for the property; and

(7) adequacy of the preservation technology proposed, its consistency with current professional standards and the demonstration of appropriate new techniques or solutions.

(b) Numerical values will be assigned to factors comprising these criteria. These values may be revised to reflect changes in program priorities. The scoring system for evaluating applications shall be announced annually in the instructions to applicants supplied with grant application forms.

(c) The evaluation results and relative ranking of a project may be released to the applicant only upon written request.

Sec. filed April 13, 1987 eff. May 4, 1987.

Section 436.6. Matching requirements

(a) Assistance toward the cost of preservation projects undertaken by municipalities and not-for-profit corporations shall not exceed 50 percent of the approved project costs, less any Federal or State assistance received other than by loan. State funds shall be provided on a reimbursement basis. As the project progresses, billings may be submitted for reimbursement for each billing period as defined in the project agreement.

(b) A not-for-profit corporation or municipality's matching share may consist of the following:

(1) cash;

(2) force account (paid labor); and

(3) donations. To be eligible for matching assistance, donated contributions must be applicable to the approved project. All donations other than cash must be contributed during the approved project period as defined in the project agreement.

(i) Donated (in kind) labor. The value of services provided by professional and technical personnel, consultants and other skilled and unskilled labor.

(ii) Donated real property. The fair market value as established by an independent appraiser in accord with the requirements of the office. If the total value of donated real property proposed for use as a matching share exceeds the amount required for the match, the remainder of the value of the donated real property may be used as the matching share for subsequent development grants for the same property, subject to the prior approval of the commissioner.

(iii) Donated equipment. The value of equipment used on a project in accord with its fair rental value.

(iv) Donated supplies and materials. The value of items in accord with current market prices at the time they are donated to the project.

(c) The commissioner may award grants to applicants who have not generated their full match at the time of application. These "challenge" grants shall be awarded with special conditions regarding the time period for raising the match and the monitoring of fund-raising progress. Grant awards may be reduced or withdrawn if the applicant is unable to raise the full match.

Sec. filed April 13, 1987 eff. May 4, 1987.

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Section 436.7. Funding distribution

(a) For the purposes of this Part, the annual allocation of awardable funds shall be distributed among the three types of preservation projects as follows:

- (1) municipal projects shall receive no less than 40 percent and no more than 60 percent;
- (2) not-for-profit projects shall receive no less than 40 percent and no more than 60 percent; and
- (3) State projects shall receive no more than 10 percent.

(b) If eligible applications do not total the amount of funding set aside in either the municipal or not-for-profit category, the remainder shall be distributed to eligible projects in the other category.

Sec. filed April 13, 1987 eff. May 4, 1987.

Part 437. Municipal Park Projects

Section 437.1. Eligibility

Projects eligible for funding for municipal park projects may be either acquisition projects or development projects.

(a) Acquisition projects.

(1) Projects which shall be eligible for funding for acquisition shall be lands, waters and structures for public outdoor or indoor recreation uses, including new facilities or additions to existing facilities dedicated to public outdoor or indoor recreation such as parks, forests, natural areas and beaches.

Types of acquisition which will be considered for funding shall include, but not be limited to, the following:

- (i) areas with frontage on oceans, sounds, rivers, streams, lakes, canals, estuaries or reservoirs that will provide water-based public recreation, water access and open space preservation opportunities, or the acquisition of water bodies themselves;
- (ii) land for creating water impoundments to provide water-based public recreation opportunities;
- (iii) areas that provide passive recreation opportunities, such as open space areas, forests, flood plains and wetlands;
- (iv) natural and environmentally significant areas and preserves and outstanding scenic areas where the objective of acquisition is to preserve the scenic, environmental or natural values; these areas must be open to the general public for recreation use to the extent that this will not cause the natural attributes of the areas to be seriously impaired or lost;
- (v) land for day-use picnic areas, neighborhood playgrounds and tot-lots, areas adjacent to school playgrounds, and competitive nonprofessional sports facilities as well as more generalized parklands;
- (vi) structures which are appropriate for use primarily for outdoor or indoor public recreation activities, such as skating rinks, swimming pools and court facilities; and
- (vii) existing recreational facilities, including environmental education centers.

(2) Means of acquisition. Acquisition may be accomplished through purchase, transfer, gift or process of eminent domain.

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(3) Accelerated acquisition of environmental resources. The office may, at the commissioner's discretion, accelerate procedures for acquisition of critical environmental areas due to imminent threat to environmental resources or an unexpected and temporary opportunity for acquisition. The commissioner may also consult with the Commissioner of Environmental Conservation regarding the possible availability of other funds for such acquisition.

(4) The following types of acquisition are not eligible for assistance under this Part:

(i) acquisition of historic sites and structures, unless it is clearly demonstrated that the acquisition is primarily for recreation purposes and that the historic aspects are a corollary to the primary recreation purposes;

(ii) acquisition of facilities of primarily educational or cultural interest, including but not limited to museums, libraries and theaters;

(iii) acquisition of areas or facilities designed to be used primarily for commercial semiprofessional and professional arts and athletics;

(iv) acquisition of areas and facilities to be used solely for game refuges or fish production purposes;

(v) acquisition of property containing luxury lodges, motels, full-service restaurants, inns and similar facilities which will be operated by the municipality or a concessionaire primarily to provide patrons with food and sleeping quarters;

(vi) acquisition of land for agricultural uses;

(vii) acquisition of lands on which no recreational opportunity will be provided within three years of acquisition, unless the municipality can demonstrate to the commissioner's satisfaction that immediate acquisition of such land is necessary and that provision for specific and appropriate recreational facilities will occur within a reasonable time;

(viii) acquisition of less than full title in lands, unless the municipality can clearly establish that any unacquired interests will not have a significant impact on the environment or the recreational uses intended for the lands.

(5) Appraisals. Generally, the fair market value standard will be used as the basic measure of grant assistance for acquisition projects. The municipality shall secure at least one appraisal of the appropriate type for each parcel to be acquired. If the property is valued at \$100,000 or more, two appraisals must be obtained. If the property is valued at less than \$5,000, a short-form appraisal may be used at the discretion of the commissioner. Appraisals shall be prepared by an active consultant appraiser in accordance with the requirements of the office.

(b) *Development and improvement projects.*

(1) Projects which shall be eligible for assistance may be either new construction or rehabilitation of existing facilities, or a combination of both, and may include projects to provide for recreational activities, access to park areas, health and safety needs and protection and enhancement of significant natural elements.

(2) A project may consist of the complete or partial development of one area operable as a distinct recreational unit, such as a city park or village playground, or it may consist of a series of similar installations on a number of geographically separated areas, such as picnic facilities in a number of

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parks. In all cases, the project must be a logical unit of work to be accomplished in a specific time frame.

(3) (i) Except as provided in subparagraph (ii) of this paragraph, projects will be funded only on facilities owned by or leased to the municipality or for which the municipality has acquired an easement. No project will be funded for leased property unless:

(a) the lease cannot be revoked at will by the lessor; and

(b) the term of the lease is sufficient, in the commissioner's judgment, to ensure a period of public use of at least 23 years from the date on which the check for the final payment on the project is issued by the State Comptroller and to assure compliance with section 437.6 of this Part.

(ii) A project may be carried out on State-owned land provided that a memorandum of understanding or comparable agreement between the municipality and the State agency having jurisdiction over the land has been executed which:

(a) states the purpose of the project and the conditions under which it is to be carried out; and

(b) contains terms and conditions sufficient in the commissioner's judgement to ensure a period of public use of at least 23 years from the date on which the check for the final payment on the project is issued by the State Comptroller and to assure compliance with section 437.6 of this Part.

(4) Development. The following are examples of the types of facilities which are eligible for State assistance under this section:

(i) playing fields, playgrounds, rifle/pistol ranges and archery ranges;

(ii) tracks, courts, golf courses and gymnasiums;

(iii) picnic facilities—tables, fireplaces, shelters and related facilities;

(iv) trails—turnouts and trails for nature walks, hiking, bicycling and exercising;

(v) swimming facilities—beaches, pools and lifeguard towers;

(vi) boating facilities—marinas, docks, berths, ramps, lifts, storage and sewage facilities;

(vii) fishing, hunting and camping facilities—piers, access points, site preparation, fireplaces and tent platforms;

(viii) winter sports facilities—Alpine and Nordic skiing, speed or figure skating and ice hockey rinks;

(ix) camping facilities—site preparation, tables, fireplaces and tent platforms; and

(x) community gardens—land preparation, perimeter fencing, perennial plantings, storage bins and sheds, irrigation systems, benches and walkways.

(5) Related facilities. The following types of development which aid in the delivery of recreation may be eligible for funding:

(i) facilities to provide barrier-free access—the adaptation of new or existing outdoor or indoor recreational facilities and support facilities for use by disabled patrons;

(ii) support facilities—roads, parking areas, utilities, sanitation systems, warming huts, shelters, visitor information huts, kiosks, bathhouses, walkways, pavilions, rest rooms, locker rooms, first-aid rooms and equipment rental facilities;

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- (iii) operation and maintenance facilities—maintenance buildings, storage areas, administrative offices, dams, erosion control works, fences, sprinkler systems and directional signs, provided that such facilities support the operation and maintenance of the recreation resource on which they are located;
 - (iv) beautification—landscaping, renovation, clearing of areas damaged by natural disasters, screening, removal, relocation or burial of overhead powerlines, and dredging, where the need for such activities is not caused by inadequate maintenance; and
 - (v) energy conservation elements—solar energy systems, earth berms, windowshading devices, improved lighting insulation and facilities for assuring the efficient use of energy in recreation facilities.
- (6) The following types of development projects are not eligible for assistance under this Part:
- (i) operational equipment for boating facilities, such as buoys, life jackets, ropes or boats;
 - (ii) marinas that do not demonstrate an equitable method of allocating berth space, including established limits for space allocated for commercial charter fishing or sightseeing boats;
 - (iii) community garden equipment and supplies such as fertilizer, seeds, tools, water hoses, gardens planned as commercial enterprises;
 - (iv) facilities designed primarily for commercial semiprofessional or professional arts or athletics, such as theaters, stadiums and rodeo arenas;
 - (v) facilities that are to be used exclusively by disabled patrons unless they are part of a recreation area or facility which serves the general public,
 - (vi) mobile recreation units, including playmobiles, skatemobiles, swimmobiles, show wagons, puppet wagons and porta-bleachers;
 - (vii) informational materials and leaflets;
 - (viii) beautification and renovation projects that are part of a regular maintenance program;
 - (ix) indoor facilities that are not, or do not directly support, public recreational activity, including auditoriums, libraries and study areas; and
 - (x) roads constructed outside the boundaries of the recreation area which are not, in fact, access roads whose principal use is to serve the recreation area.
- (7) Special situations. The following types of development projects may be eligible for funding if it can be demonstrated to the satisfaction of the commissioner that such funding will be for public park and recreation purposes which are consistent with this Part:
- (i) indoor multipurpose recreational facilities—indoor facilities appropriate for use for a variety of public recreational activities by all segments of the population, and related facilities which aid in the delivery of such recreational activities, as described in paragraph (5) of this subdivision;
 - (ii) educational institutions—recreation areas or facilities developed on the lands of public schools and colleges and universities for coordinated use by the general public and school groups, provided that they are not part of the normal and usual program responsibility of the educational institution and that the facilities are made available for public use on an equitable basis;

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- (iii) spectator facilities—amphitheaters, bleachers and other seating areas related to playing fields and other eligible facilities, provided such facilities are not designed primarily for commercial professional or semiprofessional arts or athletics, nor intercollegiate or interscholastic sports;
- (iv) interpretive facilities—interpretive facilities that provide for the observation or interpretation of natural and environmental resources, including arboretums, aquariums, nature and environmental exhibits, nature interpretive centers and small demonstration farms;
- (v) natural heritage institutions—institutions such as zoos, botanical gardens, arboretums and aquariums that own, care for and interpret for the public, living or systematically organized collections of biological specimens. Outdoor display facilities that portray a natural environmental setting that serves the specimen’s physical, social, psychological and environmental needs are eligible. Traditional outdoor caging facilities and animal pens are not eligible, although grant assistance can contribute to the renovation of such facilities to achieve a more natural environmental setting as described above. Basic winter/adverse weather housing quarters that are separate and distinct from enclosed viewing and display areas, and which are used in direct support of outdoor display facilities, are also eligible;
- (vi) food service—food service facilities whose primary purpose is to serve those participating in recreational activities. Restaurants whose primary clientele is not the users of the recreational facility are not eligible;
- (vii) cabins—simple cabins which are part of a recreational camping experience. Motels, inns and lodges are not eligible;
- (viii) group camps—group camps which are not intended for use by a particular organization but will be available to all on an equitable basis; and
- (ix) utility rights-of-way—recreation facilities placed on utility rights-of-way where those facilities are not required to be provided by the utility itself.

Sec. added by renum. 296.1, Title 6, filed Sept. 1971; repealed, filed Aug. 10, 1972; new filed April 13, 1987; amd. filed Jan. 9, 1989 eff. Jan. 30, 1989. Amended (b)(3).

Section 437.2. Application, review and ranking procedures

(a) Any municipality may apply for funds under this Part. If a municipality and a not-for-profit corporation are cooperating in the submission of an application, the municipality must execute the application and project agreement and shall have final responsibility for the implementation of the project.

(b) *Preliminary applications.* The office has instituted a preliminary application process by which a conditional determination will be made regarding which projects will be funded during a particular grants cycle.

(1) Preliminary applications shall be submitted on forms to be furnished by the office. Forms may be obtained from the respective regional offices of the office which are listed in section 461.6 of this Title or by contacting the commissioner. For municipalities within the Catskill or Adirondack forest preserve, applications may be obtained from the appropriate regional office of the Department of

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Environmental Conservation or from the Division of Operations, Department of Environmental Conservation, 50 Wolf Road, Room 611, Albany, NY 12233.

(2) Prior to submitting a preliminary application, a municipality shall schedule a preapplication conference with the regional grants-in-aid representative. At the preapplication conference the application process, including the annual numerical ranking values and distribution of program funds, will be discussed and the regional grants representative will provide such information to the municipality as is necessary for the municipality to complete the preliminary application.

(3) The preliminary application shall contain the following:

- (i) general applicant information;
- (ii) documentation to demonstrate the source of the municipality's funding match and its commitment to operating and maintaining the facility;
- (iii) a program narrative, containing information to be specified by the office, including but not limited to data on environmental resources;
- (iv) a project cost breakdown;
- (v) a project map; and
- (vi) a copy of a resolution of the governing body of the municipality recommending the project to the commissioner.

(4) Three copies of the complete preliminary application shall be submitted to the appropriate Office of Parks, Recreation and Historic Preservation or Department of Environmental Conservation regional office, to the attention of the regional grants representative, no later than September 15th. Preliminary applications hand-delivered or postmarked after September 15th will not be accepted.

(c) *Review of preliminary applications.*

(1) All preliminary applications will receive at least two separate reviews, one of which shall be conducted by the regional office. The final decision on all preliminary applications shall be made by the commissioner.

(2) All applications will be reviewed in accordance with section 437.3 of this Part.

(3) Reviews of preliminary applications will be completed and the commissioner's decision made not later than December 31st. All applicants will be immediately notified of the commissioner's decision. Such decision will be in writing and, where projects will not be funded, will contain the reasons for this determination.

(4) Conditional approval of a preliminary application will mean that the project will be funded in that grant cycle, provided that the documentation required to convert the preliminary application into a complete final application is submitted by the municipality as required by this section.

(d) *Final application.* A municipality that has received conditional approval of a preliminary application shall submit the following documents to the office as soon as possible, but no later than 60 days from the notification of conditional approval.

(1) proof of ownership, such as copies of deeds, leases and easements (required for development projects only);

(2) appraisal of property to be acquired in an acquisition project or to be used towards the municipal share of the cost of a project;

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- (3) general site map;
- (4) detailed park location map, showing park boundaries and adjacent land uses;
- (5) detailed boundary map, clearly establishing the subject area's boundaries and showing features such as road names and numbers, bodies of water, etc.;
- (6) environmental management forms:
 - (i) supporting documentation to indicate compliance with the State Environmental Quality Review Act; and
 - (ii) coastal assessment form, if applicable;
- (7) historic preservation forms:
 - (i) project review data sheet;
 - (ii) building-structure inventory forms; and
- (8) additional material specified by the office in the notice of conditional approval of a preliminary application.

(e) *Changes to project.* It is understood that in the preparation of the additional documentation for the final application, the need for changes to the project may be identified because of engineering, environmental and historic preservation concerns. If a final application will contain such changes, these changes shall be fully explained and justified and, where appropriate, supported by documentation. Final applications which contain changes from the preliminary application which are not explained to the satisfaction of the commissioner, or in which changes alter the nature of the project, will not be approved.

(f) *Review of final application.*

- (1) The office will complete its review of the final application documentation and notify the municipality of the commissioner's approval as soon as possible, but no later than 60 days from receipt of the documentation.
- (2) If the materials supplied by the municipality for the final application are incomplete or insufficient, the office will notify the municipality as soon as these deficiencies are known and will work with the municipality to assure the completion of an approvable application. In this case, notification by the office will be complete no later than 30 days after submission of complete final application documentation.

(g) *Accelerated approvals.* If an approved preliminary application also contains the documentation required to convert it to a final application, early approval of the final application may be effected.

(h) *LWCF applications not funded.*

- (1) The office shall consider applications for assistance from the Federal Land and Water Conservation Fund (LWCF) which were not funded.
- (2) In order for such a project to be considered, the municipality shall complete and submit the preliminary application according to the procedures established by this section.
- (3) The municipality may alter, revise or update any part of the application.
- (4) The preliminary application will be reviewed and ranked along with all other preliminary applications received by the office for that grants cycle.

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(5) If an approved preliminary application contains the documentation required to convert it to a final application, early approval of the final application will be effected.

(6) Municipalities may obtain copies of unfunded LWCF applications on file by contacting the regional grants-in-aid representative.

(i) *Joint applications.* Joint applications between municipalities will be considered provided that the preliminary application clearly establishes to the satisfaction of the commissioner the various responsibilities of each participating municipality, including which municipality shall have primary responsibility for being the contact with the office.

Sec. added by renum. 296.2, Title 6, filed Sept. 1971; repealed, filed Aug. 10, 1972; new filed April 13, 1987; amd. filed Aug. 8, 1989 eff. Aug. 23, 1989

Section 437.3. Criteria used in ranking

(a) All projects will be ranked in accordance with the EQBA Rating System. Any changes in the criteria and their relative weights will be proposed by the commissioner each year. Preliminary applications rolled over from the previous grant cycle will be rerated according to the criteria and weights for the grants cycle in which they are being reconsidered.

(b) Criteria which will be considered in ranking projects will generally include the following:

(1) the relationship of the project to statewide, regional and local recreation plans or assessments of need;

(2) the degree to which local recreation deficiencies will be satisfied by the project;

(3) the cost effectiveness of the project in reducing recreation deficiencies and the extent of open space/natural resource protection;

(4) project components that will maximize its use and accessibility, such as length of operating season, inclusion of facilities for disabled patrons beyond that required by State statute, and the degree of access to the facility through the use of mass transportation systems;

(5) the degree to which the project increases access to water-based activities;

(6) social and economic characteristics of the community, and associated impacts;

(7) the ability of the project to both protect and utilize the natural resources in a compatible fashion; and

(8) the ability of the community to follow through with the proposed project in both the construction and operational phases.

(c) In the case of closely ranked projects, other rating factors may be considered by the office in determining projects to be funded. These may include special engineering, environmental and historic preservation concerns, consideration given to creative and innovative projects and particular demographic factors relating to the size, location and financial status of the municipality making the application.

Sec. added by renum. 296.3, Title 6, filed Sept. 1971; repealed, filed Aug. 10, 1972; new filed April 13, 1987 eff. May 4, 1987. amd. filed Aug. 8, 1989 eff. Aug. 23, 1989.

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Section 437.4. Funding

(a) The State share of the cost of a municipal park project shall not exceed 50 percent of the approved project cost, less any Federal assistance or any other State assistance received or to be received for the project.

(b) The cost of a project, for determining the State share, shall include engineering and architectural services, plans and specifications, consultant and legal services, and other direct expenses incidental to such project.

(c) Payment of the State funds for a project shall be on a reimbursement basis only. The municipality shall submit periodic billings for reimbursement of the State share as work is performed and costs incurred.

(d) *Municipal share of cost.*

(1) The municipal share of the cost of a project may consist of funds or the value of services, materials, equipment or real property provided by the municipality or donated to the municipality for the particular project which is the subject of the State grant. The sources and amounts of the municipal share shall have the prior approval of the commissioner.

(2) Real property may be property purchased by or donated to the municipality for the particular park project which is the subject of the grant, or may be property already owned by the municipality which has not been previously operated for park purposes. The value of real property will be the fair market value as established by appraisal in accordance with the requirements of the office.

(e) *Waivers of retroactivity.* To be eligible for reimbursement as part of the State grant, or for approval as part of the municipal share, all services, materials and equipment must be provided during the term of the grant. An exception will be made only when an immediate action on a project is necessary and the time required to process an application would result in an opportunity being lost. Credit for work performed prior to the approval of an application will be granted according to the following conditions:

(1) Waivers of retroactivity will be granted only for acquisition projects or for the acquisition of real property whose value may be used as all or part of the municipal share of the cost of the project.

(2) The municipality shall notify the office in writing of the necessity for a waiver of retroactivity and provide such information about the proposed action, including environmental data, as is requested by the office.

(3) If the office grants a waiver, the retroactive costs will be eligible for assistance or use as a match only if the project is subsequently approved. The retroactive costs are incurred at the municipality's risk, since the granting of a waiver by the office is only an acknowledgment of the need for immediate action; it does not insure that the project will be approved.

(4) In order for retroactive costs to be eligible for assistance or use as a match, the municipality must submit a preliminary application for the project in the grant cycle following the one in which the waiver is granted.

(5) A finding by the office that the activity for which a retroactive waiver is sought will have a significant adverse environmental effect may preclude the granting of such waiver.

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(f) The cost of a project, for determining the State share, shall not exceed the amount set forth in the application as approved by the commissioner. The State shall not be responsible for any increases in the cost of the project after the date of the commissioner's approval.

Sec. added by renum. 296.4, Title 6, filed Sept. 1971; repealed, filed Aug. 10, 1972; new filed April 13, 1987; amd. filed Aug. 8, 1989 eff. Aug. 23, 1989. Amended (e).

Section 437.5. Restrictions on use; fees

(a) A municipality may not restrict the use of facilities acquired or developed under this Part by persons who are not residents of the municipality without the express approval of the commissioner.

(b) *Fees.* A municipality may charge a reasonable fee for the use of facilities acquired or developed under this Part.

- (1) Fees charged to nonresidents cannot exceed twice those charged to residents.
- (2) Where there is no charge for residents but a fee is charged to nonresidents, nonresident fees cannot exceed fees charged for residents at comparable State or local public facilities.
- (3) Reservation, membership or annual permit systems available to residents must also be available to nonresidents, and the period of availability must be the same for both residents and nonresidents.
- (4) This provision does not apply to nonresident fishing and hunting license fees.

Sec. added by renum. 296.5, Title 6, filed Sept. 1971; repealed, filed Aug. 10, 1972; new filed April 13, 1987 eff. May 4, 1987.

Section 437.6. Alienation

Facilities acquired or developed by a municipality pursuant to this Part shall not be sold or disposed of or used for other than public park purposes without the express authority of an act of the Legislature, which shall provide for the substitution of other lands of equal fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.

Sec. added by renum. 296.6, Title 6, filed Sept. 1971; repealed, filed Aug. 10, 1972; new filed April 13, 1987 eff. May 4, 1987.

Part 438. Urban Cultural Park Projects

Section 438.1. Interpretive/visitor center facility projects

Urban cultural park (UCP) interpretive/visitor center facility projects shall be eligible for up to 100-percent funding.

(a) *Eligibility.*

- (1) An eligible interpretive/visitor center facility project shall be:
 - (i) A structure or part thereof, including interpretive and informational exhibits and related support facilities, which will serve as a focal point for visitor orientation to the resources of the State urban cultural parks system and the local urban cultural park in which the facility is located.
 - (ii) The selected site must be described in an approved urban cultural park management plan.

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(iii) Priority will be given to interpretive/visitor centers which are located in structures that are compatible with the theme(s) of the specific UCP, listed on or eligible for listing on the State or National Register of Historic Places, and conveniently located for UCP visitors. Where more than one potential facility is identified in a management plan, the facility selected shall be subject to the approval of the commissioner.

(2) In some UCP's, more than one interpretive/visitor center may be needed.

(i) Provisions and justifications for the creation of additional visitor center(s) shall be described in an approved urban cultural park management plan.

(ii) Such proposals for additional interpretive/visitor center(s) will not be funded until the primary interpretive/visitor center is completed to the satisfaction of the commissioner.

(b) *Projects eligible for interpretive/visitor center funds.*

(1) Acquisition projects. The acquisition of sites, buildings, structures and objects for interpretive/visitor center functions, including related parking. Acquisition may include purchase, transfer and gift.

(i) Eligible costs related to acquisition include legal fees, appraisal fees and project signs, when part of an approved scope of work and within the approved period of the acquisition project.

(ii) Costs associated with acquisition of real property which are not eligible for grant assistance shall be options to purchase real property and the cost of borrowing funds for acquisition.

(iii) Appraisals must be performed no more than 12 months prior to the acquisition of real property. The cost of obtaining an appraisal shall not be an allowable cost if an acquisition grant is not subsequently awarded. If the property is valued at \$100,000 or more, two appraisals must be obtained. If the property is valued at less than \$100,000, one appraisal is sufficient. If the property is valued at less than \$5,000, a short-form appraisal may be used at the discretion of the commissioner. Appraisals shall be prepared by an active consultant appraiser in accordance with the requirements of the office.

(2) Restoration or rehabilitation projects. Eligible projects include:

(i) Activities associated with interpretive/visitor center development which are not construction but are directly related to construction. Examples of such activities include the preparation of requests for proposals, predevelopment plans, specifications and cost estimates; feasibility studies; historic structure reports; preparation of construction documents; professional accounting services; and preparation of project completion reports, project signs and the design of permanent interpretive elements. To be eligible for grant assistance, all such associated activities must be part of an approved development project.

(ii) Construction activities such as:

(a) rehabilitation of structure(s) or parts thereof for interpretive/visitor center use;

(b) provision of facilities to provide barrier-free access for disabled patrons;

(c) installation or rehabilitation of restroom and visitor reception areas; and

(d) structural and interpretive fixtures permanently affixed to the interpretive/visitor center site.

(iii) Projects shall meet the following requirements:

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(a) The interpretive/visitor center shall be available to the general public at reasonable times at no charge.

(b) The project shall provide barrier-free access for disabled patrons in accordance with applicable New York State statutes.

(c) The project shall comply with the Secretary of the Interior's standards as interpreted by the commissioner.

(d) The municipality shall utilize competent professional architects, engineers, exhibit designers and other professionals as needed in planning and developing the interpretive/visitor center and in developing any request for proposal for the selection of such professionals.

(3) Site development, including landscaping, docks, boardwalks, lighting, fencing, signage, parking, and installation of sidewalks, curbs, roads and service drives.

(c) *Eligible applicants.*

(1) An eligible applicant for an interpretive/visitor center facility project shall be a city, town or village which:

(i) shall be the owner of the structure that shall house the facility;

(ii) shall be a lessee of such structure or parts thereof sufficient to house an interpretive/visitor center facility and provide appropriate related facilities and services as described in subdivision (a) of this section, provided that such lease shall have an unexpired term of not less than 23 years from the date on which the check for final payment on the project is issued by the State Comptroller; or

(iii) shall be the occupant of land under the jurisdiction of a State agency, provided that a memorandum of understanding or comparable agreement between the municipality and the State agency having jurisdiction over the land has been executed which:

(a) states the purpose of the project and the conditions under which it is to be carried out; and

(b) contains terms and conditions sufficient in the commissioner's judgment to ensure a period of public use of at least 23 years from the date on which the check for final payment on the project is issued by the State Comptroller.

(2) If the municipality contracts with a management entity to operate the interpretive/visitor center, a copy of the contract between the municipality and the management entity for the administration, operation and maintenance of the facility shall be submitted to the commissioner for his approval prior to execution of said contract.

(d) *Application procedures.*

(1) Notice of intent.

(i) No later than May 31, 1987, each municipality which intends to apply for interpretive/visitor center assistance under this section shall notify the commissioner in writing of its intention.

(ii) No later than July 31, 1987, the municipality shall submit to the office a draft request for proposal or scope of work for the preparation of a plan for site selection (if needed) and development of interpretive/visitor center facilities and for the design and provision of appropriate exhibitry and signage associated with the project. The request for proposal shall be subject to the approval of the commissioner.

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- (2) No later than December 31, 1987, each municipality shall submit to the commissioner a formal application for an interpretive/visitor center project.
- (3) Applications shall be submitted on forms to be furnished by the office. Forms may be obtained from the Director of Urban Cultural Parks of the office.
- (4) The application shall contain the following:
 - (i) general applicant information;
 - (ii) the specific proposal for the development of interpretive/visitor centers;
 - (iii) documentation to demonstrate the municipality's ability and commitment to fund, operate and maintain the interpretive/visitor center for a period of at least 20 years;
 - (iv) a program narrative containing information to be specified by the office, including documentation and identification of local actions and funding sources guaranteeing provision of all interpretive elements needed for the interpretive/visitor center to be fully operational at the time of contract completion;
 - (v) references to page numbers of the UCP management plan which describe the interpretive/visitor center project. Information cited in the management plan should be summarized and updated where necessary;
 - (vi) a project cost breakdown;
 - (vii) a site map and floor plan, including appropriate provisions for a Statesupplied core exhibit on the UCP system; and
 - (viii) copy of a deed or other proof of ownership or copy of lease.
- (e) *Criteria.* The following factors shall be considered in funding interpretive/visitor center facilities:
 - (1) the degree to which the facility addresses the four UCP goals of education, preservation, recreation and economic development;
 - (2) the relationship of the facility to statewide, regional and local plans of agencies supporting the goals of the UCP program;
 - (3) the impact the facility will have on the local economy;
 - (4) the financial feasibility and effectiveness of the proposed facility;
 - (5) the social, environmental and economic characteristics of the community and associated impacts of the facility on those characteristics;
 - (6) the record and capability of the UCP community and the applicant to complete the facility and guarantee operations in a manner acceptable to the commissioner;
 - (7) the demonstrated capability of the UCP community to implement the programs and projects as stated in its local UCP management plan; and
 - (8) the degree to which the interpretive/visitor center complements rather than competes with existing interpretive facilities, museums and resources in the UCP area.

Sec. filed April 13, 1987; amd. filed Jan. 9, 1989 eff. Jan. 30, 1989. Amended (c)(1).

Section 438.2. Local urban cultural park resource projects

- (a) A municipality, a public corporation or not-for-profit corporation may undertake a project to acquire and develop an historically or culturally significant site, building, structure, object or distinctive natural

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feature provided that the project is identified in an approved UCP management plan and is not an eligible interpretive/visitor center project.

(b) A local UCP resource project shall be limited to the acquisition and improvement of a single property or site.

(c) Projects shall be evaluated according to the following criteria:

- (1) the degree to which the project addresses one or all of the four UCP goals of education, preservation, recreation and economic development;
- (2) the relationship of the project to statewide, regional and local plans of agencies supporting the goals of the UCP program;
- (3) the local economic needs, including job creation and revenue increases that will be generated by the project;
- (4) the financial feasibility and effectiveness of the project;
- (5) the evidence of community support for the project;
- (6) the social, environmental and economic characteristics of the community and associated impacts; and
- (7) the record and capability of the community and applicant to follow through with the proposed project in both the construction and operational phases.

(d) Eligible projects under this section shall include:

- (1) exterior building restoration, rehabilitation, improvement, preservation and protection;
- (2) interior building restoration, rehabilitation, improvement, preservation and protection when such work:
 - (i) is necessary for the stabilization and support of an historic structure; or
 - (ii) is for a structure, or part of a structure, that will be used entirely for public facilities which directly serve the UCP patron; and
 - (iii) is in accordance with the Secretary of the Interior's standards and the facility is open to the public for a prescribed period of time each year;
- (3) facade easements and covenants; and
- (4) new construction, provided that:
 - (i) such construction is compatible with the historic and architectural character of the UCP, as determined by the commissioner;
 - (ii) the facility constructed will directly serve the UCP patron without charge, except, in some instances, for parking fees; and
 - (iii) the construction complies with the Secretary of the Interior's standards as interpreted by the commissioner.

(e) *Funding for local UCP resource projects.* The State share of the cost of a local UCP resource project shall not exceed 50 percent of the approved project cost, less any Federal assistance and any other State assistance received or to be received for the project.

Sec. filed April 13, 1987; amd. filed Feb. 2, 1990 eff. Feb. 21, 1990. Amended (a).

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Section 438.3. State urban culture park system projects

A development project undertaken in a State-owned environmental, cultural or recreational facility or site, which is within a designated urban cultural park and identified in an approved management plan, shall be eligible for funding.

Sec. filed April 13, 1987 eff. May 4, 1987.

Section 438.4. Funding priorities

Funds designated for use for urban cultural park purposes shall be allocated in accordance with the following priorities:

- (a) first, urban cultural park interpretive/visitor center facilities which serve as the primary interpretive/visitor center for each UCP;
- (b) second, additional urban cultural park interpretive/visitor center facilities which supplement the facilities and services provided in primary UCP interpretive/visitor center facilities;
- (c) third, local urban cultural park resource projects; and
- (d) fourth, State urban cultural park resource projects.

Sec. filed April 13, 1987 eff. May 4, 1987.

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Subchapter C. Environmental Protection Act

Part 439. General Program Provisions

Section 439.1. Authority and purpose

These regulations implement the Environmental Protection Act, title 9 of article 54 of the Environmental Conservation Law. In enacting the Environmental Protection Act, the New York State Legislature found that preservation, enhancement, restoration, improvement and stewardship of the State's environment are among the government's most fundamental obligations and that appropriate actions to make the State's invaluable natural and historic resources available for public use, enjoyment or benefit are key components of the environmental and social policy of the State. And, it further found the State has the capacity to protect the environment and public health, safety and welfare by providing assistance to State agencies, public benefit corporations, public authorities, municipalities and not-for-profit corporations for park, recreation, historic preservation or heritage area projects.

Sec. filed Nov. 29, 1994 eff. Dec. 14, 1994; amd. filed July 27, 2009 eff. Aug. 12, 2009.

Section 439.2. Definition of terms

Whenever used in this Subchapter, the following terms shall mean and include:

- (a) **Commissioner** shall mean the Commissioner of Parks, Recreation and Historic Preservation.
- (b) **Cost** shall mean engineering and architectural services, plans and specifications, archaeological services, consultant and legal services, or other direct expenses incident to such project.
- (c) **Facility** shall mean any structure, site or site improvement including paths, trails, roads, bridges, ramps and buildings.
- (d) **Federal assistance** shall mean funds available, other than by loan, from the Federal government, either directly or through allocation by the State for construction or program purposes pursuant to any Federal law or program.
- (e) **Governing body** shall mean:
 - (1) in the case of a county outside of the city of New York, the county board of supervisors or other elective governing body;
 - (2) in the case of a city or village, the local legislative body thereof, as the term is defined in the Municipal Home Rule Law;
 - (3) in the case of a town, the town board;
 - (4) in the case of a public benefit corporation, the board of directors, members or trustees thereof;
 - (5) in the case of a public authority, the governing board of directors, members or trustees thereof;
 - (6) in the case of a not-for-profit corporation, the board of directors thereof or such other body designated in the certificate of incorporation to manage the corporation; and
 - (7) in the case of an Indian tribe, any governing body recognized by the United States or the State of New York.
- (f) **Heritage area project** shall mean a project undertaken by or through a municipality or a not-for-profit corporation for planning relating to or the structural assessment, acquisition or development of

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sites and facilities identified in a management plan approved by the commissioner in accordance with section 35.05 of the Parks, Recreation and Historic Preservation Law.

(g) **Historic preservation project** shall mean a project undertaken by a municipality or a not-for-profit corporation to acquire, improve, restore or rehabilitate property listed on the State or National Register of Historic Places to protect the historic, cultural or architectural significance thereof or a project for planning relating to or the structural assessment of that property. **Historic preservation project** shall also mean a project undertaken by the office to improve, restore or rehabilitate State historic properties or a project for planning relating to or structural assessment of those properties.

(h) **Match (matching share)** shall mean the portion of the total cost of a project which the project sponsor must provide.

(i) **Municipality** shall mean a county, city, town, village, school district, supervisory district, or an Indian tribe or nation residing within New York State, a local or State public authority or local or State public benefit corporation, a State agency, or any combination thereof.

(j) **National Register of Historic Places** shall mean the list of districts, sites, buildings, structures or objects significant in American history, architecture, archaeology, engineering or culture established in the National Historic Preservation Act of 1966 as amended (16 USC §§ 470 **et seq.**).

(k) **Not-for-profit corporation** shall mean a corporation formed pursuant to or subject to the Not-for-Profit Corporation Law and qualified for tax-exempt status under the Federal Internal Revenue Code.

(l) **Office** shall mean the Office of Parks, Recreation and Historic Preservation.

(m) **Park project** shall mean a project undertaken by a municipality or a not-for-profit corporation for planning relating to or the structural assessment, acquisition, development or improvement of park sites or recreational facilities including construction of structures, roads and parking facilities.

(n) **Project applicant** shall mean a municipality or not-for-profit corporation which applies for State assistance pursuant to this Subchapter.

(o) **Project sponsor** shall mean a municipality or not-for-profit corporation which has been awarded State assistance and, pursuant to contract, will undertake and assume responsibility for a project authorized by this Subchapter.

(p) **Public benefit corporation** shall generally mean a corporation organized or created by a unit of government to construct or operate a public improvement, the profits from which inure to the benefit of the State or the people thereof, or to perform some other function on behalf of the establishing body.

(q) **Secretary of the Interior's Standards** shall mean the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as set out in the Federal Register, volume 48, number 190, pages 44716 through 44742 (September 29, 1983). The office previously incorporated the standards by reference in rules implementing the Environmental Quality Bond Act of 1986. (See section 435.2[n] of this Title.) The standards were filed with the Secretary of State on April 13, 1987. They are available for inspection and copying from the Albany office of the Office of Parks, Recreation and Historic Preservation; the 11 regional offices of the Office of Parks, Recreation and Historic Preservation; or at the Albany office of the New York State Department of State. Secretary of the Interior's Standards also shall mean the Standards for the Treatment of Historic Properties as set out in the Code of Federal Regulations, title 36, volume 1, part 68, pages 389-392 (July 1, 2008), and notice of

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amendments and annotations at http://www.nps.gov/history/local-law/Arch_Standards.htm (July 24, 2009). As applied to projects undertaken under this Subchapter, the commissioner's interpretation of the Secretary of the Interior's Standards shall be controlling.

(r) **State assistance payment** shall mean the payment of monies by the State for projects authorized by the Environmental Protection Act.

(s) **State Register of Historic Places** shall mean the list of districts, sites, buildings, structures or objects significant in the architecture, archeology, engineering or culture of New York State, its communities or the nation established by section 14.07 of the Parks, Recreation and Historic Preservation Law.

Sec. filed Nov. 29, 1994; amd. filed Aug. 19, 1997 eff. Sept. 3, 1997. Amended (h), (i), (k); amd. filed July 27, 2009 eff. Aug. 12, 2009; amd. filed May 25, 2012 eff. June 13, 2012.

Section 439.3. Allocation of funds

The distribution of funds for park, historic preservation and heritage area projects shall be requested annually by the office for inclusion in the executive budget and action by the New York State Legislature.

(a) The commissioner shall determine the types of projects to be funded from the allocation for each fiscal year based on factors which shall include, but need not be limited to:

- (1) demand as evidenced by number and type of applications previously received for this and other grant programs administered by the office;
- (2) the Open Space Conservation Plan, the Statewide Comprehensive Outdoor Recreation Plan and other applicable planning documents;
- (3) public comments and requests received by the office or other appropriate evidence of need;
- (4) the availability of other programs and funding resources;
- (5) allocations for various types of projects in previous funding cycles;
- (6) State and Federal mandates; and
- (7) emergencies or disasters

(b) Consistent with the number of applications and the funds appropriated, the commissioner may limit the maximum amount of State assistance available for any one project.

Sec. filed Nov. 29, 1994; amd. filed Aug. 19, 1997 eff. Sept. 3, 1997; amd. filed Aug. 16, 2013 eff. Sept. 4, 2013.

Part 440. Provisions Relating to All Projects

Section 440.1. General project requirements

In order to be eligible for State assistance under this Part, the entire project must be:

- (a) recommended to the commissioner by the governing body of the project sponsor or where the project sponsor is a State agency, its chief executive; and
- (b) located within the physical boundaries of the State of New York.

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Sec. added by renum. 371.1; repealed, new filed May 13, 1966; renum. 250.1, Title 17, new added by renum. 298.1, Title 6, filed Sept. 1971; repealed, new filed July 28, 1972; repealed, filed Aug. 10, 1972; new filed Aug. 13, 1973; rep., filed June 6, 1974; new filed Nov. 29, 1994 eff. Dec. 14, 1994; amd. filed July 27, 2009 eff. Aug. 12, 2009.

Section 440.2. Not-for-profit corporation requirements

(a) A not-for-profit corporation must demonstrate to the satisfaction of the office that it is capable of operating and maintaining the completed project for the benefit of the public. The following documents will be required to verify a corporation's not-for-profit, tax-exempt status and provide evidence of such capability:

- (1) a copy of the corporation's certificate of incorporation;
- (2) a copy of a determination letter from the United States Internal Revenue Service verifying the corporation's tax-exempt status; and

(b) materials demonstrating that the not-for-profit corporation is up-to-date with all pertinent filings under section 501 of the United States Internal Revenue Code, and either article 7-A of the New York Executive Law, or section 8-1.4 of the New York Estates, Powers and Trusts Law, or section 1508 of the New York Not-for-Profit Corporation Law, or section 215 of the New York Education Law.

Sec. added by renum. 371.2; repealed, new filed May 13, 1966; renum. 250.2, Title 17, new added by renum. 298.2, Title 6, filed Sept. 1971; repealed, new filed July 28, 1972; repealed, filed Aug. 10, 1972; new filed Aug. 13, 1973; repealed, filed June 6, 1974; new filed Nov. 29, 1994; repealed, new added by renum and amd. 440.3, filed Aug. 19, 1997 eff. Sept. 3, 1997; amd. filed July 27, 2009 eff. Aug. 12, 2009; amd. filed May 25, 2012 eff. June 13, 2012.

Section 440.3. Project sponsor's interest in real property for development projects

If the project sponsor is not the sole owner of the unencumbered fee of land on which a development project will be undertaken, the following documents will be required to qualify the project sponsor's interest in the property for State assistance:

- (a) except with respect to property owned by the State, the agreement of the owner to execute the project agreement and public benefit agreement as guarantor; and
- (b) a copy of a lease, easement, contract or memorandum of understanding which establishes to the satisfaction of the commissioner that the project sponsor's interest in the property is of sufficient duration and stability to assure that the project sponsor will be able to comply with this Subchapter.

Sec. added by renum. 371.3; repealed, filed May 13, 1966; new added by renum. 298.3, Title 6, filed Sept. 1971; repealed, new filed July 28, 1972; repealed, Aug. 10, 1972; new filed Aug. 13, 1973; repealed, filed June 6, 1974; new filed Nov. 29, 1994; renum. 440.2, new added by renum. 440.4, filed Aug. 19, 1997 eff. Sept. 3, 1997; amd. filed July 27, 2009 eff. Aug. 12, 2009.

Section 440.4. Funding provisions

(a) Except for projects undertaken by the office at State historic properties, State assistance towards the cost of a project shall not exceed 50 percent of the approved project cost, provided however, in the case of a project located in an area which according to the most recent census data available has a poverty rate of at least 10 percent for the year to which the data relates, State assistance payments toward the cost of any such project shall in no event exceed 75 percent of the approved project cost.

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(b) For determining the amount of State assistance available for the project, the cost of a project shall be the amount approved by the commissioner. The State shall not be responsible for any increases in the cost of the project.

(c) State assistance will be available on a reimbursement basis. Project sponsors shall submit periodic invoices and requests for payment as work is performed and costs incurred. The amount of each State assistance payment will be in the same proportion as the State assistance bears to total project cost.

(d) A project sponsor may request an advance payment in an amount not to exceed 25 percent of the total amount of State assistance for the project or the amount of match the project sponsor can document at the time of the request, whichever is smaller.

Sec. added by renum. 298.4, Title 6, filed Sept. 1971; repealed, new filed July 28, 1972; repealed, filed Aug. 10, 1972; new filed Aug. 13, 1973; repealed, filed June 6, 1974; new filed Nov. 29, 1994; renum. 440.3, new added by renum. 440.5, filed Aug. 19, 1997 eff. Sept. 3, 1997; amd. filed July 27, 2009 eff. Aug. 12, 2009.

Section 440.5. Project sponsor's match

The project sponsor's match may consist of the following:

(a) the fair market value in the project location of material which is procured by purchase or donation during the project term or within three years prior to the application deadline date;

(b) the fair market value in the project location of equipment which is procured by purchase or donation during the project term;

(c) rental expenses incurred at customary rental rates for the use of equipment in development and construction during the project term. The donated value at customary rental rate of equipment will qualify if used during the project term;

(d) the cost of labor employed in project development and construction during the project term;

(e) the cost of services, including professional services, or the value of donated services provided during the project term or within three years prior to the application deadline date; and

(f) the fair market value of real property or an interest in real property acquired by purchase or donation during the project term or within one year prior to the application deadline date. The value of previously owned lands converted from unrelated use to project purposes may qualify as match only if such conversion occurred during the project term or within one year prior to the application deadline date.

The value of real property shall be established by an appraisal in accordance with section 440.6 of this Part.

Sec. added by renum. 298.5, Title 6, filed Sept. 1971; repealed, new filed July 28, 1972; repealed, filed Aug. 10, 1972; new filed Aug. 13, 1973; repealed, filed June 6, 1974; new filed Nov. 29, 1974; renum. 440.4, new added by renum. 440.6, filed Aug. 19, 1997 eff. Sept. 3, 1997; amd. filed July 27, 2009 eff. Aug. 12, 2009.

Section 440.6. Appraisals

Appraisals shall be prepared according to the following requirements:

(a) Appraisals shall be prepared by a qualified appraiser in accordance with the guidelines of the office.

(b) Appraisers must either be licensed or certified by the State of New York or appear on the New York State Department of Transportation's list of qualified appraisers.

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- (c) Appraisals must be conducted no more than 12 months prior to the acquisition of the property by the project sponsor.
- (d) If the property is valued at \$300,000 or more, two appraisals must be obtained.
- (e) If the property is valued at less than \$300,000, one appraisal is required.
- (f) If the property is valued at less than \$25,000, a short-form appraisal may be used at the discretion of the office.
- (g) The office may change appraisal requirements to conform to any guidelines which may be issued by the State Comptroller.

Sec. filed July 28, 1972; repealed, filed Aug. 10, 1972; new filed Aug. 13, 1973; repealed, filed June 6, 1974; new filed Nov. 29, 1994; renum. 440.5, new added by renum. and amd. 440.7, filed Aug. 19, 1997 eff. Sept. 3, 1997. Amended (f), added (g).

Section 440.7. Application information and procedures

(a) *Outreach and technical services.* The office will provide outreach and technical services to assist project applicants in preparing applications that are complete and which address the commissioner's annual funding priorities. Applicants may contact the appropriate representative of the office to schedule a pre-application conference.

(b) *Performance timelines.*

(1) The office and the project sponsor will develop specific performance timelines for inclusion in the project agreement that are feasible for the project sponsor and acceptable to the office. Timelines will address the steps necessary to initiate, progress or complete a project, including raising the project sponsor's match; submitting appraisals, plans and specifications; obtaining permits or other approvals; submitting documents necessary to verify compliance with article 15-A of Executive Law; or submitting interim and final project reports.

(2) Timelines must provide that a development project will be initiated no later than six months after a project agreement is executed and approved by the State Comptroller, and completed no later than two years subsequent to such approval. Acquisitions are required to be completed within one year of the State Comptroller's approval of the project agreement. The office may vary these timelines when it is deemed appropriate for a particular project.

(3) The office, in its discretion, may cancel projects which do not adhere to mutually established timelines. Sponsors of projects which are so cancelled may reapply in the next appropriate funding cycle.

(c) *Application information.* Application information may be obtained from the office's web site at www.nysparks.com/grants or from the Albany office or from the regional grants administrator at the appropriate regional office listed below:

Western New York Region—Allegany, Cattaraugus, Chautauqua, Erie and Niagara OPRHP, Beaver Island State Park, 2136 West Oakfield, Grand Island, NY 14072 (716) 773-5292, FAX (716) 773-4150

Finger Lakes Region—Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates, OPRHP, Allegany State Park, ASP Rte 1, Salamanca, NY 14779 (716) 354-9101, FAX (716) 354-2255

Long Island Region—Nassau and Suffolk, OPRHP, Belmont Lake State Park, PO Box 247, Babylon, NY 11702 (631) 321-3543, FAX (631) 321-3721

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New York City Region—Bronx, Kings, New York, Queens and Richmond, OPRHP, Adam Clayton Powell, Jr. State Office Building, 163 West 125th Street, 17th Floor, New York, NY 10027 (212) 866-2599, FAX (212) 866-3186
Capital District Region—Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren and Washington, OPRHP, Saratoga Spa State Park, 19 Roosevelt Drive, Saratoga Springs, NY 12866-6214 (518) 584-2000, FAX (518) 584-5694
Central New York Region—Cayuga, Cortland, Madison, Onondaga and Oswego, OPRHP, Clark Reservation State Park, 6105 East Seneca Turnpike, Jamesville, NY 13078-9516 (315) 492-1756, FAX (315) 492-3277
Southern Tier Region—Broome, Chemung, Chenango, Delaware, Schuyler, Steuben, Tioga and Tompkins, OPRHP, 2221 Taughannock Park Road, Trumansburg, NY 14886 (607) 387-7041, FAX (607) 387-3390
Mohawk Valley Region—Fulton, Herkimer, Montgomery, Oneida, Otsego and Schoharie, OPRHP, Clark Reservation State Park, 6105 East Seneca Turnpike, Jamesville, NY 13078-9516 (315) 492-1756, FAX (315) 492-3277
Mid-Hudson Region—Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester, OPRHP, Taconic Regional Office, 9 Old Post Road, Staatsburg, NY 12580 (845) 889-3866, FAX (845) 889-8321
North Country Region—Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis, and St. Lawrence, OPRHP, Keewaydin State Park, Alexandria Bay, NY 13607 (315) 482-2593, FAX (315) 482-9413

(d) *Application documentation.* Except as set forth in subdivision (e) below, the grant application shall include the following:

- (1) general applicant information;
- (2) a narrative description of the proposed project, its expected public benefit, the applicant's commitment to maintaining or operating the project and how the project conforms to the commissioner's funding priority for the cycle in which the application is submitted;
- (3) a budget detailing the total cost of the project, and sources of the applicant's match;
- (4) the agreement of any co-owner of the land and of the holder of any mortgage or other lien on the project site to subordinate that interest to assure compliance with the public benefit agreement required by section 440.10(b)(9) of this Part;
- (5) Anticipated performance timelines for initiating and completing the project;
- (6) for projects other than acquisitions, either the deed to the property or documentation of the project sponsor's interest in the project site as set forth in section 440.3 of this Part;
- (7) for projects where the project sponsor is a municipality, environmental information including a description of existing natural and cultural resources, an evaluation of the project's environmental impact and documentation showing compliance with the State Environmental Quality Review Act (SEQRA); for projects where the project sponsor is a not-for-profit corporation, environmental information including a description of existing natural and cultural resources, an evaluation of the project's environmental impact and such other information as the commissioner shall require to make a final SEQRA determination;
- (8) program specific information required by sections 441.2, 442.3 and 443.2 of this Title respectively; and
- (9) such other information as may be required by the commissioner in order to accommodate requirements arising from annual program priorities.

(e) The application process shall be announced prior to each grant round. Applications received after the specified deadline will not be accepted. At the discretion of the office, paragraphs (d)(4), (6) and (8) of this section may be submitted after the application is submitted but prior to execution of the project

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agreement with the project sponsor, however, such late submission may be a negative factor in the rating criteria.

Sec. filed July 28, 1972; repealed, filed Aug. 10, 1972; new filed Aug. 13, 1973; repealed, filed June 6, 1974; new filed Nov. 29, 1994; renum. 440.6, new added by renum. and amd. 440.8, filed Aug. 19, 1997 eff. Sept. 3, 1997; amd. filed July 27, 2009 eff. Aug. 12, 2009; amd. filed May 25, 2012 eff. June 13, 2012; amd. filed Aug. 16, 2013 eff. Sept. 4, 2013.

Section 440.8. Rating criteria

(a) All applications will be rated in accordance with the rating system established by the commissioner. Criteria used to rate projects will generally include the following:

- (1) the extent to which the project site has suffered from physical deterioration, decay, vandalism, neglect or disinvestment or may be threatened with closure, demolition or inappropriate development;
- (2) the relationship of the project to a local, regional and/or statewide planning document or other assessment of need;
- (3) the extent to which the project protects, enhances or interprets natural, cultural or historic resources;
- (4) the ability of the project sponsor to initiate and complete the project on a timely basis and operate or maintain the completed project; and
- (5) program-specific factors established for park, historic preservation and heritage areas and found in sections 441.3, 442.4 and 443.3 of this Title respectively.

(b) In addition, ratings shall take into account annual programmatic and funding priorities as established by the commissioner pursuant to section 439.3 of this Title. Specific rating factors for each grant cycle and their relative weights will be published in the *State Register* and made available with project applications.

Sec. filed July 28, 1972; repealed, filed Aug. 10, 1972; new filed Aug. 13, 1973; repealed, filed June 6, 1974; new filed Nov. 29, 1994; renum. 440.7, new added by renum. and amd. 440.9, filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 440.9. Review procedures

(a) Within each program category, applications will be rated against applications for similar projects.

(b) All applications will receive staff review, including review at the regional level. The final decision on all applications will be made by the commissioner.

(c) In addition to the rating criteria listed in section 440.8 of this Part, the commissioner may consider the following factors in determining which projects to fund:

- (1) the geographic distribution of other fundable projects in any given application cycle;
- (2) the extent to which the project will maximize the use and accessibility of a facility;
- (3) special engineering, environmental and historic preservation concerns or benefits; and
- (4) the past performance, if any, of the project sponsor on previous projects, including its compliance with equal employment opportunity and minority- and women-owned business enterprise programs.

(d) The office will use its best efforts to review applications and announce the commissioner's funding decision within 120 days of the announced application deadline.

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Sec. filed July 28, 1972; repealed, filed Aug. 10, 1972; new filed Aug. 13, 1973; repealed, filed June 6, 1974; new filed Nov. 29, 1994; renum. 440.8, new added by renum. and amd. 440.10, filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 440.10. Project agreements

- (a) All projects must be undertaken pursuant to a project agreement with the office.
- (b) All project agreements will require:
- (1) a copy of a resolution or other document of the governing body of the project sponsor recommending the application to the commissioner and authorizing an official of the project sponsor to execute documents necessary to the project;
 - (2) a project term which shall commence on the date of the letter advising a project sponsor that its application has been selected for State assistance;
 - (3) performance standards, reporting requirements and timelines for initiating and completing project elements;
 - (4) that contracts and procurement policies and procedures of a municipality comply with sections 103 and 104-b of the General Municipal Law;
 - (5) that a not-for-profit corporation has policies for procuring quality goods and services in a way that assures prudent and economical use of public money in the best interests of the taxpayers.
 - (6) that the project sponsor comply with the provisions of article 15-A of the Executive Law regarding equal employment opportunities for women and minorities and contracting opportunities for minority- and women business enterprises, as well as the Omnibus Procurement Act regarding participation of New York State businesses;
 - (7) that the project be accessible in accordance with the New York State Uniform Fire Prevention and Building Code and the Americans with Disabilities Act Guidelines (ADAAG-appendix A to 28 CFR part 36). The project sponsor is responsible for determining which of these standards, guidelines or codes apply to the project when there is a discrepancy with regard to a particular accessibility requirement;
 - (8) that changes will not be made to the project without the approval of the commissioner. The office may re-rate a project if the sponsor proposes any changes and may disapprove changes which would cause the revised project rating to fall below the level at which it would have received funding;
 - (9) that a project sign or other suitable acknowledgment in a form to be determined by the office be installed on the property;
 - (10) provisions which assure that the expenditure of public funds on the project will result in a public benefit. Such provisions may include:
 - (i) a requirement that the public have reasonable access to or use of the project as specified by the commissioner;
 - (ii) a requirement that the project sponsor not alter, demolish, sell, lease or otherwise convey the project, in whole or in part, without the prior written approval of the commissioner;
 - (iii) a requirement that all plans for restoration, rehabilitation, improvement, demolition or other physical change to the completed project be approved in writing by the commissioner before work commences; or

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(iv) program or project specific requirements which the commissioner deems necessary.

Sec. filed July 28, 1972; repealed, filed Aug. 10, 1972; new filed Aug. 13, 1973; repealed, filed June 6, 1974; new filed Nov. 29, 1994; renum. 440.9, new added by renum. and amd. 440.11, filed Aug. 19, 1997 eff. Sept. 3, 1997; amd. filed July 27, 2009 eff. Aug. 12, 2009; amd. filed Aug. 16, 2013 eff. Sept. 4, 2013.

Section 440.11. Maintenance of effort

Each recipient of funds made available under this Subchapter may be required to demonstrate to the satisfaction of the commissioner that the project will result in a net gain in public park, conservation, recreation, historic preservation or heritage area facilities.

Sec. filed July 28, 1972; repealed, filed Aug. 10, 1972; new filed Aug. 13, 1973; repealed, filed June 6, 1974; new filed Nov. 29, 1994; renum. 440.10, new added by renum. 440.12, filed Aug. 19, 1997 eff. Sept. 3, 1997; amd. filed July 27, 2009 eff. Aug. 12, 2009.

Section 440.12. Alternate grant awards

In a given funding cycle, applications which rate highly but for which insufficient funds are available may be selected as alternate grant awards. These applications may be retained by the office and may be used to select alternate projects to fund in the event that a project is cancelled by the office, abandoned by its sponsor or funds become otherwise available.

Sec. filed Nov. 29, 1994; renum. 440.11, new added by renum. and amd. 440.13, filed Aug. 19, 1997 eff. Sept. 3, 1997; amd. filed Aug. 16, 2013 eff. Sept. 4, 2013.

Part 441. Park Projects

Section 441.1. Eligibility criteria

(a) *Eligible projects* shall include planning relating to or the structural assessment, acquisition, improvement, development, preservation, restoration or rehabilitation of lands, waters or structures for the use by all segments of the population for park, recreation or conservation purposes.

(b) *Eligible acquisition projects* shall include, but are not limited to, acquisition during the project term or within one year prior to the application deadline date of a permanent easement in or fee title to lands which:

- (1) are appropriate for use as parklands, metropolitan or shoreline parks, bikeways, trailways, greenways, and/or waterway access;
- (2) comprise buffer zones or viewsheds if, in the opinion of the office, the acquisition is necessary to enhance or protect the value of existing recreational or environmental resources; or
- (3) contain natural, scenic or open space resources that are unique, rare, or of statewide or regional significance.

(c) *Eligible development projects* include but are not limited to:

- (1) playing fields, playgrounds; tracks, courts, rinks, or gymnasiums;
- (2) trails, greenways, community gardens or small agricultural demonstration projects;
- (3) facilities for swimming, boating, picnicking, camping, fishing, hunting or other recreational activities;
- (4) bandshells, amphitheaters, outdoor stages and related facilities;

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- (5) site-related interpretive or educational facilities such as arboretums, botanical gardens, flora and fauna protection projects, zoos, aquariums, nature and environmental exhibits, wildlife management facilities, or nature interpretive centers;
- (6) landscaping, screening, fencing, sprinkler systems, or dredging;
- (7) improvements necessary to facilitate access for disabled patrons;
- (8) infrastructure and ancillary facilities, provided that such facilities support the operation and maintenance of the recreation resource on which they are located.

Sec. added by renum. 372.1; repealed, filed May 13, 1966; new filed Nov. 29, 1994; amd. filed Aug. 19, 1997 eff. Sept. 3, 1997. Amended (b)(2), (c)(8); amd. filed July 27, 2009 eff. Aug. 12, 2009.

Section 441.2. Supplemental application requirements

In addition to the general application requirements listed in section 440.7 of this Title, applications under this Part shall contain the following additional information:

- (a) a project site plan and a map which clearly shows the location of the proposed project within the municipality;
- (b) photographs or images which show the current conditions of the project site as directed by the office;
- (c) the approval/endorsement of the governing body of the municipality in which the project will be located if the municipality is not the project sponsor; and
- (d) legislative authorization for alienation if all or part of the park facility is being sold, leased, exchanged, donated, disposed of or used for other than public park purposes.

Sec. added by renum. 372.2; repealed, filed May 13, 1966; new filed Nov. 29, 1994; amd. filed Aug. 19, 1997 eff. Sept. 3, 1997. Amended (a), (b); amd. filed July 27, 2009 eff. Aug. 12, 2009.

Section 441.3. Supplemental rating criteria

In addition to the criteria listed in section 440.8 of this Title, the following criteria will be considered in rating park projects:

- (a) the degree to which local recreation, conservation or open space deficiencies will be addressed by the project; and
- (b) the degree to which the project will primarily serve either a densely populated area where recreational opportunities have sustained physical deterioration, decay, neglect or disinvestment or an area where a substantial proportion of the population is of low income or otherwise disadvantaged and underserved with respect to existing recreational opportunities.

Sec. added by renum. 372.3; repealed, filed May 13, 1966; new filed Nov. 29, 1994; amd. filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 441.4. Public benefit provision

(a) To assure that a sufficient public benefit shall accrue from the expenditure of public funds where the park project involves a public-private partnership, the commissioner shall consider the following eligibility and rating criteria in addition to the criteria listed in Part 440.8 of this Title and section 441.3 of this Part. The extent to which the project:

- (1) replaces or improves an inadequate facility or creates a new facility;

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- (2) provides 51 percent or greater public use of and access to the facility for extended periods of time on a continuous or regular basis during the year;
 - (3) maximizes public use of and access to the facility during periods of peak recreational demand;
 - (4) diverts all or part of the facility to exclusive non-public use; and
 - (5) involves private funding for the project sponsor match that is high (in value, expenses, or costs of labor or services) in proportion to the approved total project cost.
- (b) To assure that a sufficient public benefit shall accrue from the expenditure of public funds for the project, the following provisions shall be included in the project agreement as appropriate for projects undertaken by municipalities:
- (1) a provision that no rule or regulation of a municipality shall restrict the use of or access to a project by non-residents of the municipality or impose a fee for such use without the prior written approval of the commissioner; and
 - (2) a requirement that facilities acquired or developed by a municipality pursuant to this Part shall not be sold, leased, exchanged, donated, disposed of or used for other than public park purposes without the prior written approval of the commissioner and the express authority of an act of the Legislature as provided in section 441.5 of this Part.
- (c) To assure that a sufficient public benefit shall accrue from the expenditure of public funds for the project, the following provisions shall be included in the project agreement as appropriate for acquisition projects undertaken by not-for-profit corporations:
- (1) a requirement that the project sponsor make and keep the project accessible to the public unless the commissioner determines that public accessibility would be detrimental to the land or any natural or historic resources contained therein;
 - (2) a requirement that lands acquired by a not-for-profit corporation pursuant to this Part shall not be sold, leased, exchanged, donated, disposed of or used for other than public park purposes without the express authority of an act of the Legislature as provided in section 441.5 of this Part;
 - (3) a requirement that the project sponsor of an acquisition project shall not sell, lease, exchange or donate the project to any entity other than a local government municipality or not-for-profit corporation which will operate and maintain the project for recreation or conservation purposes; and
 - (4) a requirement that the project sponsor execute and convey to the State, at no charge, a conservation easement pursuant to title 3 of article 49 of the Environmental Conservation Law over the land or facility being acquired by the sponsor.

Sec. filed Nov. 29, 1994; amd. filed Aug. 19, 1997 eff. Sept. 3, 1997. Amended (b); amd. filed July 27, 2009 eff. Aug. 12, 2009.

Section 441.5. Alienation of park projects

(a) *Project boundary map.*

- (1) Upon completion of a park project, the project sponsor shall submit a dated and signed project boundary map showing the location of the project and all related support facilities acquired or developed pursuant to this Part. The map shall also indicate all structures, facilities and

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encroachments on the property which are used for non-park purposes, such as power lines, easements, school buildings or clubhouses.

(2) In cases where the project is a discrete portion of the park, the project boundary map shall include as much of the park as would be required for the project to be operated by itself, including all support facilities such as roadways, parking lots, comfort stations and landscaping, except that utilities for the facility may be provided from elsewhere in the park.

(3) The office shall review the proposed project boundary map to determine its compliance with this section and any guidelines of the office and shall notify the project sponsor of its determination. The project boundary map shall define the public park facilities for which State assistance was provided pursuant to this Subchapter.

(b) *Alienation mitigation.* The act of the Legislature authorizing the alienation of facilities acquired or developed by a municipality pursuant to this Part shall require the substitution of other lands and any other requirements which the commissioner deems appropriate.

(c) *Substitute property.* Substitute property must meet the following criteria to the satisfaction of the commissioner:

(1) the fair market value of the substitute property must be no less than the fair market value of the property being alienated;

(2) the substitute property must be of equal environmental value to the lands being alienated;

(3) the substitute property must provide recreational resources and activities which are reasonably equivalent to those on the property being alienated or meet demonstrated public recreation or open space conservation needs;

(4) the location of the substitute property must be reasonably equivalent to the property being alienated, *i.e.*, it must be accessible to the same people or a comparable segment of the population; and

(5) in cases where the project was for the acquisition of land, the substitute property may not be property which is already owned by the project sponsor.

(d) *Leasing of State-funded facilities.* The lease of facilities acquired or developed pursuant to this Subchapter is an alienation and requires the express authority of an act of the Legislature. However, substitution of other lands is not necessary if the lease provides for the following:

(1) the leased premises must be operated as a public park and/or recreational facility; that is, all programs and activities must be offered to all members of the public on the same terms and conditions which shall be subject to the approval of the commissioner;

(2) the leased premises must be identified in signage, public records and publicity as a public park and/or recreational facility;

(3) at any time the facility ceases to be operated as a public park and/or recreational facility, the lease will terminate and the facility shall immediately revert to the project sponsor; and

(4) all revenues received by the project sponsor from the lease of the facility shall be used for the acquisition of other park facilities or capital improvements to municipal park and recreational facilities and shall not supplement monies otherwise appropriated. The project sponsor shall submit

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to the office certified copies of budget documents showing its anticipated expenditures for capital park purposes from all revenue sources with the use of the lease proceeds as a segregated item.

(e) *Granting of an easement over project lands.* If an act of the Legislature which grants an easement over parkland requires that the lands continue to be used for public park and recreation purposes, substitute property will not be required.

(f) *Review of alienation proposals by the office.*

(1) The project sponsor shall submit to the office a proposal pertaining to the alienation of parklands receiving State assistance under this Part as early in the planning process as possible.

(2) The material submitted shall include:

(i) complete parkland alienation information required by the office;

(ii) a map showing the location of the parkland being alienated and the proposed substitute property;

(iii) appraisals of both the property being alienated and the substitute property. The appraiser and the format of the appraisals shall be in accordance with section 440.6 of this Title;

(iv) documentation establishing the project sponsor's compliance with the State Environmental Quality Review Act;

(v) a complete summary of public input supporting or opposing both the decision to alienate and the adequacy of the substitute property; and

(vi) additional material such as the proposed deed for the substitute property, plans and drawings of developed or proposed facilities or an archeological survey.

(3) The office will review the proposal and provide its comments and recommendation to the project sponsor along with such additional information as it deems relevant in sufficient time for the proposal to be considered by the Legislature at its next regular session.

(g) *Legislative approval.* It shall be the responsibility of the project sponsor to contact its legislative representatives with regard to the introduction of legislation authorizing the alienation of parklands. The project sponsor shall give such legislative representatives the comments and recommendations of the office.

(h) *Revised project boundary map.* If the project sponsor receives legislative approval for the alienation, it shall file a revised project boundary map with the office showing the corrected boundaries of the project and including any substitute property. Upon approval of the alienation all restrictions and requirements pertaining to the project shall apply to the substitute property.

Sec. filed Nov. 29, 1994; amd. filed Aug. 19, 1997 eff. Sept. 3, 1997. Amended (a), (b), (f).

Part 442. Historic Preservation Projects

Section 442.1. Eligibility criteria

(a) A property shall be eligible for grant assistance if, prior to the award of the grant, it is:

(1) individually listed on the State or National Register of Historic Places; or

(2) located within a historic district which is listed on the State or National Register of Historic Places and which is identified in the district nomination form as contributing to the significance of

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the district. If the nomination does not clearly identify the property as contributing, the commissioner shall make this determination.

(b) *Eligible projects* include:

(1) Acquisition. The acquisition during the project term or within one year prior to the application deadline date of a permanent easement in or fee title to all or part of a property listed on the State or National Register or of buffer zones, viewsheds or other ancillary property if, in the opinion of the office, the acquisition is necessary to protect the significance of the listed property.

(2) Development. Improvement, restoration, preservation, rehabilitation, protection, reconstruction, or archaeological interpretation of historic properties. All work must conform to the Secretary of the Interior's Standards.

(3) Planning. Costs incurred to plan an acquisition or development project. Examples of such costs include:

(i) predevelopment plans, specifications, cost estimates and other contract documents;

(ii) planning or feasibility studies;

(iii) structural assessments, historic structure reports, cultural landscape reports, archaeological, architectural or historic research reports; and

(4) Implementation. Project completion or archaeological investigation reports, audit reports, project signs and costs to implement, administer or monitor an acquisition or development project.

Sec. added by renum. 375.1, June 1962; repealed, filed Feb. 17, 1967; new added by renum. 400.1, Title 6, Sept. 1971; repealed, filed June 6, 1974; new filed Nov. 29, 1994; amd. filed Aug. 19, 1997 eff. Sept. 3, 1997. Amended (b)(1); amd. filed July 27, 2009 eff. Aug. 12, 2009.

Section 442.2. Archeological development activities

(a) All identification, evaluation, curation, interpretation and protection activities shall be conducted under the supervision of a professional archeologist meeting the requirements of the office. Disturbance of archaeological sites will be kept to a minimum and funded only if one of the following criteria is met:

(1) data recovery is necessary to determine the presence of significant archaeological deposits that might be disturbed by a project; or

(2) data recovery and/or other mitigative measures are necessary because a development project will unavoidably disturb an area that has archaeological value; or

(3) testing is necessary to design and perform an approved development activity which is dependent upon information that can be obtained only through archaeological investigation; or

(4) public interpretation of a property is dependent upon the information that can only be obtained by archaeological testing.

(b) Whenever archaeological activities are funded under this Subchapter, appropriate research notes, maps, sketches, photographs, profiles, and field notes recording information about the archaeological resources and the methods and techniques employed must be submitted to the office together with a written report of the investigation. All information and reports must meet the professional requirements of the office for archaeological documentation.

(c) Archaeological collections and accompanying data and records must be curated in a repository meeting the requirements of the office.

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*Sec. added by renum. 375.2, June 1962; repealed, filed Feb. 17, 1967; new added by renum. 400.2, Title 6, Sept. 1971; repealed, filed June 6, 1974; new filed Nov. 29, 1994; amd. filed Aug. 19, 1997 eff. Sept. 3, 1997.
Amended (b).*

Section 442.3. Supplemental application requirements

In addition to the general application requirements found in section 440.7 of this Title, applications under this Part shall include the following additional information:

- (a) the location of the property shown on a map as directed by the office;
- (b) photographs or images showing the existing condition of the property as directed by the office; and
- (c) a narrative description of the property's historic significance.

*Sec. added by renum. 375.3, June 1962; repealed, filed Feb. 17, 1967; new added by renum. 400.3, Title 6, Sept. 1971; repealed, filed June 6, 1974; new filed Nov. 29, 1994; amd. filed Aug. 19, 1997 eff. Sept. 3, 1997.
Amended (b).*

Section 442.4. Supplemental rating criteria

(a) In addition to the criteria listed in section 440.8 of this Title, the following criteria will be considered in rating historic preservation projects:

- (b) the historic significance of the property in the national, State or local context; and
- (c) degree to which the project will increase public stewardship or awareness of historic resources.

Sec. added by renum. 375.4, June 1962; repealed, filed Feb. 17, 1967; new added by renum. 400.4, Title 6, Sept. 1971; repealed, filed June 6, 1974; new filed Nov. 29, 1994; amd. filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 442.5. Public benefit provision

In order to assure the preservation and maintenance of projects funded under this Part and to assure that a public benefit accrues from the expenditure of public funds, the commissioner will require the project sponsor to convey a preservation or maintenance restriction, easement or other protective agreement to the office or such other entity as the commissioner deems appropriate.

Sec. added by renum. 375.5, June 1962; repealed, filed Feb. 17, 1967; new added by renum. 400.5, Title 6, Sept. 1971; repealed, filed June 6, 1974; new filed Nov. 29, 1994 eff. Dec. 14, 1994.

Part 443. Heritage Area Projects

Section 443.1. Eligibility criteria

- (a) Projects, sites or facilities must be identified in a heritage area management plan which has been approved by the commissioner in accordance with section 35.05 of the Parks, Recreation and Historic Preservation Law.
- (b) Consistent with the four heritage area goals of preservation, education, economic development and recreation, projects may be for the acquisition or development of historically or culturally significant sites, districts, buildings, structures, objects or natural features, or for the development of interpretive, recreational or informational exhibits, materials and facilities which orient the visitor to the resources of the local heritage area or to the State heritage area program.

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(c) *Eligible acquisition projects* include the acquisition during the project term or within one year prior to the application deadline date of a permanent easement in or fee title to all or part of an historically or culturally significant site, district, building, structure, facility, object or natural feature identified in a heritage area or management plan.

(d) *Eligible development projects* include, but are not limited to:

- (1) improvement, restoration, preservation, rehabilitation, reconstruction, archaeological interpretation, or protection of sites, districts, buildings, structures, facilities, objects or natural resources in accordance with the Secretary of the Interior's standards;
- (2) new construction which complies with the Secretary of the Interior's standards;
- (3) infrastructure and ancillary facilities, provided that such facilities support the operation and maintenance of the project;
- (4) development and installation of interpretive, recreational or theme-related facilities, areas, greenways, trail systems, exhibits and signage and associated programs; and
- (5) development of buildings, facilities, sites and associated programs which address the need for multi-lingual or multi-cultural accommodation in the implementation of a project.

(e) Eligible planning and implementation projects include but are not limited to costs incurred to plan, implement, administer or monitor a development or acquisition project. Examples of such costs include:

- (1) preparation of predevelopment plans, specifications, cost estimates and other contract documents;
- (2) feasibility studies, including planning and economic development studies;
- (3) structural assessments, historic structure reports, cultural landscape reports, archaeological, architectural or historic research reports; and
- (4) project completion or archaeological investigation reports, audit reports and project signs.

Sec. added by renum. 374.1, June 1962; renum. 251.1, Title 17, Sept. 1971; new filed Aug. 10, 1972; amd. filed May 7, 1982; renum. 463.1, filed Feb. 25, 1988; new filed Nov. 29, 1994; amd. filed Aug. 19, 1997 eff. Sept. 3, 1997; amd. filed July 27, 2009 eff. Aug. 12, 2009.

Section 443.2. Supplemental application requirements

In addition to the general application requirements listed in section 440.7 of this Title, applications under this Part shall include the following additional information:

- (a) a narrative description of the project's significance in the context of existing heritage area resources and the four heritage area program goals, and its role in implementing the heritage area or urban cultural park's management plan;
- (b) the approval/endorsement of the project by the local heritage area management entity if it is not the project sponsor; and
- (c) the commitment of the local heritage area management entity either to operate or to cause to be operated any public facilities which are developed as part of a project.

Sec. added by renum. 374.2, June 1962; renum. 251.2, Title 17, Sept. 1971; new filed Aug. 10, 1972; amd. filed May 7, 1982; renum. 463.2, filed Feb. 25, 1988; new filed Nov. 29, 1994; amd. filed Aug 19, 1997 eff. Sept. 3, 1997.

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Section 443.3. Supplemental rating criteria

In addition to the criteria found in section 440.8 of this Title, the following criteria will be used to rate heritage area projects:

- (a) the degree to which the project addresses one or more of the four heritage area goals of preservation, education, economic development and recreation;
- (b) the degree to which the project contributes to the preservation, restoration or enhancement of natural, historic or cultural resources related to the local heritage area's interpretive theme(s) as established in its approved management plan;
- (c) the degree to which the project enhances the function and visual quality of the local heritage area;
- (d) the degree to which the project directly serves or benefits heritage area visitors and users; and
- (e) the impact of the facility on the local economy or its contribution to established economic development plans.

Sec. added by renum. 374.3, June 1962; renum. 251.3, Title 17, Sept. 1971; new filed Aug. 10, 1972; renum. 463.3, filed Feb. 25, 1988; new filed Nov. 29, 1994; amd. filed Aug. 19, 1997 eff. Sept. 3, 1997.

Section 443.4. Public benefit provision

In order to assure the preservation and maintenance of projects funded under this Part, and to assure that a public benefit accrues from the expenditure of public funds for the project, the following provisions shall be included in the project agreement as appropriate:

- (a) the project sponsor shall not prohibit the use of or access to the project to residents of the heritage area community or impose a fee for any use of and access to the project without the prior written approval of the office;
- (b) the project sponsor will be required to convey a preservation or maintenance restriction, easement or other protective agreement to the office or other such entity as the office deems appropriate; and
- (c) where real property is acquired for park, conservation, open space or recreation purposes, the project agreement shall include the provisions of section 441.4(b) of this Title when the project sponsor is a municipality and the provisions of section 441.4(c) of this Title, when the project sponsor is a not-for-profit corporation.

Sec. added by renum. 374.4, June 1962; renum. 251.4, Title 17, Sept. 1971; new filed Aug. 10, 1972; renum. 463.4, filed Feb. 25, 1988; new filed Nov. 29, 1994; amd. filed Aug. 19, 1997 eff. Sept. 3, 1997. Amended (a); amd. filed July 27, 2009 eff. Aug. 12, 2009.

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Chapter V. Marine and Recreational Vehicles

Subchapter A. Motorboats

Part 444. Registration of Vessels and Reports of Accidents

Section 444.1. Definitions

As used in this Part:

- (a) **Person** includes an individual, society, club, firm, partnership, corporation, or association of persons, and the singular number shall include the plural.
- (b) **Owner** means the person who claims lawful possession of a vessel by virtue of legal title or equitable interest therein which entitles him to such possession.
- (c) **Vessel** includes every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
- (d) **Public vessel** shall mean and include every vessel which is propelled in whole or in part by mechanical power and is used or operated for commercial purposes on the navigable waters of the State, that is either carrying passengers, carrying freight, towing, or for any other use; for which a compensation is received either directly or where provided as an accommodation, advantage, facility or privilege at any place of public accommodation, resort or amusement.
- (e) **Pleasure vessel** includes every vessel not within the classification of public vessel.
- (f) **Accident** shall mean any casualty involving a vessel or vessels, including but not limited to collision, capsizing, foundering, fire, explosion, disappearance of a vessel other than by theft, or disappearance of any person from on board under circumstances which indicate the possibility of death or injury.
- (g) **Reportable accident** shall mean any accident involving loss of life, personal injury, any property damage in excess of \$100, disappearance of a vessel other than by theft, or disappearance of any person from on board under circumstances which indicate the possibility of death or injury.

*Sec. added by renum. 350.1, Title 6, Sept. 1971; ams. filed: Nov. 21, 1972; Dec. 23, 1991 eff. Jan. 8, 1992.
Repealed (h)—(k).*

Section 444.2. Accident reporting and assistance

- (a) It shall be the duty of the operator of a vessel involved in any accident as defined herein, so far as he can do so without serious danger to his own vessel, crew and passengers, to render to other persons affected by said accident such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the occurrence. The operator shall exhibit his certificate of registration and give his name, address, and identification of his vessel in writing to any person injured and to the owner of any vessel or property damaged. In the event the person injured or damaged cannot be located at the place where the accident occurred, then said information and a description of the accident shall be reported by the operator of the vessel within 24 hours to the nearest police or local judicial officer.
- (b) The operator of every vessel involved in any reportable accident as defined herein shall, within seven days, file a complete written report and description of the accident as provided below.

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(c) Accidents shall be reported on forms provided by the Office of Parks, Recreation and Historic Preservation for this purpose. Forms may be obtained at any police station or regional office of the Office of Parks, Recreation and Historic Preservation.

(d) Accident reports must be filed in duplicate with the Office of Parks, Recreation and Historic Preservation, Bureau of Marine and Recreational Vehicles, Agency Building 1, Empire State Plaza, Albany, NY 12238 and another copy shall be filed with the police agency in whose jurisdiction the accident occurred.

(e) Every written accident report shall contain the following information:

- (1) numbers and/or names of vessels involved;
- (2) locality where accident occurred;
- (3) time and date when accident occurred;
- (4) name, address, age and boat-operating experience of operator of reporting vessel;
- (5) weather and sea condition at time of accident;
- (6) names and addresses of operators of other vessels involved;
- (7) names and addresses of owners of vessels or property involved;
- (8) names and addresses of any person or persons injured or killed;
- (9) nature and extent of injury to any person or persons;
- (10) description of damage to property (including vessels) and estimated cost of repairs;
- (11) description of accident (including opinions as to causes);
- (12) length, propulsion, horsepower, fuel and construction of reporting vessel;
- (13) names and addresses of known witnesses;
- (14) signature of person reporting.

(f) In order to comply with the accident reporting requirements of the Navigation Law, operators of vessel liveries shall keep or cause to be kept a record of the date and time a boat is rented, the registration number of the boat, and the name and address of the individual renting the boat. The record shall be kept for a period of six months and shall be available for inspection at reasonable times upon request by the Bureau of Marine and Recreational Vehicles or a representative thereof.

*Sec. added by renum. 350.2, Title 6, Sept. 1971; repealed, new added by renum. 444.18, filed Dec. 23, 1991
eff. Jan. 8, 1992.*

Part 445. Navigation of Vessels on the Navigable Waters of New York State and on the Tidewater Bordering on or Lying within the Boundaries of Nassau and Suffolk Counties

Section 445.1. Inland navigation rules

The Inland Navigation Rules of the United States Coast Guard, Department of Homeland Security at 33 Code of Federal Regulations (CFR) parts 83-88 and 90 are adopted and incorporated by reference in this Part and apply to vessels on the navigable waters of New York State and on the tidewaters bordering on or lying within the boundaries of Nassau and Suffolk counties. 33 CFR part 83 is published at 75 Federal Register (FR) 19544-19555 (April 15, 2010), <http://www.thefederalregister.com/d.p/2010-04-15-2010-8532>. And, 33 CFR parts 84-88 and 90 are published at http://www.access.gpo.gov/nara/cfr/waisidx_10/33cfrv1_10.html, and by the National Archives and

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Records Administration. These Federal regulations are also available for inspection and copying from the Office of Parks, Recreation and Historic Preservation, Bureau of Marine Services, Gov. Nelson A. Rockefeller Empire State Plaza, Agency Building 1, 11th floor, Albany, NY 12238, <http://nysparks.com/recreation/boating>; and from the New York Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

Sec. added by renum. 351.1, Title 6, September, 1971; rep. and new added filed June 23, 2011 eff. July 13, 2011.

Section 445.2. Aid in distress

It shall be the duty of every master or pilot of any vessel to render such assistance as he or she can possibly give to any other vessel coming under his or her observation and being in distress on account of accident, collision or otherwise.

Sec. added by renum. 351.2, Title 6, filed Sept. 1971; rep. and new added filed June 23, 2011 eff. July 13, 2011.

Part 446. Appearance Ticket and Simplified Information

Section 446.21. Definitions

As used in sections 446.21—446.25 of this Part:

- (a) **State aid** shall mean payments by the State to a county, city, town or village toward the cost of enforcing the provisions of the Navigation Law.
- (b) **Enforcement year** shall mean the calendar year.
- (c) **County** shall mean each county in the State of New York, except those counties which lie within the territorial limits of the City of New York. The term county with reference to such counties lying within the territorial limits of the City of New York shall mean the City of New York.
- (d) **Cities, towns or villages** shall mean each city, town or village lying within a county that does not enforce the provisions of the Navigation Law.
- (e) **Authorized expenditures** shall mean those expenditures determined by the commissioner to be reasonable and necessary for the adequate and proper enforcement of the provisions of the Navigation Law. Such authorized expenditures are listed under section 446.25 of this Part.
- (f) **County, city, town or village representative** shall mean the person or persons authorized by the county board of supervisors, city council, town board, or village board of trustees to deal directly with the commissioner in the administration of the State aid program.
- (g) **Commissioner** shall mean the Commissioner of Parks, Recreation and Historic Preservation.
- (h) **Authorized equipment** shall mean all equipment required on boats by section 40 of the Navigation Law, and shall include boats, motors, lifesaving, firefighting, safety and communications equipment, boat trailers, and any other items that the commissioner deems reasonable and necessary, which are used exclusively in the duties performed and associated with navigation safety and enforcement.
- (i) **Enforcement** shall mean to actively maintain a navigation patrol, to effect the issuance of uniform navigation summonses for violations of the Navigation Law and/or any rule or regulation enacted thereunder.

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Sec. added by renum. 448.1, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Section 446.22. Effective date of State aid

On and after July 1, 1965, the amount of State aid to be allocated to counties, cities, towns and villages pursuant to article 4-A of the Navigation Law, as amended by chapter 168 of the Laws of 1965, shall be determined by the commissioner as hereinafter provided. Section 79-b of the Navigation Law, as amended by chapter 168 of the Laws of 1965, provides that each county, city, town or village enforcing the provisions of the Navigation Law, including section 71 thereof, shall be entitled to receive State aid as hereinafter provided. A county, city, town or village seeking reimbursement for expenditures incurred in enforcement of the Navigation Law shall submit to the commissioner, by October 1st of each year, an estimate of such information as he may require. Within one month after the close of the calendar year, each county, city, town or village shall submit to the commissioner a statement of authorized expenditures actually incurred, in such form and containing such information as he may require.

Sec. added by renum. 448.2, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Section 446.23. Formula for dispersion of State aid

The amount of State aid to be allocated to counties, cities, towns or villages, pursuant to this Part, shall be determined by the percentage proportion which the authorized expenditure of each individual county, city, town or village, not exceeding \$100,000 for each county, including municipalities therein, shall bear to the total authorized expenditures of all the counties, cities, towns or villages for enforcement of the Navigation Law during such enforcement year. Such percentage proportion shall then be applied against an amount equal to one half of the amount received by the commissioner in fees received for registration of motor boats during such enforcement year. The amount thus determined shall constitute the maximum amount of State aid to which each county, city, town or village shall be entitled; provided, however, no county, city, town or village shall receive State aid in an amount in excess of one half of its authorized expenditures as approved by the commissioner for such enforcement year (\$50,000 maximum) per county, including municipalities therein.

Sec. added by renum. 448.3, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Section 446.24. General agreement

(a) All personnel assigned to duty of Navigation Law enforcement shall be mentally and physically capable of performing the duties to which they are assigned. They shall have a good knowledge of the provisions of the Navigation Law and the powers, duties and limitation of authority of peace officers. They shall have a thorough knowledge of the operation of small boats and the rules and regulations pertaining to such operation.

(b) All persons engaged in the Navigation Law enforcement program shall actively cooperate with the commissioner or his authorized representative, including but not limited to the answering of questions, making reports and showing records as requested. The commissioner reserves the right to refuse payment to any county, city, town or village for that portion of authorized expenditures paid to personnel deemed to be unfit to carry out the duties assigned.

(c) All counties, cities, towns and villages participating in the State aid program agree to:

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- (1) investigate complaints or Navigation Law violations within their jurisdiction, including those referred to the county, city, town or village by the commissioner;
 - (2) investigate accidents occurring within their jurisdiction;
 - (3) enforce the provisions of the Navigation Law that are applicable to waters within their jurisdiction;
 - (4) submit such reports as the commissioner may desire;
 - (5) keep records pertaining to violations, accidents and authorized expenditures;
 - (6) advise boat owners on the safe method of operating boats;
 - (7) assist in the distribution of such public information as may be provided by the commissioner;
 - (8) certify that all claims and documents which are part thereof are true and correct;
 - (9) purchase and maintain uniform navigation summonses and issue same for violations of the Navigation Law;
 - (10) maintain an up-to-date navigation enforcement logbook, by day, for each navigation season. The log shall contain the hours patrolled, the body or bodies of water patrolled, the name of the person(s) on patrol, a brief resume of any accidents investigated, and any extraordinary equipment needed in the investigation. Upon demand of the commissioner and/or his authorized representative, the log shall be made available for examination; and
 - (11) make available any or all equipment purchased or rented under the State aid program to the commissioner and/or his authorized representative for the purpose of inspection, investigation or any other official duties.
- (d) The commissioner reserves the right to deny payment of any claim or part thereof which is not deemed to be a reasonable and necessary expenditure.
- (e) The commissioner reserves the right to withhold payment on any claim pending the investigation of the contents of said claim.
- (f) The commissioner reserves the right to deny payment of any claim if any part of the said claim is found to be false and submitted with intent to defraud.
- (g) The commissioner reserves the right to deny payment, after investigation, to any county, city, town or village that, in his opinion, is not adequately enforcing the provisions of the Navigation Law.

Sec. added by renum. 448.4, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Section 446.25. Authorized expenditures

(a) Authorized equipment. The following items shall be deemed authorized expenditures, and the cost of such items, when used pursuant to the provisions of this Part, shall be reimbursable, in accordance with section 446.23 of this Part, to any county, city, town or village upon submission of a claim in accordance with this Part. However, other items of expenditure may be authorized if found to be reasonable and necessary. Prior approval of an expenditure not contained herein must be obtained from the commissioner, or enforcement representative; otherwise such expenditures will not be considered authorized expenditures and will not qualify for reimbursement under this Part. All authorized equipment which has originally been included in a claim, and for which reimbursement has been made in accordance with this Part, shall not be disposed of for a period of five years without prior approval of

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the commissioner. In the event that authorized equipment, which has originally been included in a claim and for which reimbursement has been made in accordance with this Part, is in need of replacement, the trade-in value or fair market value shall not be included in the claim for reimbursement of the purchase of new equipment. The cost of replacing authorized equipment which has been lost or destroyed by fire or other mishap may be claimed. However, any amount received from insurance coverage in payment or partial payment for the loss of such equipment shall be deducted from the claim for the new equipment purchase.

(1) Boats and boat equipment, provided that the total authorized expenditure for any one boat, including engine(s), trailer and other integral equipment, shall not exceed \$50,000:

Anchors
Bilge pumps
Boat covers
Boat hooks
Boat ladders
Boat motors
Boat trailers
Bumpers and fenders
Canvases
Compasses
Cushions
Fire extinguishers (portable and installed)
Horns
Life rings
Life saving devices, approved
Lights, running
Lights, spot
Paddles
Penetrators
Ropes and lines
Sirens
Speedometers

(2) Communications and equipment:

Megaphones
Radios (installations and repair for boat units only)
Telephones (navigation only)

(3) Navigation school expenses:

Navigation school lodging (not to exceed State rate)
Navigation school mileage in a private car (not exceeding county, city, town and village rates)
Navigation school meals

(4) Special clothing:

Badges
Caps
Deck shoes

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Jackets
Raincoats
Rain hats
Shirts

(5) Miscellaneous:

Binoculars
Boat trailer tires
Boat trailer hitches
Bolt cutters
Buoys and signs, regulatory
Buoys, mooring (for patrol vessels)
Cigarette lighter for boat (plug-in light)
Dragging equipment
Flags
Inhalators
Logbooks
Log case

(6) Operation and maintenance costs as follows (automobiles excluded):

- (i) all repairs, both general and emergency;
- (ii) cost of gas and oil (exclusive of Federal and State tax);
- (iii) mooring cost;
- (iv) winter storage;
- (v) general overhaul and/or equipment such as radios, radar, etc.,
- (vi) insurance cost;
- (vii) personal traveling expenses (including attendances at conferences, etc. However, they must be in accordance with the provisions of section 77-b of the General Municipal Law);
- (viii) automobile mileage allowance at the approved county, city, town or village rate (when auto is used in Navigation Law enforcement);
- (ix) personnel training costs (payable in cases of Navigation Law enforcement training including attendances at schools, training conferences, etc. However, they must be in accordance with the provisions of section 77-b of the General Municipal Law);
- (x) miscellaneous office supplies and expenses (itemize and explain).

(b) (1) Personnel service, temporarily assigned to Navigation Law enforcement. The wages of personnel assigned to Navigation Law enforcement during the period in which the person actually performs the duty of enforcing the Navigation Law shall be an authorized expenditure. When an officer is assigned navigation duties, an itemized account of such time and the reasons therefor must be submitted and that portion of wages earned while actually engaged in Navigation Law enforcement shall be deemed an authorized expenditure. However, no claim may be submitted unless each person involved has been engaged in the duty of Navigation Law enforcement for a total period of not less than 40 hours during the enforcement year.

(2) In addition to vouchers or payrolls, a separate certificate will be required for permanent and temporary personnel which must include name of person, title or position, rate of pay, total time

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worked, and periods in which work was performed, and must be certified by the department head of the enforcement unit of a county, city, town or village submitting the claim.

(3) Prior approval must be obtained from the commissioner before supervisory personnel can be reimbursed and only on the basis of proven expenditures.

(c) **Rentals.** Equipment may be rented by counties, cities, towns or villages for use by the Navigation Law enforcement unit. However, the claim for rental of such equipment shall not exceed one fifth of the total new purchase price for the season's rent of such equipment. Equipment rented for short periods of time shall not exceed the following authorized expenditure allowed: one fifth of the total new price divided by 10 equals maximum rental allowance for one week. A contract or agreement made by a county, city, town or village regarding the rental of any equipment for use in navigation enforcement, must be submitted to and approved in writing by the commissioner before it will be deemed an authorized expenditure.

*Sec. added by renum. 448.5, filed Dec. 1971; amds. filed: May 7, 1982; Feb. 11, 1991 eff. Feb. 27, 1991.
Amended (a)—(b).*

Part 447. Conduct of Regattas

Section 447.1. Definitions

As used in this Part:

(a) **Commissioner** shall mean the Commissioner of Parks, Recreation and Historic Preservation.

(b) **Regatta** is an organized water event of limited duration which is conducted according to a prearranged schedule over a predetermined course and in which general public interest is manifested.

(c) **Regatta permit** is written permission from the commissioner authorizing the holding of regattas on the navigable waters of the State, pursuant to the provisions of section 34 of the Navigation Law.

However, on waters over which the Federal government exercises active control regarding the regulation of regattas, permits shall be obtained from the Federal government (United States Coast Guard), in which case a New York State regatta permit will not be required. Application for a regatta permit shall be made to the commissioner, on forms to be provided by him.

(d) **Sponsor** is an individual, society, club, firm, partnership, corporation or association of persons who has organized and is conducting the regatta and in whose name the regatta permit is issued.

(e) **Special navigation inspector** shall mean the person or persons appointed by the commissioner pursuant to the provisions of section 18 of the Navigation Law.

(f) **Racing shell** is any boat, specially designed for racing and propelled solely by means of oars, not including lifeboats or standard type rowboats that are not specifically designed for rowing races.

Sec. added by renum. 353.1, Title 6, filed Sept. 1971; amd. filed May 7, 1982 eff. May 7, 1982; amd. filed June 23, 2011 eff. July 13, 2011.

Section 447.2. Preliminary preparations

(a) At least 15 days prior to the date of the proposed regatta, to be held on the navigable waters of the State, the sponsor of such regatta shall file an application with the commissioner and obtain a permit.

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(b) When regattas are proposed to be held on waters which generally sustain commercial traffic, this fact should be indicated on the application and the application should be filed at least 30 days prior to the date of the regatta. The sponsor shall supplement the application by a full explanation of the approximate quantity and type of commercial traffic, and the relationship between the traffic channels and the proposed regatta area.

(c) When the application is approved, a regatta permit will be issued. The permit will specify the date or dates and the waterway upon which the regatta is to be held, and unless alternate dates are specified, the regatta must commence and terminate within the time set forth in the permit. The permit may contain special rules and regulations, and permission to place certain equipment necessary for the conduct of the regatta.

(d) Upon the recommendation of the sponsor, at least three persons will be appointed as special navigation inspectors, and their names will be listed on the regatta permit. It shall be the duty of special navigation inspectors to enforce the provisions of the Navigation Law and the rules and regulations for the conduct of regattas, and any special rules and regulations which may be included on the regatta permit, during the period in which the regatta is authorized. Such special navigation inspectors shall receive no compensation from the State. Any expense in connection with their duties shall be borne by the sponsor of the regatta.

(e) The special navigation inspectors shall be provided with fully equipped boats of a size and speed suitable for patrolling the type of regatta in progress. The minimum equipment to be carried shall be in accordance with the provisions of section 40 of the Navigation Law, and extra equipment shall be left to the discretion of the inspector but shall be suitable for safety and lifesaving work for the type of regatta in progress.

(f) It shall be the duty of the sponsor to notify property owners in the vicinity of the regatta area, any other persons who may be affected by the regatta, and the appropriate law enforcement entity that has jurisdiction over the water body (State Police, State park police or county sheriff) of the date, time and place the regatta will be held.

(g) Permission may be granted in the regatta permit authorizing the sponsor to place equipment within the regatta area, such as buoys, markers, ski jumps, etc. However, such permission, when granted, is subject to the following provisions:

(1) Equipment may be placed in the water up to 48 hours prior to the time of the regatta for use in trial runs.

(2) Equipment shall be placed in the water after sunrise and shall be removed before sunset each day, unless properly and adequately lighted continuously during the period between sunset and sunrise, so as to warn navigation of the existence and location of such equipment.

(3) All equipment must be removed from the water before sunset on the last day of the regatta.

(4) Whenever practicable, equipment shall be colored orange, or a combination of orange and white.

(h) Prior to commencement of the regatta, the special navigation inspectors shall inspect all equipment expected to be used. The inspection shall include boats, ski jumps, tow ropes, buoys, and any other special equipment which will be used. The inspectors shall also travel the entire course of the regatta and adjacent area in order to ascertain that there are no obstructions which may be considered unsafe. The

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inspectors shall read the contents of the regatta permit and pay particular attention to "special rules", if any, which the permit may contain.

(i) Any educational institution or amateur rowing association that intends to sponsor a racing shell regatta, shall use the forms provided by the bureau of marine services to notify the commissioner at least 30 days in advance of the date, place, course description, and number of entrants to each race.

Sec. added by renum. 353.2, Title 6, filed Sept. 1971; amd. filed May 7, 1982 eff. May 7, 1982; amd. filed June 23, 2011 eff. July 13, 2011.

Section 447.3. During regatta

(a) The special navigation inspectors shall be expected to take whatever measures are necessary, in addition to those listed below, to insure the safety of participants, spectators or any other persons during the authorized regatta.

(b) Immediately prior to the start of the regatta, at least two special navigation inspectors shall take stations whereby they are in the most suitable position to accomplish the following:

- (1) warn traffic approaching regatta area;
- (2) prevent spectators in boats or ashore from getting too close to regatta area;
- (3) give assistance in case of participant accident (unless a boat is specifically assigned to this task) or other type of mishap;
- (4) stay close to the majority of participants (during races);
- (5) summon medical aid or other type of assistance from shore; and
- (6) escort commercial and recreational traffic through the regatta course.

Sec. added by renum. 353.3, Title 6, filed Sept. 1971; amd. filed June 23, 2011 eff. July 13, 2011.

Section 447.4. After regatta

(a) When the regatta is over, the special navigation inspectors shall supervise the dispersion of spectators in an orderly manner.

(b) It shall be the duty of special navigation inspectors to cause the removal of all equipment temporarily authorized for use during the regatta, prior to sunset on the last day of the regatta.

(c) Within 48 hours after a regatta, the special navigation inspectors shall compile a joint report and submit it to the commissioner. The report shall contain:

- (1) general observation of the inspectors;
- (2) report of violations of law or rules and regulations;
- (3) complete data on accidents sustained by participants, spectators or any persons in regatta area.

Sec. added by renum. 353.4, Title 6, filed Sept. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Part 448. Placing of Navigation AIDS and Floating Objections in Navigable Waters of New York State – Diver Regulations and Use of Diver Flags

Section 448.1. Definitions

(a) **Aids to navigation** shall mean buoys, beacons or other fixed objects in the water which are used to mark obstructions to navigation or to direct navigation through safe channels.

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- (b) **Floating object** shall mean any anchored marker or platform floating on the surface of the water, other than aids to navigation, and shall include, but not be limited to, bathing beach markers, speed zone markers, information markers, swimming or diving floats, mooring buoys, and ski jumps.
- (c) **Adjacent upland owner** shall mean the person or persons having title in fee to the land bordering on the water in which the floating object is to be placed.
- (d) **Special marker** shall mean buoys, signs, floating or fixed objects in the water or on shore, other than aids to navigation, which are used to convey information, warning, or to indicate areas of control or regulation.
- (e) **Commissioner** shall mean the Commissioner of Parks, Recreation and Historic Preservation.
- (f) **Diver** shall mean anyone who dives below the water for exploratory purposes with or without the use of scuba equipment.
- (g) **Diver's flag** shall mean a red flag at least 12 inches long by 12 inches wide with a white diagonal stripe exactly three inches wide, or shall mean a rigid replica of the international code flag "A" not less than one meter in height that is visible all around.
- (h) **Bathing beach area** shall mean the water area used in connection with a bathing beach at a pond, lake, stream or other navigable water of the State which is used for bathing or swimming with the express or implied permission or consent of the owner or lessee of the premises and which is operated for a fee or any other consideration or openly advertised to the public as a place for bathing or swimming. It includes but is not limited to the water area adjacent to a bathing beach that is owned or operated by a
- (1) condominium or a cooperative and used exclusively by members of the condominium, cooperative project or corporation or association and their family and friends;
 - (2) temporary residence (hotel, motel, cabin or camping colony);
 - (3) children's camp; or
 - (4) State or local government entity.

It does not include the water area adjacent to a bathing beach that is owned or maintained by an individual for the use of family or friends.

Sec. added by renum. 354.1, Title 6, filed Sept. 1971; renum. 446.21, new added by renum. 449.1, filed Dec. 1971; ams. filed: Nov. 21, 1972; May 7, 1982 eff. May 7, 1982; amd. filed June 23, 2011 eff. July 13, 2011.

Section 448.2. Aids to navigation

- (a) Lateral system. Prior to establishing a lateral system of marking on any waterway, a base or outlet and a source or head of navigation shall be first established thereon. Upon waters which have no singular inlet or outlet, arbitrary assumptions may be made to establish one location as the base or outlet and another as the source or head of navigation.
- (b) Starboard side. When proceeding from the base or outlet towards the source or head of navigation, red navigation aids shall mark the starboard or right side of the channel, and boats proceeding towards the head of navigation shall keep such aids on their starboard or right side. All such navigation aids shall conform to the following general specifications:
- (1) Color. Signal red.

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(2) Numbering. Starting at the base or outlet and ending at the head or inlet, even-numbered buoys only shall be used to mark the right or starboard side of the channel, and from such starting point shall advance in even numerical progression to the source or head of navigation. Numbering requirements shall be at the discretion of the commissioner.

(3) Lighting. Red flashing lights may be installed and shall conform to light characteristics as specified by the commissioner depending upon the location of the navigation aid. Unlighted aids shall be equipped with red reflective material on the uppermost part of the aid. The type and extent of reflective material must be approved by the commissioner.

(4) Shape. Spar, conical (nun), pillar or structural shapes may be used.

(5) Construction. Types of construction shall be approved on an individual basis considering the location of the aid and other factors.

(c) Port side. When proceeding from the base or outlet towards the source or head of navigation, green navigation aids shall mark the port or left side of the channel, and boats proceeding toward the head of navigation shall keep such aids on their port or left side. All such navigation aids shall conform to the following specifications:

(1) Color. Green.

(2) Numbering. Starting at the base or outlet and ending at the head or inlet, odd-numbered buoys only shall be used to mark the left or port side of the channel, and from such starting point shall advance in odd numerical progression to the source or head of navigation. Numbering requirements shall be at the discretion of the commissioner.

(3) Lighting. Flashing green lights may be installed and shall conform to light characteristics as specified by the commissioner depending upon the location of the navigation aid. Unlighted aids shall be equipped with green reflective material on the uppermost part of the aid. The type and extent of reflective material must be approved by the commissioner.

(4) Shape. Spar, can, pillar or structural shapes may be used.

(5) Construction. Types of construction shall be approved on an individual basis considering the location of the aid and other factors.

(d) Federal lateral system. The State navigation aid system may be further supplemented by the use of aids included in the Federal lateral system, such as midchannel and junction buoys. When such additional aids are used, they shall have the same significance as established in the Federal lateral system of buoyage. Aids placed on navigable waters of the United States shall be in accord with current Federal regulations.

(e) General obstruction marker. A general obstruction marker shall have no lateral significance and may be used in place of, or in addition to, the aids in the lateral system. This aid may be used to mark obstructions projecting from shore or wherever found in otherwise navigable waters. When this aid is located near shore, boats shall not pass between the aid and the shore. One or more aids shall be used to mark obstructions which are not in close proximity to shore, or where navigable channels exist between the obstruction and the shore, depending upon the size and character of the obstruction. In every case, there shall be a sufficient number of aids installed to accurately indicate the extent of the obstruction. Boats shall stay clear of areas in which these aids are installed, and shall not pass between such

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navigation aids when they are located close together. General obstruction markers shall conform to the following specifications:

- (1) Shape. Can, at least 1 1/2 feet from waterline to top of buoy if floating, or if can is fixed on a stanchion, it must be at least one foot in height.
 - (2) Color. The upper one fourth of the aid and the lower one fourth of the aid shall be international orange in color. The bottom stripe of orange shall show at least three inches above the waterline. The center section shall be white.
 - (3) Lighting. Flashing white lights may be installed and shall conform to light characteristics as specified by the commissioner, depending upon the location of the navigation aid and other factors. Unlighted aids shall be equipped with orange reflective material on the uppermost part of the aid. The type and extent of reflective material must be approved by the commissioner.
 - (4) Symbol. In the center of the white section, equally spaced, on not less than two sides of the buoy, there shall be a symbol in the shape of a diamond, to be of a good proportion and to cover an area of at least three fourths of the height of the white section. The symbol shall be at least one inch in thickness and painted international orange in color and, in the center thereof, running horizontally, there shall be printed in block form the word DANGER. The letters shall be black in color, and of good proportion in relation to the size of the symbol.
 - (5) Numbering. Since this aid has no lateral significance, no numbering is permitted. However, a letter, or a combination of letters may be used to identify the location of the aid on a chart.
 - (6) Construction. Types of construction shall be approved on an individual basis, considering the location of the aid and other factors.
- (f) Supplementary obstruction markers may be used to enhance the effectiveness of one or more general obstruction markers. Supplementary obstruction markers shall conform to the following specifications:
- (1) Shape. Spar or cylindrical, at least 1 1/2 feet from waterline to top of buoy if floating, or if spar or cylinder is fixed on a stanchion, it must be at least one foot in height and the bottom of the shape at least three feet above the waterline.
 - (2) Color. White with two-inch wide horizontal international orange stripes showing six inches of white in between such orange stripes, and showing at least two of such stripes above the waterline.
 - (3) Lighting. Lighting and/or reflective material shall conform to the rules and regulations for general obstruction markers, paragraph (e)(3) of this section.
 - (4) Symbol. No symbol is required, but if a symbol is used it shall conform to the rules and regulations for general obstruction markers, paragraph (e)(4) of this section.
 - (5) Numbering. Same as general obstruction markers, paragraph (e)(5) of this section.
 - (6) Construction. Same as general obstruction markers, paragraph (e)(6) of this section.

Sec. added by renum. 354.2, Title 6, filed Sept. 1971; renum. 446.22, new added by renum. 449.2, filed Dec. 1971; amd. filed June 23, 2011 eff. July 13, 2011.

Section 448.3. Special anchorage areas

- (a) Special anchorage area designation.

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(1) Pursuant to the provisions of section 43 of the Navigation Law, the commissioner may, by rule, regulation or order, designate such areas as he or she may deem proper as special anchorage areas.

(2) An adjacent upland owner only may make application to the commissioner for a revocable permit to maintain a special anchorage area, without expense to the State, within the limits of his property. The commissioner may approve of the establishment of special anchorage areas if, in his opinion, such area will not be a hazard to navigation.

(3) When authorization in the form of a revocable permit has been duly granted, the special anchorage area shall be deemed lawfully established. If, in the judgment of the commissioner, special anchorage areas authorized by him are found to be improperly maintained, or have become a hazard to navigation, or the reason for their establishment no longer exists, or that the permittee has failed to comply with the conditions of the permit or rules and regulations contained herein, the commissioner may revoke such permit by causing a written notice to be mailed to the person to whom it was issued, directing the removal of all floating objects contained within such permit area by a specified date. The person to whom such notice is directed shall thereupon remove the floating objects in accordance with such instructions. In case of failure by the person so directed to remove the floating objects within the specified time, the commissioner may cause their removal. The cost and expense of such removal shall be a charge against the person authorized to maintain the area, and the commissioner may bring any action or proceeding against such person to recover the cost of removal of such floating objects.

(4) All such areas when so designated shall be marked in accordance with the specifications contained in this Part.

(b) Area marking specifications. The offshore limits of an area shall be marked with lighted buoys and shall mark the exact location indicated in the permit. The shore limits of the area may also be marked with lighted markers placed on stanchions which are higher than the offshore markers. In each case, buoys marking such areas shall meet the following specifications:

(1) Color. White.

(2) Numbering. None—each buoy shall be lettered "SPECIAL ANCHORAGE AREA", in block form of good proportion and colored black. The lettering shall be on two sides of the buoy.

(3) Lighting. White flashing lights shall be installed and must conform to specifications made by the commissioner depending upon location and other factors.

(4) Shape. Can.

(5) Construction. Types of construction shall be approved on an individual basis, considering the location and other factors. However, all buoys must be so designed that the light will be at least three feet above the waterline.

(c) Moorings in anchorage area. Moorings may be placed within the limits of a special anchorage area in such a manner so as to allow each moored vessel to swing free with wind or current, and with enough clearance to avoid contact with any other moored vessel. At no time may a vessel or part thereof extend outside the limits of the anchorage area. Vessels of less than 65 feet in length when anchored in a special anchorage area are not required to display anchor lights at night.

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Sec. added by renum. 354.3, Title 6, filed Sept. 1971; renum. 446.23, new added by renum. 449.3, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982; amd. filed June 23, 2011 eff. July 13, 2011.

Section 448.4. Floating objects

The commissioner has discretion to authorize, through the issuance of a revocable permit, the placing in the navigable waters of the State, mooring buoys, bathing beach markers, swimming floats, speed zone markers, or any other floating object having no navigational significance, if, in his or her opinion, the placing of such floating object will not be a hazard to navigation. The commissioner has discretion to require that the floating objects be placed according to any one of the methods the commissioner chooses that are outlined in section 274.5 of this Title. Any person who may desire to place such floating objects at his or her own cost and expense can make application, therefore, to the commissioner and submit a map suitable for reproduction showing the proposed location of such floating objects with their color and meaning. Only after authorization has been granted and in accordance therewith may such floating objects be lawfully placed. If, in the judgment of the commissioner, floating objects authorized to be placed are found to be improperly placed or that the reason for their placement no longer exists or that such objects have become a hazard to navigation, the permit may be revoked and the person may be directed to remove the floating objects within a specified time. In case of failure by the person so directed to remove the floating objects within the specified time, the commissioner may cause their removal. The cost and expense of such removal shall be a charge against the person authorized to place the floating objects and the commissioner may bring any action or proceeding against such person to recover the cost of removal of such floating objects. Each floating object lawfully placed shall bear in a conspicuous place and in legible condition the State Parks and Recreation Floating Object Decal issued by the commissioner. All floating objects shall conform to the specifications contained herein.

(a) All floating objects having no navigational, informational or regulatory purposes such as swimming and diving floats, ski jumps, etc., shall be painted white and equipped with white reflector tape in such a manner that it can be seen from any direction. If such objects are authorized for placement in excess of 100 feet from shore, the commissioner may require they be equipped with a fixed white light to show all around the horizon for a distance of at least one-half mile.

(b) Mooring buoys. All mooring buoys shall meet the following minimum specifications:

(1) Size. At least one cubic foot of buoy to be above the waterline.

(2) Shape. Any.

(3) Construction. Any light self buoyant material.

(4) Lighting. None required. However, every buoy must be equipped with a one-inch strip of reflector tape all around the upper part.

(5) Color. All white with a one-inch blue stripe all around the buoy horizontally, above the waterline.

(c) Floating object placement by adjacent upland owners. Adjacent upland owners may place one mooring buoy and one swimming float of not more than 100 square feet of surface area in the waters adjacent to and within the boundaries of their shoreline, provided, however, that no floating object and no vessel or part thereof which is secured to a mooring buoy shall at any time extend more than 100 feet from shore and further provided that no floating object may be placed in a navigable channel or in any location in which it will interfere with free and safe navigation or free access to another person's

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property. The commissioner shall have the right to remove or alter the location of any such buoy or float in the interest of navigation.

(d) A bathing beach marker shall only be placed in a bathing beach area.

*Sec. added by renum. 354.4, Title 6, Sept., 1971; renum. 446.24; new added by renum. 449.4, Dec., 1971;
amd. filed June 23, 2011 eff. July 13, 2011.*

Section 448.5. Special markers

(a) Permits. The commissioner may authorize the placing of special markers in the navigable waters of the State through the issuance of revocable permits as provided in section 448.4 of this Part.

(b) General specifications. All special markers shall conform to the following general specifications:

(1) Shape. Can, at least one and one-half feet from waterline to top of buoy if floating, if fixed on a stanchion, the can must be at least one foot in length and diameter and the bottom of the can shall be not less than three feet above the waterline.

(2) Color. Upper one fourth of the marker and the lower one fourth of the marker shall be international orange in color. The bottom stripe of orange shall show at least three inches above the waterline. The center section shall be white.

(3) Lighting. Fixed white lights may be installed and shall conform to light characteristics as specified by the commissioner depending upon the location of the marker and other factors. Unlighted markers shall be equipped with orange reflective material on the uppermost part of the aid. The type and extent of reflective material must be approved by the commissioner.

(4) Numbering. A letter of the alphabet or a combination of letters may be used to identify the location of a special marker on a chart. Such letter or combination of letters may be placed on the white section of the buoy.

(5) Construction. Types of construction shall be approved on an individual basis considering the location of the marker and other factors. However, all floating markers shall be of light materials which are entirely self buoyant.

(6) Symbol specifications. All symbols shall be in the center of the white section, equally spaced, on not less than two sides of the marker. The symbol shall cover an area of at least three-fourths of the height of the white section. The symbol shall be at least one inch thick and international orange in color. All lettering on the marker shall be black in color and in block form, running horizontally and shall be of good proportion in relation to the size of the symbol.

(c) Symbol significance.

(1) (i) A diamond shall be used to warn of possible danger to the boater or to others. The word "DANGER" may be placed on the marker to further define its significance.

(ii) Alternatively, a diamond with cross shall be used to mark bathing areas or to otherwise prohibit the entry of boats to any area. Words may be placed on the marker to further define its significance and such words shall be specified by the commissioner depending upon the location and use of the marker.

(2) Circle. Shall be used to indicate the existence of regulation, control or zoning which is authorized by law or duly promulgated rules and regulations. Words may be placed within the symbol to further

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define its significance and such words shall be specified by the commissioner depending upon the location and use of the marker.

(3) Rectangle or square. Shall be used to convey useful information which has no navigational significance or bearing upon the regulation or control of boats. Words may be placed within the symbol to further define its significance and such words shall be specified by the commissioner depending upon the location and use of the marker.

Sec. added by renum. 354.5, Title 6, Sept., 1971; renum. 446.25; new added by renum. 449.5, Dec., 1971; amd. filed June 23, 2011 eff. July 13, 2011.

Section 448.6. Shore signs regulating navigation

All signs placed on shore which shall prohibit, zone, control or regulate navigation shall display the same color, symbol and lettering in good proportion as required on special marker buoys of the same significance.

Sec. added by renum. 449.6, Dec., 1971.

Section 448.7. Penalty

A violation of this Part shall constitute an offense punishable by a fine of not to exceed \$50.

Sec. added by renum. 449.7, Dec., 1971; rep. and renumbered from § 448.8 amd. filed June 23, 2011 eff. July 13, 2011.

Section 448.8. Diver regulations and use of diver flags

(a) A diver's flag shall be flown when any individual is diving alone or in the company of others.

(b) (1) The diver's flag shall be red, square or rectangular in shape, of a minimum of at least 12 inches long by 12 inches wide with a white diagonal stripe of exactly three inches wide.

(2) The diver's flag shall be a rigid replica of the international code flag "A" not less than one meter in height that is visible all around.

(c) The flag shall be so constructed or of such material as to maintain an altitude perpendicular to the mast in light wind conditions to provide optimum visibility.

(d) All divers are required to surface within 100 feet of the marker.

(e) All boats shall remain at least 100 feet from the flag in all directions.

(f) All diver's flags used shall be positioned on a boat or float so as to fly at about two feet above the surface of the water.

(g) All divers when diving alone shall be attached to the flag or float by an easily removed or easily broken line so that when they are swimming beneath the water, the float and flag will accompany them.

(h) A diver need not be attached to a flag or float when he is assisted by surface personnel in a vessel.

Sec. added by renum. 449.8, Dec., 1971; renumbered to § 448.7 and renumbered from § 448.9 amd. filed June 23, 2011 eff. July 13, 2011.

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Part 449. Equipment to be Carried on Public Vessels

Section 449.1. Definitions

The following terms when used in this Part, unless otherwise expressly stated, shall be deemed to mean and include:

(a) Portable fire extinguishers; classification.

(1) A class B-1 extinguisher shall mean the foam type with a minimum charge of one and one-fourth gallons, the dry chemical type with a minimum charge of two pounds or the carbon dioxide type with a minimum charge of four pounds.

(2) A class B-2 extinguisher shall mean the foam type with a minimum charge of two and one-half gallons, the dry chemical type with a minimum charge of 10 pounds or the carbon dioxide type with a minimum charge of 15 pounds.

(b) Fixed fire extinguishing systems. Fixed fire extinguishing systems, hereinafter referred to as "fixed systems", shall mean total flooding systems using carbon dioxide gas as the extinguishing agent and having components fixed in position. The operation of the fixed system may be either manual, automatic or a combination of manual and automatic and must be approved by the United States Coast Guard for marine use. Each system shall be of such capacity to provide one pound of CO₂ gas for each 14 cubic feet of protected area. The inspector shall specify the size of the fixed system re-required [sic], the location of cylinders and components and the type of control. Fixed systems shall be required equipment on inboard motor boats and on outboard motor boats which have installed tanks and enclosed spaces, when such boats are used for carrying passengers. In cases where the construction of a vessel or the location of engines and tanks are mainly exposed to the open atmosphere, thus making the installation of a fixed system impractical, the inspector may omit the fixed system requirement and add to the portable extinguisher requirement, if deemed necessary.

(c) Ventilation. Ventilation shall mean the induction of a directed current of air by natural or mechanical means as opposed to venting which only provides openings for escape without provision for induction. Induction as used above means the intake of air from the outside which shall be directed to and through the length of the compartment and then released outside again. Any compartment or space in which an engine or fuel tank is located, particularly the lower portion of bilges, shall be provided with ventilation capable of preventing and effectively removing any accumulation of flammable or explosive vapor.

(1) Natural ventilation shall mean ventilation induced by the installation of permanently open and unobstructed inlet and outlet ventilation ducts, extending to bilges, with two ducts serving as inlets leading to the wings at one end of the engine compartment and/or fuel tank space and two ducts serving as outlets from the wings at the opposite end. The aggregate inlet area and the aggregate outlet area should be proportioned approximately to the beam of the boat, with two square inches of aggregate inlet or outlet duct area per foot of beam as the minimum. Where engines and/or fuel tanks are not in closed compartments, at least one ventilating duct shall be installed in the fore part of the boat and one in the after part. In the case of completely open boat construction using outboard motors and portable fuel tanks, no ventilation ducts are required.

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(2) Mechanical ventilation shall mean ventilation induced by the installation of a power exhaust blower, in addition to the minimum requirement for natural ventilation, the motor of which shall be completely enclosed and sparkproof and shall be installed outside of ducts and as high above the bilge as possible. The exhaust blower shall be of such size as to exhaust the total air capacity of the compartment in a period of one minute.

(d) Life preservers. All life preservers used on public vessels shall be of jacket design, containing pads of buoyant materials consisting of balsa wood, cork, vinyl covered kapok, or vinyl covered fibrous glass inserted in a cloth covering which shall be fitted with straps or ties so that the life preserver can be securely held to the human body. All life preservers manufactured after 1949 shall be India orange in color, except that white colored life preservers which have been in continuous use are approved only if in good condition. Recovering of life preservers is not permitted. In addition, all life preservers used on public vessels shall be of the commercial type approved by the United States Coast Guard for use on vessels carrying passengers for hire. Limited United States Coast Guard standards for life vests, buoyant cushions, etc. are not approved.

(e) Inboard motor boats. For the purposes of this Part, inboard motor boats shall mean all vessels with permanently installed engines and/or fuel tanks using gasoline or diesel oil as a fuel supply, or vessels having enclosed bilge, engine and/or fuel tank spaces using gasoline or diesel oil as a fuel supply.

Sec. added by renum. 355.1, Title 6, Sept., 1971; renum. 448.1; new added by renum. 450.1, Dec., 1971.

Section 449.2. Application of rules

(a) All vessels certified as public vessels shall be equipped as herein specified after January 1, 1963.

(b) Special consideration may be given to departures from the specific requirements of this Part when it can be shown that special circumstances or arrangements warrant such departures.

Sec. added by renum. 355.2, Title 6, Sept., 1971; renum. 488.2, new added by renum. 450.2, Dec., 1971.

Section 449.3. Equipment required

(a) Outboard motor boats—Classes “A” and “1”.

(1) One life preserver for each passenger and crew member as specified on vessel’s “Certificate of Inspection”.

(2) One anchor and cable. The anchor and cable shall be of such type or design and strength to hold the vessel secure during conditions of severe weather, characteristic to the waterway upon which the vessel will operate.

(3) One “class B-1” portable fire extinguisher, to be located near the steering station.

(4) Fixed fire extinguishing system (required only if vessel has either enclosed fuel tank space, or a permanently installed fuel tank).

(5) Mechanical horn, or mechanical whistle.

(6) A natural ventilation system shall be installed. The inspector may, in addition, require the installation of a mechanical ventilation system on any vessel if the age, construction, condition, type or location of machinery or tanks indicates that such a system is necessary or if the hull design is such that vapors may be trapped and difficult to remove with natural ventilation.

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- (7) Navigational lights as required by law for classes A and 1 vessels.
- (8) Hand portable bilge pump having a capacity of not less than five gallons per minute.
- (b) Inboard motor boats—classes “A” and “1”.
 - (1) One life preserver for each passenger and crew member as specified on vessel’s “Certificate of Inspection”.
 - (2) One anchor and cable. The anchor and cable shall be of such type or design and strength to hold the vessel secure during conditions of severe weather, characteristic to the waterway upon which the vessel will operate.
 - (3) A United States Coast Guard approved backfire flame arrestor for each carburetor installed, such backfire flame arrestor to be mounted securely on the air intake of each carburetor (gasoline engines only).
 - (4) Two “class B-1” portable fire extinguishers (if fixed fire extinguishing system is not required), the location of the fire extinguishers to be as follows: one to be mounted near the steering station and one to be mounted near the engine access space.
 - (5) One “class B-1” portable fire extinguisher, to be located near the steering station, plus a fixed fire extinguishing system.
 - (6) Mechanical horn, or mechanical whistle.
 - (7) A natural ventilation system shall be installed. The inspector may, in addition, require the installation of a mechanical ventilation system on any vessel if the age, construction, condition, type or location of machinery or tanks indicates that such a system is necessary or if the hull design is such that vapors may be trapped and difficult to remove with natural ventilation.
 - (8) Navigational lights as required by law for classes A and 1 vessels.
 - (9) Hand portable bilge pump, having a capacity of not less than five gallons per minute.
- (c) Motorboats—Class “2”.
 - (1) One life preserver for each passenger and crew member as specified on vessel’s “Certificate of Inspection”.
 - (2) One anchor and cable. The anchor and cable shall be of such type or design and strength to hold the vessel secure during conditions of severe weather, characteristic to the waterway upon which the vessel will operate.
 - (3) Two “class B-1” portable fire extinguishers. One of the extinguishers to be located near the steering station. The other extinguisher to be located as directed by the inspector.
 - (4) Fixed fire extinguishing system. (Required only if vessel has enclosed engine and/or fuel tank spaces.)
 - (5) A United States Coast Guard approved backfire flame arrestor for each carburetor installed (except outboard motors). Such backfire flame arrestor to be securely mounted on the air intake of each carburetor (gasoline engines only).
 - (6) Mechanical horn, or mechanical whistle.
 - (7) A natural ventilation system shall be installed. The inspector may, in addition, require the installation of a mechanical ventilation system on any vessel if the age, construction, condition, type

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or location of machinery or tanks indicates that such a system is necessary or if the hull design is such that vapors may be trapped and difficult to remove with natural ventilation.

(8) Navigational lights as required by law for class 2 vessels.

(9) Life floats or other buoyant apparatus as required by law, for not less than 20 per cent of all persons on board (required on vessels of over 50 tons burden navigating one or more miles from shore at any time).

(10) Bell, to be permanently mounted and conveniently located near the steering station.

(11) Power operated bilge pump, plus a hand operated portable bilge pump. Said power operated bilge pump to have a capacity of not less than 10 gallons per minute and may be driven off the main engine or other source of power. Hand portable bilge pump shall have a capacity of not less than five gallons per minute. Power bilge pumps to be fitted with a suitable strainer to prevent clogging of pumps by foreign matter.

(d) Motor boats—classes “3” and “4”.

(1) One life preserver for each passenger and crew member as specified on vessel’s “Certificate of Inspection”.

(2) One anchor and cable. The anchor and cable shall be of such type or design and strength to hold the vessel secure during conditions of severe weather, characteristic to the waterway upon which the vessel will operate.

(3) A United States Coast Guard approved backfire flame arrestor for each carburetor installed. Such backfire flame arrestor to be securely mounted on the air intake of each carburetor (gasoline engines only).

(4) Sufficient class B-1 or B-2 portable fire extinguishers shall be located as indicated by the inspector at the engine space access, wheel house, galley, crews quarters, passenger spaces or other areas of potential fire hazard. Each extinguisher shall be of such type and size to adequately cover the potential fire hazard.

(5) Fixed fire extinguishing system.

(6) Mechanical horn, or mechanical whistle.

(7) A natural ventilation system shall be installed. The inspector may, in addition, require the installation of a mechanical ventilation system on any vessel if the age, construction, condition, type or location of machinery or tanks indicates that such a system is necessary, or if the hull design is such that vapors may be trapped and difficult to remove with natural ventilation.

(8) Navigational lights as required by law for appropriate class of vessel.

(9) Life floats, or other buoyant apparatus as required by law, for not less than 20 per cent of all persons the vessel is authorized to transport as evidenced by her “Certificate of Inspection”.

(Required on vessels of over 50 tons burden navigating one or more miles from shore at any time.)

(10) Bell, to be permanently mounted and conveniently located near the main steering station.

(11) A self-priming power bilge pump, permanently connected to the bilge main, with a capacity of not less than 25 gallons per minute. Said bilge pump may be driven off the main engine or other source of power and must be fitted with a suitable strainer to prevent the entry of foreign matter clogging the suction side.

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(12) Vessels authorized to carry 100 or more passengers must be equipped with a self-priming power fire pump, permanently connected to the fire main and of such size as to discharge an effective stream from a hose connected to the highest outlet. The power fire pump may be driven off the propulsion engine or other source of power. If of sufficient size, this pump may also be connected to the bilge system provided the suction side is fitted with a suitable strainer to prevent the entry of foreign matter clogging the intake of the pump. There shall be a sufficient number of fire main hydrants, each equipped with a length of hose and so located that any portion of the vessel may be reached with an effective stream of water. The fire hose shall be of such strength as to withstand a pressure of at least 75 pounds to the square inch. The hose shall be in sections of not less than 25 feet and not more than 50 feet in length, with fittings of brass or other corrosion resistant metal. All fire main piping, valves and fittings shall be in accordance with good marine practice and suitable for the purpose intended.

(13) A vessel station bill, setting forth the exact duties of each member of the crew during fire or other emergency. (Required only on vessels with a crew of three or more persons.)

(14) The inspector may require the installation of an approved fixed fire extinguishing system in lieu of, or in addition to, the power fire pump required in paragraph (12) of this subdivision (d).

Sec. added by renum. 355.3, Title 6, Sept., 1971; renum. 448.3; new added by renum. 450.3, Dec., 1971.

Part 450. Inspection of Reports and Records

Section 450.1. Inspection of reports and records

Attorneys-at-law, insurance companies, banks, Federal, State or municipal agencies and their paid employees acting within the scope of their employment, and other persons having a necessary and specific interest and need in obtaining accident reports or records relating to vessel registrations required to be filed in the Office of Parks, Recreation and Historic Preservation, Bureau of Marine and Recreational Vehicles may, on forms provided for the purpose, request that a search be made and/or photocopies be made of such record or report and released to them. Nothing contained herein shall require the Office of Parks, Recreation and Historic Preservation to divulge or release information pertaining to reports or records, the disclosure of which might interfere with any investigation or prosecution by any law enforcement agency, district attorney, special commission or grand jury empowered under law to conduct such investigation or prosecution.

Sec. added by renum. 376.1, filed June 1962; repealed, new filed May 22, 1970; renum. 275.1, Title 17, new added by renum. 356.1, Title 6, filed Sept. 1971; renum. 449.1, new added by renum. 453.1, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Section 450.2. Fees for searches and copies of records

(a) Fee for searches. The fee for a search shall be 50 cents multiplied by the number of files necessarily searched, the number of names or numbers against which the search is made and the number of documents for which the search is made. If a certificate showing the result of a search is required, there shall be an additional fee of 50 cents.

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(b) Fees for copies of records and reports. The fees for copies of records and reports, other than accident reports, shall be as follows: photostatic copies, \$1 per page; accident report, \$3.50. If certification of a record or report is required, there shall be an additional fee of 50 cents.

Sec. added by renum. 376.2, filed June 1962; repealed, new filed May 22, 1970; renum. 275.2, Title 17, new added by renum. 356.2, Title 6, filed Sept. 1971; renum. 449.2, new added by renum. 453.2, filed Dec. 1971.

Part 451. Safe Boating

Section 451.1. Purpose and scope

(a) The commissioner (commissioner) of the Office of Parks, Recreation and Historic Preservation (agency) establishes a comprehensive safe boating education program through the Marine Services Bureau of this agency to:

- (1) teach basic boating skills necessary for safe and enjoyable boating;
- (2) impart to each student a sense of responsibility for their actions when operating a vessel or personal watercraft (PWC);
- (3) impart an understanding of what could happen if the student neglects that responsibility and fails to observe safe boating principles;
- (4) encourage each student to use common sense and be courteous to other users of the waterway; and
- (5) encourage each student to take the time and effort to learn more about boating.

(b) The safe boating program includes:

- (1) requirements for certain vessel or PWC operators to carry the boating safety certificate issued by the agency;
- (2) standards for teaching the New York Safe Boating Course (New York course or course);
- (3) standards for receiving a boating safety certificate;
- (4) standards for instructor certification; and
- (5) standards for commercial organization certification.

(c) The agency's address for all correspondence and submissions regarding this program is the Office of Parks, Recreation and Historic Preservation, Marine Services Bureau, Agency Building 1, Empire State Plaza, Albany, NY 12238.

Sec. filed Feb. 9, 1979; ams. filed: May 7, 1982; Dec. 7, 1999 as emergency measure, expired 90 days after filing; March 7, 2000 as emergency measure; May 4, 2000 as emergency measure; June 6, 2000 eff. June 21, 2000. Amended (b)—(c); rep. and new added filed Aug. 16, 2010 eff. Sept. 1, 2010.

Section 451.2. Boating safety certificate or exemption required

(a) An operator of a vessel or a PWC must comply with safe boating principles.

(b) A youth who is at least 10 but less than 18 years old must not operate a vessel without adult supervision unless the youth has obtained and is carrying a boating safety certificate or exemption.

(c) A person who is at least 14 years old must not operate a PWC without obtaining and carrying a boating safety certificate or exemption.

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(d) A youth who is less than 14 years old must not operate a PWC without supervision by an adult who has obtained and is carrying a boating safety certificate or exemption.

Sec. filed Feb. 9, 1979; ams. filed: Dec. 7, 1999 as emergency measure, expired 90 days after filing; March 7, 2000 as emergency measure; May 4, 2000 as emergency measure; June 6, 2000 eff. June 21, 2000; rep. and new added filed Aug. 16, 2010 eff. Sept. 1, 2010.

Section 451.3. Application for a boating safety certificate

In general, every person who is required to carry a boating safety certificate must:

- (a) register for the course with the volunteer instructor, commercial instructor or commercial organization that is sponsoring the course;
- (b) provide the information required, affirm and sign the student record form distributed at the course;
- (c) attend all course sessions;
- (d) attain at least age 10 before taking the course;
- (e) successfully complete the course requirements, including a score of at least 76 percent on the final examination, and comply with this Part.

Sec. filed Feb. 9, 1979; ams. filed: Dec. 7, 1999 as emergency measure, expired 90 days after filing; March 7, 2000 as emergency measure; May 4, 2000 as emergency measure; June 6, 2000 eff. June 21, 2000; rep. and new added filed Aug. 16, 2010 eff. Sept. 1, 2010.

Section 451.4. Temporary and permanent boating safety certificates

- (a) Temporary certificate. The instructor issues the temporary boating safety certificate directly to a student who successfully completes the course requirements and the instructor notifies the agency. The temporary certificate is valid for 90 days. The instructor shall not issue more than one temporary certificate nor issue a replacement certificate to a student.
- (b) Permanent certificate. The agency issues the permanent boating safety certificate as follows:
 - (1) Adult operator. After receiving the temporary certificate the adult operator (age 18 or over) must follow the directions on the student record form, apply to the agency for a permanent boating safety certificate, and pay the \$10 fee (by credit card, check or money order) to the agency. After receiving the instructor's properly completed forms and the adult operator's properly completed form and fee, the agency may issue the boating safety certificate directly to the operator by regular mail;
 - (2) Youth operator (at least age 10 but less than age 18). After receiving the instructor's properly-completed forms, the agency may issue the permanent boating safety certificate directly to the youth operator by regular mail;
 - (3) Replacement boating safety certificate and fee. In the event the original boating safety certificate is lost, mutilated or destroyed an operator must apply to the agency's Marine Services Bureau for a replacement boating safety certificate and pay the agency a \$10 processing fee (by credit card, check or money order). The agency may issue the replacement directly to the operator by regular mail.

Sec. filed Feb. 9, 1979; repealed, new filed: Dec. 7, 1999 as emergency measure, expired 90 days after filing; March 7, 2000 as emergency measure; May 4, 2000 as emergency measure; June 6, 2000 eff. June 21, 2000; rep. and new added filed Aug. 16, 2010 eff. Sept. 1, 2010.

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Section 451.5. Exemptions

(a) A person is exempt from carrying a boating safety certificate or taking the course if they hold at least one of the following valid certifications, licenses, memberships or status. A copy of that certification, license, membership or status information must be carried by the operator and produced upon request of a law enforcement or judicial officer. A law enforcement or judicial officer may require the operator to produce the original certification, license, membership or status document within a reasonable time period:

- (1) safe boating instructor certification issued by the agency;
- (2) membership in good standing of the United States Power Squadron or a safe boating certification issued by the United States Power Squadron;
- (3) membership in good standing of the United States Coast Guard Auxiliary or a safe boating certification issued by the United States Coast Guard Auxiliary;
- (4) valid license issued under section 64 of the Navigation Law;
- (5) valid operator's license issued by the United States Coast Guard or the Canadian Coast Guard;
- (6) police officer, peace officer, firefighter, emergency rescue personnel or lifeguard acting within the scope of their official duties; or
- (7) non-resident or New York resident who has received comparable safe boating instruction and is holding a valid comparable certificate issued by the state or country where they presently reside or recently resided;
 - (i) however, a New York resident holding a valid comparable certificate issued by a former state or country of residence must apply for a boating safety certificate and complete the course within a one-year grace period after moving into the State;
 - (ii) the agency retains the discretion to review any out-of-state instruction to determine whether it is equivalent to the New York course. If the agency finds the out-of-state course is not equivalent it may require a non-resident to apply for a boating safety certificate and complete the course requirements, or may require a new resident of New York to apply for the boating safety certificate and complete the course requirements prior to expiration of the one-year grace period.

Sec. filed Feb. 9, 1979; repealed, new filed: Dec. 7, 1999 as emergency measure, expired 90 days after filing; March 7, 2000 as emergency measure; May 4, 2000 as emergency measure; June 6, 2000 eff. June 21, 2000; rep. and new added filed Aug. 16, 2010 eff. Sept. 1, 2010.

Section 451.6. Suspension or revocation of safe boating certificate

- (a) The agency may suspend or revoke a boating safety certificate issued to an operator:
- (1) if the operator holding the boating safety certificate is found guilty of boating while intoxicated under section 49-a or 49-b of the Navigation Law, or is found guilty of reckless operation of a vessel or PWC and the privilege to operate the vessel or PWC is suspended under section 45 of the Navigation Law; or
 - (2) if the agency determines that the operator knowingly provided false answers to questions on the student record form or obtained the boating safety certificate through fraudulent means or in violation of this Part.

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(b) The agency may suspend or revoke a boating safety certificate issued to an operator if the operator's instructor:

- (1) did not hold a valid instructor certification issued by the agency;
- (2) failed to follow any of the course requirements or conducted classes or administered the examination in a way that the agency determines failed to give the student sufficient knowledge or mastery of safe boating practices as outlined in sections 75 through 79 of the Navigation Law; or
- (3) helped the student obtain the boating safety certificate by fraudulent or unlawful means.

(c) The agency may also suspend or revoke a boating safety certificate issued to a youth operator if the youth operator is found guilty of a felony, misdemeanor or violation related to any provisions of the Navigation Law or a violation of this Subchapter.

(d) After the suspension period expires or one year after revocation, the operator may re-apply for another boating safety certificate, complete the course requirements and pay the \$10 fee if applicable (by credit card, check or money order) to the agency.

Sec. filed Feb. 9, 1979 eff. Feb. 13, 1979; rep. and new added filed Aug. 16, 2010 eff. Sept. 1, 2010.

Section 451.7. Definitions

(a) **Boating safety certificate** means the permanent agency-issued wallet-sized, card that includes the name of the operator; boating safety certificate number; operator's date of birth, sex and eye color; and issue date. It satisfies the requirements of subdivisions (1) and (1-a) of section 49 of the Navigation Law. It includes the temporary boating safety certificate that the instructor awards to the operator that is valid for only 90 days.

(b) **Commercial organization** means an organization that is affiliated with more than one commercial instructor and has received a certification from the agency to coordinate instruction in the New York Safe Boating Course. The commercial organization must have a manager or owner who is responsible for charging a fee to students, managing recordkeeping, registering students for classes, transacting business with the agency on behalf of the commercial organization's affiliated instructors and ensuring that its instructors implement the course requirements, the Navigation Law and this section, and that they comply with the New York Safe Boating Instructor Guide.

(c) **Course** means the New York Safe Boating Course that includes the requirements described in section 451.6 of this Part.

(d) **Course attendance form** means the roster and information for all students registered for a safe boating course. It includes the students' attendance records, test scores, issued student record form numbers, the course commencement and completion dates, name and location of the training facility, the lead instructor's name and identification number and the names of other instructors, instructors-in-training or persons who assisted in teaching the course. The number of entries on this form must match the number of students that were in attendance at the course commencement and the number of student record forms submitted to the agency for that course.

(e) **Exemption** means a valid certification, license, membership or status described in section 451.5 of this Part.

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(f) **Fraudulent practice** means any conduct or representation of the instructor that could induce another to believe or conveys the impression to a reasonable person that a boating safety certificate or other privilege granted at the discretion of the agency could be obtained in any way other than as described in this Part. It also means collecting, requesting, accepting or exacting money or other compensation or fees for the course in a manner different from what is allowed in this Part.

(g) **Instructor** means a person who has a valid certification issued by the agency that indicates he or she is qualified to teach the course.

(1) A volunteer instructor teaches the course but does not charge the student a fee. The volunteer instructor may collect a nominal proportional custodial or room use charge from the student that may be assessed by the host training facility, or may collect a nominal discretionary donation from a student who voluntarily wishes to contribute to the not-for-profit organization that is sponsoring the course, or may collect both a charge and a donation. The agency may require an entity to submit documents that evidence its status as a training facility or not-for-profit organization.

(2) A commercial instructor teaches the course and charges the student a fee directly or is affiliated with a commercial organization that charges the student a fee.

(h) **Operator** means a person who operates a vessel or personal watercraft.

(i) **Personal watercraft** means a craft that is less than 16 feet in length, propelled by a water jet pump as its primary source of motor propulsion and designed to be operated by a person who sits, stands, or kneels on it rather than designed to be operated by a person who sits or stands inside it. For purposes of this Part it also includes specialty prop-craft as defined in subdivision 31 of section 2 of the Navigation Law.

(j) **Safe boating principles** mean operating a vessel or PWC in a prudent manner as outlined in the course materials and textbook supplied by the agency.

(k) **Student record form** means a document that includes the following three parts:

- (1) a temporary boating safety certificate that may be used for 90 days;
- (2) a student application for a permanent boating safety certificate; and
- (3) a record of class attendance with the graded final examination and student and instructor's affirmations and signatures.

(l) **Training facility** means a room that is:

- (1) located in a school, library, office, or portion of a building that is used for commercial, public, educational, charitable and non-residential activities;
- (2) clean, adequately lighted, heated and ventilated and free from any visual or audible distractions;
- (3) provided with adequate toilet facilities for all students, including persons with disabilities;
- (4) capable of seating all enrolled students at desks or tables;
- (5) equipped with adequate chalkboards, whiteboards or flipcharts that are clearly visible from all seating areas and with all other facilities necessary for adequate presentation of course materials;
- (6) accessible to persons with disabilities.

(m) **Vessel** means any floating craft as defined in subdivision 6 of section 2 of the Navigation Law, however, for purposes of this Part only it excludes personal watercraft (defined here separately), a rowboat, canoe, kayak or crew racing shell.

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Sec. filed Feb. 9, 1979; ams. filed: Dec. 7, 1999 as emergency measure, expired 90 days after filing; March 7, 2000 as emergency measure; May 4, 2000 as emergency measure; June 6, 2000 eff. June 21, 2000; rep. and new added filed Aug. 16, 2010 eff. Sept. 1, 2010.

Section 451.8. New York safe boating course requirements

Only persons who have received an instructor certification issued by the agency may teach the course.

The instructor or the commercial organization must comply with the following requirements:

(a) *Pre-registration.* At least two weeks before a course is scheduled to begin and before it is advertised the instructor or the commercial organization shall pre-register the course with the agency by providing the following information: dates, times, name of training facility and its location, names of lead instructor and names of any additional instructors that are scheduled to teach the course, number of classroom sessions, age restrictions (if any), class sizes, total enrollment; instructional fees charged to students (if any) and any other information required by the agency.

(1) Class sizes may vary between 6 and multiples of 30 students per instructor. Requiring 30 students per instructor means that a class of 90 students, for example, would require a lead certified instructor and 2 additional certified instructors to teach it.

(2) An instructor may not register a class of less than 6 students nor more than 30 students per instructor. If an instructor pre-registers 6 students and at least 2 students attend, the instructor may, nevertheless, teach the class.

(b) *Instruction.* A minimum eight hours total classroom instruction taught by an instructor with at least one 10-minute break per hour is required. During an all-day session three 10-minute breaks may be accumulated and a 30-minute meal substituted for the breaks. The eight hours of instruction must include a review period and the final examination. Instructors-in-training or qualified and recognized experts in the safe boating field may occasionally teach all or part of the lessons but a certified instructor must be present and the lesson plans must be followed.

(c) *Course materials.* Instructors must follow the lesson plans, policies, procedures and use the textbook supplied by the agency. These course materials are based on or meet the current requirements of the National Association of State Boating Law Administrators (NASBLA) and the New York Safe Boating Instructor Guide issued by the agency. Instructors shall not focus the instruction to cover only points covered on the final examination nor provide students with the answers to questions in lieu of following the lesson plans. The New York course materials provided by the agency may not be used to satisfy any other certificate required by any other commercial or governmental entity.

(d) *Final examination.* The final examination shall be a closed-book test supplied by the agency and administered only after the instructional phase of the course has been completed. No examinations for other certificates or licenses may be administered or taken during the course. The student must obtain a 76 percent grade on the examination.

(e) *Receipt.* The commercial instructor or commercial organization must provide a receipt to the student for any fee collected. The volunteer instructor must provide a receipt to the student for any charge or donation collected. All instructors must maintain copies of these receipts for five years after issuance and make them available to the agency when requested. Alternatively, commercial instructors' receipts may be maintained for five years by their affiliated commercial organizations.

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(f) The agency retains discretionary authority to decline to send course materials and final examinations for a course to any instructor or commercial organization that the agency determines has not followed or is not following the minimum requirements outlined in this Part.

Sec. filed Feb. 9, 1979; repealed, new added by renum. and amd. 451.9, filed: Dec. 7, 1999 as emergency measure, expired 90 days after filing; March 7, 2000 as emergency measure; May 4, 2000 as emergency measure; June 6, 2000 eff. June 21, 2000; rep. and new added filed Aug. 16, 2010 eff. Sept. 1, 2010.

Section 451.9. Instructor or commercial organization recordkeeping

The agency will provide the required student record forms and course attendance forms to each instructor or to a commercial organization for those courses that the instructor or commercial organization pre-registers with the agency.

- (a) The instructor must ensure that the student fills out the student record form prior to taking the final examination.
- (b) The instructor or the manager of the commercial organization must maintain and account for the student record form. The instructor or commercial organization must immediately notify the agency of the loss, destruction or mutilation of a student record form. The agency may decline to issue a boating safety certificate to a student whose student record form is missing, mutilated, destroyed, or fraudulently completed.
- (c) The instructor must submit the completed student record forms and the completed course attendance form to the agency within seven days of the course's conclusion. Alternatively, an instructor affiliated with a commercial organization may send the forms to the manager of the affiliated commercial organization within seven days of the course's conclusion. The manager, in turn, must send the complete course forms to the agency within 21 days of the course's conclusion.
- (d) Student record forms not accounted for on an instructor's course attendance form may be rejected by the agency and the agency may not issue a boating safety certificate to the student.
- (e) If the instructor's certification is suspended or revoked or if an instructor ceases teaching, the instructor must return the completed, partially-completed or unused student record forms and course attendance forms, and surrender the instructor's certification to the agency.
- (f) The instructor who is affiliated with a commercial organization may transfer all completed or unused student record forms and course attendance forms to the manager of the commercial organization. The manager must provide an accounting of the forms to the agency and may:
- (1) provide another affiliated instructor to teach a course that is in progress;
 - (2) immediately return the unused forms to the agency; or
 - (3) re-distribute the unused student record forms to other instructors affiliated with that commercial organization.
- (g) The instructor or manager of the commercial organization shall maintain a record of all experts who teach a class during a course. Each record shall indicate the name, address, qualifications of the expert and lecture date.
- (h) Additional recordkeeping requirements for a commercial organization. The agency may issue student record forms to a commercial organization in batches of up to 250 maximum for pre-registered courses.

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All outstanding forms in one batch must be accounted for by the manager of the commercial organization before the agency may issue a new batch. This accounting shall include:

- (1) tracking each student record form on a schedule form provided by the agency and making the schedule available upon the agency's request;
- (2) disbursing only the required number of student record forms to affiliated instructors on a monthly basis;
- (3) notifying the agency within seven days of receiving mutilated or destroyed student record forms or within seven days of learning that forms may be missing; and
- (4) keeping copies of all records required to be submitted under this Part for five years and making them available to the agency for inspection when requested.

Sec. filed Feb. 9, 1999; renum. 451.8, filed: Dec. 7, 1999 as emergency measure, expired 90 days after filing; March 7, 2000 as emergency measure; May 4, 2000 as emergency measure; June 6, 2000 eff. June 21, 2000; rep. and new added filed Aug. 16, 2010 eff. Sept. 1, 2010.

Section 451.10. Instructor certification

(a) *Initial application.* A person interested in teaching the course must apply directly to the agency for certification as a safe boating instructor before commencing course instruction. The application must be completed on forms prescribed and supplied by the agency. The application is available from and must be filed with the Office of Parks, Recreation and Historic Preservation, Marine Services Bureau, Agency Building 1, Empire State Plaza, Albany, New York 12238.

(1) The applicant must provide a name, date of birth, address and any other names the applicant has used or been known by. All information or documentation requested on the forms must be provided. The applicant must sign and swear to the truth and accuracy of the information and have the signature notarized.

(2) A criminal background check will be conducted by the agency on each applicant.

(b) *Requirements.* An applicant for an initial instructor certification must demonstrate to the agency's satisfaction that he or she is:

- (1) 18 years of age or older;
- (2) of sound mind and good moral character;
- (3) in possession of a boating safety certificate or a graduate of the New York State Marine Law Enforcement Course;
- (4) familiar with safe boating practices and the Navigation Law and demonstrates that knowledge by passing an examination that may be written or oral at the discretion of the agency;
- (5) in possession of course lesson plans and the New York Safe Boating Instructor Guide and has mastered the material;
- (6) scheduled to attend or has attended a seminar entitled "Introduction to the New York Safe Boating Safety Course" which will be given upon request at least once a month at the Marine Services Bureau office in Albany, NY; and
- (7) trained as an instructor and competent to teach the course as determined by the agency. In determining competency the agency may accept one or more of the following documents:

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- (i) a certified written recommendation from the supervising certified instructor on a form provided by the agency. This recommendation must indicate the applicant has assisted in teaching classes to the supervising instructor's satisfaction during at least four courses and as outlined in the New York Safe Boating Instruction Guide;
- (ii) copy of a teaching license issued by the New York Board of Regents or equivalent teaching license issued by another state or province;
- (iii) copy of an instructor development certification or other evidence of police officer, peace officer, firefighter or emergency medical personnel instructor training;
- (iv) copy of current instructor certification issued by the United States Coast Guard Auxiliary or the United States Power Squadron;
- (v) any other evidence acceptable to the agency that demonstrates to the agency's satisfaction the applicant has equivalent instructor training.

(c) *Instructor certification.* The agency reviews the initial application and requirements and may issue or deny the instructor certification. The certification is in the form of a card and includes a specific instructor number and an expiration date. The instructor must carry this card during class instruction and may hold it in lieu of a boating safety certificate (if one is required) when operating personal watercraft. The instructor must present the instructor certification upon request at any time to agency staff or the agency's designee along with photo identification.

(d) *Instructor probation and agency's audit.* The instructor in receipt of an initial instructor certification is subject to probation that ends after the initial two years or sooner if agency staff or the agency's designee issues a satisfactory evaluation after auditing the instructor's classroom teaching performance.

(e) *Renewals.* An instructor's certification is valid for a term of two calendar years and an instructor must apply for renewal prior to expiration of the certification. If an instructor has taught at least one course during the two-year term, has complied with the requirements of this Part and has obtained satisfactory evaluations if audited by the agency, then the certification will be automatically renewed.

(1) Alternatively, if an instructor applies for renewal of an expired certification within one year of the expiration date, the agency may require the instructor to do one or more of the following before renewing the certification:

- (i) take the course again;
- (ii) attend a seminar entitled "Introduction to the New York Safe Boating Course"
- (iii) teach at least one course;
- (iv) receive a satisfactory evaluation from agency staff or agency's designee after an audit of classroom performance; or
- (v) pass a written or oral examination on safe boating practices and Navigation Law requirements.

(f) Any application submitted more than one year after the certification expires may be re-issued only at the agency's discretion and must comply with the requirements for initial instructor certification.

(g) *Denial.* The agency may deny an application for initial instructor certification or a renewal or re-issuance if the applicant conceals relevant information or knowingly makes a partial or false entry on any part of the initial, renewal or re-issuance application, or if the applicant fails to disclose a prior boating safety certificate or instructor certification suspension or revocation, or if the applicant has been

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convicted of or has any pending charges related to any felony, misdemeanor or violation, except a traffic infraction.

(h) *Suspension or revocation.* The agency may immediately suspend or revoke an instructor's certification under section 451.13 of this Part if the instructor:

- (1) violates any section of this Part;
- (2) refuses to permit agency staff or the agency's designee audit a class;
- (3) receives two unsatisfactory evaluations;
- (4) displays poor judgment or inappropriate behavior in interacting with students;
- (5) has been convicted of or charged with any felony, misdemeanor or violation, except a traffic infraction;
- (6) engages in any fraudulent practice; or
- (7) harasses, threatens or assaults or otherwise disparages any other instructors, prospective students, students or agency representatives.

Sec. filed Aug. 16, 2010 eff. Sept. 1, 2010.

Section 451.11. Commercial organization certification

(a) *Initial application.* The manager of a commercial organization that intends to provide the course for a fee to the public through an affiliation with more than one instructor must apply to the agency in December of each year on forms provided by the agency to obtain a commercial organization certification. The application must be filled in completely and include the following:

- (1) the name of the commercial organization;
- (2) the commercial organization's principal place of business which is the mailing address for all correspondence and exchange of materials and forms between the organization and the agency;
- (3) the names and addresses of the owner and manager of the commercial organization. If the owner and manager signing the application have ever used or have ever been known by another name, such name or names must be listed on the application. If the commercial organization changes ownership, management, or dissolves, the agency must be notified within 10 days;
- (4) the names and addresses of all instructors affiliated with the commercial organization;
- (5) statements attesting to the owner's and manager's good characters, reputations, fitness, and ability to comply satisfactorily with this Part. The application must be certified and signed by the owner and manager and their signatures must be notarized. Excluding requested information or making a partial or false entry on any part of the application is a violation of this section and will result in a denial of the application.

(b) *Renewals.* A renewal application must be submitted at least 30 but not more than 60 days prior to the expiration date of the commercial organization certification that is being renewed. Failure to file a renewal application within this period may delay issuance of the renewal certification, and result in a time period during by which the applicant is uncertified and not authorized to provide the course. The agency shall not accept a renewal application after December 31st which is the expiration date of the commercial organization certification, and the applicant must apply for re-issuance of an initial commercial organization certification.

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(c) *Certification.* The agency may issue a commercial organization certification and renewal certifications upon satisfactory completion of the application. A commercial organization certification must be held solely by the commercial organization to which it is issued and shall not be transferred to another commercial organization. It must be prominently displayed in the principal place of business or the training facility. The commercial organization certification shall include the following information:

- (1) the name of the commercial organization;
- (2) the names of the owner and manager of the commercial organization;
- (3) the address of the principal place of business of the commercial organization;
- (4) a list of affiliated instructors;
- (5) the expiration date, which is December 31st of the year for which the certification is issued.

(d) The commercial organization must:

- (1) not knowingly affiliate with or employ any instructor who has been convicted of or charged with a felony, misdemeanor or violation (except a traffic infraction) unless prior approval to employ or affiliate with this person is granted by the agency, upon a sworn and notarized affidavit or other proof of the facts as the agency shall require from that instructor or the owner, manager, partner, officer, agent or employee of the commercial organization;
- (2) not use an instructor whose certification has been suspended or revoked by the agency under this Part;
- (3) ensure that affiliated instructors maintain the standards set forth in this Part and in the New York Safe Boating Instructor Guide;
- (4) use another instructor to audit each instructor's class performance and recordkeeping at least once per year and provide the results of the audit to the agency on the provided forms;
- (5) ensure that the training facility used by an affiliated instructor meets the definition in this Part.

Sec. filed Aug. 16, 2010 eff. Sept. 1, 2010.

Section 451.12. Suspension or revocation of instructor of commercial organization certifications

(a) Denial of applications for initial, renewal or re-issued commercial organization certifications or suspensions or revocations. The agency may deny any application for an initial, a renewal or a re-issued commercial organization certification or suspend or revoke it for any of the following reasons:

- (1) the commercial organization or its owner or manager fails to comply with any of the provisions of this Part;
- (2) the commercial organization, its owner, manager or any partner, officer or affiliated instructor of the commercial organization is convicted of a felony, misdemeanor or violation except a traffic infraction;
- (3) the owner, manager, partner, officer or affiliated instructor of the commercial organization makes a material false statement or conceals a material fact in connection with the application for the commercial organization certification or renewal or refuses to comply with an audit request by the agency;
- (4) the commercial organization, its owner, manager or any partner, officer or affiliated instructor of the commercial organization engages in a fraudulent practice;

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- (5) the owner, manager, partner, officer or affiliated instructor of the commercial organization fails to follow the prescribed procedures for obtaining an instructor certification issued by the agency;
- (6) the commercial organization or any owner, manager, partner, officer, affiliated instructor or employee of the commercial organization harasses, threatens or assaults any other instructor, prospective student, student or agency representative.

The commercial organization may request a hearing by the commissioner on the suspension or revocation by certified mail within 10 days as outlined in subdivision (c) of this section.

(b) Immediate suspension. The agency may immediately suspend an instructor's certification or commercial organization's certification on written notice for a period not to exceed 90 days when it has reasonable cause to believe that the health or safety of the public would be jeopardized by allowing an individual to continue to be certified as an instructor or by allowing a commercial organization to continue to be certified to provide the course.

(1) The agency shall provide written notice of the immediate suspension by having it served in person by the agency staff or by an agent or by certified mail return receipt requested to the instructor's or commercial organization's address on the application forms. The notice shall include a brief explanation of the reason for the immediate suspension. The instructor or commercial organization may (within 10 days of receipt of the immediate suspension) send a request for a hearing in writing, return on the suspension to the commissioner by certified mail.

(c) Alternative suspension or revocation. The agency shall provide written notice of intent to suspend or revoke an instructor certification or commercial organization certification on a certain future date by certified mail return receipt requested to the instructor's or commercial organization's address on the application forms. The notice shall include a brief explanation of the basis for the suspension or revocation. The instructor or commercial organization may (within 10 days of receipt of the notice) send a request for a hearing on the suspension or revocation to the commissioner by certified mail. If the instructor or commercial organization does not request a hearing the suspension or revocation shall be final on the date in the agency's notice.

(d) The address for a hearing request is the Office of Parks, Recreation and Historic Preservation, Marine Services Bureau, Agency Building 1, Empire State Plaza, Albany, New York 12238.

(e) Any hearing under this Part may be held by the commissioner's designee in Albany or in one of the agency's park regional headquarters, at the commissioner's discretion.

Sec. filed Aug. 16, 2010 eff. Sept. 1, 2010.

Section 451.13. Advertising

(a) In correspondence, print advertising or any other media, an instructor or commercial organization must not:

- (1) publish, advertise or intimate that a prospective student or student is guaranteed receipt of a boating safety certificate issued by the agency;
- (2) publish, advertise or intimate that a boating safety certificate is a boating license;
- (3) state or imply that completion of the course is required to operate a motorboat in New York State;

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- (4) state or imply that completing the course will reduce insurance rates unless the claim is substantiated and documented to be consistent with the requirements of section 78-a of the Navigation Law;
- (5) use or allow the use of any advertisement which would reasonably have the effect of leading people to believe that the instructor or commercial organization is an agent, representative or employee of the agency;
- (6) use the New York State symbol, or the New York State Office of Parks, Recreation and Historic Preservation's logo; and
- (7) make any false or misleading claims or statements in any of its advertising or use advertising that includes any unsubstantiated data or claims.

Sec. filed Aug. 16, 2010 eff. Sept. 1, 2010.

Section 451.14. Violation

Failure to comply with this Part constitutes a violation under section 73-c of the Navigation Law.

Sec. filed Aug. 16, 2010 eff. Sept. 1, 2010.

Section 451.15. Severability

If a court of competent jurisdiction determines that any provision of this Part or its application to any person, commercial organization or circumstance is contrary to law, then that determination shall not affect or impair the validity of the other provisions of this Part or application of the disputed provision or other provisions to other persons, commercial organizations or circumstances.

Sec. filed Aug. 16, 2010 eff. Sept. 1, 2010.

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Subchapter B. Snowmobiles

Part 453. Definitions

Section 453.1. Definitions

- (a) **Commissioner** shall mean the Commissioner of Parks, Recreation and Historic Preservation, acting directly or indirectly through a duly authorized representative.
- (b) **Operator** shall mean every person who operates or is in actual physical control of a snowmobile.
- (c) **Owner** shall mean a person or corporation or partnership, other than a lienholder, having title to a snowmobile.
- (d) **Snowmobile** shall mean a self-propelled vehicle designed for travel on snow or ice, steered by skis or runners, and supported in part by skis, belts or cleats.
- (e) **Commercial snowmobile** shall mean and include every snowmobile that is used or operated for commercial purposes on the lands or waters of the State, that is either carrying passengers, carrying freight, towing, or for any other use for which compensation is received, either directly or indirectly, or where provided as an accommodation, advantage, facility or privilege at any place of public accommodation, resort or amusement.
- (f) **Rental snowmobile** shall mean any snowmobile leased or rented for a fee or other consideration, whether received directly in cash or in conjunction with other services provided.
- (g) **Pleasure snowmobile** shall mean every snowmobile not within the classification of commercial or rental snowmobile.
- (h) **Dealer** shall mean a person, partnership or corporation engaged in the business of selling snowmobiles at wholesale or retail in New York State.
- (i) **Dealer registration** shall mean the process by which the Commissioner of Motor Vehicles may, upon application by a dealer and payment of the proper fee, record the registrant as a bona fide dealer in snowmobile sales.
- (j) **Dealer registration certificate** shall mean the form issued by the Commissioner of Motor Vehicles bearing a distinguishing dealer registration number indicating that the registrant is a registered dealer.
- (k) **Accident** shall mean any casualty involving a snowmobile or snowmobiles, including but not limited to collision, overturning, fire or explosion.
- (l) **Enforcement agency** shall mean the Office of Parks, Recreation and Historic Preservation, the Department of Environmental Conservation, a regional park, recreation and historic preservation commission, the Division of State Police, any county sheriff's office or any police department of a county, city, town or village.
- (m) **Police officer** shall mean every law enforcement officer in the State, including conservation law officers, forest rangers and State Park police.
- (n) **Snowmobile violation** shall mean a violation of any of the provisions of title D of the Parks, Recreation and Historic Preservation Law, or any ordinances, rules and regulations enacted pursuant thereto, or any other law relating to snowmobiles.
- (o) **Court** shall mean any court of competent jurisdiction.
- (p) **Jurisdiction** shall mean the legal jurisdiction of the court over the offense or crime.

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- (q) **State aid** shall mean payments by the State (1) to municipalities towards the cost of enforcing the provisions of article 27 of the Parks, Recreation and Historic Preservation Law; or (2) to counties, cities, towns or villages for the costs incurred for the development and maintenance of snowmobile trail systems within their boundaries according to the provisions of section 27.17 of the Parks, Recreation and Historic Preservation Law.
- (r) **Enforcement year** shall mean the State fiscal year.
- (s) **Municipality** shall mean each county, city, town or village in New York State, except those counties which lie within the territorial limits of New York City. Counties within the territorial limits of New York City shall mean the City of New York.
- (t) **Snowmobile operator's safety certificate** shall mean the certificate issued by the commissioner evidencing that the holder thereof has successfully completed an approved course of instruction in snowmobile operation and safety.
- (u) **Special event** shall mean an organized snowmobile event of limited duration which is conducted according to a prearranged schedule and in which the general public interest is manifested.
- (v) **Special event permit** shall mean written permission from the commissioner authorizing the holding of a special event at a specific location, pursuant to the provisions of article 25 of the Parks, Recreation and Historic Preservation Law.
- (w) **Sponsor** shall mean any individual, society, club, firm, partnership, corporation, or association of persons who have organized and are conducting the special event in whose name the special event permit is issued.
- (x) **Person in charge** shall mean the designated individual having full authority to represent the sponsoring organization in all matters relating to a particular special event.
- (y) **Special assistant to person in charge** shall mean the person or persons assigned by the person in charge to assist at a particular special event.
- (z) **Instructor** shall mean a person who has been certified by the commissioner as being qualified to teach the New York State young snowmobile operator's safety training course.
- (aa) **Bureau** shall mean the Snowmobile Bureau of the Office of Parks, Recreation and Historic Preservation, Agency Building 1, Empire State Plaza, Albany, NY 12238.
- (ab) **Rule or regulation** shall mean any rule or regulation duly adopted by the commissioner pursuant to article 25 of the Parks, Recreation and Historic Preservation Law.
- (ac) **Snowmobile trail** shall mean a marked corridor on lands owned by a local sponsor, or for which the local sponsor can provide assurances satisfactory to the commissioner that such lands shall continue to be available for snowmobile use, which are designated for snowmobile use by the general public.
- (ad) **Authorized expenditure** shall mean an expenditure determined by the commissioner to be reasonable and necessary for the proper development and maintenance of a snowmobile trail.
- (ae) **Local sponsor** shall mean a county engaging and assisting in the development and maintenance of a system of snowmobile trails and a program with relation thereto within its boundaries to encourage safety, tourism and utilization, or in the event a county does not undertake such a program or system of trails, any city, town or village within such county which undertakes the same.

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Sec. added by renum. 359.1, Title 6, filed Sept. 1971; renum. 450.1, filed Dec. 1971; new added by renum. and amd. 454.1, filed Feb. 1, 1988; amd. filed Nov. 22, 1988 eff. Dec. 7, 1988. Amended (r) and (dd), added (ff); amd. filed Dec. 23, 2009 eff. Jan. 6, 2010.

Part 454. Snowmobile Trail Development and Maintenance

Section 454.1. Availability of State aid for snowmobile trail development and maintenance

- (a) The office shall provide State aid for snowmobile trail development and maintenance in accordance with the provisions of this Part to local sponsors, as defined in section 453.1(ff) of this Title.
- (b) State aid shall be available in the following categories:
- (1) development grants for new trail construction, including but not limited to culverts and bridges, signage, and amenities such as shelters, parking lots and sanitary facilities; and
 - (2) maintenance grants for repair, rehabilitation and maintenance of trail facilities, including but not limited to brush cutting, grooming, sign replacement, and repair and upkeep of facilities.
- (c) Projects in each category will be funded according to the proportion that the authorized expenditures which a local sponsor makes in a given category bear to the total of authorized expenditures which all local sponsors make in that category.

Sec. added by renum. 360.1, Title 6, filed Sept. 1971; amd. filed May 7, 1982; renum. 453.1, new filed Feb. 1, 1988; amd. filed Nov. 22, 1988 eff. Dec. 7, 1988.

Section 454.2. Authorized expenditures

The following items, to the extent that they are in excess of any snowmobile user fees received by the local sponsor, shall be deemed authorized expenditures when used according to the provisions of this Part and shall be eligible for funding as provided in section 454.5 of this Part.

- (a) Land use costs. Charges, such as rentals, permit fees and the costs of acquiring easements which are required for authorization to use lands of another for trails.
- (b) Subcontracts. Costs for subcontracting with municipalities, not-for-profit corporations, snowmobile clubs and other like entities for the development and maintenance of snowmobile trails and facilities. Any such contract shall contain a provision holding harmless the State of New York from any liability in connection with such contract and shall be subject to the approval of the commissioner in form and content.
- (c) Labor. The costs for personnel of the local sponsor which are assigned to and engaged in trail construction or maintenance shall be paid at the normal hourly rates of wage of such personnel, regardless of whether the employee is in overtime status at the time that such work is performed. Payroll information shall be kept by the local sponsor at the office of the appropriate official for inspection.
- (d) Equipment and motor vehicle rental. Eligible costs may include the charge for the equipment operator. Rental of equipment, including but not limited to bulldozers, backhoes, dumptrucks, four-wheel drive vehicles, snowmobiles, ATV's and groomers or grooming equipment, shall be eligible costs at the actual current lease or rental rate, except that the commissioner may establish a reasonable maximum allowable rate for each piece of equipment.

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- (e) Purchase of equipment. Purchase of power equipment and hand tools for use on a snowmobile trail project, including but not limited to chain saws, power scythes, shovels, hoes, tree trimmers, rakes and axes.
- (f) Materials. The cost of materials for use on a snowmobile trail project, including but not limited to gravel, stone, lumber and culverts.
- (g) Vehicle costs. Allowance for actual mileage of vehicles owned by the local sponsor while being used on a snowmobile trail project.

Sec. filed Feb. 1, 1988; amd. filed Nov. 22, 1988 eff. Dec. 7, 1988.

Section 454.3. Local snowmobile trail development and maintenance plans

- (a) Each local sponsor wishing to obtain State aid for snowmobile trail development and maintenance shall submit to the commissioner a local snowmobile trail development and maintenance plan. The plan shall be in a form and contain such information as shall be required by the commissioner.
- (b) The plan shall serve as a long-range planning document for the development and maintenance of snowmobile trails by the local sponsor and all applications for future State aid shall be in conformance with and implement all or part of the plan. The plan shall cover at least three years' snowmobile trail development and maintenance.
- (c) After January 1, 1989, no local sponsor shall submit to the commissioner an application for State aid until it has first submitted and had approved a local plan. In order to submit an application for State aid for a project which is not covered by the plan previously submitted a local sponsor shall submit and have approved an updated plan.
- (d) No later than September 1st of each year, each local sponsor shall submit an update of its local plan. The update shall include any changes to the plan previously submitted which the local sponsor has determined to be necessary or appropriate. In addition, the update shall always project the trail development and maintenance to be undertaken for three years beyond the current fiscal year.
- (e) The commissioner shall review the local plan, and local plan updates, and comment on each in writing no later than 90 days after receipt.
- (f) The local sponsor shall be responsible for conducting all appropriate reviews of the plans, including environmental reviews, and for obtaining necessary approval of local, regional and other State governmental entities.

Sec. filed Feb. 1, 1988; amd. filed Nov. 22, 1988 eff. Dec. 7, 1988.

Section 454.4. Application for state aid

- (a) An application for State aid shall be submitted no later than September 1st of each year for which aid is sought. The application shall include a description of the projects which the local sponsor will carry out during the current fiscal year, including an estimate of expenditures for their implementation, and shall be in a form and contain such additional information as shall be required by the commissioner.
- (b) The commissioner shall review each application to determine whether the proposed expenditures conform to its trail development and maintenance plan and are authorized under this Part.

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(c) The commissioner shall determine the percentage proportion which the authorized expenditures of each local sponsor which applies for State aid bear to the total authorized expenditures of all local sponsors applying for funds.

(d) Such percentage shall be applied against the amount of State aid available for distribution for that fiscal year. The amount thus determined shall be the amount of State aid which each local sponsor shall be entitled to receive.

(e) No city, town or village may apply for State aid in any fiscal year in which the county containing such city, town or village shall also apply for such aid.

Sec. filed Feb. 1, 1988; amd. filed Nov. 22, 1988 eff. Dec. 7, 1988.

Section 454.5. Project agreement

(a) Each local sponsor shall enter into a project agreement with the office for the receipt of State aid under this Part.

(b) Seventy percent of the State aid shall be made available to the local sponsor after November 1st and upon execution and approval of the project agreement.

(c) The remaining 30 percent shall be paid to the local sponsor after completion of the program for that fiscal year and verification of the local sponsor's expenditures to the satisfaction of the commissioner.

Sec. filed Feb. 1, 1988; amd. filed Nov. 22, 1988 eff. Dec. 7, 1988.

Part 456. Requirements for Obtaining a Snowmobile Safety Certificate

Section 456.1. Requirements for obtaining a snowmobile safety certificate

Requirements for obtaining a snowmobile safety certificate include:

(a) attendance at three of the four prescribed lessons;

(b) completion of the workbook; and

(c) attainment of a score of 75 percent on the final examination.

Sec. added by renum. 362.1, Title 6, filed Sept. 1971; renum. 455.15, new added by renum. 457.1, filed Dec. 1971.

Section 456.2. Course content

(a) New York State young snowmobile operator's safety training course shall be a training program prepared and published by the commissioner as authorized in article 25 of the Parks, Recreation and Historic Preservation Law, comprised of a minimum of 10 hours of classroom instruction and one hour of optional field instruction by a duly certified instructor.

(b) The course will contain, but not be limited to, the following topics:

(1) code of ethics;

(2) registration;

(3) safe operation;

(4) laws and enforcement of laws;

(5) parts identification;

(6) fuel system;

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- (7) safety features and safety equipment;
- (8) driving tips;
- (9) wind-chill chart;
- (10) proper clothing; and
- (11) survival techniques.

Sec. added by renum. 362.2, Title 6, filed Sept. 1971; renum. 455.16, new added by renum. 457.2, filed Dec. 1971; amds. filed: Oct. 5, 1978; May 7, 1982 eff. May 7, 1982.

Section 456.3. Instructor certification

Certification of an instructor's qualifications shall be on the following basis:

- (a) attendance at a training seminar conducted by a representative of the bureau; or
- (b) possession of a valid New York State teacher's license and the written recommendation of a regional coordinator; or
- (c) assisting a certified instructor in the presentation of the New York State young snowmobile operator's safety training course.

Sec. added by renum. 362.3, Title 6, filed Sept. 1971; renum. 455.17, new added by renum. 457.3, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Section 456.4. Application for snowmobile safety certificate

- (a) The application for a snowmobile safety certificate shall include but not be limited to the following:
 - (1) name of applicant;
 - (2) address of applicant (street, city, county, state);
 - (3) date of birth of applicant;
 - (4) sex, weight, height, color of eyes, color of hair;
 - (5) name of parent or guardian;
 - (6) instructor's code number; and
 - (7) attendance record.
- (b) The instructor shall complete the "endorsement for snowmobile safety certificate" on the back of the application and sign his name in full.
- (c) After the youthful operator successfully completes the young snowmobile operator's safety training course, the instructor shall separate the application from the safety certificate and shall return the application to the office.

Sec. added by renum. 362.4, Title 6, filed Sept, 1971; renum. 455.18, new added by renum. 457.4, filed Dec. 1971; amd. filed April 11, 1978 eff. April 11, 1978. Amended (c).

Section 456.5. Snowmobile safety certificate

- (a) Snowmobile safety certificate shall be wallet-size and include but not be limited to the following:
 - (1) name of applicant;
 - (2) address of applicant (street, city, county, state);
 - (3) date of birth of applicant;
 - (4) sex, weight, height, color of eyes, color of hair;

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- (5) instructor's code number;
- (6) name of applicant's parent or guardian;
- (7) signature of applicant; and
- (8) certificate number.

(b) After the youthful operator successfully completes the young snowmobile operator's safety training course, the instructor shall issue the prenumbered snowmobile safety certificate to the youthful operator.

Sec. added by renum. 362.5, Title 6, filed Sept. 1971; renum. 455.19, new added by renum. 457.5, filed Dec. 1971; amd. filed April 11, 1978 eff. April 11, 1978. Amended (b) and repealed (c).

Section 456.6. Duplicate snowmobile safety certificate

In the event that a snowmobile safety certificate is lost, the youthful operator may obtain a duplicate snowmobile safety certificate by making application to the bureau upon payment of a fee of \$1.

Sec. added by renum. 362.6, Title 6, filed Sept. 1971; renum. 455.20, new added by renum. 457.6, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Section 456.7. Revocation and suspension

The commissioner may suspend or revoke a snowmobile operator's safety certificate upon a determination by him that such action is warranted, provided the certificate holder is given the opportunity of a hearing before the commissioner.

Sec. added by renum. 362.7, Title 6, filed Sept. 1971; renum. 455.21, new added by renum. 457.7, filed Dec. 1971.

Section 456.8. Exemption

A youthful operator who is a resident of another state or country and is the holder of a valid snowmobile safety certificate issued pursuant to the laws of that state or country shall be exempt from the requirements of this Part.

Sec. added by renum. 362.8, Title 6, filed Sept. 1971; renum. 455.22, filed Dec. 1971; new filed April 11, 1978 eff. April 11, 1978.

Part 457. Snowmobile Accident Reports

Section 457.1. Accident reporting

(a) It shall be the duty of the operator of a snowmobile involved in any accident, as defined in this Subchapter, so far as he can do so, to render to other persons affected by said accident such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the occurrence.

(b) The operator of any snowmobile involved in any accident shall stop and exhibit his certificate of registration and operator's certificate, if he is required to have one, give his name, address and the identification number of his snowmobile, in writing, to any person injured and to the operator or owner of any snowmobile or property damaged. In the event the person injured or the owner of property damaged cannot be located at the place where the accident occurred, then said information and a

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description of the accident shall be reported by the operator of the snowmobile, within 24 hours, to the nearest police officer, enforcement agency or magistrate.

(c) The operator of every snowmobile involved in any accident resulting in loss of life, personal injury, or property damage in excess of \$1,000 shall, within seven days of the accident, file a complete written report and description of the accident as provided in this section.

(d) Accidents shall be reported on forms provided by the commissioner for that purpose. Forms may be obtained at any police station or office of the division.

(e) Accident reports are to be filed with the bureau and a copy thereof shall be filed with the local enforcement agency in whose jurisdiction the accident occurred.

(f) Every written report shall contain, but not be limited to, the following information:

- (1) number of snowmobiles involved;
- (2) locality where accident occurred;
- (3) time and date when accident occurred;
- (4) name, address, age and snowmobile operating experience;
- (5) weather conditions at time of accident;
- (6) name and address of operator of other snowmobile involved;
- (7) name and address of owners of snowmobiles or property involved;
- (8) name and address of any person injured or killed;
- (9) nature and extent of injury to any person or persons;
- (10) description of damage to property, and estimated cost of repairs;
- (11) description of accident;
- (12) make, year built, type of snowmobile;
- (13) name and address of all known witnesses;
- (14) type of accident;
- (15) signature of person reporting; and
- (16) registration numbers of snowmobiles involved.

Sec. added by renum. 363.1, Title 6, filed Sept. 1971; renum. 456.1, new added by renum. 458.1, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982; amd. filed Dec. 23, 2009 eff. Jan. 6, 2010.

Section 457.2. Police reporting

(a) Any employee of an enforcement agency who investigates, or receives information of, an accident involving a snowmobile shall make a written report of the investigation or information received, and such additional facts relating to the accident as may come to his knowledge, and mail the same within 48 hours to the bureau, keeping a record of same in his office.

(b) Where a serious injury or death has resulted from such accident, the investigating officer may delay mailing his report to the bureau pending a final determination as to the condition of the injured person or persons; however, in such cases the investigating officer or his superior must promptly notify the bureau by telephone, teletype or in writing of such delay and the reason therefor. Said written report is to be filed not later than seven days after the accident.

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Sec. added by renum. 363.2, Title 6, filed Sept. 1971; renum. 456.2, new added by renum. 458.2, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Payment of State Aid to Municipalities Enforcing Snowmobile Provisions

Section 457.30. Effective date of State aid

On and after October 1, 1970, every county, city, town or village enforcing the provisions of article 25 of the Parks, Recreation and Historic Preservation Law shall be entitled to receive State aid as hereinafter provided. A county, city, town or village seeking reimbursement for expenditures incurred in enforcement of this article shall submit to the commissioner, by January first of each year, an estimate of such expenditures for the current fiscal year, in such form and containing such information as the commissioner may require. Within one month after the close of the fiscal year, each such county, city, town or village shall submit to the commissioner a statement of authorized expenditures actually incurred, in such form and containing such information as he may require. For the purpose of this section, fiscal year shall mean the period from April 1st through March 31st.

Sec. added by renum. 461.1, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Section 457.31. Formula for dispersion of State aid

(a) The amount of State aid to be allocated to counties, cities, towns or villages shall be determined by the commissioner as hereinafter provided. The commissioner shall determine the percentage proportion which the authorized expenditures of each individual county, city, town or village, but not exceeding \$25,000 for each county, including the municipalities therein, shall bear to the total authorized expenditures of all the counties, cities, towns or villages for enforcement of article 25 of the Parks, Recreation and Historic Preservation Law during the fiscal year. Such percentage proportion shall then be applied against an amount equal to 25 percent of the amount received by the commissioner in fees received for registration of snowmobiles during such fiscal year, to the extent only and not exceeding the sum of \$150,000.

(b) The amount thus determined shall constitute the maximum amount of State aid to which each county, city, town or village shall be entitled; provided, however, that no county, city, town or village shall receive State aid in an amount in excess of one half of its authorized expenditures as approved by the commissioner for such fiscal year (\$12,500 maximum per county, including municipalities therein).

Sec. added by renum. 461.2, filed Dec. 1971; amds. filed: Sept. 13, 1973; May 7, 1982 eff. May 7, 1982.

Section 457.32. General agreement

(a) All personnel assigned to the duty of enforcing the snowmobile provisions shall be mentally and physically capable of performing the duties to which they are assigned. They shall have a good knowledge of the provisions of article 25 of the Parks, Recreation and Historic Preservation Law and the powers, duties and authority of peace officers. They shall have a thorough knowledge of the operation of snowmobiles and the rules and regulations pertaining to such operation.

(b) All persons engaged in the snowmobile enforcement program shall actively cooperate with the commissioner or his authorized representative, including, but not limited to, the answering of questions,

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making reports and showing records as requested. The commissioner may refuse payment to any municipality for that portion of authorized expenditures paid to personnel deemed to be unfit to carry out the duties assigned.

(c) All municipalities participating in the State aid program shall:

- (1) investigate complaints of violations of article 25 of the Parks, Recreation and Historic Preservation Law within their jurisdiction, including those referred to the municipality by the commissioner;
- (2) enforce the provisions of article 25 of the Parks, Recreation and Historic Preservation Law that are applicable to land and water within their jurisdiction;
- (3) submit such reports as the commissioner may desire;
- (4) keep records pertaining to violations and authorized expenditures;
- (5) advise snowmobile owners on the safe method of operating snowmobiles;
- (6) assist in the distribution of such public information as may be provided by the commissioner;
- (7) certify that all claims and documents which are part thereof are true and correct;
- (8) purchase and maintain uniform snowmobile summonses, and issue same for violations of article 25 of the Parks, Recreation and Historic Preservation Law;
- (9) maintain an up-to-date snowmobile enforcement log book, by day, for each snowmobile season. The log shall contain the hours patrolled, the areas patrolled, the name of each police officer on patrol, a brief resume of any accidents investigated, and any extraordinary equipment needed in the investigation. Upon demand of the commissioner or his authorized representative, the log shall be made available for examination;
- (10) make available any or all equipment, purchased or rented under the State aid program, to the commissioner or his authorized representative for the purpose of inspection, investigation or any other official duties.

(d) The commissioner may deny payment of any claim or part thereof which is not deemed to be a reasonable and necessary expenditure.

(e) The commissioner may withhold payment on any claim pending the investigation of the contents of said claim.

(f) The commissioner may deny payment of any claim if any part of said claim is found to be false and submitted with intent to defraud.

(g) The commissioner may deny payment, after investigation, to any municipality that, in his opinion, is not adequately enforcing the provisions of article 25 of the Parks, Recreation and Historic Preservation Law.

Sec. added by renum. 461.3, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Section 457.33. Authorized expenditures and equipment

(a) The following items shall be deemed authorized expenditures and the cost of such items, when used pursuant to the provisions of this Part, shall be reimbursable, in accordance with section 457.32 of this Part, to any county, city, town or village upon submission of a claim in accordance with this Part. However, other items of expenditures may be authorized if found to be reasonable and necessary. Prior

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approval of an expenditure not contained herein must be obtained from the commissioner, or his authorized representative; otherwise such expenditures will not be considered authorized expenditures and will not qualify for reimbursement under this Part. All authorized equipment which has originally been included in a claim, and for which reimbursement has been made in accordance with this Part, shall not be disposed of for a period of three years without prior approval of the commissioner. In the event that authorized equipment which has originally been included in a claim and for which reimbursement has been made in accordance with this Part is in need of replacement, the trade-in value or fair market value shall not be included in the claim for reimbursement of the purchase of new equipment. The cost of replacing authorized equipment which has been lost or destroyed by fire or other mishap may be claimed. However, any amount received from insurance coverage in payment or partial payment for the loss of such equipment shall be deducted from the claim for the new equipment purchase.

(1) Snowmobiles and snowmobile equipment:

Gas cans	Battery
Funnels	Fire extinguisher
Snowmobile covers	Horn
Snowmobile hooks	Rearview mirror
Drive belts (spare)	Light bulbs (spare)
Spark plugs (spare)	Lights, spot
Snowmobile trailers	Saddlebags
Snowmobile bumpers and handles	Ropes
Grease gun	Siren
Oil can	Speedometer
Wrenches for spark plugs and motor bolts	Revolving red light
Compass	

(2) Four-wheel drive vehicle (to be used exclusively to haul snowmobile, or boat in summer, not plow snow, etc.).

(3) Communications and equipment:

- Megaphone
- Radios, certain radio equipment
- Telephone (snowmobile enforcement use only)

(4) Snowmobile school expenses:

- Snowmobile school lodging (not to exceed State rate)
- Snowmobile school mileage in a private car (at State rate)
- Snowmobile school meals

(5) Special clothing:

Badges	Pants
Hats	Insulated underwear
Snowmobile boots	Snowmobile goggles
Jackets	Gloves
Snowmobile outfits	Face masks
Shirts	Safety helmet

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(6) Miscellaneous:

Binoculars	Snowmobile trailer hitches
Shovels	Flashlights and flashlight batteries
Blankets	Snowmobile trailer tires
Tarpaulin	Cigarette lighter, snowmobile
Hand warmers	Signs, regulatory
Log books	Snowmobile trailer wiring
Log case	Snowmobile sled
Tire chains	Waterproof match case
Truck tires (snow)	Snowshoes and harness
Pull chain	First aid kits (including splint)

(7) Operation and maintenance costs as follows (automobiles excluded):

- (i) All repairs, both general and emergency.
- (ii) Cost of gas, oil and grease (exclusive of Federal and State tax).
- (iii) Summer storage.
- (iv) General overhaul and equipment such as radios.
- (v) Insurance cost.
- (vi) Personal traveling expenses (including attendance at conferences, etc. However, they must be in accordance with the provisions of section 77-b of the General Municipal Law).
- (vii) Automobile mileage allowance at the State rate.
- (viii) Personnel training costs. (Payment in cases of snowmobile law enforcement training includes attendance at schools, training conferences, etc. However, they must be in accordance with the provisions of section 77-b of the General Municipal Law.)
- (ix) Miscellaneous office supplies and expenses (itemize and explain).

(b) Personnel assigned to snowmobile law enforcement.

- (1) The wages of personnel so assigned, authorized and paid by the county or municipality, during the period in which the person actually performs the duty of enforcing article 25 of the Parks, Recreation and Historic Preservation Law, shall be an authorized expenditure. If an officer is assigned to such duty, all wages earned during such period become part of a claim. If an officer is assigned snowmobile duties intermittently, an itemized account of such time must be submitted, and that portion of wages earned while actually engaged in snowmobile law enforcement shall be deemed an authorized expenditure.
- (2) In addition to vouchers or payrolls, a separate certificate will be required for permanent and temporary personnel, which must include name of person, title or position, rate of pay, total time worked, and periods in which work was performed, and must be certified by the department head of the enforcement unit of the county, city, town or village submitting the claim.
- (3) Prior approval must be obtained from the commissioner before supervisory personnel can be reimbursed, and only on the basis of proven expenditures.

(c) Rentals. Equipment may be rented by counties, cities, towns or villages for use by the snowmobile law enforcement unit. However, the claim for rental of such equipment shall not exceed one fifth of the total new purchase price of such equipment for the season's rent. Equipment rented for short periods of

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time shall not exceed the following authorized expenditure allowed: one fifth of the total new price divided by 10 equals maximum rental allowance for one week. A contract or agreement made by a county, city, town or village, regarding the rental of any equipment for use in snowmobile enforcement, must be submitted to, and approved in writing by, the commissioner before it will be deemed an authorized expenditure.

Sec. added by renum. 461.4, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982; amd. filed Sept. 22, 2016 eff. Oct. 12, 2016.

Part 458. Conduct of Snowmobile Special Events

Section 458.1. Preliminary preparations

(a) At least 15 days prior to the date of the proposed special event, to be held at a specific location within the boundaries of New York State, the sponsor of such special event shall file an application with the commissioner and obtain a permit from him. Insurance coverage shall be provided by the sponsor in accordance with current requirements of the commissioner.

(b) When special events are proposed to be conducted on privately owned lands, a written statement of no objections to the holding of the special event, from the owner or owners of such private lands, shall be submitted along with the application to conduct a snowmobile special event. When the proposed special event is desired to be conducted on State-owned lands or State or locally owned park lands, a copy of the permit required by the supervisor of State-owned land or State or locally owned park shall be forwarded with application in lieu of the statement of no objections as required in the case of private landowners.

(c) When the application is approved, a special event permit will be issued. The permit will specify the date or dates and exact location at which the special event is to be held and, unless alternate dates are specified, the special event must commence and terminate within the time set forth in the permit. The permit may contain special rules and regulations applicable to a particular locality, and permission to place certain equipment necessary for the conduct of the special event.

(d) Upon recommendation of the person in charge, at least three persons will be appointed as special assistants to the person in charge, and their names will be listed on the special event permit. It shall be the duty of special assistants to the person in charge to enforce the provisions of article 25 of the Parks, Recreation and Historic Preservation Law and the rules and regulations for the conduct of snowmobile special events and any special rules and regulations which may be included on the special event permit during the period in which the special event is authorized. Such person in charge, or special assistants to the person in charge, shall receive no compensation from the State. Any expense in connection with their duties shall be borne by the sponsor of the snowmobile special event.

(e) The special assistants to the person in charge shall be provided with fully equipped snowmobiles or other appropriate snow-traveling vehicles of a size and speed suitable for patrolling the type of special event in progress. The minimum equipment to be carried shall be in accordance with the provisions of section 25.17 of the Parks, Recreation and Historic Preservation Law, plus efficient means of communication such as radios or walkie-talkies, and extra equipment shall be left to the discretion of the

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person in charge of the snowmobile special event, but shall include equipment suitable for fire control, first aid and emergency transportation.

(f) It shall be the duty of the person in charge to notify local police and property owners in the vicinity of the special event area, and any other person who may be affected by the special event, of the proposed date, time and place the special event will be held.

(g) Permission may be granted in the snowmobile special event permit authorizing the person in charge to place equipment within the special event area, such as pylons, poles and markers. However, such permission, when granted, is subject to the following provisions:

- (1) Equipment may be placed up to 24 hours prior to the time of the special event for use in trial runs.
- (2) All equipment must be removed before sunset on the last day of the special event.
- (3) Whenever practical, equipment shall be colored reflective orange.

(h) Prior to commencement of the special event, the special assistants to the person in charge shall inspect all snowmobiles, emergency vehicles and any other special equipment expected to be used. The special assistants to the person in charge shall also travel the entire course of the special event and adjacent area in order to ascertain that there are no conditions which may be considered unsafe. The special assistants to the person in charge shall become familiar with the contents of the snowmobile special event permit and pay particular attention to special rules and regulations, if any, which the permit may contain.

Sec. added by renum. 364.1, Title 6, filed Sept. 1971; renum. 457.1, new added by renum. 462.1, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Section 458.2. During special event

(a) The special assistants to the person in charge shall be expected to take whatever measures are deemed necessary, in addition to those listed in this section, to insure the safety of participants, spectators or any other persons during the authorized snowmobile special event.

(b) Immediately prior to the start of the special event, at least two special assistants to the person in charge shall take stations whereby they are in the most suitable position to accomplish the following:

- (1) warn traffic approaching special event;
- (2) prevent spectators on other snow-traveling machines from getting too close to special event;
- (3) give assistance in case of participant accident (unless an emergency vehicle is specifically assigned to this task) or other type of mishap;
- (4) stay close to the majority of participants (during races); and
- (5) summon medical aid or other type of assistance.

Sec. added by renum. 364.2, Title 6, filed Sept. 1971; renum. 457.2, new added by renum. 462.2, filed Dec. 1971.

Section 458.3. After special event

(a) When the special event is over, the special assistants to the person in charge shall supervise the dispersion of spectators in an orderly manner.

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(b) It shall be the duty of the special assistants to the person in charge to cause the removal of all equipment temporarily authorized for use during the special event, prior to sunset on the last day of the special event.

(c) Within 48 hours after a snowmobile special event, the special assistants to the person in charge shall compile a joint report and submit it to the bureau. The report shall contain:

- (1) general observations concerning the event;
- (2) report of violations of article 25 of the Parks, Recreation and Historic Preservation Law, this Part, or any special rules and regulations which may be included on the special event permit; and
- (3) complete data on accidents involving participants, spectators or any person in the special event.

Sec. added by renum. 462.3, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

General Instructions for Design and Placement of Snowmobile Signs

Section 458.10. Application

(a) Warning signs are used to warn the highway user of physical or operating conditions on or adjacent to the roadway. Warning signs call for caution on the part of the motorist, pedestrian or snowmobile operator, and generally require a reduction in driving speed for safety.

(b) The use of warning signs should be held to a minimum consistent with the requirements for safety. Unnecessary signs detract from their effectiveness and cause disrespect for all warning signs.

Sec. added by renum. 463.0, filed Dec. 1971.

Section 458.11. Location

(a) Warning signs are placed primarily for the protection of the driver who is unacquainted with the road. They should normally be located well in advance of the condition to which they apply, with due consideration for existing physical characteristics. Day and night trial runs should be made to determine the most effective placement and positioning.

(b) In rural districts, the advance distance will depend upon the speed limit, prevailing speed of approaching traffic, character of road alignment and nature of the topography. Subject to adjustment for specific conditions, the advanced distance for warning signs shall normally be between 250 feet and 750 feet.

Sec. added by renum. 463.1, filed Dec. 1971.

Section 458.12. Longitudinal placement

(a) The placement of signs along the highway in relation to the roadway condition or regulation varies according to the type of sign used and the nature of the message conveyed.

(b) The following table indicates acceptable posting distances for the longitudinal placement of warning signs with respect to approach speeds under normal conditions on highways in rural districts:

85-percentile approach speeds	Advance posting distance
Less than 25 mph	250 feet
25-35 mph	300 feet
35-45 mph	400 feet

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45-55 mph

500-750 feet

(c) Signs should normally be erected individually, except where one sign supplements another or where guide signs must be grouped. Two signs for different purposes should not be located closer together than 200 feet if it can reasonably be avoided.

Sec. added by renum. 463.2, filed Dec. 1971.

Section 458.13. Height

The height of a sign is the vertical distance between the nearest edge of the roadway and the bottom of the sign. Signs in rural districts shall be mounted at a height of at least five feet. However, where parked vehicles or other obstructions are likely to interfere with the visibility of the sign, the height should be at least seven feet. Signs in business and residence districts shall be mounted at a height of at least seven feet. Route markers shall be considered as a single sign for purposes of this section. The snowmobile route marker assembly shall be mounted at a height of at least four feet.

Sec. added by renum. 463.3, filed Dec. 1971.

Section 458.14. Lateral placement

(a) Lateral clearance is the horizontal distance between the edge of the roadway and the nearest edge of the sign or sign assembly.

(b) On highways other than expressways, the lateral clearance shall be as follows:

(1) Not less than 6 feet nor more than 12 feet.

(2) The distance between an unmountable curb face, guide rail, or the edge of the usable shoulder and the nearest edge of a sign should be at least two feet. In urban districts the distance from the face of the curb should not be less than one foot and generally not more than three feet.

(c) The lateral clearance to the snowmobile route marker shall be three feet to the right of the nearest edge of the permitted path of travel.

Sec. added by renum. 463.4, filed Dec. 1971.

Section 458.15. Seasonal signs

(a) Seasonal signs are signs which inform the highway user of conditions or regulations which are present or in effect for less than the full 12 months of the year. It is not practical to consider a period shorter than two months as a season. The following are acceptable methods of displaying seasonal signs:

(1) Erect the sign as a permanent sign and remove or cover it when it is not required.

(2) Hinge the sign along its horizontal axis so that one portion may be folded over the other portion to obscure the message.

(b) The height, lateral and longitudinal placements of seasonal signs should comply with the erection specifications for permanently mounted signs.

Sec. added by renum. 463.5, filed Dec. 1971.

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Section 458.16. Snowmobile crossing sign

(a) Design



Yellow background
Black legend
Reflectorized

Sign No.	Size	Margin	Border
W86	30" x 30"	1/2"	3/4"
W86A	36" x 36"	5/8"	7/8"
W86B	24" x 24"	3/8"	5/8"

(b) This sign is provided for use to warn traffic of a snowmobile crossing where conditions such as sight distance and number of snowmobiles crossing warrant such use. The provisions of subdivisions (b)—(d) of section 232.1 of the New York State Manual of Uniform Traffic Control Devices have general application in the consideration of the use of this sign.

(c) The W86 sign is standard. The W86A or larger sign may be used where greater emphasis or visibility is required. The W86B sign may be used on highways, having no more than one moving lane of traffic in each direction, where approach speeds are low and where physical conditions make the use of the standard size sign impractical as a ground-mounted sign.

(d) Snowmobile is defined in section 21.05 of the Parks, Recreation and Historic Preservation Law, and Part 454 of the rules and regulations of the Office of Parks, Recreation and Historic Preservation, adopted September 1971.

(e) This sign may be used in advance of locations where snowmobiles cross the highway in a well defined path as part of a recognized trail crossing. The M57 (as specified in the New York State Manual of Uniform Traffic Control Devices) snowmobile route marker, supplemented with an M45 (as specified in the New York State Uniform Traffic Control Devices) white-on-brown directional marker arrow may be used at the trail crossing.

(f) The use of the snowmobile crossing sign shall be limited on a seasonal basis to between October 15th of one year and May 15th of the succeeding year.

Sec. added by renum. 463.6, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Section 458.17. Snowmobile route marker

(a) Design

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**Brown background
 White legend and border
 Reflectorized**

Sign No.	Size	Margin	Border
M57	24" x 18"	None	5/8"

(b) This sign shall be used to mark highways or parts of highways where the use of snowmobiles is permitted by official designation in conformance with section 25.05 of the Parks, Recreation and Historic Preservation Law.

(c) Snowmobile is defined in section 21.05 of the Parks, Recreation and Historic Preservation Law.

(d) Subdivision 7 of section 25.05 of the Parks, Recreation and Historic Preservation Law permits the operation of snowmobiles on the following portions of highways, other than the Thruway, interstate highways or controlled-access State highways, upon official designation by the appropriate governmental agency:

- (1) shoulders and inside banks;
- (2) access areas not to exceed 1,500 feet when, in the determination of the governmental agency concerned, it is otherwise impossible to gain immediate access to an area adjacent to the highway;
- and
- (3) on roadways of such highways where the outside banks are determined by the governmental agency to be impassable.

(e) The snowmobile route marker shall be used in combination with the appropriate M41 (as specified in the New York State Manual of Uniform Traffic Control Devices) through M48 (as specified in the New York State Manual of Uniform Traffic Control Devices) directional marker arrow to indicate the direction of permitted use. The directional marker arrow shall be mounted immediately below the snowmobile route marker and shall have a color combination of white legend on brown background.

(f) It shall be located at intervals, as necessary, to clearly mark the permitted path of travel, and at turns in the path. It shall be located three feet to the right of the permitted path, at a height of at least four feet.

(g) The M57 (as specified in the New York State Manual of Uniform Traffic Control Devices) sign, supplemented with an M45 white-on-brown directional marker arrow, may be used to indicate the location of a recognized snowmobile trail crossing.

(h) The use of the snowmobile route marker shall be limited on a seasonal basis to between October 15th of one year and May 15th of the succeeding year.

Sec. added by renum. 463.7, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

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Part 459. Standards for Equipment on Snowmobiles Sold or Offered for Sale in New York State; Helmets

Section 459.1. Definitions

The terms **snowmobile**, **equipment** and **commissioner** as used in this Part are defined in section 21.05 of the Parks, Recreation and Historic Preservation Law or Part 454 of this Subtitle.

Sec. added by renum. 365.1, Title 6, filed Sept. 1971; renum. 455.30, new added by renum. 464.1, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Section 459.2. Types of snowmobile equipment and operations requiring approval

The following types of snowmobile equipment must be approved:

- (a) Mufflers.
- (b) Noise emission from the entire snowmobile.

Sec. added by renum. 365.2, Title 6, filed Sept. 1971; renum. 455.31, new added by renum. 464.2, filed Dec. 1971.

Section 459.3. Procedure for obtaining departmental approval

(a) The applicant shall submit:

- (1) the description and model number of the device to be approved;
- (2) a copy of the manufacturer's or laboratory's test report; and
- (3) a certificate certifying that the device has been tested in accordance with section 459.4 of this Part and found acceptable.

(b) Approval of snowmobile equipment or standards referred to in section 459.2 of this Part shall be granted by the commissioner on receipt of a certification from the manufacturer or laboratory currently engaged in the examination, testing and evaluation of such equipment or noise control devices, and which maintains or employs adequate staff and facilities to perform such functions. The certification and test report shall state that the equipment has been tested in accordance with the provisions of section 459.4 of this Part. The certification shall be accompanied by a full and complete test report setting forth the general conditions upon which the test was completed and the specifications regarding same. Upon receipt of a copy of the test and the certification, the commissioner, will by letter, notify the applicant that the device has been approved and that they may legally sell the snowmobiles in the State of New York.

Sec. added by renum. 464.3, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Section 459.4. Testing criteria

The sound level produced by a new snowmobile manufactured after June 1, 1975, shall not exceed 78 decibels (78dB (A)) on the A scale, measured at a distance of 50 feet to the side of such snowmobile when the machine is run at full throttle and tested in accordance with the procedures of the Society of Automotive Engineers recommended practice J192-a. The sound level produced by a snowmobile manufactured after June 1, 1980, shall not exceed 73 decibels (73dB (A)) on the A scale, measured at a

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distance of 50 feet to the side of such snowmobile when the machine is run at a speed of 15 miles per hour and tested in accordance with the Society of Automotive Engineers recommended practice J1161.

Sec. added by renum. 464.4, filed Dec. 1971; amd. filed Oct. 5, 1978; repealed, new filed Aug. 24, 1979 eff. Sept. 1, 1979.

Section 459.5. Withdrawal of approval

The manufacturer shall not modify or change the device approved without resubmission of the modified device for approval in the same manner as required for the original device. The commissioner reserves the right to inspect the manufacturing plant and any devices sold in the State of New York. In the event that it is determined that the devices approved have been modified and are no longer acceptable, the manufacturer will be notified of withdrawal of the approval and will no longer be permitted to sell snowmobiles in this State. All notifications of approval or disapproval will be accomplished by letter.

Sec. added by renum. 464.5, filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

Section 459.6. Protective helmets

(a) Authority and purpose. This regulation implements chapter 228 of the Laws of 1997, which amended the Parks, Recreation and Historic Preservation Law to provide that no person shall operate a snowmobile or ride as a passenger on a snowmobile unless he or she is wearing a protective helmet of a type approved by the Commissioner of Parks, Recreation and Historic Preservation. It should be noted that neither the law nor the regulation applies to the operation of a snowmobile or riding as a passenger on private lands owned by the operator or passenger, or where the operator or passenger has a contractual right such as a lease other than as a member of a club or association, and for which no compensation is paid to the owner with respect to such operation.

(b) The approval of the Commissioner shall be deemed to be granted for helmets which meet the standard set forth in subdivision (c) of this section.

(c) Requirements for approval. A helmet that is approved for wear while operating a snowmobile or riding as a passenger on a snowmobile shall be any helmet bearing a legible label that is applied by the manufacturer which indicates that the manufacturer of the helmet certifies that it meets one of the following established standards:

- (1) Federal Department of Transportation motor vehicle safety standard 218; motorcycle helmets, which can be found at title 49 of the Code of Federal Regulations, section 571.218; or
- (2) The Standard for Protective Headgear for motorcycles established by the Snell Memorial Foundation and identified as Standard M-95 or Standard M-2000.

Copies of the Federal DOT and Snell standards are available for review at the Office of Parks, Recreation and Historic Preservation, Marine and Recreational Vehicle Bureau, Agency Building 1, 13th Floor, Empire State Plaza, Albany, NY 12238.

Sec. filed July 25, 2002 eff. Aug. 14, 2002.

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Part 460. Requirement for Liability Insurance and Certificate of Self-Insurance

Section 460.1. Applicability of law

(a) No snowmobile shall be operated on the roadway or shoulder of a public street or highway at any time, unless the owner of such snowmobile has obtained a policy of insurance in such language and form as shall be determined and established by the Superintendent of Insurance.

Sec. added by renum. 366.1, Title 6, filed Sept. 1971; renum. 457.11, new filed Dec. 1971.

Section 460.2. Amount of insurance

The terms of the policy of insurance shall indemnify any one person sustaining bodily injury or the death of one person in any one accident in the amount of \$10,000 and subject to said limit of one person, to a limit of \$20,000 because of bodily injury or death of two or more persons in any one accident, and to a limit of \$5,000 because of injury to or destruction of property of others in any one accident.

Sec. added by renum. 366.2, Title 6, filed Sept. 1971; renum. 457.12, new filed Dec. 1971.

Section 460.3. Proof of insurance

(a) The operator of an insured snowmobile shall carry proof of insurance on his person or on the snowmobile when it is in operation.

(b) Proof of insurance shall consist of a card or notice, obtained from the insurance carrier, containing the following information:

- (1) name and address of the insurance carrier;
- (2) name and address of the insured;
- (3) make and model of snowmobile covered by the policy;
- (4) policy number;
- (5) effective date and expiration date of the policy;
- (6) statement indicating that minimum financial limits of law are covered by the policy; and
- (7) authorized signature of issuing carrier.

(c) Proof of insurance shall be produced and displayed by the owner or operator of a snowmobile to any law enforcement officer or to any person who has suffered personal injury or property damage as a result of operation of such snowmobile on a public street or highway.

Sec. added by renum. 366.3, Title 6, filed Sept. 1971; renum. 457.13, new filed Dec. 1971.

Section 460.4. Certificate of self-insurance

Any State department or subdivision of the State or municipal corporation may file for a certificate of self-insurance with the bureau in lieu of an insurance policy issued by a private insurance carrier covering snowmobiles which they own or operate.

Sec. added by renum. 366.4, Title 6, filed Sept. 1971; renum. 457.14, new filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

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Section 460.5. Application for certificate of self-insurance

The application for a certificate of self-insurance shall contain:

(a) The following information concerning the applicant:

- (1) name of the applicant;
- (2) Federal employer's number;
- (3) coverage for which self-insurance is requested:
 - (i) property damage;
 - (ii) bodily injury;
- (4) amount of reserves set aside to meet future claims;
- (5) manner in which claims are investigated and adjusted;
- (6) number of accidents in last two years;
- (7) number of claims and amounts;
- (8) number of settlements and amounts;
- (9) number of judgments open and unsatisfied; and
- (10) period of time covered by certificate of self-insurance.

(b) The following information concerning each snowmobile to be covered by self-insurance:

- (1) year of manufacture;
- (2) make of snowmobile;
- (3) identification number; and
- (4) registration number.

(c) An affidavit attesting to the truth of the above information, signed by the chief fiscal officer of the applicant and acknowledged by a notary public.

Sec. added by renum. 366.5, Title 6, filed Sept. 1971; renum. 457.15, new filed Dec. 1971.

Section 460.6. Notification of approval or disapproval of application for self-insurance

The bureau shall notify the applicant in writing of approval or disapproval of the application for self-insurance and all facts pertinent thereto.

Sec. added by renum. 366.6, Title 6, filed Sept. 1971; renum. 457.16, new filed Dec. 1971; amd. filed May 7, 1982 eff. May 7, 1982.

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Chapter VI. Miscellaneous

Subchapter A. Administrative Procedures

Part 461. Public Access to Records

Section 461.1. Statement of policy

- (a) The Legislature has provided for public access to government records under the Freedom of Information Law (FOIL) (Public Officers Law, article 6, sections 84-90).
- (b) This Part outlines the procedures for obtaining records from the Office of Parks, Recreation and Historic Preservation (office or OPRHP) and personnel responsibilities for providing access to records.
- (c) The contact information for the Records Access Officer is OPRHP, Empire State Plaza, Agency Building 1, Albany, NY 12238 or foil@oprhp.state.ny.us.

Sec. added by renum. 367.1, Title 6, filed Sept. 1971; renum. 457.30, filed Dec. 1971; new filed Feb. 7, 1973; repealed, filed June 6, 1974; new filed Aug. 30, 1974 eff. Sept. 1, 1974; rep. and new added filed Aug. 25, 2010 eff. Sept. 15, 2010.

Section 461.2. Designation of the Records Access Officer and Records Appeals Officer

- (a) (a) The commissioner of the office (commissioner) is responsible for administering the Freedom of Information Law and shall designate a Records Access Officer who may, in turn, designate Assistant Records Access Officers. The commissioner shall also designate a Records Appeals Officer.

Sec. added by renum. 367.2, Title 6, filed Sept. 1971; renum. 457.31, filed Dec. 1971; new added by renum. and amd. 462.1, filed Oct. 22, 1984 eff. Nov. 1, 1984; rep. and new added filed Aug. 25, 2010 eff. Sept. 15, 2010.

Section 461.3. Subject matter list, location and time for inspection

- (a) Subject matter list. Categories of records and locations of regional offices are listed at <http://www.nysparks.state.ny.us/insideour-agency/foil-requests.aspx>.
- (b) Locations.

- (1) If access is granted records shall be available for inspection upon request and appointment during regular business hours at OPRHP's Albany office, Empire State Plaza, Agency Building 1, Albany, NY 12238. Alternatively, the Records Access Officer may make records available for inspection at a regional office or at the State Historic Preservation Office at Peebles Island Resource Center, Delaware Avenue, Cohoes, NY 12047, Telephone No. (518) 237-8643.

Sec. added by renum. 367.3, Title 6, filed Sept. 1971; renum. 457.32, filed Dec. 1971; new added by renum. 462.2, filed Oct. 22, 1984 eff. Nov. 1, 1984; rep. and new added filed Aug. 25, 2010 eff. Sept. 15, 2010.

Section 461.4. Request for access to records

- (a) A request for access to records shall be addressed to the Records Access Officer, OPRHP, Empire State Plaza, Agency Building 1, Albany, NY 12238 or foil@oprhp.state.ny.us.
- (b) Within five business days after receiving a request that reasonably describes the records, the Records Access Officer shall respond in the medium requested by:

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- (1) informing the person requesting the records that the request or a portion of the request does not reasonably describe the records sought and including, if possible, directions enabling the person to request the records;
 - (2) granting or denying access to the records in whole or in part;
 - (3) acknowledging receipt of the request in writing and including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and not more than 20 business days after the date of the acknowledgment. However, if it is known that circumstances will prevent disclosing the records within 20 business days from the date of the acknowledgment, the Records Access Officer shall state in writing the reason for not being able to grant the request within this 20-day time period and shall indicate a date certain within a reasonable time period beyond 20 days when the records will be granted or denied in whole or in part.
- (c) In determining a reasonable time for granting or denying a request the Records Access Officer shall consider the volume of the request, the ease or difficulty in locating, retrieving or copying the records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed or withheld pursuant to law, the number of requests received and similar factors that bear on the ability to grant or deny access to records within a reasonable time period.
- (d) The Records Access Officer shall redact identifying details in records to prevent any possible unwarranted invasion of privacy as described in the Public Officers Law, article 6, sections 87(2)(b); 89(2)(b),(2-a); and 96. In addition, the Records Access Officer shall not disclose other details that are prohibited from disclosure under Federal or State statutes, regulations, policies or privileges, or agreements between or among the State and another state or states or the United States.
- (e) The Records Access Officer after receiving payment of the fee prescribed for copies of the requested documents shall provide copies, and shall provide certification of correctness of the copies upon request.
- (f) The Records Access Officer shall certify if the records are not in the possession of this agency or they cannot be located after a diligent search.

Sec. added by renum. 367.4, Title 6, filed Sept. 1971; renum. 457.33, filed Dec. 1971; new added by renum. 462.3, filed Oct. 22, 1984 eff. Nov. 1, 1984; rep. and new added filed Aug. 25, 2010 eff. Sept. 15, 2010.

Section 461.5. Information exempted or excluded from inspection, denial of access to records and appeal procedure

- (a) Exempted or excluded information. The Records Access Officer shall review requested records and deny access to records or delete identifying details that are exempted or excluded from public scrutiny by law.
- (b) Denial of access. The Records Access Officer's denial of access shall be in writing and shall state the reason for the denial and advise the requester of the right to appeal within 30 days to the identified Records Appeals Officer.
- (c) Appeal procedure.
 - (1) The Records Appeals Officer shall hear and decide appeals from a denial of access. Appeals shall be made within thirty days of the denial of access and shall be addressed to: Records Appeals Officer, OPRHP, Empire State Plaza, Agency Building 1, Albany, NY 12238.

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- (2) Appeals from a denial of access shall be in writing and shall specify the:
- (i) date and location of requests for records;
 - (ii) records to which the requester was denied access; and
 - (iii) name and return address of the requester.
- (3) The Records Appeals Officer shall issue a decision within 10 business days of receiving the appeal and shall transmit a copy of the appeal and decision to the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.
- (4) A final denial on appeal of access to a requested record under this subdivision shall be subject to court review as provided for in article 78 of the Civil Practice Law and Rules.
- (d) Protection of trade secrets, critical infrastructure information, and records maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise.
- (1) Identification of records. Any entity submitting records to the office that may be excepted from disclosure pursuant to the Public Officers Law, shall file with the Records Access Officer a written request that those records not be disclosed. The request shall be filed at the time the records are submitted and shall identify the records or portions of records that the submitter believes should not be disclosed and shall indicate the bureau, region or unit of the office to which the records have been submitted.
- (2) Custody of records.
- (i) Information submitted as provided in this subdivision shall be kept in the custody of the director of the bureau, region or unit responsible for maintaining the records, and the director may designate other individuals within the office to inspect or copy the records.
 - (ii) The director shall maintain the records apart from all other records in a locked file cabinet or other secure place.
 - (iii) The Records Access Officer shall not disclose these records until at least 15 business days after the entitlement to the exception has been finally determined by a court of competent jurisdiction.
- (3) Determination of exception. On the initiative of the Records Access Officer, or upon the request of any person for a record excepted from disclosure pursuant to this subdivision, the Records Access Officer shall:
- (i) inform the person who requested the exception of the intent to determine whether the exception should be granted or continued;
 - (ii) permit the person who requested the exception to submit a written statement indicating why the exception should be granted or continued within 10 business days of receipt of notification;
 - (iii) within seven business days of the receipt of the written statement, or within seven business days of the period prescribed for submission of the statement, issue a written reasoned determination granting, continuing or terminating the exception;
 - (iv) serve copies of the determination upon the person, if any, requesting the record, the person who asked for the exception, and the Committee on Open Government.

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(4) Appeal from determination. A denial of an exception from disclosure may be appealed by the person submitting the information and a denial of access to the record under this subdivision may be appealed by the person requesting the record as follows:

(i) Within seven business days of receipt of written notice denying the request for an exception or the request for access to the record, the person asking for the exception or the person requesting the record may appeal to the Records Appeals Officer.

(ii) The appeal shall be in writing and set forth: the name and address of the person asking for the exception or the person requesting the record; the date of the request for the exception or access; the specific record to which exception or access was denied; the reasons given for the denial; and whether the denial was issued or is considered to be a denial because of failure of the office to respond in a timely manner.

(iii) The appeal shall be determined within ten business days of the receipt of the appeal. Written notice of the determination shall be served upon the person, if any, requesting the record, the person who asked for the exception and the Committee on Open Government. The notice shall contain a statement of the reasons for the determination.

(5) A proceeding to review an adverse determination made under paragraph (4) of this subdivision may be commenced pursuant to article 78 of the Civil Practice Law and Rules.

(6) Nothing in this section shall be construed to deny any person access pursuant to the provisions of the Public Officers Law or these regulations to any record or part excepted from disclosure upon the written consent of the person who requested the exception.

Sec. added by renum. 463.1, filed Oct. 22, 1984 eff. Nov. 1, 1984; rep. and new added filed Aug. 25, 2010 eff. Sept. 15, 2010.

Section 461.6. Fees for copies

(a) No fee shall be charged for inspecting records.

(b) The following fees shall be charged for copying records except where a different fee is prescribed by statute:

(1) Paper copies (9 inches by 14 inches) shall be assessed at \$.25/per side of each sheet of paper.

(2) All others copies shall be assessed at the actual cost of reproducing the record.

Sec. added by renum. 463.2, filed Oct. 22, 1984 eff. Nov. 1, 1984; rep. and new added filed Aug. 25, 2010 eff. Sept. 15, 2010.

Part 462. Access to Personal Information

Section 462.1. Procedures for providing access to records

(a) *Form for request.*

(1) All requests shall be made in writing except that the agency may make records available upon an oral request made in person.

(2) A request may be addressed to the main office records access officer, to the personnel records access officer or to a regional records access officer.

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(3) A request shall reasonably describe the record or records sought. Whenever possible, the data subject should supply identifying information that will assist in locating the records sought.

(b) *Proof of identity.*

(1) When a request is made by mail, the agency may require verification of a signature or inclusion of an identifier generally known only by the data subject, or similar appropriate identification.

(2) When a request is made in person, or when records are made available in person following a request made by mail, the agency may require appropriate identification.

(c) *Location.* Records shall be made available at the agency's central office. However, the agency shall arrange for records to be made available at the regional headquarters nearest the residence of the data subject whenever possible.

(d) *Hours.* The agency shall accept requests for records and make records available during all regular business hours.

(e) *Processing the request.* In processing the request, the records access officer shall:

(1) assist the data subject in identifying and requesting personal information, if necessary;

(2) describe the contents of systems of records orally or in writing in order to enable a data subject to learn if a system of records includes a record or personal information pertaining to him or her;

(3) within five days of the receipt of a written request, either:

(i) make the record available;

(ii) deny access to the record in whole or in part and explain in writing the reasons therefor; or

(iii) acknowledge receipt of the request in writing and advise the data subject of the date by which the request will be granted or denied;

(iv) if an acknowledgment was given to the data subject according to this paragraph, grant or deny access to the record within 30 days.

(f) *Making the record available.* In making a record available, the agency shall:

(1) make the record available for review, in a printed form without codes or symbols, unless an accompanying document explaining such codes or symbols is also provided;

(2) permit the data subject to copy the record;

(3) make a copy of the record for the data subject, upon request, and upon the payment of or offer to pay the required fee, which shall be the same as the fee set out at section 461.9 of this Title; and

(4) upon request, certify that a copy of a record is a true copy.

(g) Upon request, another person may accompany the data subject, when reviewing or obtaining copies of records. The records access officer may require the data subject to furnish a written statement authorizing discussion of the record in the other person's presence.

Sec. added by renum. 368.1, Title 6, filed Sept. 1971; renum. 458.1, filed Dec. 1971; new filed Nov. 13, 1973; ams. filed: Nov. 16, 1973; Jan. 22, 1974; repealed, filed June 6, 1974; new filed Aug. 30, 1974; repealed, new filed April 11, 1978; ams. filed: Aug. 28, 1978; May 7, 1982; March 26, 1984; renum. 461.2, new filed Oct. 22, 1984 eff. Nov. 1, 1984.

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Section 462.2. Amendment to records

Within 30 business days of a request from a data subject for correction or amendment of a record or personal information that is reasonably described and pertains to the data subject, the agency shall either:

- (a) make the amendment or correction in whole or in part, and inform the data subject that, on request, such correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed, pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law, and for which the agency has a record of such disclosure or for which the data subject supplies the name; or
- (b) inform the data subject in writing of its refusal to correct or amend the record, including the reasons therefor, and identify the person to whom an appeal may be directed.

Sec. added by renum. 368.2, Title 6, filed Sept. 1971; renum. 458.2, filed Dec. 1971; new filed Nov. 13, 1973; amd. filed Nov. 16, 1973; repealed, filed June 6, 1974; new filed Aug. 30, 1974; repealed, new filed April 11, 1978; renum. 461.3, new filed Oct. 22, 1984 eff. Nov. 1, 1984.

Section 462.3. Appeal procedure

- (a) Any person denied access to a record or denied a request to amend or correct a record or personal information pursuant to this section may, within 30 business days of such denial, appeal the denial.
- (b) Such appeal shall be in writing and shall be addressed to the Commissioner of Parks, Recreation and Historic Preservation at the address shown at section 461.8(c) of this Title, and shall contain the following:
 - (1) the date and location of the request for a record or for amendment or correction of a record or personal information;
 - (2) the record that is the subject of the appeal; and
 - (3) the name and return address of the appellant.
- (c) Within seven business days of the receipt of a complete appeal of a denial of access, or within 30 business days where the appeal concerns a denial of a request for correction or amendment, the commissioner shall:
 - (1) provide access to or correct or amend the record or personal information;
 - (2) fully explain in writing the factual and statutory reasons for further denial, and inform the data subject to the right to seek judicial review of such determination pursuant to article 78 of the Civil Practice Law and Rules.
- (d) If, on appeal, a record or personal information is corrected or amended, the data subject shall be informed that, on request, the correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law and for which the agency has a record of such disclosure or the data subject supplies the name.
- (e) The agency shall immediately forward to the Committee on Open Government a copy of any appeal made pursuant to this section upon receipt, the determination thereof and the reasons therefor at the time of such determination.

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Sec. added by renum. 368.3, Title 6, filed Sept. 1971; renum. 458.3, filed Dec. 1971; new filed Aug. 30, 1974; repealed, new filed April 11, 1978; renum. 461.4, new filed Oct. 22, 1984; amd. filed Jan. 17, 1986 eff. Jan. 17, 1986. Amended (a) and (c).

Section 462.4. Statement of disagreement by data subject

- (a) If correction or amendment of a record or personal information is denied in whole or in part upon appeal, the written decision rendered pursuant to the appeal shall inform the data subject of the right to:
- (1) file with this agency a statement of reasonable length setting forth the data subject's reasons for disagreement with the determination; and
 - (2) request that such statement of disagreement be provided to any person or governmental unit to which the record has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law, and for which the agency has a record of such disclosure or the data subject supplies the name.
- (b) Upon receipt of a statement of disagreement by a data subject, the records access officer shall:
- (1) clearly note any portions of the record that are disrupted; and
 - (2) attach the data subject's statement as part of the record. When providing the data subject's statement to entities pursuant to paragraph (a)(2) of this section, the agency may include in the record a statement of its reasons for not making the requested amendment.

Sec. filed Oct. 22, 1984 eff. Nov. 1, 1984.

Section 462.5. Records which are exempt from disclosure

The following records are exempt from disclosure:

- (a) records specifically prohibited by statute from disclosure;
- (b) patient records concerning mental disabilities or medical records where access is not otherwise required by law;
- (c) inmate records;
- (d) attorney's work product;
- (e) an accounting of a disclosure for law enforcement purposes, if specifically notified not to make such disclosure by the receiving agency; and
- (f) records or information which are not identifiable or retrievable without extraordinary search methods.

Sec. filed Oct. 22, 1984 eff. Nov. 1, 1984.

Part 463. Payment to an Owner or Tenant of Property Acquired by the Commissioner of Parks, Recreation and Historic Preservation

Section 463.1. Purpose

Section 3.19 of the Parks, Recreation and Historic Preservation Law provides that the Commissioner of Parks, Recreation and Historic Preservation, with the approval of the Director of the Budget, shall establish and may amend rules and regulations authorizing the payment of reasonable and necessary moving expenses, supplemental relocation payments, loss of favorable mortgage financing and closing costs to occupants of property acquired pursuant to such laws. The following rules and regulations shall

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apply to moving expenses, supplemental relocation payments, loss of favorable mortgage financing and closing costs to eligible persons caused by their displacement from real property acquired pursuant to such law.

Sec. added by renum. 369.1, Title 6, filed Sept. 1971; renum. 458.11, filed Dec. 1971; new filed Aug. 30, 1974; repealed, new filed April 11, 1978; amd. filed March 26, 1984; renum. 461.5, filed Oct. 22, 1984; new added by renum. 443.1, filed Feb. 25, 1988 eff. March 16, 1988.

Section 463.2. Definitions

For the purpose of this Part, the following terms shall mean:

- (a) **Office.** Office of Parks, Recreation and Historic Preservation, in the Executive Department.
- (b) **Department.** The Executive Department.
- (c) **Individual.** A person who is not a member of a family as hereinafter defined.
- (d) **Family.** The term **family** means two or more individuals, one of whom is the head of a household, plus all other individuals, regardless of blood or legal ties, who live with and are considered a part of the family unit. Where two or more individuals occupy the same dwelling with no identifiable head of a household, they shall be treated as one family.
- (e) **Business.** The term **business** means any lawful activity, excepting a farm operation, conducted primarily:
 - (1) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing or marketing of products, commodities or any other personal property;
 - (2) for the sale of services to the public;
 - (3) by a nonprofit organization; or
 - (4) solely for the purpose of moving and related expenses for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.
- (f) **Nonprofit organization.** A corporation, partnership, individual or other public or private entity, engaged in a business, professional or institutional activity on a nonprofit basis, necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, profession or institutional activity on the premises.
- (g) **Farm operation.** The term **farm operation** means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.
- (h) **Moving expenses.** The reasonable necessary expenses of moving personal property, including the costs of dismantling, disconnecting, crating, loading, insuring, temporary storage, transporting, unloading and reinstalling such personal property. Reimbursement for necessary moving expenses is also intended to include payment for temporary lodging and transportation and the cost of transferring licenses, exclusive of legal fees. Moving expense reimbursement is exclusive of any betterments or improvements (except when required by law) or additives to the replacement site.

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- (i) **Counted rooms.** That space in the appropriated structure containing a substantial and usual quantity of household furniture, equipment and personal property. They shall include the usual acceptable defined rooms such as bedrooms, living rooms, kitchens, etc., but will exclude vestibules, hallways, bathrooms and powder rooms.
- (j) **Dwelling.** Any single family house, a single family unit in a multi-family building, a unit of a condominium or cooperative housing project, a mobile home, or any other residential unit.
- (k) **Comparable replacement dwelling.** One which is:
- (1) decent, safe and sanitary as otherwise defined in this Part;
 - (2) functionally equivalent and substantially the same as the acquired dwelling with respect to:
 - (i) number of rooms;
 - (ii) area of living space;
 - (iii) type of construction;
 - (iv) age; and
 - (v) state of repair;
 - (3) fair housing (open to all persons regardless of race, color, religion, sex or national origin);
 - (4) in areas not generally less desirable than the dwelling to be acquired in regard to:
 - (i) public utilities; and
 - (ii) public and commercial facilities;
 - (5) reasonably accessible to the relocatee's place of employment;
 - (6) adequate to accommodate the relocatee;
 - (7) in an equal or better neighborhood;
 - (8) available on the market to the displaced person; and
 - (9) within the financial means of the displaced family or individual.
- (l) **Mortgage.** Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State, together with the credit instruments, if any, secured thereby.
- (m) **Owner.** An individual owning, legally or equitably, the fee simple estate, a life estate, a 99-year lease; the contract purchaser of any of the foregoing estates or interests or who has succeeded to any of the foregoing interests by devise, bequest, inheritance or operation of law.
- (n) **Loss of favorable mortgage financing.** The amount to compensate a displaced person for the increased interest costs he is required to pay for financing a replacement dwelling based on the existing and replacement housing mortgage.
- (o) **Incidental expenses.** The amount necessary for the actual, reasonable and necessary costs incurred incident to the purchase of a replacement dwelling, not including prepaid expenses.
- (p) **Hardship case.** A situation determined by the commissioner to represent any extenuating or unusual circumstance where serious financial, social or personal hardship would be imposed upon an owner/tenant because of a delay in receiving payment of moving expenses, supplemental housing benefits, or related eligible expenses.
- (q) **Initiation of negotiations for the parcel.** The date of the first personal contact with the owner of any property to be acquired or his designated representative where price is discussed.

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- (r) **Initiation of negotiations for the project.** The date of the first personal contact with the owner of any property or his designated representative where price is discussed, except where such contract is made solely for protective buying or because of hardship.
- (s) **Date of eligibility for benefits.** Eligibility for the payments enumerated in this Part are specified under the respective subdivisions hereof. However, no eligibility will accrue to any person moving onto any project subsequent to the date of initiation of negotiations for the project, except for the payment of moving expenses, unless it be determined by the commissioner to be in the public interest to so make a finding of eligibility.
- (t) **Standards for decent, safe and sanitary housing.** A decent, safe and sanitary dwelling is one which meets all of the following minimum requirements:
- (1) Conforms to State and local housing codes and ordinances. Conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations.
 - (2) Water. Has a continuing and adequate supply of potable safe water.
 - (3) Kitchen requirements. Has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and connected to hot and cold water, and a adequate sewage system. A stove and refrigerator in good operating condition shall be provided when required by local codes, ordinances or custom. When these facilities are not so required by local codes, ordinances or custom, the kitchen area or area set aside for such use shall have utility service connections and adequate space for the installation of such facilities.
 - (4) Heating system. Has an adequate heating system in good working order which will maintain a minimum temperature of 70 degrees Fahrenheit in the living area under local outdoor design temperature conditions. A heating system will not be required in those geographical areas where such is not normally included in new housing. Bedrooms are not included in the "living area" as referred to in this paragraph.
 - (5) Bathroom facilities. Has a bathroom, well lighted and ventilated and affording privacy to a person within it, containing a lavatory, basin and a bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush closet, all in good working order and properly connected to a sewage disposal system.
 - (6) Electric system. Has an adequate and safe wiring system for lighting and other electrical services. When the utility is not reasonably accessible and is not required by local codes, ordinances or custom, an exception may be approved by the regional Federal administrator or other designated official on a project basis.
 - (7) Structurally sound. Is structurally sound, weathertight, in good repair and adequately maintained.
 - (8) Egress. Each building used for dwelling purposes shall have a safe unobstructed means of egress leading to safe open space at ground level. Each dwelling unit in a multi-dwelling building must have access either directly or through a common corridor to a means of egress to open space at ground level. In buildings of three stories or more, the common corridor on each story must have at least two means of egress.

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(9) Habitable floor space. Has 150 square feet of habitable floor space for the first occupant in a standard living unit and at least 100 square feet (70 square feet for mobile home) of habitable floor space for each additional occupant. The floor space is to be subdivided into sufficient rooms to be adequate for the family. All rooms must be adequately ventilated. **Habitable floor space** is defined as that space used for sleeping, living, cooking or dining purposes and excludes such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries and unfurnished attics, foyers, storage spaces, cellars, utility rooms and similar spaces.

(10) The standards for decent, safe and sanitary housing as applied to rental of sleeping rooms shall include the minimum requirements contained in paragraphs (1), (4), (6), (7) and (8) of this subdivision and the following:

(i) Habitable floor space. At least 100 square feet of habitable floor space for the first occupant and 50 square feet of habitable floor space for each additional occupant.

(ii) Bathroom facilities. Lavatory, bath and toilet facilities that provide privacy including a door that can be locked if such facilities are separate from the room.

(11) A mobile home is to be considered to be decent, safe and sanitary if it meets the standards set forth in this subdivision, except that the space requirements are reduced to a minimum of 150 square feet of habitable floor space for the first occupant and a minimum of 70 square feet of habitable floor space for each additional occupant and that one means of egress is available.

Sec. added by renum. 369.2, Title 6, filed Sept. 1971; renum. 458.12, filed Dec. 1971; new filed Aug. 30, 1974; amd. filed Jan. 29, 1975; repealed, new filed April 11, 1978; amds. filed: Aug. 28, 1978; May 7, 1982; renum. 461.6, filed Oct. 22, 1984; new added by renum. 443.2, filed Feb. 25, 1988 eff. March 16, 1988.

Section 463.3. General provisions applicable to residential and commercial moving expenses

The provisions stated herein apply to eligible persons occupying property to which title vested in the State on or after July 1, 1971. Application for payment of moving expenses shall be made by an eligible person in writing to the commissioner upon forms prescribed and shall be accompanied by such information, evidence and executed vouchers as may be required. Such application shall be submitted to the commissioner through the regional park offices and payment of such moving expenses will be made to eligible persons under the circumstances and to the extent set forth herein.

(a) Any individual, family, business or farm operator is eligible to receive payment for the reasonable expenses of moving his personal property subsequent to the earlier of the following two dates:

(1) he is in occupancy at the initiation of negotiations for the acquisition of the real property in whole or in part; or

(2) he is in occupancy at the time he is given a written notice by the State that it is their intent to acquire the property by a given date or he is given notice to vacate the property by a specific date.

(b) Where the acquisition of real property used for a business or farm operation which is eligible for a payment under subdivision (a) of this section causes a person to vacate a dwelling from other real property not acquired, the additional expenses of moving such personalty are eligible for the appropriate moving payments.

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- (c) Moving expenses shall not exceed the cost of transportation beyond 50 miles, except in the case of a business or farm when the State determines that relocation cannot be accomplished within the 50-mile area; such exceptions may only be allowed to the nearest adequate and available site.
- (d) The cost of insurance premiums covering loss and damage of personal property while in storage or transit will be eligible for reimbursement. Moving expenses shall not include any direct losses or losses due to negligence.
- (e) The type of interest acquired does not affect the eligibility of relocation costs for reimbursement, provided the interest acquired is sufficient to cause displacement. If, in the opinion of the commissioner, the acquisition of a portion of an entire premises or of access thereto renders all or the remainder of such premises unsuitable for continued use and occupation, or renders it without suitable access, the removal of personal property from the entire property may be considered eligible for the payment of moving expenses.
- (f) Moving expenses shall not include the cost of moving any fixtures or equipment considered part of the realty from the acquired property nor will reimbursement be made for any cost of construction or improvement to the new location or for any remodeling, redecorating or reinforcing of the new structure to accommodate the eligible person or his personal property, unless required by law, or deemed to be in the public interest by the commissioner.
- (g) Reimbursement for electrical wiring and plumbing charges and communication systems work, covers only that work which is directly related to the personal property being relocated. Reimbursement is to exclude any costs of bringing electrical or plumbing services to the new site, but may include costs of labor and materials of distributing these services to the personal property relocated. Reimbursement under this category excludes costs of installing basic electrical wiring or plumbing to a new structure, or that normally found and expected in an existing structure, and is intended to cover only those costs necessary to provide sufficient and adequate, but not super-adequate, utilities to operate the displaced business.
- (h) No reimbursement for overtime payments will be allowed unless prior approval is received in writing from the office.
- (i) It is expected that in anticipation of moving, the business or farm will reduce their inventories of stock or merchandise as much as practicable in order to have the removal accomplished in the most businesslike manner.
- (j) Application for payment of moving expenses must be made within 12 months after vacating of acquired premises or six months after final award determination in a case litigated in the courts of the State, whichever is the later. Such limitation shall include any eligible storage period.
- (k) In case a building or structure acquired by the State is returned to the owners under an agreement, an eligible person will be entitled to the moving expenses for any personal effects, furniture and household equipment remaining in the building or structure at the time of removal of such building or structure; however, the cost of moving the structure is not eligible for moving expenses. The eligible person, at his option, may accept a room-count allowance or receive reimbursement on the actual cost basis.
- (l) In the case where the acquisition of real property causes the displacement of an advertising sign and such sign constitutes the only improvement to the property acquired, or where the acquisition causes a

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person to remove his advertising sign from real property not acquired, the owner of the advertising sign is eligible for appropriate moving payments. However, where the advertising sign is owned by and located on the business or farm displaced, there will be no separate moving or related expenses considered.

(m) *Moving junkyards and automobile graveyards.* The State will pay the cost to put the junk or automobile bodies in an acceptable condition for delivery to the nearest reasonable salvage collection point, together with the transportation costs from the appropriated property to said salvage collection point. In the case of moving the material from an appropriated junkyard to a substitute location, the State will pay the processing cost to prepare the junk for removal by the most economical means. The State will not pay the cost of disassembly for resale of parts.

(n) An advertising sign, junkyard or automobile graveyard that is otherwise eligible for moving payments will not be eligible when it is moved to a site in violation of State, Federal or local regulations.

(o) An otherwise eligible owner of an advertising sign or a nonprofit business is not entitled to an "in lieu of" moving expense payment.

(p) If the actual costs incurred by the eligible person exceed the office's approved limit of moving expenses, the eligible person may submit to the office a fully detailed explanation for the excess costs. The office's approval limit may be adjusted accordingly.

(q) The cost of necessary storage for a period not to exceed six months may be considered as part of moving expenses and will be subject to the following provisions:

(1) Moving expenses may include the cost of moving into dead storage at the prevailing rate in a commercial storage facility or warehouse; no payment will be made for storage on premises owned or occupied by the eligible person, members of his immediate family, or his legal or financial representative.

(2) If personal property is subsequently sold or delivered from storage to third parties, reimbursement for storage or moving out of storage will not be allowed.

(r) The costs of storage or moving out of storage will not be considered in calculating a figure for determining the extent of participation in any other benefits denied herein.

(s) The State will not participate in more than one move of a displaced person unless in the opinion of the commissioner it is in the public interest to do so.

(t) In the case of a hardship where advance payment of moving expenses is requested, the eligible person must submit in advance a written application setting forth the full extent and circumstances of the hardship. A written determination will be made by the office. If the office determines a hardship exists, an advanced payment of reasonable necessary moving expenses may be made.

(u) In unusual or hardship situations, when determined to be in the public interest, the commissioner may authorize a payment even though the strict requirements of eligibility specified herein are not met.

Sec. added by renum. 369.3, Title 6, filed Sept. 1971; renum. 458.13, filed Dec. 1971; new filed Aug. 30, 1974; repealed, new filed: Jan. 29, 1975; April 11, 1978; amd. filed Aug. 28, 1978; renum. 461.7, filed Oct. 22, 1984; new added by renum. 443.3, filed Feb. 25, 1988 eff. March 16, 1988.

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Section 463.4. Residential moving expenses

All eligible residential occupants will be entitled to reimbursement of actual, reasonable and necessary moving expenses or may elect a fixed amount in accordance with the counted-room allowance.

(a) (1) If the eligible person elects to receive a scheduled payment in lieu of actual, reasonable and necessary moving expenses, the following schedules will apply:

ROOM-COUNT SCHEDULE					
Unfurnished Units (Including mobile homes)					
1st room	2nd	3rd	4th	5th	6th & over
\$50	\$110	\$150	\$190	\$225	\$25 each
Mobile Homes					
Sq. Ft.					
300	300/500	500/700	700/800	800 over	
\$100	\$150	\$200	\$250	\$300	
Furnished Units, Sleeping Rooms (Including mobile homes)					
1st room	2nd and remaining				
\$25	\$15				

(1) (2) In addition to the amounts specified in paragraph (1) of this subdivision, each relocated individual or family will be entitled to a \$200 dislocation allowance. When garages, sheds and outbuildings are acquired and the eligible person's place of residence is not disturbed, or when the eligible person's principal place of residence is not the appropriated site, a fixed allowance may be applied per the aforementioned room-count schedules less the \$200 dislocation allowance.

(b) (1) If the eligible residential occupant elects to receive reimbursement on the basis of actual, reasonable and necessary moving expenses, he shall submit to the office at least four weeks prior to the moving date at least one estimate or bid from a recognized household furniture concern, together with a detailed inventory of all personal property to be removed. Such estimate or bid is to be in a form as prescribed in section 463.6 of this Part. After receipt of the estimate in acceptable form, an amount will be deemed reasonable and necessary by the office and the eligible person notified in writing to commence moving. Upon completion of the move, actual, reasonable and necessary moving expenses will be paid based upon receipted bills submitted to the office in an acceptable form consistent with section 463.6 of this Part, limited to an amount not to exceed the approved estimate.

(2) In the case of a residential self-move performed by the eligible person, his family and others not normally in the moving business, the move must be in compliance with all applicable State and Federal laws. All charges must be detailed in the form of a summary affidavit. In the event of failure to meet any of the above requirements as provided, payment will be limited to a lump-sum amount based on the counted-room schedule plus the dislocation allowance.

Sec. added by renum. 369.4, Title 6, filed Sept. 1971; renum. 458.13, filed Dec. 1971; new filed Aug. 30, 1974; repealed, new filed: Jan. 29, 1975; April 11, 1978; amds. filed: May 7, 1982; March 26, 1984; renum. 461.8, filed Oct. 22, 1984; new added by renum. 443.4, filed Feb. 25, 1988 eff. March 16, 1988.

Section 463.5. Commercial moving expenses

An eligible person occupying a business, farm operation or a nonprofit organization will be reimbursed for actual, reasonable and necessary moving expenses; actual, reasonable and necessary expenses in

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searching for a replacement site; and actual direct losses of tangible personal property in moving or discontinuing the operation or activity.

(a) The eligible person shall notify the office, eight weeks prior to the starting date of the move, of his definite intentions regarding the manner and method of moving. At the option of the office, personnel of the office may conduct an inventory of personal property and merchandise to be moved, including a description of each phase of the work to be performed and an explanation of any unusual or peculiar circumstances that will be pertinent to arriving at a comprehensive cost of moving figure. The address of the appropriated property, address the eligible person is moving to and the approximate distance between is to be included therein. This inventory is to be signed by the eligible person and is to be supplied to all estimators and bidders for each phase of the work, and they are to base their estimates and bids on removal of the items listed therein. The occupant may, at his own expense, obtain competitive bids on the costs of moving and may submit a competitive self-move bid on all or a portion of the removal.

(b) Actual costs must be documented upon receipted, detailed bills from recognized movers, skilled craftsman, and are not to exceed the total of the lowest acceptable bids or estimates obtained on each phase of the move.

(c) Estimates and bids on each phase of the move shall be obtained by the office from generally recognized, qualified movers and skilled craftsmen. Upon receipt and review of all estimates and bids, the office will determine the lowest acceptable bid. This bid will be sent to the eligible person, advising him to commence moving and setting forth the limits of reimbursement and the time and manner in which payment will be made. After the removal has been accomplished, actual costs must be documented by detailed, receipted bills from recognized movers, skilled craftsmen, and are not to exceed the approved amount based on a total of the lowest acceptable bids or estimates obtained on each phase of the move. All bids from movers and craftsmen must be submitted in accordance with section 463.6 of this Part.

(d) In the case of a self-move, the owner of a relocated business may be paid an amount, to be negotiated between the State and the business, not to exceed the lower of two firm bids or estimates obtained by the State from qualified moving firms.

(e) When personal property which is used in connection with the business to be moved is of low value and high bulk and the estimated cost of moving would be disproportionate in relation to the value, the State may negotiate with the owner for an amount not to exceed the difference between the cost of replacement of comparable item(s) on the market and the amount which would probably have been received for the item(s) on liquidation.

(f) All books and records kept by eligible persons shall be subject to review and audit by a State representative during reasonable business hours.

(g) Payment of moving expenses is based upon the preapproval of estimates and bids submitted to the office before commencing the move. If, due to extraordinary circumstances, a move is completed without submitting necessary bids, the commissioner may, upon receipt of sufficient written justification for failure to submit estimates, pay reasonable and necessary actual expenses upon verification and support for the expenses incurred.

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Sec. added by renum. 369.5, Title 6, filed Sept. 1971; renum. 458.14, filed Dec. 1971; new filed Aug. 30, 1974; repealed, new filed April 11, 1978; amd. filed Oct. 18, 1982; renum. 461.9, filed Oct. 22, 1984; new added by renum. 443.5, filed Feb. 25, 1988 eff. March 16, 1988.

Section 463.6. Procedure for actual cost basis moving expenses

On an actual cost basis, all bids, estimates and final bills being submitted on each phase of the move by moving concerns or skilled craftsmen, herein referred to as contractors, shall contain as a minimum, the following information:

- (a) Name and address of the contractor and date prepared.
- (b) If estimates, bids or bills are to be made on a hourly rate or some other basis, then such method must contain sufficient data and explicit details to expedite meaningful analysis.
- (c) An itemized list of the estimated or actual charges for packing, unpacking, crating, dismantling, disconnecting, reassembling and reconnection.
- (d) If any material is required, it must be itemized together with the costs. No reimbursement will be made for the use of new materials in the reinstallation of the personalty except when it is in the best interest of the State.
- (e) In cases where use of trucks and other equipment are necessary, an itemized list of charges shall be based upon an hourly, daily, weekly or monthly rate, whichever total amount is lesser, based upon the number of estimated hours equipment will be used. The estimated equipment rate or hourly wage rate shall not exceed the prevailing industry rate for such equipment or labor. If the eligible person utilized equipment or labor at a rate less than the rates paid by commercial movers, the lesser rate will be used.
- (f) If it is determined by the commissioner that the bids, estimates or bills submitted appear unreasonable, unnecessary or noncompensable, the eligible person may be required to submit additional information considered necessary to determine the reasonable and necessary cost of moving.

Sec. added by renum. 369.6, Title 6, filed Sept. 1971; renum. 458.16, filed Dec. 1971; new added by renum. 443.6, filed Feb. 25, 1988 eff. March 16, 1988.

Section 463.7. "In lieu of" moving expenses for business or farm occupants

In lieu of actual, reasonable and necessary moving expenses, searching fees and actual direct losses of tangible personal property, a business or farm operation is eligible for a payment equal to the average annual net earnings of the displaced business or farm, except such payment shall not be less than \$2,500 nor more than \$10,000, providing the following requirements are met:

- (a) *Business.* The owner of the business eligible for relocation expenses must submit a written application as prescribed by the commissioner with eligibility for payment contingent upon the State's determination that the business:
 - (1) cannot be relocated without a substantial loss of patronage, herein defined as the average dollar volume of business transacted during the two taxable years immediately preceding the year in which the business is relocated;
 - (2) is not part of a commercial enterprise having at least one other establishment which is not being acquired by the State or the United States and which is engaged in the same or similar business; and
 - (3) the business contributes materially to the income of the displaced owner.

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(b) *Farm*. The owner of a displaced farm operation must submit a written application as prescribed by the commissioner with eligibility for payment contingent upon the State's determination that:

- (1) the farm operator has discontinued or relocated his entire operation at the present location; and
- (2) in the case of a partial taking, the property remaining after the acquisition is no longer an economic unit as determined by the State in its appraisal process.

(c) The office will calculate a payment in lieu of moving expenses equivalent to the average annual net earnings. The term *average annual net earnings* means one half of any net earnings of the business or farm before Federal, State and local income taxes during the two taxable years immediately preceding the taxable year in which the business or farm is relocated. Such earnings shall include any compensation paid by the business or farm to the owner and his immediate family during the base-year period. In the case of a corporation, earnings shall include any compensation paid by the corporation to the owner of a majority interest in the corporation. For purposes of determining majority ownership, stock held by a husband and his immediate family shall be treated as one unit.

(d) If the business or farm affected can show that it was in business 12 consecutive months during the two taxable years prior to the taxable year in which it is required to relocate; had income during such period and is otherwise eligible, the owner of a business is eligible to receive the "in lieu of" payment. Where the business was in operation during the entire two preceding taxable years, the payment shall be computed by dividing the net earnings by the number of months the business was operated and multiplying by 12. A taxable year is defined as any 12-month period used by the business in filing income tax returns.

(e) For the owner of a business or farm to be entitled to this payment, the business or farm must provide information to support the net earnings. State or Federal income tax returns for the years in question are acceptable as evidence of earnings. Any commonly accepted method of verifying earnings may be offered, provided it grants the State the right to review the records and accounts of the business or farm. The eligible person will be notified in writing by the office regarding his eligibility, and the amount of the "in lieu of" payment, if any, will be set forth therein.

Sec. added by renum. 369.7, Title 6, filed Sept. 1971; renum. 458.17, filed Dec. 1971; new added by renum. 443.7, filed Feb. 25, 1988 eff. March 16, 1988.

Section 463.8. Actual, reasonable and necessary searching fees

(a) In the case of a business, farm operation or nonprofit organization, the eligible person or his qualified representative may be reimbursed for the actual, reasonable and necessary expenses in searching for a replacement site not to exceed \$500. The owner of a displaced advertising sign, eligible under section 463.3 of this Part, may be reimbursed his actual, reasonable expenses in searching for a replacement sign site not to exceed \$100. Reimbursement will be limited to the above amounts unless in exceptional cases the commissioner deems otherwise.

(b) The expenses in searching for a replacement site may include transportation expenses, meals and lodging away from home and the reasonable value of time actually spent in searching for a replacement site, including the actual, reasonable fees of realtors or real estate brokers in such searching but not including any commission for the sale of a property.

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(c) The application for reimbursement shall take the form of a summary affidavit which is to include the name and address of the eligible person, a detailed summary of the work performed, dates and hours worked and wage rate applied not to exceed \$10 per hour. Lodging, mileage and subsistence charges will be allowed according to and consistent with the prevailing rates approved for State travel and expense purposes by the State Comptroller for those types of expenditures.

(d) All actual, reasonable and necessary expenses directly related to the search for replacement property must be documented by detailed, receipted bills.

Sec. added by renum. 443.8, filed Feb. 25, 1988 eff. March 16, 1988.

Section 463.9. Actual direct losses of tangible personal property

(a) Actual direct losses of tangible personal property are allowed in the case of a business, farm or nonprofit organization when an eligible person who is displaced is entitled to relocate such personal property but elects not to do so. Payments for such losses may only be made after a bona fide effort has been made by the owner to sell the item(s) involved. When the item(s) is sold, payment will be made according to the following standards:

(1) If the business, farm, etc. is reestablished, but the personal property is replaced with a comparable item at the new location, payment shall be the lesser of:

- (i) the replacement cost less the net proceeds of the sale; or
- (ii) the estimated cost of moving the item.

(2) If the business, etc. is discontinued or the item is not replaced in the reestablished business, payment shall be the lesser of:

- (i) the depreciated value of the item in place less the net proceeds of the sale; or
- (ii) the estimated cost of moving the item.

(b) If a bona fide sale is not effected above because no offer is received for the personalty, the owner shall be entitled to the reasonable expenses of the sale plus the estimated cost of moving the item(s). Payment to the owner for losses for the item involved in this circumstance will not be made unless and until the owner thereof submits a suitable declaration of abandonment of the item(s) involved. Upon receipt of its abandonment notice, the item(s) become the property of the State, subject to disposal in the most economical manner. If the person makes no attempt to dispose of the property by sale or removal, the owner will not be entitled to payment of any moving expenses or losses for the item involved.

(c) (1) Under the above conditions, the eligible person shall notify the office, at least three months prior to the starting date of the move, of his definite intentions toward application for a payment for direct losses of tangible personal property. Upon receipt of this notice, an inventory will be compiled by the office distinguishing the realty and the personalty, and the eligible person will sign this inventory. The office will further obtain estimates on the costs of moving the personal property to the new location. Upon written notification from the office, the eligible person may make arrangements for a public sale, advertising to be accomplished in the most economical manner and with provision for adequate notification through the media appropriate for the sale of the personalty. The sale will be held publicly during reasonable hours and in the presence of representatives of the office.

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(2) The sale price, if any, and the actual reasonable cost of advertising costs or related costs in conducting the sale incurred by an auctioneer or sales manager, shall be supported by a copy of the bill of sale or similar documents and by copies of any advertisements, offers to sell, auction records and other data supporting the bona fide nature of the sale, which are to be presented to the office when making application for payment under this subdivision.

(3) The eligible owner of an advertising sign may be reimbursed for actual direct losses when he is entitled to relocate the sign but does not do so; the owner need not attempt to conduct a bona fide sale; the loss will be the lesser of:

- (i) the depreciated reproduction cost of the sign as determined by the State; or
- (ii) the estimated cost of moving the sign.

Sec. added by renum. 443.9, filed Feb. 25, 1988 eff. March 16, 1988.

Section 463.10. Supplemental relocation payments, loss of favorable mortgage financing, incidental expenses

In addition to other payments and benefits authorized by State law, individuals and families displaced from dwellings on real property acquired by the office, who were in occupancy on or after July 1, 1971, are entitled to supplemental relocation payments, payment for loss of favorable mortgage financing and incidental expenses in accordance with the following criteria and eligibility standards.

(a) General requirements to receive replacement housing payments.

(1) In addition to the occupancy requirements as specifically enumerated herein, a displaced person is otherwise eligible for the appropriate payments when he relocates and occupies a decent, safe and sanitary dwelling within one year, beginning on the later of the following dates: the date on which he receives final payment from the State for legal damages directly connected with the acquisition of his dwelling unit; or the date required to move from the dwelling acquired; or the date on which he actually moves from the dwelling acquired, if in fact this latter date is earlier than the date required to move. The *date required to move* is here defined and elsewhere in this section as that date specified in writing by the State, by which the property must be vacated.

(2) Application for payments under this section shall be in writing on forms prescribed by the commissioner. The application must be filed no later than six months after the expiration of the one-year period specified immediately above, except that in cases litigated in the Court of Claims, the six-month period shall start from the date of final judgment of that court.

(3) If two or more eligible families occupy the same single family dwelling unit, each family is eligible for a replacement housing payment if they relocate to separate dwelling units.

(4) If two or more eligible individuals with no identifiable head of household occupy the same single family dwelling unit, they are considered as one family for replacement housing payment purposes. When all individuals do not relocate to decent, safe and sanitary housing, the office shall determine and pay those individuals who do relocate into decent, safe and sanitary housing a pro rata share of the amount that would have been received if all of the individuals had relocated together.

(b) Supplemental payments; owner-occupants over 180 days who repurchase.

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(1) A displaced owner-occupant of a dwelling may receive additional payments, the combined total of which may not exceed \$15,000 for the additional cost necessary to purchase replacement housing; to compensate the owner for the loss of favorable financing on his existing mortgage in the financing of replacement housing; and to reimburse the owner for incidental expenses incident to the purchase of replacement housing when such costs are incurred as specified herein.

(2) The owner-occupant is eligible for such payments when:

(i) he is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or in part; or

(ii) he is in occupancy at the time he is given a written notice by the State that it is their intent to acquire the property by a given date; and

(iii) such occupancy has been for at least 180 consecutive days immediately prior to the date of vacation or initiation of negotiations, whichever is earlier; and

(iv) he purchases and occupies a decent, safe and sanitary dwelling within the time period specified in paragraph (a)(1) of this section.

(3) The replacement housing payment is the amount, if any, which when added to the amount for which the State acquired his dwelling, equals the actual cost which the owner is required to pay for a decent, safe and sanitary dwelling, or the amount determined by the office as necessary to purchase a comparable dwelling, whichever is less. The State's determination of the amount necessary to purchase a comparable dwelling may be made on the basis of either of the two following methods:

(i) The State may establish a schedule of probable selling prices of comparable dwellings in the various types of dwellings being acquired. Such schedule may be prepared from an analysis of the current probable selling prices of dwellings available on the market.

(ii) The State may determine the probable selling price of a comparable dwelling by analyzing those selected comparable dwellings available for sale which are most nearly comparable to the property being acquired by the State.

All calculations or supplemental relocation payments are to be predicted on the basis of the probable selling price of the available comparable housing, not the asking prices.

(4) An owner-occupant desiring to retain his acquired dwelling may be paid a replacement housing payment according to the following computations:

(i) If the dwelling to be moved is decent, safe and sanitary, the payment shall be the amount by which the cost to relocate the dwelling exceeds the acquisition price of the dwelling. The costs to relocate may include the reasonable costs of acquiring the dwelling, acquiring a new site and other expenses incident to retaining, moving the dwelling and restoring it to a condition comparable to that before the move.

(ii) If the dwelling to be moved is not decent, safe and sanitary, the payment shall be computed as above except that the costs to cure the decent, safe and sanitary deficiencies shall be included in the costs to relocate.

(iii) The payments computed under subparagraph (i) or (ii) of this paragraph may not exceed the amount which the owner would have obtained had he purchased a replacement dwelling and his payment computed as per paragraph (3) of this subdivision.

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(c) *Owner-occupant over 180 days who rents replacement housing.* An owner-occupant eligible for a replacement housing payment under subdivision (b) of this section who elects to rent a replacement dwelling is eligible for a rental replacement housing payment not to exceed \$4,000. The payment shall be computed and disbursed according to the following criteria:

- (1) The payment shall be determined by subtracting, from the amount necessary to rent a comparable dwelling for the next four years, 48 times the economic rental of the dwelling unit occupied as computed by the State.
- (2) In cases where the economic rental of the acquired dwelling exceeds 25 percent of the owner's gross monthly income and he elects to relocate into public subsidized rental housing, the computation of benefits will be in accordance with paragraph (3) of this subdivision.
- (3) The State may determine the rental rates of comparable housing by a schedule or an individual analysis of comparable available rentals.
- (4) The payment under this section may not exceed the maximum amount the owner would have received had he elected to repurchase a dwelling unit under the provisions of subdivision (b) of this section.

(d) *Owner-occupant, less than 180 days but more than 90 days, who purchase.* A displaced owner-occupant otherwise eligible under subdivision (b) of this section, except that he has owned and occupied the dwelling for less than 180 days but more than 90 days, may receive an amount, not to exceed \$4,000, to enable him to make a down payment on the purchase of a replacement dwelling and reimbursement for actual expenses incident to such purchase; or for additional costs to relocate his retained dwelling in accordance with the following:

- (1) The amount of the down payment shall be determined by the State as the amount required as a down payment on a comparable dwelling if such purchase was financed with a conventional loan.
- (2) The expenses incident to the purchase of replacement housing as described in subdivision (j) of this section.
- (3) Upon purchase and occupancy of a decent, safe and sanitary dwelling by the relocatee within the time limits specified in paragraph (a)(1) of this section, the relocatee may be reimbursed:
 - (i) the full amount of the down payment determined in paragraph (1) of this subdivision and the eligible incidental expenses if such total amount does not exceed \$2,000; or, if more than \$2,000:
 - (ii) \$2,000 plus 50 percent of the amount in excess of \$2,000, providing the relocatee contributes 50 percent of the amount in excess of \$2,000.
- (4) The full amount of the down payment must be applied to the purchase price of the replacement property and any down payment and incidental costs claimed must be shown in the closing statement. To process for payment, the State must be furnished a copy of the closing statement.

If the owner elects to retain his dwelling, the replacement housing payment will be determined in accordance with paragraph (b)(4) of this section, except that such payment shall not exceed \$4,000. If the owner first elects to rent a replacement property, but later decides to apply for a down payment on a purchase of a replacement property, any payments made under the rental provisions are to be deducted from the payments authorized under this paragraph.

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(e) *Owner-occupant, less than 180 days but more than 90 days, who rents.* An owner-occupant, otherwise eligible under subdivision (b) of this section, except that he has owned and occupied the dwelling for less than 180 days but more than 90 days and elects to rent a replacement dwelling, is eligible for a rental housing payment not to exceed \$4,000. The specific payment will be determined in accordance with the provisions of paragraphs (c)(1)-(3) of this section.

(f) *Tenant-occupant, over 90 days, renting replacement housing.*

(1) A displaced tenant is eligible for a rental replacement housing payment, not to exceed \$4,000, when:

- (i) he is in occupancy at the beginning of negotiations for the acquisition of the real property; or
- (ii) he is in occupancy at the time he is given a written notice by the State that it is their intent to acquire the property by a given date; and
- (iii) such occupancy has been for at least 90 consecutive days immediately prior to the date of vacation or initiation of negotiations, whichever is earlier; and
- (iv) he rented and occupied a decent, safe and sanitary dwelling within the time period specified in paragraph (a)(1) of this section.

(2) The payment, not to exceed \$4,000, shall be determined by subtracting, from the amount necessary to rent a comparable dwelling for the next years, the following amount:

- (i) 48 times the average monthly rental paid by the relocated individual or family during the last three months; or
- (ii) if such average monthly rental is not reasonably equal to market rentals for similar dwellings, the economic rent as established by the State shall be used;
- (iii) the "rent being paid" shall include any rent supplements supplied by others except when, by law, such supplement is to be discontinued upon vacation of the property.

(3) When the average monthly rental being paid by the relocatee, not including supplemental rent by public agencies, exceeds 25 percent of the monthly gross income of such individual or family, the payment, not to exceed \$4,000, shall be determined by subtracting 12 times the average monthly income of the relocatee from:

- (i) 48 times the monthly rental determined by the State as necessary to rent a private comparable dwelling if the relocatee moves into private housing; or
- (ii) if the relocatee moves into public subsidized housing, the lesser of;
 - (a) 48 times the monthly rental determined by the State as necessary to rent a private comparable dwelling; or
 - (b) 48 times the monthly rental the relocatee is required to pay if he relocates in the subsidized housing.

(4) The State may determine the rental rates of comparable housing by a schedule or an individual analysis of comparable rentals.

(g) *Tenant-occupant, over 90 days; down payment for purchase.* A tenant-occupant, eligible for a rental replacement payment under subdivision (f) of this section, who elects to purchase a replacement dwelling is eligible to receive an amount, not to exceed \$4,000, to enable him to make a down payment

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on the purchase of a replacement dwelling, including the incidental expenses incident to such purchase. The payment will be computed in accordance with the provisions of subdivision (d) of this section.

(h) *Sleeping room tenant, over 90 days.* A displaced tenant of a sleeping room who is eligible for a replacement housing payment under subdivision (f) of this section receives an amount, not to exceed \$4,000, as a rental replacement housing payment or to enable him to make a down payment on a replacement dwelling in accordance with the following regulations:

(1) For rental replacement housing, the payment, not to exceed \$4,000 shall be determined by subtracting, from the amount necessary to rent a comparable sleeping room for the next four years, the following amount:

- (i) 48 times the average monthly rental paid by the displaced tenant during the last three months; or
- (ii) if such average monthly rental is not reasonably equal to market rentals for similar sleeping rooms, the economic rent as established by the State.

(2) The State may determine the rental rates of comparable housing by a schedule or an individual analysis of comparable available rentals.

(3) The down payment amount, including the expenses incident to purchase of the replacement dwelling, are to be computed in accordance with the provisions of subdivision (d) of this section.

(i) *Increased interest payments; owner-occupant over 180 days, who purchases.*

(1) An owner-occupant, otherwise eligible under subdivision (b) of this section, is entitled to a payment for the loss of favorable financing on his existing mortgage in the financing of replacement housing, providing such payment falls within the \$15,000 limit established in subdivision (b), and further providing that the following conditions are met:

- (i) the dwelling acquired was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the established eligibility date as specified in subdivision (b); and
- (ii) the mortgage on the replacement dwelling bears a higher rate of interest than the mortgage interest rate on the acquired dwelling.

(2) The increased interest payment will be based on and limited to the lesser of the following amounts:

- (i) the present worth of the right to receive the monthly difference in mortgage payments on the existing mortgage using the old and new interest rates; or
- (ii) the present worth of the right to receive the monthly difference in mortgage payments on the new mortgage using the old and new interest rates.

(3) Payment computation. The amount of increased interest payment will be computed in accordance with the following procedures:

- (i) The monthly principal and interest payment differences caused by the change in interest rates is computed for both the existing mortgage and new mortgage for their respective remaining terms and amounts. The old and new interest rates are used in each case.
- (ii) The present worth of the monthly interest difference found in subparagraph (i) of this paragraph is computed for each mortgage by discounting the annual difference (the sum of the

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monthly difference for one year) at the savings deposit interest rate for the remaining term of each mortgage. The lesser of the amounts so derived is the increased interest payment.

(4) Interest rate of replacement dwelling mortgage.

(i) The interest rate on the mortgage for the replacement dwelling to be used in the computation shall be the actual rate but may not exceed the prevailing interest rate currently charged by mortgage-lending institutions in the vicinity.

(ii) When the lending agency imposes debt service charges as an incident to the extension of credit, and such charges are normal to the market, the annual percentage rate shown in the truth in lending statement shall be used in lieu of the mortgage interest rate in computing the monthly principal and interest payments.

(5) Discount rate. The discount rate shall be the prevailing rate of interest paid on passbook savings account deposits by commercial banks in the general area in which the replacement dwelling is located.

(6) To whom payment made. The payment described in this paragraph may be made directly to the relocated individual or family, or, upon written instruction from the relocated individual or family, directly to the mortgagee of the replacement dwelling.

(7) Partial acquisition.

(i) Where the dwelling is located on a tract normal for residential use in the area, the interest payment shall be reduced to the percentage ratio that the acquisition price bears to the before value; except the reduction shall not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition, and it is necessary to refinance.

(ii) Where a dwelling is located on a tract larger than normal for residential use in the area, the interest payment shall be reduced to the percentage ratio that the value of the residential portion bears to the before value. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

(8) Multi-use properties. The interest payment on multi-use properties shall be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.

(9) Other highest and best use. If a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, and if the mortgage is based on residential value, the interest payment shall be computed as provided above. If the mortgage is obviously based on the higher use, however, the interest payment shall be reduced to the percentage ratio that the estimated residential value of the parcel bears to the before value.

(j) *Incidental expenses.*

(1) An otherwise eligible owner-occupant or tenant-occupant who purchases a replacement dwelling is entitled to a payment for the incidental expenses incident to the purchase of the replacement dwelling, providing such payment falls within the \$15,000 and \$4,000 limits as otherwise established in this section. The following expenses, insofar as they do not constitute prepaid expenses, are eligible for reimbursement on an actual cost basis:

(i) legal, closing and related cost, including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings or plats, and charges paid incident to recordation;

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- (ii) lenders, FHA or VA appraisal fees;
- (iii) FHA or VA application fee;
- (iv) certification of structural soundness;
- (v) credit report;
- (vi) owners' title policy or abstract of title;
- (vii) escrow agent's fee;
- (viii) State revenue stamps; and
- (ix) sales or transfer taxes.

(2) No fee, cost, charge or expense is reimbursable as an incidental expense which is part of the debt service, or finance, charge under the Federal Truth in Lending Act.

(3) Reimbursement for these eligible incidental expenses shall be contingent upon showing the actual expense and shall be accompanied by a copy of the closing statement for the replacement dwelling.

(k) *Mobile homes; replacement housing payments; general provisions.*

(1) A mobile home is considered to be decent, safe and sanitary if it meets the defined standards in this Part.

(2) Where the office determines that a sufficient portion of a mobile home park is taken to justify the operator of such park to move his business or go out of business, and the operator does in fact move or go out of business, the owners and occupants of the mobile home dwellings not within the actual taking but who are forced to move are eligible to receive the same payments as though their dwellings were within the actual taking.

(3) When a comparable home dwelling is not available, the supplemental relocation payment is to be calculated on the basis of the next higher type dwelling that is available and meets the applicable requirements and standards, *i.e.*, a higher type mobile home or a conventional dwelling.

(l) *Mobile homes; owner-occupants over 180 days.* A displaced owner of a mobile home who has occupied, for at least 180 days, the mobile home on the site from which he is being displaced, and is otherwise eligible under the provisions of paragraph (b)(2) of this section, is eligible for payments, the total of which may not exceed \$15,000, for the additional costs necessary to purchase replacement housing under the following circumstances:

(1) When owner-occupied owns both mobile home and site, the replacement housing payment will be the amount, if any, which when added to the amount for which the State acquired his mobile home and site equals the lesser of:

- (i) the amount the owner is required to pay for a decent, safe and sanitary conventional dwelling or a decent, safe and sanitary replacement mobile home and site; or
- (ii) the amount determined by the State as necessary to purchase a comparable mobile home and a site.

If the owner-occupant decides to rent, the rental replacement payment shall be the difference between the State's determination of the amount necessary to rent a comparable mobile home and site for a period of four years and 48 times the economic rent of the existing mobile home and site. The calculated rental replacement payment may not exceed the amount determined by the State in subparagraphs (i) and (ii) of this paragraph, or \$4,000, whichever is lesser.

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(2) Owner-occupant; acquisition of site only. Upon acquisition of the site, and the mobile home is required to be moved, the replacement housing payment will be determined as follows: The amount, if any, when added to the amount for which the State acquired his mobile homesite, equals the lesser of:

- (i) the amount the owner is required to pay for a comparable homesite; or
- (ii) the amount determined by the State as necessary to purchase a comparable mobile homesite.

If the owner elects to rent, the rental replacement payment shall be the difference in the amount determined by the State as necessary to rent a comparable mobile homesite for a period of four years and 48 times the economic rent of the site acquired. The calculated rental replacement payment may not exceed the amount determined by the State in subparagraph (ii) of this paragraph, or \$4,000 whichever is lesser.

(3) When owner-occupied owns mobile home, rents site. The replacement housing payment will be the amount, if any, which when added to the amount for which the State acquired his mobile home, equals the lesser of:

- (i) the amount the owner is required to pay for a replacement dwelling; or
- (ii) the amount determined by the State as necessary to purchase a comparable mobile home, plus the difference in the amount determined by the State as necessary to rent a comparable mobile homesite for a period of four years and 48 times the rent being paid on the site acquired.

If the owner elects to rent a replacement mobile home, the rental replacement housing payment, not to exceed \$4,000, shall be the difference in the amount determined by the State as necessary to rent a comparable mobile home and site for four years and 48 times the economic rent of the mobile home plus the actual rent of the site acquired.

(4) In addition to the replacement housing payments specified above, the owner-occupant is entitled to compensate him for the loss of favorable financing on his existing mortgage in the financing of replacement housing and payment for incidental expenses incident to the purchase of replacement housing. These payments will be calculated and paid in accordance with subdivisions (i) and (j) of this section.

(m) *Mobile homes; owner-occupants less than 180 days but not more 90 days.* A displaced owner of a mobile home who has occupied, for less than 180 days but more than 90 days, the mobile home on the site from which he is displaced and who is otherwise eligible under the provisions of paragraph (b)(2) of this section, is eligible for an amount, not to exceed \$4,000, to enable him to make a down payment on the purchase of replacement housing and to reimburse him for the actual expenses incident thereto in accordance with the following provisions:

(1) Owner-occupant owning both mobile home and site. If the owner purchases a replacement dwelling, the replacement housing payment will be determined in accordance with the heretofore defined provisions relating to down payment calculations, except that the amount of the down payment shall be determined by the State as the amount required on the purchase of a comparable mobile home and site. If the owner-occupant elects to rent, the rental replacement payment, not to exceed \$4,000, shall be the difference in the amount determined by the State as necessary to rent a

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comparable mobile home and site for a period of four years and 48 times the economic rental of the mobile home and site.

(2) Owner-occupant; acquisition of site only. If the owner purchases conventional housing or a site to which the mobile home is moved, the replacement housing payment will be in an amount determined in accordance with the provisions relating to down payment calculations, except that the amount of the down payment shall be determined by the State as the amount required as a down payment on the purchase of a comparable site. If the owner-occupant elects to rent, the rental replacement payment, not to exceed \$4,000, shall be the difference in the amount determined by the State as necessary to rent a comparable site for four years and 48 times the economic rent of the site acquired.

(3) Owner-occupant owns mobile home, rents site. If the owner purchases replacement housing, the replacement housing payment, not to exceed \$4,000, will be:

- (i) an amount determined in accordance with the provisions relating to down payment calculations, except that the amount of the down payment shall be determined by the State as the amount required as a down payment on the purchase of a comparable mobile home; plus
- (ii) the difference in the amount determined by the State as necessary to rent a comparable mobile homesite for four years and 48 times the rent being paid on the site acquired.

If the owner elects to rent, the rental replacement payment shall be the difference in the amount determined by the State as necessary to rent a comparable mobile home and site for four years and 48 times the economic rent of the mobile home and the actual rent of the site acquired.

(n) *Mobile homes; tenants over 90 days.* A displaced tenant of a mobile home who has occupied for at least 90 days the mobile home on the site from which he has been displaced, and is otherwise eligible under the provisions of paragraph (f)(1) of this section, is eligible for a replacement housing payment, not to exceed \$4,000:

- (1) to enable him to make a down payment on the purchase of a replacement dwelling and to reimburse him for the expenses incident to such purchase; or
- (2) if he elects to rent, payment shall be the difference in the amount determined by the State as necessary to rent a comparable mobile home and site for four years and 48 times the actual rent being paid for the mobile home and site acquired.

(o) *Supplemental replacement housing payments; miscellaneous provisions.*

(1) Inspection of replacement dwelling. In order to be eligible for and receive any supplemental relocation payments, the State must inspect the replacement dwelling and determine that it meets the decent, safe and sanitary standards as defined in section 463.2 of this Part. In any application for payment, the individual or family must indicate that, to the best of their knowledge and belief, the replacement dwelling meets the defined standards for decent, safe and sanitary housing.

(2) Advanced replacement housing payments in litigated cases. An advance replacement housing payment can be authorized and paid to a property owner if the determination of the State's acquisition price will be delayed pending the outcome of a trial in the Court of Claims. A provisional replacement housing payment may be calculated by deeming the State's maximum offer for the property as the acquisition price. Payment of such amount may be made upon the owner-occupant's agreement that:

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- (i) upon final judgment of the Court of Claims, the replacement housing payment will be recomputed using the acquisition price determined by the court as compared to the actual price paid or the amount determined by the State necessary to acquire a comparable decent, safe and sanitary dwelling; and
 - (ii) if the amount awarded by the court as the fair market value of the property acquired plus the amount of the recomputed replacement housing payment exceeds the price paid for, or the State's determined cost of, a comparable dwelling, the owner will refund to the State, from the judgment amount, an amount equal to the excess. In no event, however, shall he be required to refund more than the amount of the replacement housing payment advanced; and
 - (iii) if the property owner does not agree to such adjustment, the replacement housing payment shall be deferred until the case is finally adjudicated and computed on the basis of the final determination, using the award as the acquisition price.
- (3) Ownership of replacement dwelling prior to displacement. Any person who has obtained legal ownership of a replacement dwelling any time after the initiation of negotiations on the project, and occupies the replacement dwelling after being displaced but within the time limit specified in paragraph (a)(1) of this section, is eligible for a replacement housing payment if the replacement dwelling meets decent, safe and sanitary standards.
- (4) Partial taking situations.
- (i) Where a dwelling is located on a tract normal for residential use in the area, the maximum replacement housing payment shall be determined by subtracting the "before value" of the property from the estimated selling price of a comparable dwelling on a lot typical for the area.
 - (ii) Where a dwelling is located on a tract larger than normal for residential use in the area, the maximum replacement housing payment shall be determined by estimating the value of the dwelling at the present location on a homesite typical in size for the area and deducting this amount from the selling price of a comparable dwelling on a site typical for the area.
- (5) Dwelling on land with higher and better use. Where a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, the maximum replacement housing payment shall be determined by estimating the value of the dwelling at the present location on a homesite typical for the area and zoned for residential use and deducting this amount from the selling price of a comparable dwelling on a typical residential homesite for the area.
- (6) Joint residential and business use. Where displaced individuals or families occupy living quarters on the same premises as a displaced business, farm or nonprofit organization, such individuals or families are separate displaced persons for purposes of determining entitlement to relocation payments.
- (7) Payments on assignments. Payments described herein may be made, upon written instructions and assignment from the displaced person, directly to a lessor for rent or to a seller for application on a payment for decent, safe and sanitary dwelling.
- (8) Owner-occupant; prohibitions on double payments. If an owner-occupant eligible for the maximum \$15,000 payment elects initially not to repurchase a replacement dwelling, but rather to claim benefits on the four-year rent differential basis, he cannot receive double payment in excess of

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\$15,000 if he later decides (within the allowable period) to purchase a replacement house. The amount of any payment made on the rent differential basis is to be deducted from the calculated differential necessary to purchase a replacement dwelling.

(9) All rental replacement housing payments shall be paid in a lump sum except that it shall be paid in installments when this method of payment is requested by the displaced person. Prior to any payment the tenant must certify to the State that he is occupying decent, safe and sanitary housing.

Sec. added by renum. 443.10, filed Feb. 25, 1988 eff. March 16, 1988.

Section 463.11. Appeals procedure

(a) An applicant for a moving expense and/or replacement housing payment shall be notified promptly in writing concerning his eligibility for the payment claimed; the amount, if any, he is entitled to receive, and the time and manner in which such payment will be made. If any or all of the amounts claimed are disallowed or require additional documentation, the eligible person will be so notified in writing to this effect.

(b) If the claimant is not satisfied with the payment offered, he may, within 18 months of vacating or six months after final award determination by the courts of the State, request an informal conference to present his case. When requested, such a conference is scheduled in the regional office conducted by the regional manager of the park region. The claimant may bring whomever he wishes to represent him or present some facet of his claim. The decision of the regional manager will be made in writing directed to the claimant or his representative and may be appealed to the deputy commissioner for planning and operations.

(c) The deputy commissioner for planning and operations shall then make an independent determination according to the data submitted to him by the claimant and the regional manager. This determination will be made in writing to the claimant.

(d) In the event the claimant is not satisfied with the results achieved at this stage, he may then request a formal hearing. This request will be directed to the Commissioner of Parks, Recreation and Historic Preservation. The formal hearing will be conducted by a hearing officer designated by the commissioner at a time and place to be determined by the hearing officer. Minutes of the proceedings will be taken.

(e) Based upon all the evidence produced at the hearing, the hearing officer will make his recommendation to the Commissioner of Parks, Recreation and Historic Preservation, who will then make a final determination regarding the claim presented.

(f) In the instance of an appeal, no payment of such calculated moving expenses or supplemental housing and related benefits is to be made until a decision has been rendered by the Commissioner of Parks, Recreation and Historic Preservation. In the instance where an owner files a claim in the Court of Claims for adjudication of the fair market value of the property acquired, and similarly files for an appeal hearing disputing the amount of the supplemental payment preferred, no appeal hearing will be held until final award determination by the courts of the State.

Sec. added by renum. 443.11, filed Feb. 25, 1988 eff. March 16, 1988.

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Section 463.12. Hardship cases

Notwithstanding any other provisions contained in this Part, the commissioner is authorized in hardship cases to make advance payments in anticipation of the eligible person actually completing his moving of personal property or actually purchasing or renting and occupying decent, safe and sanitary replacement housing. The commissioner may authorize the advance payment of the amount determined to represent reasonable and necessary moving expenses or the amount of the approved supplemental relocation payment deemed necessary to purchase or rent decent, safe and sanitary replacement housing. In the case of a supplemental relocation payment, payment can only be made if there is a signed contract for the purchase of a replacement property, or in the case of a replacement rental unit, if there is a signed lease or some other firm commitment. In both instances, the proposed replacement housing must be inspected prior to payment for a determination of compliance with decent, safe and sanitary standards.

Sec. added by renum. 443.12, filed Feb. 25, 1988 eff. March 16, 1988.

Part 464. Summer Empire State Games

Section 464.1. Purpose

The Summer Empire State Games (ESG or games) promote the public health and welfare of New York residents by encouraging wholesome amateur athletic competition particularly for youths; providing opportunities and incentives to improve amateur athletics; publicly recognizing dedicated amateur athletes; showcasing the different regions of the State; providing economic benefits to the host community; and, fostering and encouraging volunteerism. The purpose of this regulation is to clarify the procedures and participation requirements for applicants, coaches, officials and volunteers.

Sec. filed Jan. 26, 2010 eff. Feb. 10, 2010.

Section 464.2. Definitions

- (a) **Agency** means the Office of Parks, Recreation and Historic Preservation.
- (b) **Applicant** means the person who applies to compete in or competes in the Summer Empire State Games.
- (c) **Finals** means the championship event where qualified participants from all six regions compete in the designated host city.
- (d) **Region** means one of the six geographic areas of New York State divided by counties as follows:
 - (1) Adirondack - Albany, Clinton, Columbia, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Saratoga, Schoharie, Schenectady, St. Lawrence, Rensselaer, Warren and Washington.
 - (2) Central - Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, Otsego, Schuyler, Tioga and Tompkins.
 - (3) Hudson Valley - Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester.
 - (4) Long Island - Nassau and Suffolk.
 - (5) New York City - Bronx, Kings (Brooklyn), New York (Manhattan), Queens and Richmond (Staten Island).

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(6) Western - Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Steuben, Wayne, Wyoming and Yates.

(e) **Regional trial** means the competitive tryout in one of the six regions for a particular event.

(f) **Resident** or **residency** means that the applicant resides in a fixed and permanent home (domicile) in New York State as of April 30th in the year the Summer Empire State Games are held.

(1) When registering for finals or at any time upon request of the agency the applicant may be required to produce a birth certificate and must produce the following documents to prove identity or State residency:

(i) New York State Driver's License or Enhanced Driver's License;

(ii) New York State Non-Driver Photo Identification or Enhanced Non-Driver Photo Identification; or

(iii) New York State High School or Junior High School Photo Identification.

(2) A student who is a resident of New York but attends boarding school or college in another state or is home schooled must produce the documents listed in subparagraph (1)(i) or (ii) of this subdivision.

(3) A student who attends boarding school or college in this State but who is a resident of another state is not eligible to participate in the summer games.

(4) To protest an athlete's eligibility based on lack of residency or any other criteria a coach must file two proofs with the agency by 5 p.m. on the Friday preceding the week the games are held. The agency, upon receipt of a protest or at its own initiative, may require an applicant to produce at least three of the following additional documents before he or she is allowed to participate:

(i) NYS Professional License;

(ii) NYS Pistol Permit;

(iii) NYS Income Tax W-2 (with SSN);

(iv) pay stub (with name and NYS address);

(v) utility bill (with name and NYS address);

(vi) current proof of homeowners/renters insurance (policy or proof of claim for NYS address);

(vii) military orders that are in effect;

(viii) NYS property or school tax bills or receipts for current year (must reflect current NYS address both on mailing portion and portion stating what property is being taxed);

(ix) current residential lease (NYS address); or

(x) voter registration notification card issued within one year.

(g) **Roster** means a list of participants (roster) for each finals event that is prepared by Tuesday of the week the Summer Empire State Games are held.

(h) **Summer Empire State Games (summer ESG or summer games)** means:

(1) An annual multi-sport event managed, coordinated and conducted by the agency at the agency's discretion. The games are patterned after the Olympics, held by the agency for amateur athletes during the summer, staffed by volunteers and funded by available State appropriations, sponsors and donations. Regional trials are held prior to the finals in each of six State regions along with team practices. A finals competition is then held in one region of the State.

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(2) The agency recognizes regional sports teams by ESG name, logo and uniform during the regional trials, practices and finals competition only. The agency prohibits team use of the ESG name, logo or uniform at any other competition or any event held after the summer ESG have concluded. The agency is not responsible for any other team competitions or events. Any request to use the ESG name, logo or uniform for a team or at a competition or event must be made in writing to the agency and authorized in writing by the agency.

Sec. filed Jan. 26, 2010 eff. Feb. 10, 2010.

Section 464.3. Eligibility

The ESG and competition in the games is a privilege, not a right. The agency is the sole entity responsible for the ESG and for implementing the ESG. Accordingly, the agency retains the discretion to: charge a fee to applicants for tryouts, participation or other activities associated with ESG, cancel divisions, cancel individual classes within an event, cancel any event in whole or in part or cancel the ESG for any legitimate reason to be determined by the agency.

(a) General eligibility. An applicant is ineligible to participate in the sport that he or she formerly participated in or is presently participating in as a professional. To be eligible to compete in the summer ESG, an applicant must not violate the Code of Conduct and must:

- (1) try out and compete only in the regional trials for the region where the applicant resides as of April 30th in the year the Summer games are held. Exceptions:
 - (i) All sports. A student who attends boarding school or college in one region and participates in an initial regional trial held while the boarding school or college is still in regular session may compete in the regional trials and in the finals for that school's region or college's region even if the student is a resident of another region of the State;
- (2) try out and compete for only one region and only one division (scholastic, open or masters);
- (3) attend and actively participate in the regional trials;
- (4) compete in only one sport at the finals. Although an applicant may try out and qualify for the finals in different sports, the applicant must choose one sport before July 1st of the games year by notifying the involved ESG regional coaches for all the sports the applicant tried out for and the ESG regional director. If an applicant fails to choose one sport or fails to notify the applicable ESG regional coaches and the regional director by the deadline, he or she may be removed from all sport rosters and may not participate or compete in the summer games that year;
- (5) attend the finals if he or she qualifies. An applicant who qualifies to represent a region but does not compete in the finals must provide a reasonable excuse to the ESG regional coach and the regional director before Tuesday of the week the finals are held. If an applicant fails to notify by the deadline and fails to provide a reasonable excuse that is acceptable to the agency, the applicant shall be removed from all sport rosters and shall not participate or compete in the summer games that year and the following year;
- (6) pay for any health or medical expenses incurred and should carry health insurance;

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(7) meet the eligibility or membership requirements of the sport or the sport's National Governing Body (NGB). For example, an applicant participating in any of the following sports must be a member of that sport's NGB:

- (i) boxing - United States of America Boxing (USA Boxing);
- (ii) cycling - United States Cycling Federation (USCF);
- (iii) judo - United States of America Judo (USA Judo), United States Judo;

(8) if requested, provide the residency and identification documents requested by the agency and comply with the requirements of this section before Friday of the week prior to the beginning of the ESG.

Sec. filed Jan. 26, 2010 eff. Feb. 10, 2010.

Section 464.4. Scholastic or open division eligibility

(a) There are three divisions for the summer games: scholastic, open and masters that, in general, are open to different age groups.

(1) Scholastic Division.

- (i) Maximum age. An applicant must be age 17 or younger as of August 31st in the year the summer games are held.
- (ii) Minimum age. In the following contact sports an applicant also must be age 13 as of April 30th in the year the summer games are held: baseball, basketball, field hockey, ice hockey, judo, lacrosse, soccer, softball, volleyball and wrestling.

(2) Open division minimum age. An applicant must be age 18 or older as of August 31st in the year the summer games are held.

(3) Exceptions:

(i) Boxing age requirements will follow USA Boxing rules which shall be posted on the Empire State Games website (www.empirestategames.org).

(ii) Gymnastics.

(a) Scholastic and open divisions (men). A male gymnast who is eligible for the scholastic division may try out for the open division. However, the gymnast must choose to participate in the open division by notifying the ESG men's gymnastics coach and regional director before the regional trial begins. In addition, the applicant must have a minimum score of 33.00 at the regional trials to compete at finals.

(b) Scholastic and open divisions (women). Female gymnasts eligible for the scholastic and open divisions must try out together. The top seven regional qualifiers shall compete in the open division finals and the next seven regional qualifiers shall compete in the scholastic division finals. However, participants who are age 18 or older as of August 31st in the year the games are held must finish in the top seven at a regional trial and must compete in the open division at the finals. They are not eligible to compete in the scholastic division.

(iii) Synchronized swimming. Open division. Applicants must be at least age 12 as of April 30th in the year the summer games are held.

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(iv) No scholastic division. An applicant younger than age 18 may compete in the open division for a sport if the open division includes that sport but the scholastic division does not.

Sec. filed Jan. 26, 2010 eff. Feb. 10, 2010.

Section 464.5. Masters division

(a) The following minimum age eligibility requirements apply to the following sports in the masters division:

- (1) Archery (age 50 as of the first day of the summer ESG);
- (2) Bowling (age 50 as of the first regional trial);
- (3) Canoeing (marathon) (age 18 as of the first day of the summer ESG);
- (4) Cycling (age 35 as of January 1st in the year the summer ESG are held);
- (5) Diving; synchronized diving (age 21 as of the first day of the summer ESG);
- (6) Fencing (age 50 as of the first day of the summer ESG);
- (7) Golf (age 35 as of the first day of the summer ESG);
- (8) Gymnastics (age 22 as of the first day of the summer ESG);
- (9) Rugby (age 18 as of the first day of the summer ESG);
- (10) Swimming (age 18 as of December 31st of the games year);
- (11) Track and field; racewalk; 10K road race (age 30 as of the first day of the summer ESG);
- (12) Sailing (age 18 as of the first day of the Summer ESG).

Sec. filed Jan. 26, 2010 eff. Feb. 10, 2010.

Section 464.6. Code of conduct

The Code of Conduct includes this Part, the agency's guidance documents that will be adopted pursuant to this Part including the Games Plan and Handbook and all other related agency guidelines.

(a) The Code of Conduct requires all athletes, coaches, officials and volunteers associated with any ESG sport or program to conduct themselves responsibly at all times, both on and off the field at all regional trials and finals competitions.

(b) The Code of Conduct prohibits use of performance enhancing substances; prohibits use of any drugs including tobacco and alcohol in university or college buildings or on those grounds, and at all competition sites or events associated with the summer ESG; and, prohibits practices deemed illegal or unacceptable by a sport's National Governing Body (NGB).

(c) The Code of Conduct requires honesty, respect, sportsmanship and fair play so that the honor and dignity of the athletes competing in this amateur athletic competition is not compromised.

Sec. filed Jan. 26, 2010 eff. Feb. 10, 2010.

Section 464.7. Sanctions

(a) The agency will use this Part and the Code of Conduct to enforce penalties affecting participation in the Summer ESG that may be assessed by an NGB or other authority or sanctioning body for the sport.

(b) If an athlete, coach, official or volunteer violates this Part or the Code of Conduct or other agency guidelines, the ESG director's designee may immediately exclude or remove that person from any host

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facility or venue or dismiss them from the summer ESG. The violator may appeal that interim decision to the ESG director who will make the final decision. The ESG games may require them to forfeit any ESG apparel or awards pending a final decision. The ESG director's final decision may require the violator to forfeit apparel or forfeit awards or banish them from future ESG participation.

Sec. filed Jan. 26, 2010 eff. Feb. 10, 2010.

Section 464.8. Severability

If a court of competent jurisdiction determines that any provision of this Part or its application to any person or circumstance is contrary to law that determination shall not affect or impair the validity of the other provisions of this Part or the application to other persons and circumstances.

Sec. filed Jan. 26, 2010 eff. Feb. 10, 2010.