

will be published in the *Register* within 30 days of the rule's effective date.

Assessment of Public Comment

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

**EMERGENCY
RULE MAKING**

Rules Relating to Insurance and Bond Requirements

I.D. No. DOS-22-15-00010-E

Filing No. 392

Filing Date: 2015-05-18

Effective Date: 2015-05-18

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

Action taken: Repeal of section 160.9; and addition of new section 160.9 to Title 19 NYCRR.

Statutory authority: Executive Law, section 91; General Business Law, sections 402(5) and 404

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

Specific reasons underlying the finding of necessity: The Department of State ("Department") is charged, inter alia, with the enforcement of New York General Business Law ("NY GBL") Article 27, which relates to the appearance enhancement industry. A principal purpose behind the enactment of Article 27 was to provide a system of licensure of appearance enhancement businesses and operators that would both allow for the greatest possible flexibility in the establishment of regulated services and implement measures to protect those inextricably entwined in the industry. Consistent with this legislative intent of Article 27, the Department is empowered to issue regulations which protect the general welfare of the public, including workers employed by business owners. Notwithstanding existing laws and regulations, a number of businesses have taken unfair advantage of a significant number of licensed workers who contribute to the community and economy. The ease with which some establishments have been able to deprive workers of fair wages and other rights is due in part to the inadequate protections.

To help ensure that workers, who are often vulnerable to abuses, are guaranteed to receive wages which are legally due, new bonding and insurance requirements are needed. The enhancement of public safety, health and general welfare necessitates the promulgation of this regulation on an emergency basis. The Department finds that by imposing new bonding and insurance provisions potential abuses by unscrupulous business owners will be reduced and hardworking employees will be protected.

Subject: Rules relating to insurance and bond requirements.

Purpose: To enhance protections to workers by adding new provisions requiring wage coverage.

Text of emergency rule: Section 160.9 of Title 19 of the NYCRR is repealed and a new 160.9 is added to read as follows:

19 NYCRR § 160.9 Bond or liability insurance

(a) An owner must maintain liability coverage in the following amounts:

(1) for accident and professional liability, at least \$25,000 per individual occurrence and \$75,000 in the aggregate; and

(2) for payment of wages and remuneration legally due employees and providers of appearance enhancement services pursuant to the following schedule:

(i) if owner employs one to four individuals, at least \$25,000 or in such other amount as directed by the Secretary;

(ii) if owner employs five to ten individuals, at least \$40,000 or in such other amount as directed by the Secretary;

(iii) if owner employs 11 to 25 individuals, at least \$75,000 or in such other amount as directed by the Secretary; or

(iv) if owner employs 26 or more individuals, at least \$125,000 or in such other amount as directed by the Secretary.

(b) Such liability coverage may be obtained by purchasing:

(1) a bond with a corporate surety, from a company authorized to do business in this state, payable in favor of the people of the state of New York; or

(2) accidental and professional liability insurance, or general liability insurance; or

(3) any combination of (1) or (2) as provided in this Subdivision provided that the coverage amounts set forth in Subdivision (a) of this Section are satisfied.

(c) Bond or liability insurance coverage may be terminated in accordance with the following provisions:

(1) A bond obtained pursuant to this Section shall be filed with the Secretary. Such bond shall not be cancelled, revoked, or terminated by the owner, nor shall the owner take action that would result in the cancellation, revocation, or termination of such bond, except after notice to, and with the consent of, the Secretary at least forty-five days in advance of such cancellation, revocation, or termination. The bond shall include a provision requiring the surety to provide sixty days' notice to the Secretary prior to the effective date of cancellation of the bond. Additionally, no business owner license shall be issued or renewed until such bond, if applicable, is filed.

(2) Upon the termination of a liability insurance policy obtained pursuant to this Section, an owner must submit to the Secretary a notice of termination of insurance in a form prescribed by the Secretary. Such notice must be filed with the Secretary prior to the effective date of termination.

(d) Evidence of such bond or liability insurance policy must be maintained on the business premises. Such evidence shall be accessible by all employees at all times that the business is open.

(e) An owner will be permitted to maintain a bond or liability insurance policy as required by former Section 160.09 until June 30, 2015. All owners shall comply with the provisions of this Section on or after July 1, 2015. The requirements of this Section shall apply immediately to any owner who was not licensed on or before the effective date of this Section.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 15, 2015.

Text of rule and any required statements and analyses may be obtained from: David A. Mossberg, Esq., NYS Dept. of State, 123 William Street, 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the *Register* within 30 days of the rule's effective date.

Assessment of Public Comment

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

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

Regulations Establishing Safety Standards for Anchoring, Securing, and Counter-Weighting a Movable Soccer Goal

I.D. No. DOS-22-15-00011-EP

Filing No. 398

Filing Date: 2015-05-19

Effective Date: 2015-05-20

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

Proposed Action: Addition of Part 4608 to Title 21 NYCRR.

Statutory authority: General Business Law, section 399-j

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: The Department of State ("Department") is charged, inter alia, with the promulgation of rules and regulations establishing safety standards for anchoring, securing and counter-weighting a moveable soccer goal pursuant to New York General Business Law ("NY GBL") section 399-j, Chapter 436 of the Laws of 2014. The statute requires that such regulations substantially comply with the guidelines for moveable soccer goal safety produced by the United States Consumer Product Safety Commission.

A principal purpose behind the enactment of Chapter 436 of the Laws of 2014 was to prevent injuries and fatalities resulting from improperly secured portable soccer goals. Consistent with the clear direction of the statute which references the U.S. Consumer Product Safety Commission Guidelines for Movable Soccer Goal Safety, and the legislative intent of Chapter 436, the Department is empowered to issue regulations which protect the general safety and welfare of the public.

NY GBL § 399-j becomes effective on May 20, 2015. To help ensure

that the State's soccer fields are maintained in a safe manner, the Department finds that it is necessary to require immediate adoption of the U.S. Consumer Product Safety Commission Guidelines for Movable Soccer Goal Safety. The protection of public safety, health and general welfare necessitates the promulgation of this regulation on an emergency basis. The Department finds that the use of the U.S. Consumer Product Safety Commission Guidelines for Movable Soccer Goal Safety will reduce the risk of death and injuries related to improperly secure moveable soccer goals.

Subject: Regulations establishing safety standards for anchoring, securing, and counter-weighting a moveable soccer goal.

Purpose: Establish the U.S. Consumer Product Safety Commission Guidelines for Movable Soccer Goal Safety as the New York standard.

Text of emergency/proposed rule: A new Part 4608 is added to Title 21 of the NYCRR as follows:

Part 4608

Anchoring, Securing and Counter-Weighting a Moveable Soccer Goal (Statutory Authority: General Business Law § 399-j)

§ 4608.1 Definitions.

(a) "Moveable soccer goal" shall mean a freestanding structure consisting of at least two upright posts, a crossbar, and support bars that is designed:

- (1) to be used by adults or children for the purposes of a soccer goal;
- (2) to be used without any other form of support or restraint other than pegs, stakes, or other forms of temporary anchoring device; and
- (3) to be able to be moved to different locations.

§ 4608.2 Incorporation by reference.

This Part adopts safety standards for anchoring, securing and counter-weighting moveable soccer goals contained within the U.S. Consumer Product Safety Commission Guidelines for Movable Soccer Goal Safety as New York State's safety standards for anchoring, securing and counter-weighting moveable soccer goals. This publication is thus incorporated by reference in this Part. Said publication, entitled: *Guidelines for Movable Soccer Goal Safety*, published by the U.S. Consumer Product Safety Commission in 1995, as Publication No. 326, is online free of charge at: <http://www.cpsc.gov/en/Safety-Education/Safety-Guides/Sports-Fitness-and-Recreation/Guidelines-for-Movable-Soccer-Goal-Safety/>.

Said publication may be viewed at the New York State Department of State, Division of Consumer Protection, 99 Washington Avenue, Suite 640, Albany, New York 12231, the New York State Department of State website at www.dos.ny.gov and the New York State Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, NY 12207.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 16, 2015.

Text of rule and any required statements and analyses may be obtained from: Paula J. O'Brien, Esq., Department of State, 99 Washington Avenue, Suite 640, Albany, NY 12231, (518) 474-2257, email: paula.obrien@dos.ny.gov

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

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

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Subdivision 3 (a)(6) of section 94-a of the Executive Law, powers and duties of the New York State Department of State Division of Consumer Protection and the Secretary of State, grants general rulemaking authority to the Department to implement other powers and duties by regulation and otherwise as prescribed by any provision of law. Section 399-j of the General Business Law mandates that the Department in consultation with the Office of Parks, Recreation and Historic Preservation (State Parks) promulgate a regulation establishing safety standards for anchoring, securing and counter-weighting moveable soccer goals. The proposed rule simply incorporates by reference the U.S. Consumer Product Safety Commission Handbook for Moveable Soccer Goal Safety (Guidelines or CPSC Handbook).

2. LEGISLATIVE OBJECTIVES:

The legislative memorandum in support of General Business Law section 399-j directs promulgation of this proposal. This memorandum indicates that the legislative objective of General Business Law section 399-j is to address the hope of parents and guardians that soccer fields where their children meet friends, play, compete and exercise are among the safest places their children can spend time. From 1979 to 2014 there were 39 deaths and 56 injuries reported nationally due to insecurely anchored portable soccer goals with the predominant victims' children ages 9 to 11.¹ Further, that memorandum underscored that adherence to

the U.S. Consumer Products Safety Commission (CPSC) moveable soccer goal safety guidelines established in January 1995 could prevent accidental deaths and injuries in children. The regulation establishes the CPSC Handbook as the standard in New York State for erecting and maintaining moveable soccer goals to reduce the frequency and severity of accidents.

3. NEEDS AND BENEFITS:

The purpose of the proposed rule is to achieve the statutory objectives of General Business Law section 399-j, which requires the Department of State, in consultation with the Office of Parks, Recreation and Historic Preservation to promulgate a rule regarding moveable soccer goals that encourages compliance with the CPSC Handbook. This may decrease the number of serious injuries and deaths related to unsafe moveable soccer goals. The Department and the Office of Parks, Recreation and Historic Preservation did collaborate as required by the statute.

Research conducted by the CPSC and reported by the Soccer Industry Council of America indicated that over 16 million persons in the United States play soccer at least once a year. Seventy-four percent (over 12 million) of these persons are under the age of 18. Soccer ranks fourth in participation for those under 18, following basketball, volleyball, and softball. Further, the Council indicated that there are approximately 225,000 to 500,000 soccer goals in the United States. Many of these soccer goals may be unsafe because their design is unstable or they are either unanchored or not properly anchored or counter-balanced. These moveable soccer goals pose an unnecessary risk of tip over if children are allowed to climb on goals (or nets) or hang from the crossbar.²

Accordingly, incorporating by reference the entire CPSC Handbook is the best way to comply with the intent of General Business Law section 399-j and enable soccer field owners and administrators the opportunity to become familiar with nationally recognized moveable soccer goal safety standards which will encourage necessary and effective compliance.

4. COSTS:

(a) Costs to State Government: The Department will develop and distribute informational material to aid with education and compliance with this new rule. This information will also be available on the Department's website. The cost to the Department is estimated at approximately two thousand (\$2,000) dollars. While the implementing statute does not state it explicitly applies to the State or state agencies, incorporating the Guidelines into this regulation reinforces them as the prevailing industry practice, thus, indirectly requiring state agencies to voluntarily comply. One region of State Parks calculated the cost of compliance for its soccer facilities to be \$7,900 if sandbags are used. If you multiply that by 11 park regions the total compliance cost for State Parks would be \$86,900. However, the cost of the development and distribution of informational material and state agencies' voluntary compliance with the CPSC Handbook is outweighed by the benefits to the public. Also, in the event of alleged non-compliance, the Office of the New York State Attorney General may incur costs related to investigation and enforcement against private parties.

(b) Costs to private regulated parties: These rules may impose some costs on businesses, clubs, schools or parks that erect and maintain moveable soccer goals in compliance with General Business Law section 399-j to provide safer soccer fields for children. However, because costs incurred will vary depending upon whether an entity has already implemented the Guidelines, the type of materials used to comply and the number of fields in need of compliance, the Department is unable to project potential cost impacts. The Department will carefully consider all oral and written comments received as a result of these proposed regulations.

(c) Costs to local governments: These rules may impose costs on school districts and local governments that are presently not complying with the Guidelines when they erect and maintain moveable soccer goals. The Association of Towns, New York State Conference of Mayors and the New York State Association of Counties were all consulted with respect to this proposal. No comments on compliance costs were offered.

Costs to other local government entities and school districts not presently managing soccer facilities would depend on the design and methods chosen in the future should they choose to erect and maintain moveable soccer goals. Therefore, the Department has no methodology upon which to project costs. The Department will carefully consider all oral and written comments received as a result of the proposed regulation.

5. LOCAL GOVERNMENT MANDATES:

The local government mandate to substantially comply with the CPSC Handbook is a result of General Business Law section 399-j and not this rule.

6. PAPERWORK:

No new paperwork requirements are anticipated for compliance with this proposal. However, parties in alleged non-compliance would have the opportunity to submit within five days a written response to the notice of a proceeding by the Attorney General. There are no reporting requirements to the Department in the proposed regulation. However, the Department may respond in writing to any inquires regarding these rules.

7. DUPLICATION:

The proposed regulation will not duplicate, overlap or conflict with any known State or federal regulatory requirements. The proposal will incorporate by reference the CPSC Handbook and create consistency with respect to moveable soccer goal safety standards throughout New York State.

8. ALTERNATIVES:

The Department is mandated by General Business Law section 399-j to promulgate a regulation that substantially complies with the CPSC Handbook on this issue. Accordingly, there were no significant alternatives considered. Nonetheless, the Department will carefully consider all comments received as a result of the proposed regulation.

9. FEDERAL STANDARDS:

The proposed rule does not conflict with any federal standards. The Guidelines were developed in consultation with the Coalition to Promote Soccer Goal Safety. The CPSC is an independent federal regulatory agency charged with addressing unreasonable risks of death and injury associated with over 15,000 types of consumer products. One way that the CPSC staff does this is to work with industry and other interested parties to develop voluntary product safety guidelines and standards.

10. COMPLIANCE SCHEDULE:

The provisions of the General Business Law are effective May 20, 2015. This rulemaking is required by the General Business Law and does not impose additional requirements on regulated parties. Therefore, no compliance schedule is feasible. This regulation will be effective as an emergency measure on May 20, 2015 and effective as a permanent regulation upon publication of Notice of Adoption in the State Register.

¹ <http://www.anchoredforsafety.org/incidents.html>

² *Guidelines for Moveable Soccer Goal Safety*, CPSC, (January 1995).

Regulatory Flexibility Analysis**1. EFFECT OF RULE:**

The proposed regulations will require local governments to comply with GBL § 399-j. The regulations will have an effect on small businesses, which are defined as employing 100 or less individuals (SAPA § 102(8)) that install or erect moveable soccer goals to be used by adults or children for the purposes of a soccer goal.

2. COMPLIANCE REQUIREMENTS:

Section 399-j of the General Business Law, requires the Department, in consultation with the Office of Parks, Recreation and Historic Preservation, to promulgate rules that will ensure moveable soccer goals used in New York State will substantially comply with guidelines published in the U.S. Consumer Product Safety Commission Guidelines for Moveable Soccer Goal Safety (CPSC Handbook), thereby decreasing the number of serious injuries and deaths related to unsafely erected moveable soccer goals. Compliance with the proposed rule by small businesses, school districts and local governments that use moveable soccer goals is required.

3. PROFESSIONAL SERVICES:

The Department believes that no professional skillset is required to follow the CPSC Handbook. In the event of alleged non-compliance with the proposed regulations, small businesses, school districts or local governments may incur legal expenses in connection with investigation and enforcement actions.

4. COMPLIANCE COSTS:

These rules may impose costs on small businesses and local governments that use existing or erect new moveable soccer goals. The amount of costs will depend upon a variety of factors including, the use of any anchoring or weighting materials, which for a single field may range from \$100 to \$400 for a single field. Whereas, retrofit kits for any moveable goal posts that do not currently comply with the proposed regulation range from a few hundred dollars to just over \$1,200 per goal post unit. Alternatively, sandbags provide a more economical means of compliance at \$50 a bag. The labor required to erect the moveable soccer goal per the CPSC Handbook is estimated to take an hour per field (half an hour per goal). Labor costs vary throughout the State. Therefore, the Department is unable to provide a projected cost with accuracy. The cost of non-compliance would be a fine of up to Five Hundred and 00/100 (\$500.00) Dollars for each violation.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

With the exception of potential costs for small businesses, school districts and local governments, the Department has not identified any economic or technological barriers to compliance with provisions of this proposal.

6. MINIMIZING ADVERSE IMPACT:

Recognizing that the replacement of moveable soccer goals for permanently affixed soccer goals would be cost prohibitive to many entities, the legislation and this proposal require only that existing or new moveable soccer goals be anchored, secured and counter-weighted to conform to guidelines published in the U.S. Consumer Product Safety

Commission's Guidelines for Moveable Soccer Goal Safety. Incorporating by reference a national standard that is familiar to many small businesses, schools, and local governments further minimizes any adverse impact. Compliance with federal guidelines that are nationally recognized, allows for continuity and one designated resource to which business and local governments can refer. This approach sensibly transitions all of New York State's soccer fields to equipment that meets the latest and nationally recognized safety standards.

The Department was contacted by the East New York Soccer League (League) and the New York State Youth Soccer Federation of Western New York (Federation) with respect to this proposal. The League and the Federation confirmed that most of the moveable soccer goals within their membership were in compliance with the CPSC Handbook. The President of the Red Hook Soccer Club expressed concern regarding the Handbook extinguishing an entity's ability to secure goals on turf with sandbags, as opposed to anchors. However, section 5 of the Handbook provides all viable anchoring/securing/ counter weighting guidelines. Thus, sandbags or other counter weights, regardless of surface, still fall under acceptable guidelines.

Additionally, flexibility is provided for in the enabling legislation and this proposal by exempting moveable soccer goals erected on one, two, or three-family residential property, some of which may be owned by small businesses or local governments.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Association of Towns of New York State, the New York State Conference of Mayors, and the New York State Association of Counties were all consulted with respect to this proposal. No comments were offered.

The East New York Soccer Leagues, the New York State Youth Soccer Federation of Western New York and Red Hook Soccer Club were consulted with respect to this proposal.

The Red Hook Soccer Club provided broad compliance costs estimates. The New York State Office of Parks, Recreation and Historic Preservation provided cost estimates on movable soccer goal retro kits and sandbags.

8. PENALTIES:

NYS General Business Law section 399-j(3) provides whenever the Attorney General finds sufficient evidence of non-compliance with the requirements of the rule, he or she may bring an action in the Supreme Court of the State of New York for a judgment to enjoin the continuance of non-compliance, and for a civil penalty of not more than \$500 for each violation. Before any violation is sought to be enjoined, the Attorney General shall provide the subject person or entity with certified mail notification of such contemplation and an opportunity to show in writing within five business days after receipt of notice, why proceedings should not be instituted. An exception is made where the Attorney General finds that to give such notice and opportunity would violate the public interest. Accordingly, the five day period serves as an opportunity to cure and is only suspended if it violates the protection of the public's safety, health and general welfare interests.

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:**

Regulated businesses covered by the proposed regulations do business in every county in the State, including rural areas as defined in Section 102 (10) of the State Administrative Procedure Act.

2. REPORTING, RECORDKEEPING OR OTHER COMPLIANCE REQUIREMENTS:

The proposed regulations impose no new reporting requirements or record keeping compliance requirements. General Business Law Section 399-j requires compliance with the CPSC Handbook regarding the installation, use and storage of full-size or nearly full-size moveable soccer goals in rural areas of the state.

3. COSTS:

(a) **Costs to State Government in Rural Areas:** The Department will develop and distribute informational material to aid with education and compliance with these new rules. This information will also be available on the Department's website. This cost to the Department is estimated at approximately two thousand (\$2,000) dollars. While the implementing statute does not state it explicitly applies to the State or state agencies, incorporating the Guidelines into this regulation reinforces them as the prevailing industry practice, thus, indirectly requiring state agencies to voluntarily comply. One region of State Parks calculated the cost of compliance for its soccer facilities to be \$7,900 if sandbags are used. If you multiply that by 11 park regions the total compliance cost for State Parks would be \$86, 900. However, the cost of the development and distribution of informational material and state agencies' voluntary compliance with the CPSC Handbook is outweighed by the benefits to the public. Also, in the event of alleged non-compliance, the Office of the New York State Attorney General may incur costs related to investigation and enforcement against private parties.

(b) Costs to private regulated parties in Rural Areas: These rules may impose costs on businesses that erect moveable soccer goals in rural areas. However, because costs incurred will vary depending upon plans related to specific moveable soccer goal erection and other factors, the Department is unable to provide projected costs with accuracy. The Department will carefully consider all oral and written comments received as a result of these proposed regulations.

(c) Costs to Local Governments in Rural Areas: These rules may impose costs on local governments that erect moveable soccer goals in rural areas of the state. Costs to local government entities in rural areas are dependent upon the specific plan related to erection of particular moveable soccer goals. Therefore, the Department has no methodology upon which to base projected costs. The Department will carefully consider all oral and written comments received as a result of these proposed regulations.

4. MINIMIZING ADVERSE IMPACT:

Recognizing that the replacement of moveable soccer goals for permanently affixed soccer goals would be cost prohibitive to entities in rural areas, the legislation and this proposal require only that existing or new moveable soccer goals be anchored, secured, and/or counter-weighted to conform to guidelines published in the U.S. Consumer Product Safety Commission's Guidelines for Moveable Soccer Goal Safety. This approach would sensibly transition all of New York State's soccer fields in rural areas to equipment that meets the latest and nationally recognized safety standards.

5. RURAL AREA PARTICIPATION:

The Department will develop and distribute informational material to aid with education and compliance with these new rules. This information will also be available on the Department's website. The Department will carefully consider any comments filed in response to this notice, and make changes to the extent necessary to reflect any impacts on rural areas.

Job Impact Statement

The proposed regulations should not have a substantial adverse impact defined as a decrease of 100 jobs (SAPA § 201-a (6)(c)). The Department estimates that as businesses and local governments go forward with new and improved moveable soccer goal construction they should be able to comply with the proposed rules at a minimal increase in cost. As it is evident from the nature of these amendments that they would not have an adverse impact on the number of jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required.

NOTICE OF ADOPTION

Addition of Provisions Relating to "Sparkling Devices" to the State Uniform Fire Prevention and Building Code

I.D. No. DOS-05-15-00007-A

Filing No. 408

Filing Date: 2015-05-20

Effective Date: 2015-06-03

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

Action taken: Addition of section 1228.3 to Title 19 NYCRR.

Statutory authority: Executive Law, section 377(1)

Subject: Addition of provisions relating to "sparkling devices" to the State Uniform Fire Prevention and Building Code.

Purpose: To amend the Uniform Code to provide additional requirements applicable to buildings and structures where "sparkling devices" are manufactured, stored, sold or used and add other restrictions on the use of "sparkling devices."

Substance of final rule: This rule adds a new section 1228.3 to Part 1228 of Title 19 of the NYCRR. New Section 1228.3 is summarized as follows:

1228.3 Sparkling devices.

(a) Scope. The provisions of this section 1228.3 shall govern the possession, manufacture, storage, handling, sale, and use of sparkling devices. Any building or structure where sparkling devices are manufactured, stored, handled, sold or used shall be subject to the provisions of this section 1228.3 and to all other provisions of the Uniform Code applicable to such building or structure.

(b) Definitions. In this section, the following terms shall have the following meanings unless a different meaning is clearly required by the context:

(1) 2010 FCNYS. The term "2010 FCNYS" means the publication entitled "Fire Code of New York State" published by the International Code Council, Inc. (publication date: August 2010).

(2) APPROVED. The term "approved" means acceptable to the code enforcement official.

(3) CODE ENFORCEMENT OFFICIAL. The term "code enforcement official" means the officer or other designated authority charged with the administration and enforcement of the Uniform Code, or a duly authorized representative.

(4) HIGHWAY. The term "highway" means a public street, public alley or public road.

(5) LISTED. The term "listed" means equipment or materials included on a list published by an approved testing laboratory, inspection agency or other organization concerned with current product evaluation that maintains periodic inspection of production of listed equipment or materials, and whose listing states that equipment or materials comply with approved nationally recognized standards and have been tested or evaluated and found suitable for use in a specified manner.

(6) NFPA 495. The term "NFPA 495" means the publication entitled "Explosive Materials Code" published by the National Fire Protection Association (publication date: 2006).

(7) NFPA 1124. The term "NFPA 1124" means the publication entitled "Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles" published by the National Fire Protection Association (publication date: 2006).

(8) OPERATING BUILDING. The term "operating building" means a building occupied in conjunction with the manufacture, transportation or use of explosive materials, sparking devices, or both. Operating buildings are separated from one another with the use of intraplant or intraline distances.

(9) SPARKLING DEVICES. The term "sparkling devices" shall have the meaning ascribed to that term by section 270.00(1)(a)(vi) of the Penal Law, and shall include "ground-based or hand-held devices" (as defined in subparagraph (i) of this paragraph) and "novelties" (as defined in subparagraph (ii) of this paragraph).

(i) Ground-Based or Hand-Held Devices. The term "ground-based or hand-held devices" shall include the category of devices described in section 270.00(1)(a)(vi)(1) of the Penal Law [the full text of the rule includes the statutory definition here].

(ii) Novelties. The term "novelties" shall include the category of devices described in section 270.00(1)(a)(iv)(2) of the Penal Law [the full text of the rule includes the statutory definition here].

(c) Other applicable laws. The provisions of this section 1228.3 shall be in addition to, and not in limitation of, (1) all other provisions of the Uniform Code applicable to any building or structure where sparkling devices are manufactured, stored, handled, sold or used and (2) all other statutes, rules, regulations, local laws, and ordinances applicable to the possession, manufacture, storage, handling, sale and/or use of sparkling devices, including but not limited to sections 270.00 and 405.00 of the Penal Law; section 392-j of the General Business Law; section 156-h of the Executive Law; Part 225 of Title 9 of the NYCRR; Part 39 of Title 12 of the NYCRR (Industrial Code Rule 39); and local laws, ordinances or regulations relating to operating permits as contemplated by 19 NYCRR section 1203.3(g). Nothing in this section 1228.3 shall be construed as permitting the possession, manufacture, handling, sale and/or use of sparkling devices in violation of any other law, statute, rule, regulation, local law or ordinance applicable to the possession, manufacture, storage, handling, sale and/or use of sparkling devices. Nothing in this section 1228.3 shall be construed as permitting the possession, manufacture, handling, sale and/or use of sparkling devices in any jurisdiction where the possession, manufacture, handling, sale and/or use of sparking devices has not been made legal in accordance with the provisions of section 405.00 of the Penal Law.

(d) Hazardous conditions.

(1) From time to time, the New York State Department of Environmental Conservation (DEC) publishes fire danger ratings for each fire danger rating area (FDRA) in the State. The use of sparkling devices at any location within a FDRA designated by the DEC as having a fire danger rating of "Extreme (Red)" at any time when such designation is in effect is prohibited.

(2) In addition, the DEC may from time to time designate certain areas within the State as being subject to "Red Flag" conditions. The use of sparkling devices at any location within any area designated by the DEC as being subject to "Red Flag" conditions at any time such designation remains in effect is prohibited.

(e) Use of ground-based or hand-held devices in or near buildings or structures.

(1) No ground-based or hand-held device (as defined in subparagraph (i) of paragraph (9) of subdivision (b) of this section) shall be used inside any building or structure unless (i) such ground-based or hand-held device is listed for indoor use and (ii) the use of such ground-based or hand-held device inside such building or structure has been approved.

(2) No ground-based or hand-held device (as defined in subparagraph (i) of paragraph (9) of subdivision (b) of this section) shall be used within 10 feet of any building or structure unless (i) such ground-based or hand-