

# RULE MAKING ACTIVITIES

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

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

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

---

---

## Adirondack Park Agency

---

---

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

#### Official Map, Minor Corrections to Existing Regulations, Implement Existing Practice Re Permit Applications

I.D. No. APA-05-09-00003-P

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

**Proposed Action:** This is a consensus rule making to add section 570.3(w) and renumber accordingly; and amend sections 570.3(aa)(4), 572.4 and 575.4(c) of Title 9 NYCRR.

**Statutory authority:** Executive Law, art. 27; Environmental Conservation Law, sections 15-2709 and 24-0801

**Subject:** Official Map, minor corrections to existing regulations, implement existing practice re permit applications.

**Purpose:** Define Official Map as electronic map at Agency; to correct minor errors in existing regulations; implement existing practice.

**Text of proposed rule:** Section 570.3 Definitions is amended to add:  
570.3(w) *Official Map means the Adirondack Park Land Use and Development Plan Map which depicts the private land use areas as identified, updated and filed pursuant to section 805 of the Adirondack Park Agency Act and which is maintained in an electronic format at the headquarters of the Adirondack Park Agency.*

The following definitions would be renumbered accordingly.

Section 570.3(aa)(4) is amended to add:

§ 570.3(aa)(4) each motel unit, hotel unit or similar tourist accommodation unit which is attached to a similar unit by a party wall, each accommodation unit of a tourist home or similar structure, and each tourist cabin or similar structure for rent or hire involving less than 300 square feet of floor space, constitutes one tenth of a principal building.

Note the addition of a comma to conform to the statutory definition.

Section 572.4(a)(1) is amended to add:

§ 572.4 Permit application requirements generally.

(a)(1) Applications may be submitted only by a project sponsor as defined by section 570.3(ab) of these regulations, shall contain the signature(s) of the owner(s) of record of the land involved as co-applicant, and shall contain a description of the project in the form and manner required in the appropriate application form. *The Agency will promptly notify the project sponsor that the submission does not contain the minimal information necessary to initiate the application process, such as signatures of the landowners, an incomplete site plan or project description or is missing required attachments (e.g., copy of the current deed); and the Agency will not commence review clocks or other processing without this information.*

Section 575.4 (c) is amended to add:

§ 575.4(c) Decks or porches which are above water level and extend beyond the structural footprint of any boathouse, as that term is defined at 9 NYCRR 570.3[f]c, are subject to the shoreline setback restrictions if those portions which extend beyond the structural footprint exceed 100 square feet in the aggregate.

**Text of proposed rule and any required statements and analyses may be obtained from:** John S. Banta, Counsel, NYS Adirondack Park Agency, PO Box 99, Ray Brook, NY 12977, (518) 891-4050, email: jsbanta@gw.dec.state.ny.us

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

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

#### Consensus Rule Making Determination

It is not likely that there will be any objections to the proposed consensus rules for the following reasons:

§ 570.3(w) will further define the Official APA Map as the map which is maintained in electronic format at Agency headquarters. This implements the existing reality, as the primary reference at the Agency is electronic, supplemented by paper, mylar and acetate records of the Official Map from earlier points in time. The electronic map was created over a decade ago, and is maintained by highly qualified Agency staff with strict protocols for correction and amendment. It is readily available to the public through both electronic and other media.

§ 570.3(aa)(4): The change is the addition of a comma which does not change the implementation of the existing regulation.

§ 572.4(a)(1): The change implements existing practice regarding the minimum requirements for a permit application.

§ 575.4(c): This corrects an obvious incorrect citation.

#### Job Impact Statement

A formal job impact statement is not submitted for these proposed regulatory amendments to the Adirondack Park Agency regulations as these rules are not expected to create any adverse impacts to jobs and employment opportunities in the Adirondack Park. These amendments do not make any substantive changes to the regulations. Each is discussed below.

§ 570.3(w) will further define the Official APA Map as the map which is maintained in electronic format at Agency headquarters. This does not create any substantive change to the map in any way, nor does it affect the rights or responsibilities of any landowner in the Park.

§ 570.3(aa)(4): The change is the addition of a comma and does not change the implementation of the existing regulation.

§ 572.4(a)(1): The change implements existing practice regarding the minimum requirements for a permit application.

§ 575.4(c): This corrects an obvious incorrect citation.

None of these proposed changes will involve or affect jobs or potential employment in the Adirondack Park in any way.

---



---

## New York State Athletic Commission

---



---

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

#### Change of Address of the Office Location of the New York State Athletic Commission

**I.D. No.** ATH-05-09-00007-P

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

**Proposed Action:** This is a consensus rule making to amend section 206.1 of Title 19 NYCRR.

**Statutory authority:** Unconsolidated Laws, section 8901

**Subject:** Change of address of the office location of the New York State Athletic Commission.

**Purpose:** To change the address of the New York State Athletic Commission's general offices.

**Text of proposed rule:** The text of 19 NYCRR § 206.1 will be amended to read as follows:

The general offices of the commission shall be located at [270 Broadway] 123 William Street, in the City of New York, and the office hours of the commission shall be from 9 a.m. to 5 p.m. each day, except Saturday, Sunday and legal holidays in the State of New York. The commission may establish other or additional offices and office hours in its discretion.

**Text of proposed rule and any required statements and analyses may be obtained from:** James W. Leary, Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 1120, Albany, New York, 12331-0001, (518) 474-6740.

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

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

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

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

No person is likely to object to this rule making because the rule merely makes technical changes and is otherwise non-controversial. The proposed rule would change section 206.1 of Title 19 NYCRR to reflect the New York State Athletic Commission's relocation of its general offices. The location of these offices would be changed from 270 Broadway, in the City of New York, to 123 William Street, in the City of New York.

#### **Job Impact Statement**

The proposed rule would merely change section 206.1 of Title 19 NYCRR to reflect the relocation of the general offices of the New York State Athletic Commission. The address of these offices has changed from 270 Broadway, in the City of New York, to 123 William Street, in the City of New York. It is therefore apparent from the nature and purpose of the rule that it would not have a substantial adverse impact on jobs and employment opportunities.

---



---

## Office of Children and Family Services

---



---

### EMERGENCY RULE MAKING

#### The Protection of Children in Residential Facilities from Child Abuse and Neglect

**I.D. No.** CFS-05-09-00005-E

**Filing No.** 70

**Filing Date:** 2009-01-16

**Effective Date:** 2009-01-17

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

**Action taken:** Amendment of Parts 166, 180 and 182 of Title 9 NYCRR and amendment of Parts 433 and 434 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d) and 34(3)(f); and L. 2008, ch. 323, section 19

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

**Specific reasons underlying the finding of necessity:** The adoption of these regulations on an emergency basis is necessary to protect the health, safety and welfare of children in residential care by implementing the provisions of chapter 323 of the Laws of 2008, which relates to the protection of children in residential facilities from child abuse and neglect.

**Subject:** The protection of children in residential facilities from child abuse and neglect.

**Purpose:** To implement L. 2008, ch. 323.

**Substance of emergency rule:** Part 433 of Title 18 (Child Abuse and Neglect in Residential Care)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates the scope statement to include the statutory changes and implements the updated statutory definitions. The amendment also updates the obligations and procedures of the Office of Children and Family Services (OCFS), authorized agencies and residential care facilities in conformance with the statutory changes and updates outdated references to the former Department of Social Services.

Sections 434.1, 434.2, and 434.10 of Title 18 (Child Protective Services Administrative Hearing Procedure)

The amendment implements statutory changes, which reflect existing practice, in conformance with past federal and state court decisions, requiring that administrative review and fair hearing determinations of child abuse and maltreatment be made using the fair preponderance of the evidence standard. The amendment also updates outdated references to the former Department of Social Services.

Section 166-1.4 of Title 9 (Prevention and Remediation Procedures)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates procedures for the protection of youth in OCFS-operated residential facilities in conformance with statutory changes. The amendment also updates outdated references to the former Department of Social Services and the former Division for Youth.

Sections 180.3 and 180.5 of Title 9 (Juvenile Detention Facilities Regulations)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates procedures for the protection of youth in juvenile detention facilities in conformance with statutory changes. The amendment also updates outdated references to the former Department of Social Services and the former Division for Youth.

Sections 182-1.2 and 182-1.12 of Title 9 (Runaway and Homeless Youth Regulations for Approved Runaway Programs)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates procedures for the protection of youth in runaway and homeless youth programs in conformance with statutory changes. The amendment also updates outdated references to the former Department of Social Services and the former Division for Youth.

Sections 182-2.2 and 182-2.11 of Title 9 (Runaway and Homeless Youth Regulations for Transitional Independent Living Support Programs)

The amendment implements Chapter 323 of the Laws of 2008, relating to the protection of children in residential facilities from child abuse and neglect. The amendment updates procedures for the protection of youth in runaway and homeless youth programs in conformance with statutory changes. The amendment also updates outdated references to the former Department of Social Services and the former Division for Youth.

**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 April 15, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

#### **Regulatory Impact Statement**

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules, regulations and policies to carry out its powers and duties.

Section 34(3)(f) of the SSL authorizes the commissioner of OCFS to establish regulations for the administration of public assistance and care within New York State, both by the State and by local government units.

Chapter 436 of the Laws of 1997 transferred certain functions, powers, duties and obligations of the former Department of Social Services and all of the functions, powers, duties and obligations of the former Division for Youth to OCFS.

Chapter 323 of the Laws of 2008 amended sections 412, 413, 415, 422, 424-a, 424-b, 424-c and 460-c of the SSL and created sections 412-a and 424-d of the SSL to clarify the definitions of abuse and neglect of a child in residential care and strengthen the process used to investigate and respond to such allegations. Section 19 of Chapter 323 of the Laws of 2008 authorizes OCFS to promulgate rules and regulations on an emergency basis for the purpose of implementing the provisions of the Chapter.

**2. Legislative objectives:**

The regulations implement Chapter 323 of the Laws of 2008 relating to the protection of children in residential facilities from child abuse and neglect. Specifically, the regulations implement the updated statutory definitions and requirements for additional determinations relating to reports of child abuse and maltreatment in residential settings that were enacted in the new sections 412-a and 424-d of the SSL. For example, residential care now includes inpatient or residential settings certified by the Office of Alcoholism and Substance Abuse Services (OASAS) and designated as serving youth, and care provided by an authorized agency licensed to provide both foster care and residential care as licensed or operated by OASAS.

The regulations also implement statutory changes, which reflect existing practice, in conformance with past federal and state court decisions, requiring that administrative review and fair hearing determinations of child abuse and maltreatment be made using the fair preponderance of the evidence standard. In addition, the regulations make technical changes, such as updating outdated references to the former Department of Social Services and the former Division for Youth.

**3. Needs and benefits:**

The regulations are necessary for OCFS to conform to statutory changes to the SSL relating to the protection of children in residential facilities from child abuse and neglect. Specifically, the regulations clarify and update the definitions of abuse and neglect of a child in residential care and strengthen the process used to investigate and respond to such allegations. For example, residential care now includes inpatient or residential settings certified by the Office of Alcoholism and Substance Abuse Services (OASAS) and designated as serving youth, and care provided by an authorized agency licensed to provide both foster care and residential care as licensed or operated by OASAS. Additionally, the statute and regulations require an immediate law enforcement referral in the event that an investigation reveals that it is likely that a crime may have been committed against a child.

The regulations are also necessary to conform the regulations to the statutory changes, which reflect existing practice, in conformance with past federal and state court decisions, requiring that administrative review and fair hearing determinations of child abuse and maltreatment be made using the fair preponderance of the evidence standard.

The regulations will not apply to incidents that occur before January 17, 2009, which is the effective date of the statutory changes.

**4. Costs:**

The regulations are necessary to comply with the enactment of Chapter 323 of the Laws of 2008. The fiscal impact to OCFS is \$397,000 for six positions and associated non-personal service expenses.

**5. Local government mandates:**

For local governments that operate residential facilities for children, the regulations require that a copy of a facility's and licensing state agency's corrective action plan or plan of prevention and remediation be sent to OCFS if OCFS conducted the investigation of the abuse or neglect, even where the facility is licensed by another State agency. This adds one copy of a report to the paperwork already required to be sent to the licensing State agency under the current statutory and regulatory standards.

**6. Paperwork:**

The regulations require that a copy of a facility's and licensing state agency's corrective action plan or plan of prevention and remediation be sent to OCFS if OCFS conducted the investigation of the abuse or neglect, even where the facility is licensed by another State agency. This adds one copy of a report to the paperwork already required to be sent to the licensing State agency under the current statutory and regulatory standards.

**7. Duplication:**

The regulations do not duplicate other State requirements.

**8. Alternatives:**

The proposed regulations are required to implement the state law, Chapter 323 of the Laws of 2008. No alternatives were considered.

**9. Federal standards:**

The regulations and Chapter 323 of the Laws of 2008 are consistent with the requirements of the federal Child Abuse Prevention and Treatment Act (CAPTA), which does not have special requirements pertaining to children in residential care.

**10. Compliance schedule:**

Chapter 323 of the Laws of 2008 provides for a January 17, 2009 effective date of the changes set forth in the regulations. For purposes of transition between the former statutory and regulatory provisions and the new law, the effective date will apply to the date when the abuse or neglect was alleged to have occurred. If a report came in on or after January 17, 2009 that involves an incident or incidents that occurred before January 17, 2009, the former definitions of abuse and neglect of children in residential care will apply.

**Regulatory Flexibility Analysis**

**1. Effect on small business and local governments:**

The regulations will affect social services districts, voluntary authorized agencies, residential runaway and homeless youth programs and counties that contract for detention programs. There are 58 social services districts, approximately 160 voluntary authorized agencies and 83 residential runaway and homeless youth programs. There are 38 counties plus New York City that contract for detention programs.

**2. Reporting, recordkeeping and compliance requirements:**

The regulations are necessary to comply with state statutory requirements relating to the protection of children in residential facilities from child abuse and neglect. The regulations reflect the enactment of Chapter 323 of the Laws of 2008, which requires implementation of the statutory changes to be effective January 17, 2009.

Social services districts and voluntary authorized agencies will continue to operate under the current definitions and determination standards for incidents that occurred before January 17, 2009. The regulations reflect the statutory clarification of the definitions of abuse and neglect of a child in residential care and the process used to investigate and respond to such allegations.

The regulations require that a copy of a facility's and licensing state agency's corrective action plan or plan of prevention and remediation be sent to OCFS if OCFS conducted the investigation of the abuse or neglect, even where the facility is licensed by another State agency. This adds one copy of a report to the paperwork already required to be sent to the licensing State agency under the current statutory and regulatory standards.

**3. Professional services:**

No new or additional professional services would be required by small businesses or local governments in order to comply with the regulations.

**4. Compliance costs:**

The regulations are necessary to comply with the enactment of Chapter 323 of the Laws of 2008. The fiscal impact to OCFS is \$397,000 for six positions and associated non-personal service expenses.

**5. Economic and technological feasibility:**

The social services districts, counties, voluntary authorized agencies and other agencies affected by the regulations have the economic and technological ability to comply with the regulations.

**6. Minimizing adverse impact:**

It is anticipated that the regulations will not have an adverse impact. The regulations build on existing procedures.

**7. Small business and local government participation:**

The regulatory changes make the changes necessary to conform the regulations to the statutory changes made by Chapter 323. In December of 2008, OCFS conducted six regional trainings for voluntary authorized agencies and facilities licensed by OCFS, OMRDD and OMH regarding the changes in state statutory provisions relating to the protection of children in residential facilities from child abuse and neglect. A statewide teleconference was held in November of 2008 regarding the changes in law and that training was recorded so that the training is available to all agencies that were not able to attend one of the regional trainings. A reminder of the statutory changes will be sent to the voluntary agencies in an informational letter in January 2009.

**Rural Area Flexibility Analysis**

**1. Types and estimated numbers of rural areas:**

The regulations will affect 44 social services districts that are defined as being rural counties and the seven social services districts that include significant rural areas within their borders. In addition, there are approximately 100 voluntary authorized agencies that service rural communities that will be affected by the regulations.

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

The regulations are necessary to comply with state statutory requirements relating to the protection of children in residential facilities from child abuse and neglect. The regulations reflect the enactment of Chapter 323 of the Laws of 2008, which requires implementation of the statutory changes to be effective January 17, 2009.

Social services districts and voluntary authorized agencies will continue to operate under the current definitions and determination standards for incidents that occurred before January 17, 2009. The regulations reflect the statutory clarification of the definitions of abuse and neglect of a child

in residential care and the process used to investigate and respond to such allegations.

The regulations require that a copy of a facility's and licensing state agency's corrective action plan or plan of prevention and remediation be sent to OCFS if OCFS conducted the investigation of the abuse or neglect, even where the facility is licensed by another State agency. This adds one copy of a report to the paperwork already required to be sent to the licensing State agency under the current statutory and regulatory standards.

3. Costs:

The regulations are necessary to comply with the enactment of Chapter 323 of the Laws of 2008. The fiscal impact to OCFS is \$397,000 for six positions and associated non-personal service expenses.

4. Minimizing adverse impact:

It is anticipated that the regulations will not have an adverse impact on rural areas. The regulations build on existing procedures.

5. Rural area participation:

The regulatory changes make the changes necessary to conform to the regulations to the statutory changes made by Chapter 323. In December 2008, OCFS conducted six regional trainings for voluntary authorized agencies and facilities licensed by OCFS, OMRDD and OMH regarding the changes in state statutory provisions relating to the protection of children in residential facilities from child abuse and neglect. A Statewide teleconference was held in November of 2008 regarding the changes in law and that training was recorded so that the training is available to all agencies that were not able to attend one of the regional trainings. A reminder of the statutory changes will be sent to the voluntary agencies in an informational letter in January 2009.

**Job Impact Statement**

A full job impact statement has not been prepared for the regulations which contain new requirements imposed by Chapter 323 of the Laws of 2008. The regulations will not have an impact on jobs and employment opportunities because they will not adversely impact the number of staff authorized agencies must maintain to provide residential care for children.

---

## Department of Civil Service

---

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-35-08-00001-A

**Filing No.** 59

**Filing Date:** 2009-01-16

**Effective Date:** 2009-02-04

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text or summary was published** in the August 27, 2008 issue of the Register, I.D. No. CVS-35-08-00001-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-35-08-00003-A

**Filing No.** 58

**Filing Date:** 2009-01-16

**Effective Date:** 2009-02-04

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the exempt class.

**Text or summary was published** in the August 27, 2008 issue of the Register, I.D. No. CVS-35-08-00003-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-35-08-00005-A

**Filing No.** 57

**Filing Date:** 2009-01-16

**Effective Date:** 2009-02-04

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text or summary was published** in the August 27, 2008 issue of the Register, I.D. No. CVS-35-08-00005-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-35-08-00006-A

**Filing No.** 55

**Filing Date:** 2009-01-16

**Effective Date:** 2009-02-04

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text or summary was published** in the August 27, 2008 issue of the Register, I.D. No. CVS-35-08-00006-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-35-08-00007-A

**Filing No.** 56

**Filing Date:** 2009-01-16

**Effective Date:** 2009-02-04

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.  
**Statutory authority:** Civil Service Law, section 6(1)  
**Subject:** Jurisdictional Classification.  
**Purpose:** To delete positions from and classify positions in the non-competitive class.  
**Text or summary was published** in the August 27, 2008 issue of the Register, I.D. No. CVS-35-08-00007-P.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us  
**Assessment of Public Comment**  
 The agency received no public comment.

## Education Department

### NOTICE OF ADOPTION

#### State Government Archives and Records Management

**I.D. No.** EDU-44-08-00010-A  
**Filing No.** 72  
**Filing Date:** 2009-01-20  
**Effective Date:** 2009-02-05

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

**Action taken:** Amendment of Part 188 of Title 8 NYCRR.  
**Statutory authority:** Education Law, section 207 (not subdivided); Arts and Cultural Affairs Law, section 57.05(9)  
**Subject:** State Government Archives and Records Management.  
**Purpose:** To revise and update requirements for the management and oversight of State government archives and records management programs.  
**Text or summary was published** in the October 29, 2008 issue of the Register, I.D. No. EDU-44-08-00010-P.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** Lisa Struffolino, State Education Department, Office of Counsel, State Education Building, Room 148, Albany, NY 12234, (518) 473-4921, email: legal@mail.nysed.gov  
**Assessment of Public Comment**

Since publication of a Notice of Proposed Rule Making in the State Register on October 29, 2008, the State Education Department received the following comments:

**COMMENT:**

A State agency questioned the rationale for revising the definition of “records” in Section 188.2 (h) and specifically why references to microforms, computer-readable tapes, discs, film, video and sound recordings are eliminated from the definition.

**DEPARTMENT RESPONSE:**

The definition of “records” in Section 188.2 (h) is being revised to match the definition of “records” found in Section 57.05 (2) of Arts and Cultural Affairs Law, the law which provides the statutory basis for the regulations. The elimination of references to certain media from the definition is not intended to mean that these materials are not records. Rather, the definition of “records” encompasses all documentary materials, regardless of physical form or characteristics, and therefore continues to establish that microforms, computer-readable tapes, discs, film, video and sound recordings are “records” pursuant to the definition.

**COMMENT:**

The proposed revision to Section 188.2 (h), by adding the phrase “preserved or appropriate for preservation” to the definition of “records,” can be interpreted as expanding the definition of State agency “records” subject to the regulations. The revised definition can be interpreted to require that new forms of electronic communications maintained by State agencies are to be included in the definition of “records” and are subject to the regulations, thereby placing a burden on State agencies.

**DEPARTMENT RESPONSE:**

The revision to Section 188.2 (h) revises the current definition of “records” to match the definition of “records” provided in Section 57.05 (2) of Arts and Cultural Affairs Law. It is that law which provides the statutory basis for the regulations and definitions of “records” in both locations should coincide. Adding the phrase “preserved or appropriate for preservation” to the definition of “records” will not expand the meaning of the term, but will instead limit the definition of “records” by specifying that documentary materials must meet this qualifying phrase as well as other portions of the definition in order to be “records” subject to the regulations. New forms of electronic communications may already meet the test of being “records” under both the existing and the revised definition, so that no change in the “records” status of those media will occur as a result of the revised definition.

**COMMENT:**

A State agency noted that Section 188.20 (e) establishes requirements for the management of media used to store “permanent” or “archival” electronic records. The proposed revision indicates that the requirements are to apply to “electronic” rather than “magnetic computer” media as stated in the current regulations. However, the requirements in this section are not relevant to “permanent” or “archival” records stored on certain electronic media by the commenting agency. The agency therefore recommended that the requirements be updated to be more comprehensive and to reflect current technologies.

**DEPARTMENT RESPONSE:**

The Department agrees that the revised requirements will not pertain to all electronic media that are used to store “permanent” or “archival” records. However, the revised requirements are intended to modernize and improve the management of such media based on current industry standards, even though requirements cannot now be written for all electronic media based on current industry standards. Nonetheless, the Department will continue to review the requirements for managing electronic media so that additional requirements can be proposed in the future for additional forms of electronic media.

**COMMENT:**

Section 188.21 (a) of the regulations updates the list of State agencies paying annual fees to the State Education Department for records management services. The Chief Information Officer/Office for Technology (CIO/OFT) questioned whether adding the agency to the highest fee category is appropriate. Fees are to be calculated based on the volume of records in the custody of the agency, and the CIO/OFT noted that many of the data and records it stores on behalf of other State agencies remain in the legal ownership of those agencies. The CIO/OFT recommended that other appropriate factors, beyond the volume of records in agency custody, be considered in setting the fee schedule.

**DEPARTMENT RESPONSE:**

In establishing the fee schedule, the State Education Department based fees on the volume of records in the physical or legal custody of the agency, since both factors are significant in determining records management services to be provided to an agency. On this basis, the CIO/OFT has been correctly placed in the fee schedule. In the future, the Department will consider whether the standards used for classifying agencies for fee purposes should be revised to include factors other than the volume of records in the custody of an agency. This future action may result in a re-categorization of some agencies for fee purposes.

**COMMENT:**

A State agency questioned the increase in fees charged to State agencies for storing records at the State Records Center, as indicated in Section 188.21 (b), including the use of a uniform fee for all types of media rather than a fee schedule based on media type as is used in the current regulation. The comment suggested that there should be a cap on fees paid by each agency to assist in agency financial planning.

**DEPARTMENT RESPONSE:**

The State Records Center has used the existing fee schedule for more than 20 years. An increase in fees is needed to continue meeting costs incurred by the State Records Center. Using a uniform fee schedule regardless of media type enables the Records Center to better calculate storage fees to be assessed to agencies. Further, the new fee schedule continues to charge agencies less than they would typically pay to store records in commercial records storage facilities, especially because the Records Center charges only for storage while commercial facilities also charge for transactions involving stored records (initial filing, processing, retrieval, delivery, pickup and refilling). Inasmuch as fees are based on the quantity of records stored by an agency, any agency can cap or reduce its fees by restricting the volume of records it stores at the Records Center.

**COMMENT:**

An agency noted that the definition of Executive Chamber records found in Section 188.25 (a) differs from that used in Section 188.2 (h) and suggested that a common definition of "records" be used.

**DEPARTMENT RESPONSE:**

Because of the unique status of Executive Chamber records disposition, based on common interpretations of Section 5 of Executive Law, the State Education Department has previously discussed with the Executive Chamber the language to be used in Section 188.25 to guide records disposition. At the present time, the Department is continuing to use the definition which the Department and the Executive Chamber agreed would be used in regulations. Future discussions with the Executive Chamber may consider revisions to the definition of "records" and other provisions of Section 188.25.

**COMMENT:**

A commenter noted that the reporting requirements for the State University of New York, as indicated in Section 188.28, are being revised from biannual (every six months) to biennial (every 24 months) and questioned the reason for the revision.

**DEPARTMENT RESPONSE:**

The Department intended that reports be made every 24 months and is now correcting the inadvertent use of the wrong term (biannual rather than biennial) establishing when those reports are to be made.

### NOTICE OF ADOPTION

#### Requirements for Earned Degrees, Honorary Associate Degrees and Registered Degrees

**I.D. No.** EDU-46-08-00004-A

**Filing No.** 71

**Filing Date:** 2009-01-20

**Effective Date:** 2009-02-04

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

**Action taken:** Amendment of sections 3.47, 3.48 and 3.50 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 210 (not subdivided), 214 (not subdivided), 215 (not subdivided), 218(1), 224(4), 305(1), (2) and 6306(5-b)

**Subject:** Requirements for earned degrees, honorary associate degrees and registered degrees.

**Purpose:** To authorize conferral of Master of Studies in Law degree and authorize community colleges to confer honorary associate degrees.

**Text or summary was published** in the November 12, 2008 issue of the Register, I.D. No. EDU-46-08-00004-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Lisa Struffolino, Office of Counsel, New York State Education Department, 89 Washington Avenue, Room 148, Albany, New York 12234, (518) 473-4921, email: lstruffo@mail.nysed.gov

**Assessment of Public Comment**

The agency received no public comment.

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

#### Mandatory Continuing Education Requirements for Physical Therapists and Physical Therapist Assistants

**I.D. No.** EDU-05-09-00010-P

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

**Proposed Action:** Addition of section 77.10 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 212(3), 6504 (not subdivided), 6507(2)(a), and 6742-a(1), (2), (3), (4), (5) and (6); and L. 2008, ch. 207, section 2

**Subject:** Mandatory continuing education requirements for physical therapists and physical therapist assistants.

**Purpose:** Establish continuing education requirements for the physical therapy professions and requirements for the approval of sponsors.

**Substance of proposed rule (Full text is posted at the following State website: [www.op.nysed.gov](http://www.op.nysed.gov)):** The Commissioner of Education proposes to add a new section 77.10 to the Regulations of the Commissioner of

Education, relating to mandatory continuing education for physical therapists and physical therapist assistants. The following is a summary of the substance of the proposed regulation:

A new section 77.10 is added to the regulations of the Commissioner of Education, establishing continuing education requirements for licensed physical therapists and certified physical therapist assistants.

Subdivision (a) of section 77.10 defines the term acceptable accrediting agency and higher education institution.

Subdivision (b) of section 77.10 cites the applicability of the continuing education requirement, namely that each licensed physical therapist and certified physical therapist assistant required to register with the department to practice in New York State shall comply with the mandatory continuing education requirements prescribed in the section. This subdivision also provides for exemptions and adjustments to the requirement.

Exemptions are allowed for those licensed physical therapists and certified physical therapist assistants who are: (a) in their first triennial registration period during which they are first licensed to practice as a physical therapist or physical therapist assistant in New York State; and (b) not engaged in practice as a physical therapy or physical therapist assistant in New York State, as evidenced by not being registered to practice in New York State, except as otherwise provided.

An adjustment to the requirement is permitted for the licensee who documents good cause that prevents compliance, such as poor health certified by a physician, or a specific physical or mental disability certified by an appropriate health care professional, or extended active duty with the armed forces of the United States, or other good cause beyond the licensee's control which in the judgment of the department makes it impossible for the licensee to comply with the continuing education requirements in a timely manner.

Paragraph (1) of subdivision (c) of section 77.10 sets the general mandatory continuing education requirement for licensed physical therapists and certified physical therapist assistants. Subparagraph (i) establishes the requirement: at least 36 hours of continuing education acceptable to the Department for each triennial registration period. Licensees whose first registration following September 1, 2009, is less than three years from that date but on or after January 1, 2010 shall be required to complete continuing education hours on a prorated basis at the rate of one-half hour of acceptable continuing education per month beginning January 1, 2010 up to the first registration date thereafter. Subparagraph (ii) sets forth the continuing education requirement during each registration period of less than three years.

Paragraph (2) of subdivision (c) of section 77.10 defines continuing education that is acceptable to the State Education Department. Such continuing education must be in the subjects prescribed in subparagraph (i) of this paragraph and be the types of learning activities prescribed in subparagraph (ii) of this paragraph and subject to the prohibitions contained in subparagraph (iii).

Acceptable continuing education shall contribute to the professional practice of physical therapy and shall have its focus: activities that enhance knowledge and skill in examination, evaluation, prognosis and planning, intervention, re-examination, prevention and outcomes in physical therapy; clinical interventions/evidence-based models, and philosophy and principles of physical therapy; patient communications, recordkeeping, and reimbursement issues; general supervision and business practices; pedagogical methodologies or other topics which contribute to the professional practice of physical therapy; or matters relating to health care, law, and/or ethics which contribute to professional practice in physical therapy and the health, safety, and/or welfare of the public.

Acceptable courses of learning and other education activities that are acceptable are: (1) courses of learning offered by an approved sponsor; university and college credit and non-credit courses; and professional development and technical sessions related to the practice of physical therapy. Other acceptable education activities include: (1) preparing and teaching a course offered by a sponsor of continuing education provided that such teaching shall not be acceptable where the licensee has taught the course on more than one occasion without presenting new or revised material; (2) preparing and teaching a course, acceptable to the department, at a higher education institution relating to the practice of physical therapy, provided that such teaching shall not be acceptable where the licensee has taught the course on more than one occasion without presenting new or revised material; (3) making a technical presentation at a professional conference sponsored by an organization that is a sponsor of continuing education, provided that the presentation shall not be acceptable where the licensee has presented on the topic on more than one occasion without presenting new or revised material; (4) achieving specialty certification from an entity acceptable to the department; (5) completing a self-study program; (6) authoring an article published in a peer-reviewed journal or a published book; and (7) completing and receiving a passing score on an examination approved by the department that demonstrates the licensee's knowledge of the laws, rules and regulations of New York relating to the practice of physical therapy.

Any continuing education designed for the sole purpose of maximizing profits for the practice of a physical therapist or a physical therapist assistant shall not be considered by the department as acceptable continuing education.

Subdivision (d) of section 77.10 provides that at each re-registration, the licensed physical therapist and certified physical therapist assistant must certify to the Department compliance with the continuing education requirements or that they are subject to an exemption or adjustment of such requirements.

Subdivision (e) of section 77.10 prescribes the requirement for a licensee returning to practice as a physical therapist or physical therapist assistant after a lapse in practice, defined as not being registered to practice in New York State.

Subdivision (f) of section 77.10 authorizes the department to issue a conditional registration to a physical therapist or physical therapist assistant who attests to or admits to noncompliance with the continuing education requirement and prescribes the requirements for a conditional registration.

Subdivision (g) of section 77.10 requires the licensed physical therapist or certified physical therapist assistant to maintain and ensure access by the Department to records of completed continuing education as specified in that subdivision.

Subdivision (h) of section 77.10 provides for the measurement of continuing education study, specifically, that a minimum of 50 minutes of study equal one hour of continuing education credit and that continuing education credit for other educational activities shall be awarded as prescribed by the department.

Subdivision (i) of section 77.10 establishes the requirements for sponsors of continuing education to physical therapists and physical therapist assistants.

Paragraph (1) of subdivision (i) states that sponsors of continuing education to licensed physical therapists and certified physical therapist assistants in the form of courses of learning or self-study programs shall meet the requirements of either paragraphs (2) or (3) of this subdivision.

Paragraph (2) of subdivision (i) provides that the Department will deem approved as a sponsor of continuing education to licensed physical therapists and certified physical therapist assistants: (1) a national physical therapy professional organization or other professional organization acceptable to the department; (2) a New York State physical therapy professional organization acceptable to the department; (3) a national organization of jurisdictional boards of physical therapy; (4) an entity, hospital or health facility defined in section 2801 of the Public Health Law; and (5) a higher education institution.

Paragraph (3) of subdivision (i) establishes the standards for Department approval of sponsors to offer continuing education to licensed physical therapists and physical therapist assistants that are not otherwise deemed approved.

Subdivision (j) of section 77.10 establishes the fees for mandatory continuing education, conditional registration, and the fee for an organization desiring to offer continuing education to licensed physical therapists and physical therapist assistants based upon a Department review.

**Text of proposed rule and any required statements and analyses may be obtained from:** Lisa Struffolino, New York State Education Department, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 473-4921, email: lstruffo@mail.nysed.gov

**Data, views or arguments may be submitted to:** Frank Munoz, Office of the Professions, New York State Education Department, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 486-1965, email: opopr@mail.nysed.gov

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

#### **Regulatory Impact Statement**

##### **1. STATUTORY AUTHORITY:**

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Subdivision (3) of section 212 of the Education Law authorizes the State Education Department to determine and set fees for certifications and permits.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Paragraph (a) of subdivision (1) of section 6742-a of the Education Law, as added by Chapter 207 of the Laws of 2008, requires a licensed physical therapist and physical therapist assistant to complete mandatory continuing education as a condition for registration to practice in New

York State and provides an exception to licensees with a conditional registration certificate.

Paragraph (b) of subdivision (1) of section 6742-a of the Education Law allows physical therapists and physical therapist assistants to be exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed. It also authorizes the State Education Department to adjust the requirement in certain cases.

Paragraph (c) of subdivision (1) of section 6742-a of the Education Law provides an exemption from the continuing education requirement for licensees not engaged in the practice of physical therapy and physical therapist assistant and directs the State Education Department to establish continuing education requirements for licensees reentering the profession.

Subdivision (2) of section 6742-a of the Education Law provides that a physical therapist or physical therapist assistant must complete the mandatory continuing education requirements to be registered to practice in New York State, and establishes the continuing education hour requirement and a prorated formula for licensees whose first registration date follows September 1, 2009 and occurs less than three years from such effective date.

Subdivision (3) of section 6742-a of the Education Law authorizes the State Education Department to issue conditional registrations for physical therapists or physical therapist assistants who do not meet the regular continuing education requirements, to establish requirements for such licensees under conditional registration, and to charge a fee for such conditional registration in addition to the fee for triennial registration.

Subdivision (4) of section 6742-a of the Education Law defines acceptable continuing education as formal courses of learning and educational activities which contribute to professional practice in physical therapy and which meet standards prescribed in the Regulations of the Commissioner of Education. This subdivision also authorizes the department to require the completion of continuing education courses in specific subjects to fulfill the continuing education requirement and authorizes such courses to be taken from a sponsor approved by the department, pursuant to the regulations of the commissioner.

Subdivision (5) of section 6742-a of the Education Law requires physical therapists and physical therapist assistants to maintain adequate documentation of compliance with the continuing education requirements and provide such documentation at the request of the State Education Department.

Subdivision (6) of section 6742-a of the Education Law authorizes the State Education Department to charge physical therapists and physical therapist assistants a mandatory continuing education fee of \$45, in addition to the triennial registration fee required by section 6734 of the Education Law.

Section 2 of Chapter 207 of the Laws of 2008 authorizes the State Education Department to add, amend, and/or repeal any rule or regulation necessary to timely implement the new law requiring the completion of continuing education by physical therapists and physical therapist assistants.

##### **2. LEGISLATIVE OBJECTIVES:**

The proposed regulation carries out the intent of the aforementioned statutes in that it will, as directed by statute, establish standards relating to mandatory continuing education for physical therapists and physical therapist assistants. Specifically, the proposed regulation establishes appropriate standards for what constitutes acceptable continuing education, continuing education requirements when there is a lapse in practice, requirements for licensees under conditional registration, recordkeeping requirements applicable to licensees, and standards for the approval of sponsors of continuing education to licensed physical therapists and physical therapist assistants.

##### **3. NEEDS AND BENEFITS:**

The purpose of the proposed regulation is to establish continuing education requirements that licensed physical therapists and physical therapist assistants must complete to be registered to practice this profession in New York State and requirements for the approval of sponsors of such continuing education. The proposed regulation is needed to clarify and implement the requirements of section 6742-a of the Education Law, as added by Chapter 207 of the Laws of 2008.

As required by statute, the proposed regulation is also needed to establish continuing education requirements when there is a lapse in practice, requirements for licensees under conditional registration, and standards for the approval of sponsors of continuing education to licensed physical therapists and physical therapist assistants. In addition, the regulation is needed to establish a fee for the review by the State Education Department

of sponsors of courses of learning or educational activities in order to defray the cost of such review.

#### 4. COSTS:

(a) Costs to State government. The proposed regulation implements statutory requirements and establishes standards as directed by statute. The regulation will not impose any additional cost on State government, over and above the cost imposed by the statutory requirements.

(b) Costs to local government: None.

(c) Cost to private regulated parties. The proposed regulation does not impose additional costs on licensed physical therapists and physical therapist assistants beyond those imposed by statute. Statutory provisions impose a mandatory continuing education fee of \$45 for physical therapists and physical therapist assistants at each triennial registration and require that physical therapists and physical therapist assistants complete a prescribed number of hours of acceptable continuing education. The proposed regulation establishes a \$900 fee for sponsors reviewed by the State Education Department for approval to offer continuing education in the form of courses of learning or educational activities for a three-year term.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed amendment does not impose additional costs on the State Education Department beyond those imposed by statute.

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements the requirements of section 6742-a of the Education Law relating to continuing education requirements for physical therapists and physical therapist assistants. It does not impose any program, service, duty, or responsibility upon local governments.

#### 6. PAPERWORK:

The proposed regulation requires each licensee to maintain or ensure access, for six years, of a record of completed continuing education which includes: the type of educational activity, the title of the course if a course, subject of the continuing education, the number of hours completed, the sponsor's name and any identifying number (if applicable), attendance verification if a course, participation verification if another educational activity, and the date and location of the continuing education. In addition, the proposed amendment requires sponsors of continuing education to physical therapists and physical therapist assistants, reviewed for approval by the State Education Department, to maintain a record for at least six years which includes: the name and curriculum vitae of the faculty, a record of attendance of licensed physical therapists or physical therapist assistants in the course if a course, a record of participation of a licensed physical therapist or physical therapist assistant in a self-study program if a self-study program, an outline of the course or program, date and location of the course or program, and the number of hours for completion of the course or program.

#### 7. DUPLICATION:

There are no other State or Federal requirements on the subject matter of this amendment. Therefore, the amendment does not duplicate other existing State or Federal requirements.

#### 8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered. The proposed regulation implements statutory requirements.

#### 9. FEDERAL STANDARDS:

There are no Federal standards for the continuing education of licensed physical therapists or physical therapist assistants.

#### 10. COMPLIANCE SCHEDULE:

The proposed regulation implements and clarifies statutory continuing education requirements for physical therapists and physical therapist assistants. Physical therapists and physical therapist assistants must comply with the continuing education requirements on the effective date of the authorizing statute, September 1, 2009. The statute and implementing regulation establish a phase-in period in which the licensee will be required to complete less than the full 36 hours of continuing education based upon a proration formula. No additional period of time is necessary to enable regulated parties to comply.

#### *Regulatory Flexibility Analysis*

##### (a) Small Businesses:

#### 1. EFFECT OF RULE:

The proposed rule relates to mandatory continuing education for licensed physical therapists and physical therapist assistants. This continuing education will be provided by sponsors approved by the State Education Department, some of which are small businesses. The State Education Department does not know the exact number of sponsors that will be small businesses, but estimates that number using the methodology below.

Individuals licensed in public accountancy have been subject to mandatory continuing education requirements since 1985, and sponsors of such continuing education must be approved by the State Education Department, after a State Education Department review. In accounting, about 800 sponsors of continuing education are approved by the State Education Department. There are about 60.2 percent as many physical therapists (18,565) and physical therapist assistants (4,604) as individuals licensed in public accountancy (38,479) in this State. Using that percentage, we calculate that there will be a need for about 400 sponsors of continuing education to physical therapists and physical therapist assistants. Of these, based upon a survey of the sponsors in accounting, the Department estimates that about 75 percent or 300 will be small businesses.

The proposed regulation has a provision that permits a sponsor to be deemed approved by the State Education Department, if it is approved by another prescribed organization that approves continuing education for physical therapists and physical therapist assistants. For such sponsors there are no additional compliance requirements in the regulation. The Department expects that almost all 300 sponsor/small businesses will be deemed approved by virtue of their being approved by another organization that approves continuing education for physical therapists and physical therapist assistants. Based upon the Department's experience in other licensed professions, which have similar sponsor approval procedures (podiatry, ophthalmic dispensing), only about 50 sponsors will seek approval through a State Education Department review, of which only about 38 will be small businesses (.75 x 50).

#### 2. COMPLIANCE REQUIREMENTS:

The regulation contains no compliance requirements for sponsors that are deemed approved through the approval of other organizations that approve continuing education for physical therapists and physical therapist assistants.

There are compliance requirements for sponsors seeking approval through a State Education Department review. Every three years, organizations desiring to offer continuing education to licensed physical therapists and physical therapist assistants based upon a review by the State Education Department must submit an application for advance approval as a sponsor at least 90 days prior to the date for the commencement of the continuing education. The applicant must document in the application: curricular areas of offerings, its organizational status as an educational entity or expertise in the professional area, the qualifications of course instructors, methods for assessing the learning of participants, and recordkeeping procedures. Applicants would be approved to offer continuing education to physical therapists and physical therapist assistants for a three-year term.

#### 3. PROFESSIONAL SERVICES:

No professional services are expected to be required by small businesses to comply with the proposed regulation. The regular staff of small businesses will be able to complete the application needed for the review by the State Education Department.

#### 4. COMPLIANCE COSTS:

An organization seeking approval as a sponsor of continuing education to physical therapists and physical therapist assistants through a State Education Department review would be required to pay the State Education Department a fee of \$900 to defray the cost of its review. Such fee would be paid once every three years, upon submission of the organization's application. Therefore, the annualized cost is \$300.

The Department estimates that it would require a staff member to spend about eight hours to complete the application. Based on an hourly rate of \$37 per hour (including fringe benefits), we estimate that the cost of completing the application to be \$296. An application would have to be completed once every three years. Therefore, the annualized cost of completing the application is estimated to be \$98.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed regulation will not impose any technological requirements on regulated parties. See above Compliance Costs for the economic impact of the regulation.

#### 6. MINIMIZING ADVERSE IMPACT:

The Department believes that the standards for sponsor review by the State Education Department are reasonable, and that uniform standards should apply, regardless of the size of the sponsoring organization, in order to ensure the quality of the continuing education.

#### 7. SMALL BUSINESS PARTICIPATION:

Members of the State Board for Physical Therapy, many of whom have experience in a small business environment, provided input in the development of the proposed regulation. In addition, staff of the State Education Department worked with the statewide and national professional associa-

tions and councils that represent physical therapists and physical therapist assistants by disseminating information concerning the proposed regulation to these organizations and seeking their input. These organizations include members who own and operate small businesses.

(b) Local Governments:

The proposed regulation establishes continuing education requirements for physical therapists and physical therapist assistants and standards for sponsors of such continuing education. It will not impose any reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact on local governments. Because it is evident from the nature of the proposed rule that it does not affect local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

**Rural Area Flexibility Analysis**

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. All 18,752 licensed physical therapists and 4,662 licensed physical therapist assistants who are registered to practice in New York would be subject to the requirements of the proposed regulation. Of these 2,361 physical therapists and 954 physical therapist assistants reported that their permanent address of record is in a rural county of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

As required by section 6742-a of the Education Law, effective September 1, 2009, the proposed regulation will require physical therapists and physical therapist assistants, including those that reside or work in rural areas, to complete a prescribed number of hours of acceptable continuing education to be registered to practice in New York State. The proposed regulation prescribes the educational activities that may meet the continuing education requirement and the subjects for that continuing education. The regulation requires licensees to certify that they have met the requirement upon applying for renewal of registration to practice in New York State. The proposed regulation requires each licensee to maintain prescribed information concerning completed acceptable continuing education for six years from the date of completion of the course.

The proposed regulation also establishes standards for the Department's review of sponsors desiring to offer acceptable continuing education in the form of courses of learning or self-study programs, including sponsors that may be located in rural areas. The regulation requires such sponsors to maintain specified records related to the offering of the courses of learning and self-study programs for a six-year period from the date of completion of the coursework.

The proposed regulation does not impose a need for professional services other than educational services to meet the continuing education requirements.

3. COSTS:

The proposed regulation does not impose additional costs on physical therapists and physical therapist assistants beyond the costs imposed by statute. However, the regulation does establish a fee of \$900 for entities reviewed by the State Education Department to become an approved sponsor of continuing education to licensed physical therapists and physical therapist assistants for a three-year term.

4. MINIMIZING ADVERSE IMPACT:

The proposed regulation implements and clarifies the continuing education requirements for physical therapists and physical therapist assistants found in section 6742-a of the Education Law. The statutory requirements do not make exceptions for individuals who live or work in rural areas. The Department has determined that the proposed regulation's requirements should apply to all physical therapists and physical therapist assistants, regardless of their geographic location, to help ensure continuing competency across the State. The Department has also determined that uniform standards for the Department's review of sponsors are necessary to ensure quality offerings in all parts of the State. Because of the nature of the proposed regulation, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed regulation were solicited from statewide organizations representing all parties having an interest in the practice of physical therapy and physical therapist assistant. Included in this group were the State Board for Physical Therapy and professional associations representing the physical therapy profession. These groups have members who live or work in rural areas.

**Job Impact Statement**

Section 6742-a of the Education Law, as added by Chapter 207 of the Laws of 2008, establishes mandatory continuing education requirements for licensed physical therapists and physical therapist assistants registered to practice in New York State. The proposed regulation establishes standards for acceptable continuing education to meet the statutory requirement and the requirements for the approval of sponsors of such continuing education.

The proposed regulation implements specific statutory requirements and directives. Section 6742-a of the Education Law establishes the requirement that licensed physical therapists and physical therapist assistants must complete a prescribed number of hours of continuing education in order to be registered to practice in this State. Therefore, any impact on jobs and employment opportunities by establishing a continuing education requirement for physical therapists and physical therapist assistants is attributable to the statutory requirement, not the proposed rule, which simply establishes consistent standards as directed by statute.

In any event, a similar statutory continuing education requirement was established for individuals licensed respiratory therapists and respiratory therapy technicians in 2000, and the Department is not aware that the requirement significantly affected jobs or employment opportunities in that profession. In addition, the statutory requirement should increase job and employment opportunities for instructors and administrators who will be needed to provide the continuing education instruction to licensees.

Because it is evident from the nature of the proposed regulation, which implements specific statutory requirements and directives, that the proposed rule will have no impact on jobs or employment opportunities attributable to its adoption or only a positive impact, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

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

**Administration of Immunization Agents by Certified Pharmacists**

I.D. No. EDU-47-08-00007-RP

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

**Proposed Action:** Addition of section 63.9 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6527(7), 6801(1), (2), (3), 6802(22), 6828(1), (2), 6909(7) and L. 2008, ch. 563

**Subject:** Administration of immunization agents by certified pharmacists.

**Purpose:** Establish criteria for the certification of licensed pharmacists and requirements for the administration of immunizations.

**Substance of revised rule:** The Board of Regents proposes to amend the Regulations of the Commissioner of Education by adding a new section 63.9, effective December 3, 2008. Section 63.9 of the Regulations of the Commissioner of Education is added to establish requirements relating to the administration of immunizations for the prevention of influenza and pneumococcal disease and medications for the emergency treatment of anaphylaxis by certified pharmacists.

Section 63.9(a) defines the applicability of the provision, authorizing certified pharmacists to administer certain immunization agents and medications for the emergency treatment of anaphylaxis only to the extent that the applicable provisions in Education Law sections 6527, 6801, 6802, 6828 and 6909 have not expired or been repealed.

Sections 63.9(b)(1) and (b)(2) provide that a pharmacist with a certificate of administration issued by the Department is authorized to administer immunization agents to prevent influenza or pneumococcal disease to patients over the age of 18, pursuant to either a patient specific order or non-patient specific order and protocol ordered by a licensed physician or certified nurse practitioner with a practice site in the county in which the immunization is administered. If the immunization is administered in a county with a population of 75,000 or less, the immunization shall be prescribed or ordered by a licensed physician or certified nurse practitioner with a practice site in the county in which the immunization is administered or in an adjoining county.

Section 63.9(b)(3) establishes the requirements that a licensed pharmacist must meet in order to obtain a certificate to administer immunizations from the Department. The licensed pharmacist shall submit an application with the required fee and present satisfactory evidence of completion of one of the following: (1) a training course in the administration of immunizations acceptable to the Commissioner and the Commissioner of Health; (2) a training course associated with a Doctor of Pharmacy degree;

or (3) possession of a current certificate of administration issued by another jurisdiction and continuous practice in the administration of immunizing agents since the pharmacist received such training or completion of a retraining program in the administration of immunization agents.

Section 63.9(b)(4) establishes the standards, procedures and reporting requirements for the administration of immunizing agents.

Section 63.9(b)(5)(i) provides that certified pharmacists shall maintain or ensure the maintenance of a copy of the patient specific order or the non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner which authorizes the certified pharmacist to administer immunization agents. This section prescribes the information required to be included in patient specific orders and non-patient specific orders and protocol. Such orders and protocol shall be considered a record of the patient. The pharmacist shall maintain a record of the patient in either: (a) a patient medication profile, or (b) in instances where a patient medication profile is not required, on a separate form that is retained by the pharmacist who administered the immunization.

Section 63.9(b)(5)(ii) establishes the contents of patient specific orders and non-patient specific orders.

Section 63.9(b)(5)(iii) specifies additional provisions required to be included in non-patient specific orders, including the incorporation of a protocol.

Section 63.9(b)(5)(iv) requires the protocol, incorporated into the non-patient specific order, to include the standards, procedures and reporting requirements set forth in section 63.9(b)(4).

Section 63.9(c)(1) authorizes certified pharmacists to administer medications for the emergency treatment of anaphylaxis.

Section 63.9(c)(2) establishes the standards, procedures and reporting requirements for the administration of anaphylaxis treatment agents by certified pharmacists.

Section 63.9(c)(3)(i) requires a certified pharmacist to maintain or ensure the maintenance of a copy of the non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner that authorizes such pharmacist to administer medications for the emergency treatment of anaphylaxis. This section requires a record of each patient to be maintained in either a patient medication profile, or in instances where a patient medication profile does not exist, on a separate form that is retained by the pharmacist who has administered the immunization.

Section 63.9(c)(3)(ii) provides that the non-patient specific order shall authorize one or more named pharmacists, or certified pharmacists who are not individually named but are identified as employed or under contract with an entity that is legally authorized to employ or contract with pharmacists to provide pharmaceutical services, to administer specified anaphylaxis treatment agents in specified circumstances for a prescribed period of time. This subparagraph also prescribes the content for such non-patient specific orders.

Section 63.9(c)(3)(iii) requires that the protocol to be incorporated into the non-patient specific order include the requirements set forth in section 63.9(c)(2).

**Revised rule compared with proposed rule:** Substantial revisions were made in section 63.9(b)(4)(x).

**Text of revised proposed rule and any required statements and analyses may be obtained from** Lisa Struffolino, New York State Education Department, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 473-4921, email: lstruffo@mail.nysed.gov

**Data, views or arguments may be submitted to:** Frank Munoz, New York State Education Department, 2nd Floor, West Wing, Education Building, Albany, NY 12234, (518) 486-1965, email: opopr@mail.nysed.gov

**Public comment will be received until:** 30 days after publication of this notice.

#### **Revised Regulatory Impact Statement**

Since publication of a Notice of Proposed Rule Making in the State Register on November 19, 2008, the following substantial revisions were made to the proposed rule:

Section 63.9(b)(4)(x) has been revised to clarify that a certified pharmacist shall report the administration of any immunizations to the New York State Department of Health and/or to the New York City Department of Health and Mental Hygiene, in a manner required by either the Commissioner of Health of the State of New York or of the City of New York, as applicable.

The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Impact Statement.

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

Since publication of a Notice of Proposed Rule Making in the State Register on November 19, 2008, the proposed rule was revised as set forth in Statement Concerning the Regulatory Impact Statement filed herewith.

The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Flexibility Analysis.

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

Since publication of a Notice of Proposed Rule Making in the State Register on November 19, 2008, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The above revisions to the proposed rule do not require any revisions to the previously published Rural Area Flexibility Analysis.

#### **Revised Job Impact Statement**

Since publication of the Notice of Proposed Rule Making in the State Register on November 19, 2008, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The proposed rule, as so revised, requires certified pharmacists to report the administration of any immunizations to the New York State Department of Health and/or to the New York City Department of Health and Mental Hygiene, in a manner required by either the Commissioner of Health of the State of New York or of the City of New York. The revised rule will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

A Notice of Proposed Rule Making was published in the State Register on November 19, 2008. Below is a summary of written comments received by the State Education Department (SED) and SED's assessment of issues raised.

1. COMMENT: Section 63.9(b)(4)(x) of the proposed amendment relates to the reporting requirements for both the New York State Department of Health and the New York City Department of Health and Mental Hygiene. However, this section only refers to the Commissioner of Health, which could be interpreted to mean only the Commissioner of Health of the State of New York and not the New York City Commissioner of Health, as was originally intended.

DEPARTMENT RESPONSE: SED agrees with this comment and has revised the proposed rule to refer to the "Commissioner of Health of the State of New York or of New York City, as applicable."

2. COMMENT: One commenter indicated that the proposed amendment is inconsistent because it refers to the individuals receiving immunizations as both "patients" and "recipients."

DEPARTMENT RESPONSE: SED agrees that both terms are used interchangeably throughout the proposed amendment. However, SED believes the terms are used appropriately and will not result in confusion to the regulated parties.

---

## Department of Environmental Conservation

---

### NOTICE OF ADOPTION

#### **New Major Facilities and Major Modifications to Existing Facilities**

**I.D. No.** ENV-39-07-00006-A

**Filing No.** 74

**Filing Date:** 2009-01-20

**Effective Date:** 30 days after filing

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

**Action taken:** Amendment of Parts 200, 201 and 231 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303 and 19-0305; and Federal Clean Air Act, sections 160-169 and 171-193 (42 U.S.C. 7470-7479; 7501-7515)

**Subject:** New major facilities and major modifications to existing facilities.

**Purpose:** To comply with the 2002 Federal New Source Review (NSR) Rule promulgated and correct deficiencies that the EPA identified.

**Substance of final rule:** The Department of Environmental Conservation (Department) is proposing revisions to its rulemaking proposal published in the State Register on September 26, 2007 for Parts 200, 201 and 231 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the

State of New York, entitled "General Provisions," "Permits and Registrations" and "New Source Review in Nonattainment Areas and Ozone Transport Regions" respectively.

The Part 200 amendments will add a definition for Routine Maintenance, Repair, or Replacement (RMRR), codifying current Department practice of reviewing RMRR activities on a case by case basis, taking into account the nature and extent of the activity and its frequency and cost. In addition, the Department is revising Part 200 (Sections 200.9 and 200.10). Section 200.9 is being amended to include all federal materials referenced in the proposed amendments to Part 231. Section 200.10(a) is being amended to reflect that the Department is no longer delegated responsibility for implementation of the Federal Prevention of Significant Deterioration (PSD) Program.

The proposed amendments to Part 201 revise the definition for "major stationary source or major source" at 6 NYCRR 201-2.1(b)(21). The definition will now encompass the term "major facility" and incorporate major facility and significant project thresholds for facilities emitting particulate matter or particles with an aerodynamic diameter less than or equal to a nominal 2.5 micro-meters (PM-2.5). EPA designated the New York City metropolitan area as nonattainment for the PM 2.5 standard (70 Fed. Reg. 944). Nonattainment new source review (NNSR) is now required for new major facilities and major modifications to existing facilities that emit PM 2.5 in significant amounts in the PM2.5 nonattainment area.

The existing nonattainment New Source Review program at Part 231 will be re-titled "New Source Review for New and Modified Facilities" and will include new Subparts 231-3 through 231-13. The new subparts will implement nonattainment New Source Review (NNSR) and attainment New Source Review (PSD). The NNSR requirements are based on New York's existing NNSR program Subpart 231-2, with revisions to include selected provisions from the December 31, 2002 Federal NSR reform rule and EPA's December 21, 2007 Reasonable Possibility in Recordkeeping Rule. The PSD requirements are also based largely on the December 31, 2002 Federal NSR reform rule as codified at 40 CFR 52.21.

The proposed revisions to Part 231 will change the basis of applicability for modifications and emission reduction credits (ERCs) from an "Emission Unit" basis to an "Emission Source" basis, incorporate various federal requirements, provide clarification of existing requirements, and require comprehensive reporting, monitoring, and recordkeeping that will conform to the requirements of Title V. Through this rulemaking, the Department will also establish a new method for determining baseline actual emissions. Baseline actual emissions will be determined by using any 24 consecutive month period of emissions in the previous five years. All facilities (no separate baseline period for electric utility steam generating units) will be required to determine their baseline actual emissions using this method.

The Department will retain existing Subpart 231-1 "Requirements for emission sources subject to the regulation prior to November 15, 1992" and Subpart 231-2, "Requirements for emission units subject to the regulation on or after November 15, 1992". These regulations are currently cited in many air permits issued throughout the State and retaining them will facilitate implementation and enforcement of the NSR program. Existing Subpart 231-2 will be revised only to indicate that the Subpart will not apply after the date the proposed revisions to Part 231 become effective. Thus, permit applications received on or after the effective date of revised Part 231 will be processed according to the provisions of Subparts 231-3 through 231-13, as applicable.

New Subparts 231-3 through 231-13 have been added to include provisions from the EPA December 31, 2002 NSR Rule, and incorporate the Federal PSD program. The NNSR provisions currently specified in Subpart 231-2 are being updated and incorporated into these new subparts. The Department is also adopting a State PSD program which is based largely on the Federal PSD rule and included in Subparts 231-7, 231-8, and 231-12. The subparts of the proposed regulation are being organized to ease determinations of applicability, to collect common requirements into groups, and to streamline the regulation. The organization of the new regulation strives to make a more coherent series of requirements and obligations.

Subpart 231-3 General Provisions specifies provisions which apply generally such as a transition plan, exemptions, general prohibitions, source obligation, general permit requirements, facility shakedown periods, and circumvention. Proposed Section 231-3.4 (Exemptions) has been revised to remove the Clean Coal technology exemptions. The Department has determined that these exemptions are out of date and no longer necessary for implementing the NSR program. The Source Obligation section (231-3.6) includes a requirement that any owner or operator of a facility that proposes a project that involves a physical change or change in the method of operation that the owner or operator determines would be followed by a facility emissions increase that equals or exceeds any of the significant project thresholds in Subpart 231-13, Tables 3, 4 or

6, must notify the Department in writing of the proposed project prior to implementing the change if the owner or operator determines that the project does not constitute a modification because all the emission increases are attributable to independent factors in accordance with Clause 231-4.1(b)(40)(i)(c). The notification must include (1) a description of the change, (2) the calculation of the projected emissions increase, (3) the proposed date of the change, and (4) an explanation of the factual basis for the conclusion that none of the projected emission increases are attributable to the proposed project.

Subpart 231-4 defines the terms used throughout Part 231 and incorporates terms from both the existing Subpart 231-2 and the Federal PSD rule, 40 CFR 52.21. The Department has made minor revisions to terms used in existing Subpart 231-2 and 40 CFR 52.21 so that definitions are consistent for both nonattainment and attainment NSR and with New York's regulations. The Department has also removed the previously proposed Clean Coal technology definitions to be consistent with the removal of the Clean Coal technology exemptions in Subpart 231-3.

To facilitate the implementation and administration of Part 231, the Department has included the requirements for new and modified facilities in four main Subparts (231-5 to 231-8) depending on the facility's location in an attainment or nonattainment area.

Subpart 231-5 is applicable to new facilities and to modifications at existing non-major facilities in nonattainment areas. Proposed new major facilities will continue to be subject to the requirements to install Lowest Achievable Emission Rate (LAER) and obtain emission offsets as they are under existing Subpart 231-2. The subpart also specifies that non-major facilities undertaking projects which are major by themselves, or increase the emissions of the facility above major thresholds must obtain permits which limit emissions.

Subpart 231-6 applies to modifications at existing major facilities in nonattainment areas. The subpart continues the requirements for LAER technology and emission offsets that exist in the Department's current nonattainment NSR program. The subpart also specifies that facilities can perform a netting exercise to determine whether the modification, when considering other contemporaneous activities at the facility, would exceed applicable emissions thresholds.

Subpart 231-7 applies to new facilities and to modifications at existing non-major facilities in attainment areas. The subpart implements the requirements for determination of air quality impacts through modeling, and the application of Best Available Control Technology (BACT). The subpart also specifies that non-major facilities undertaking projects which are major by themselves, or increase the emissions of the facility above major thresholds must obtain permits which limit emissions.

Subpart 231-8 applies to modifications at existing major facilities in attainment areas of the State. The subpart implements the requirements for determination of air quality impacts through modeling and the application of BACT in the case of facilities which undertake a NSR major modification. These requirements address Federal PSD requirements. The subpart also specifies that facilities can perform a netting exercise to determine whether the modification, when combined with other contemporaneous activities at the facility, would exceed emissions thresholds.

The remaining five subparts include general provisions that apply to both new and modified subject facilities.

Subpart 231-9 sets forth the requirements for establishing Plantwide Applicability Limitations (PAL) at Title V facilities. A PAL allows a facility to undertake modifications without being subject to NSR review as long as the facility does not exceed its PAL emission limit. Subpart 231-9 is based on the PAL provisions from the December 31, 2002 Federal NSR rule (67 Fed Reg at 80278), which specify PAL creation, duration, and expiration. The Department has made a few revisions to the Federal regulatory language to take into account Subpart 201-6, New York's approved Title V regulation and to ensure that reduced emissions and improved air quality will result. PALs are established in Title V permits and are subject to Title V permit application and processing procedures for creation, modification, or renewal. PALs are created for an initial period of 10 years, less if established during the middle of a Title V permit term, and can be renewed for 10 years, subject to certain restrictions. The proposed regulation requires that the PAL shall be reduced to 75 percent of the initial PAL, commencing with the first day of the sixth year of the PAL, unless the owner or operator demonstrates that a lesser level of reduction is justified. The owner or operator may seek an alternative reduced PAL by demonstrating that the application of BACT and/or LAER, as applicable, on all major PAL emission sources at the facility would not result in a 25 percent reduction in the initial PAL. The Department may authorize a reduction in the PAL to a level that would reflect the emissions from the facility if all major PAL emission sources are operated at full capacity after complying with BACT and/or LAER, as applicable.

Subpart 231-10 defines emission offset and Emission Reduction Credit (ERC) creation and use. The provisions for ERC creation and use are substantially the same as existing Subpart 231-2 except for the determina-

tion of ERC enforceability. Under proposed Subpart 231-10 the Department has clarified how ERCs are made enforceable.

Subpart 231-11 sets forth permit requirements for new major facilities, NSR major modifications, and netting. This Subpart also establishes reasonable possibility requirements for insignificant modifications. These requirements are in addition to any Part 201 requirements that may apply. The Federal Reasonable Possibility Rule only requires post-change monitoring for insignificant modifications if the projected actual emissions increase (Part 231 project emission potential) is by itself greater than or equal to 50 percent of the applicable significance threshold. Proposed Part 231 extends the post-change monitoring requirement to also include any modification with a project emission potential which is less than 50 percent of the applicable significant project threshold in Table 3, Table 4 or Table 6 of Subpart 231-13, but equals or exceeds 50 percent of the applicable significant project threshold when emissions excluded in accordance with Clause 231-4.1(b)(42)(i)(c) (emissions from independent and unrelated factors) are added. For such modifications, facilities will be required to keep records of their calculation of emission increases from independent and unrelated factors such as demand growth, monitor post-modification emissions, and submit annual reports to verify the accuracy of their calculations. Additionally, the Federal Reasonable Possibility Rule only requires EUSGUs to notify the Department, prior to beginning actual construction, for any modification with a project emission potential which equals or exceeds 50 percent of the applicable significant project threshold. Proposed Part 231 extends the pre-construction notification requirement to any facility that proposes a modification with a project emission potential which equals or exceeds 50 percent of the applicable significant project threshold in Table 3, Table 4 or Table 6 of Subpart 231-13, but equals or exceeds 50 percent of the applicable significant project threshold when emissions excluded in accordance with Clause 231-4.1(b)(42)(i)(c) (emissions from independent and unrelated factors) are added.

Subpart 231-12 specifies the ambient air quality impact analysis requirements for facilities in attainment areas. These requirements emanate from the Federal PSD rule which is codified at 40 CFR 52.21.

Subpart 231-13 includes several tables which list applicable emission thresholds for proposed new and modified facilities, emission offset ratios, Federal Class I variance maximum allowable increase concentrations, and maximum allowable increase in SO<sub>2</sub> concentrations for gubernatorial variances. Table 9 - Source Category List includes the new chemical process plant exclusion for ethanol production facilities that produce ethanol by natural fermentation (included in NAICS codes 325193 or 312140). This exclusion was promulgated in the EPA May 1st, 2007 Final Rule for 40 CFR Parts 51, 52, 70, and 71 Prevention of Significant Deterioration, Nonattainment New Source Review, and Title V: Treatment of Certain Ethanol Production Facilities Under the "Major Emitting Facility" definition.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 200.1(c), 201-2.1(b)(21), 231-3.6(a), 231-4.1(b)(29)(iii), 231-5.1(a)(1), (2), (b), 231-5.2(d)(1), (e)(1), 231-6.3(d)(1), (e)(1), 231-7.1(a)(1), (2), (b), 231-10.1(h), (i), 231-10.2(c) and 231-10.7.

**Revised rule making(s) were previously published in the State Register** on September 24, 2008.

**Text of rule and any required statements and analyses may be obtained from:** Rick Leone, P.E., DEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: 231nsr@gw.dec.state.ny.us

**Additional matter required by statute:** Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file. This rule has been approved by the Environmental Board.

#### **Revised Regulatory Impact Statements**

There were no changes to the previously published Revised Regulatory Impact Statement.

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

There were no changes to the previously published Revised Regulatory Flexibility Analysis for small business and local governments.

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

There were no changes to the previously published Revised Rural Area Flexibility Analysis.

#### **Revised Job Impact Statement**

There were no changes to the previously published Revised Job Impact Statement.

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

Comments Received September 24, 2008 through October 24, 2008

The New York State Department of Environmental Conservation

(Department) is proposing to amend existing 6 New York Code of Rules and Regulations (NYCRR) Parts 200 (General Provisions), 201 (Permits and Registrations), and 231 (New Source Review In Nonattainment Areas and Ozone Transport Regions). The amendments to Part 200 add a definition for Routine Maintenance Repair or Replacement, amend the definition of potential-to-emit, and remove the reference to delegation of the federal Prevention of Significant Deterioration (PSD) requirements. The amendment to Part 201 modifies the definition for Major Stationary Source. Existing Part 231 will be re-titled as New Source Review for New and Modified Facilities and will include new Subparts 231-3 through 231-13. The existing Part 231 regulations (Subparts 231-1 and 231-2) are being retained with only modification of applicability dates. The new Subparts will implement nonattainment, and attainment (PSD) New Source Review.

The Department's proposed amendments to 6 NYCRR Parts 200, 201, and 231 were published in the State Register on September 26, 2007. The Department's proposed amendments have been revised to address public comments received on the Department's September 26, 2007 proposal, Department initiated revisions to the September 26, 2007 proposal, and EPA's final "reasonable possibility" rule for insignificant modifications promulgated on December 21, 2007. The Department's re-proposed amendments to 6 NYCRR Parts 200, 201, and 231 were published in the State Register on September 24, 2008. The comment period closed on October 24, 2008. The Department received written comments from 11 different commenters regarding the re-proposed regulation. All of the comments have been reviewed, summarized and responded to by the Department in its Assessment of Public Comments document.

Generally, the commenters supported the Department's effort to revise its new source review regulations and adopt a State PSD program. However, all commenters, including industry and environmental organizations, expressed opposition to various aspects of the proposed amendments for a variety of reasons. The comments covered a number of topics including, regulatory efficiency, technical concerns, economic impacts, perceived inconsistencies with the Environmental Conservation Law (ECL) and the Clean Air Act (CAA), and legal concerns.

The proposed definition for routine maintenance, repair, or replacement was added to Part 200 to clarify an existing federal regulatory exemption from the definition of "modification" for those activities that involve "routine maintenance, repair, or replacement" (RMRR). Many commenters expressed concern regarding the Department's proposal to establish a definition for "Routine Maintenance, Repair, or Replacement" in Part 200.1(c). While supporting the RMRR exemption, these commenters characterized the definition as being vague and unworkable. These commenters expressed concern with the Department's use in the definition of the words "generally" and "typically" and requested further definition of those terms. Other commenters took issue with the indication that RMRR is "typically paid for out of the operation and maintenance (O and M) budget of the facility." The RMRR definition mentions sources of funding in order to differentiate between operation and maintenance budgets, which would likely have funds specifically set aside for routine replacements, and those capital expenditures which would be more indicative of non-routine activities. The proposed regulation does not establish a presumptive exclusion from the definition of modification for those activities financed from a capital budget, or establish a bright-line for treating O and M expenses as RMRR. The source of funding is one of several criteria to consider when characterizing an activity as routine or non-routine.

Commenters also stated that the RMRR definition, as proposed, could limit the availability and reliability of the equipment at their facilities, and that any project, including maintenance activities, could be considered as life extending and therefore not meet the definition of RMRR. Most commenters requested that the definition be eliminated completely or revised to include additional clarification of the terms contained in the definition. To address commenters concerns, the Department has revised the definition to clarify the meaning of RMRR. The proposed Part 231 definition states that the Department will continue to review activities on a case-by-case basis as has been the established practice.

A comment was received regarding the proposed definition of "major stationary source" in Paragraph 201-2.1(b)(21). The commenter correctly states that the Department intends to use the proposed definition for implementing the major NSR requirements in Part 231 as well as the Title V permitting requirements in Part 201. The commenter believes that the proposed definition could lead to confusion when the definition is relied upon for implementing Part 231 because the 250 tpy major facility threshold that applies in attainment or unclassified areas, for sources that are not in a listed source category, is not referenced. The Department agrees with the commenter's concern. To address this issue, the Department will revise the proposed definition.

A comment was received regarding the Department's mandated use, by reference, of Departmental "policy" documents with regard to air quality impact analyses. Concern was stated that references to such guidance and

policy are construed as establishing binding and enforceable standards. During the formulation of the draft Part 231 rule, the air quality impact analysis procedures referred to were proposed for public comment on March 8, 2006 and finalized as DAR-10 in the Environmental Notice Bulletin on May 24, 2006 after minor public comments were received. DAR-10 is titled "NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis." In accordance with Section 3-0301(z) of the Environmental Conservation Law, the Department must make available for public notice, and in appropriate cases public comment, all guidance memoranda and similar documents of general applicability which provide guidance to the general public in complying with the Environmental Conservation Law and its regulations. The purpose of DAR-10 is to provide guidance to the regulated community as to what methods will be considered acceptable approaches for dispersion modeling methodologies and related air analysis procedures.

Several comments were received regarding the Department's proposal to continue with a single baseline period for all regulated NSR contaminants for a single project. The commenters on this issue requested that multiple baselines be allowed for a single project, indicating that the Department is overly restrictive compared to the EPA, limiting the ability of a facility to account for variability in production rates, fuels and raw materials. The use of multiple baselines could result in a facility selecting several different baseline periods to maximize the determination of past actual emissions for several different pollutants. The Department believes this could create an artificially high profile of baseline actual emissions which in fact were never emitted by the facility (or emission source) and, in extreme cases, could never be achieved by the facility in actual operation. With higher baseline emissions during a particular two-year period, a proposed project could possibly avoid being subject to NSR for those pollutants as a result of selecting that baseline period. The result of this is the potential for a project that would otherwise be considered major except for the artificially high baseline to either "cap out" or "net out" of NSR. This would cause an increase in emissions that would exacerbate air quality problems in New York State. The Department has determined that a single baseline period for a specific project is more appropriate for New York's NSR program. The use of a single baseline period assures that a proposed project is based on an actual operating scenario and not an artificially high emissions baseline. The Department will not make the requested change.

Comments were received regarding the Department's proposal to allow a baseline period of five years for determining baseline actual emissions. The Department's proposal allows the determination of baseline actual emissions by calculating pre-change emissions based on actual emissions during any 24 consecutive months within the five years immediately preceding the change. The commenters requested that the proposed baseline period be consistent with the current Federal baseline period (10 year look-back) provisions that allow the determination of baseline actual emissions by calculating pre-change emissions based on actual emissions during any 24 consecutive months within the ten years immediately preceding the change. Alternatively, they requested that the Department allow for a 10 year look-back while reserving the ability to determine whether a proposed baseline period is most representative of normal operations. The Department believes that the implementation of NSR in New York needs to be streamlined, and having a more straightforward approach to determining baseline actual emissions is a significant step to achieving that goal. Under the baseline period definition in current Subpart 231-2, facilities are not allowed to demonstrate that a 24 consecutive month period, outside of the five years immediately preceding a project, is more representative of normal facility operations. Facilities do, however, have the opportunity to make a case that another 24 consecutive month period within five years immediately preceding a project is more representative of baseline emissions. This requires a case-by-case review of historical facility operations by Department staff, an extremely resource intensive process, as noted in the Regulatory Impact Statement, that can lead to inconsistent application of the rule throughout the State. Allowing facilities to choose any 24 consecutive months in the five years immediately preceding a project avoids this result. The Department believes that allowing any 24 consecutive months in five years provides facilities with a sufficient period of time to establish baseline emissions. The Regulatory Impact Statement discusses in detail the rationale behind the Department's decision to propose the baseline period consisting of any 24 consecutive months in the five years immediately preceding a project. No change will be made to the proposed baseline period.

Comments from various environmental groups and industry representatives were received regarding the proposed Subpart 231-11 reporting and recordkeeping requirements associated with projects for which there exists a reasonable possibility of triggering NSR applicability. The comments from environmental groups suggested that the proposed regulations may contain a "loophole" for facilities that attribute all of the increase to demand growth. The commenters recommend that the Department clarify

the requirements of Subpart 231-11 to eliminate the "loophole". The industry comments stated that the proposed provisions will impose regulatory requirements that are more stringent than Federal requirements, and the recordkeeping requirements are excessive for modifications that have no reasonable possibility of resulting in a significant emissions increase. They further state that there is no justification for requiring the Section 231-11.4 recordkeeping and monitoring requirements when a project's potential to emit ensures there's no reasonable possibility that actual emissions will exceed the significance thresholds. The Department understands the concerns of both the environmental and industry commenters. The Department disagrees with the environmental groups' assertion that the proposal would require fewer sources to monitor post-change emissions than required under the federal reasonable possibility rule. The Department also disagrees with the industry comment that the recordkeeping requirements are excessive for modifications that have no reasonable possibility of resulting in a significant emissions increase. Requiring such records is important if a facility proposes a project in the future for which a net emission increase determination is necessary. Furthermore, Federal regulations require that all emissions, including emissions from any exempt or trivial activity, which are contemporaneous with a proposed project, be included in any net emissions increase determination. Maintaining the records under proposed Subpart 231-11 ensures that all emission increases are on record and available should a net emission increase determination be required. The Department believes that the rule as proposed strikes an appropriate balance between environmental concerns and economic and administrative concerns.

Comments were received regarding the Plantwide Applicability Limitation in proposed Subpart 231-9. Both the environmental and industry commenters supported the PAL provisions, but both had concerns with specific aspects of the PAL provisions. Environmental commenters objected to allowing sources to use different baseline periods for different pollutants, allowing a source which has not yet commenced construction to include emissions equal to the potential to emit, and allowing a PAL to be presumptively renewed at the existing PAL level. The industry commenters objected to the 25 percent reduction requirement in the sixth year of the PAL. As discussed in the Regulatory Impact Statement, the Department wants to encourage the use of PALs in the State and believes that they could provide a measure of regulatory flexibility while at the same time providing for long-term protection of the environment. The environmental commenters' proposed revisions would significantly reduce the flexibility provided by the rule and, as a result, discourage the use of PALs in the State. The industry commenters' request to delete the 25 percent reduction requirement would not be consistent with the Department's environmental protection goals. The Department has determined that additional environmental benefits will result from requiring a reduction in the PAL of up to 25 percent in the sixth year of the PAL. The Department believes that the proposed PAL provisions best balance the goals of improving air quality while reducing the burden of NSR compliance on industry. The Department will not revise these provisions.

Comments were received regarding PM2.5 requirements. Industry strongly urged the Department to follow EPA's May 2008 final NSR regulations for PM2.5 and offer an offset program that recognizes SO2 and NOx as PM2.5 precursors and allows ERCs of these contaminants to be used to offset PM2.5 increases and for internal PM2.5 netting. States with EPA approved PSD programs and those with PM2.5 nonattainment areas have up to three (3) years to submit a revised SIP incorporating the PM2.5 NSR requirements. The Department will need time to evaluate EPA's final PM2.5 rule, specifically with regard to applicable PM2.5 precursors and appropriate interpollutant trading ratios to determine what provisions make sense for New York. Until the Department has an approved program addressing PM2.5, EPA will be implementing all PM2.5 NSR requirements.

Comments were received regarding the rule's implementation of a transition plan, specifically with regard to the applicability of 40 CFR 52.21, following the promulgation of Part 231. Both rules will continue to be applicable until Part 231 is included in the New York State SIP and is approved by EPA.

Comments were received regarding the existing significant project threshold of 2.5 tons per year for VOC and NOx in the severe ozone nonattainment area. Industry has advocated for an increase in the significant project threshold applicable to the severe ozone non-attainment area. Industry recommends increasing the significant project threshold in proposed Part 231-13.3, Table 3 to 12.5 tpy. The Department will retain the significant project threshold of 2.5 tons per year for NOx and VOC for the severe ozone nonattainment area. The Department has determined that retention of this threshold is vital to New York State's ability to control ozone and crucial to its SIP for attaining the 1-hour ozone NAAQS. Raising the significant project threshold to 12.5 tpy as requested by commenter would relax requirements that have been in place for almost eight years and result in fewer modified facilities undergoing NSR review and could

potentially raise concerns under the anti-backsliding provisions of the Clean Air Act. Finally, the threshold levels for non-attainment areas are established in the Clean Air Act (CAA). For severe areas the CAA requires that any increase be considered significant.

Comments were received from industry objecting to the proposed requirement for a facility to apply for and obtain a permit that establishes an emission limit associated with an insignificant net emission increase determination. The Department's policy has always been to require applicants to accept permissible emission limits when avoiding NSR applicability. BACT and LAER avoidance permit conditions have been included in dozens of facility permits throughout New York State since the NSR program was first promulgated. This is not a new requirement and only affects the source that was constructed or modified not necessarily an entire facility.

---



---

## Department of Health

---



---

### EMERGENCY RULE MAKING

#### Criminal History Record Check

**I.D. No.** HLT-41-08-00005-E

**Filing No.** 69

**Filing Date:** 2009-01-16

**Effective Date:** 2009-01-16

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

**Action taken:** Addition of Part 402 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2899-a(4); and Executive Law, section 845-b(12)

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

**Specific reasons underlying the finding of necessity:** Emergency agency action is necessary for preservation of the public health, public safety and general welfare.

The regulation is needed on an emergency basis to implement the Department of Health's statutory duty to act on requests for criminal history record checks which are required by law. The law is intended to protect patients, residents, and clients of nursing homes and home health care providers from risk of abuse or being victims of criminal activity. These regulations are necessary to implement the law as of its effective date so that the Department of Health can fulfill its statutory duty of ensuring that the health, safety and welfare of such patients, residents and clients are not unnecessarily at risk.

**Subject:** Criminal History Record Check.

**Purpose:** Criminal background checks of certain prospective employees of NHs, CHHAs, LHCSAs & long term home health care programs.

**Substance of emergency rule:** This regulation adds a new Part 402 to Title 10 NYCRR, which relates to prospective unlicensed employees of nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs who will provide direct care or supervision to patients, residents or clients of such providers.

The regulation establishes standards and procedures for criminal history record checks required by statute. Provisions govern the procedures by which fingerprints will be obtained and describe the requirements and responsibilities of the Department and the affected providers with regard to this process. The regulations address the identification of provider staff responsible for requesting the criminal history checks, supervision of temporary employees, notice to the Department when an employee is no longer employed, the content and procedure for obtaining consent and acknowledgment for finger printing from prospective employees. The Department's responsibilities for reviewing requests are set forth and specify time frames and sufficient information to process a request.

The proposed rule also describes the extent to which reimbursement is available to such providers to cover costs associated with criminal history record checks and obtaining the fingerprints necessary to obtain the criminal history record check.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-41-08-00005-P, Issue of October 8, 2008. The emergency rule will expire March 16, 2009.

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

#### Regulatory Impact Statement

**Statutory Authority:**

Section 2899-a(4) of the Public Health Law requires the State Commissioner of Health to promulgate regulations implementing new Article 28-E of the Public Health Law which requires all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs ("the providers") to request, through the Department of Health ("the Department"), a criminal history record check for certain unlicensed prospective employees of such providers.

Subdivision (12) of section 845-b of the Executive Law requires the Department to promulgate rules and regulations necessary to implement criminal history information requests.

**Legislative Objectives:**

Chapter 769 of the Laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 establish a requirement for all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs to obtain criminal history record checks of certain unlicensed prospective employees who will provide direct care or supervision to patients, residents or clients of such providers. This is intended to enable such providers to identify and employ appropriate individuals to staff their facilities and programs and to ensure patient safety and security.

**Needs and Benefits:**

New York State has the responsibility to ensure the safety of its most vulnerable citizens who may be unable to protect and defend themselves from abuse or mistreatment at the hands of the very persons charged with providing care to them. While the majority of unlicensed employees in all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs are dedicated, compassionate workers who provide quality care, there are cases in which criminal activity and patient abuse by such employees has occurred. While this proposal will not eliminate all instances of abuse, it will eliminate many of the opportunities for individuals with a criminal record to provide direct care or supervision to those most at risk. Pursuant to Chapter 769 of the laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 ("the Chapter Laws"), this proposal requires the providers to request the Department to obtain criminal history information from the Division of Criminal Justice Services ("the Division") and a national criminal history check from the FBI, concerning each prospective unlicensed employee who will provide direct care or supervision to the provider's patients, residents or clients.

Each provider subject to these requirements must designate "authorized persons" who will be empowered to request, receive, and review this information. Before a prospective unlicensed employee who will provide direct care or supervision to patients, residents or clients can be permanently hired, he or she must consent to having his/her fingerprints taken and a criminal history record check performed. Two sets of fingerprints will be taken and sent to the Department, which will then submit them to the Division. The Division will provide criminal history information for each person back to the Department.

The Department will then review the information and will advise the provider whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the Department disapproves the prospective employee's eligibility for employment, (e.g., the person has a felony conviction for a sex offense or a violent felony or for any crime specifically listed in section 845-b of the Executive Law and relevant to the prospective unlicensed employees of such providers). In some cases, a person may have a criminal background that does not rise to the level where the Department will disapprove eligibility for employment. The proposed regulations allow the provider, in such cases, to obtain sufficient information to enable it to make its own determination as to whether or not to employ such person. There will also be instances in which the criminal history information reveals a felony charge without a final disposition. In those cases, the Department will hold the application in abeyance until the charge is resolved. The prospective employee can be temporarily hired but not to provide direct care or supervision to patients, residents or clients of such providers.

The proposal implements the statutory requirement of affording the individual an opportunity to explain, in writing, why his or her eligibility for employment should not be disapproved before the Department can finally inform a provider that it disapproves eligibility for employment. If the Department maintains its determination to disapprove eligibility for employment, the provider must notify the person that the criminal history information is the basis for the disapproval of employment.

The proposed regulations establish certain responsibilities of providers in implementing the criminal history record review required by the law.

For example, a provider must notify the Department when an individual for whom a criminal history has been sought is no longer subject to such check. Providers also must ensure that prospective employees who will be subject to the criminal history record check are notified of the provider's right to request his/her criminal history information, and that he or she has the right to obtain, review, and seek correction of such information in accordance with regulations of the Division, as well as with the FBI with regard to federal criminal history information.

#### COSTS:

##### Costs to State Government:

The Department estimates that the new requirements will result in approximately 108,000 submissions for a criminal history record check on an annual basis. This number of submissions for an initial criminal history record check will decrease overtime as the criminal history record check database (CHRC) is populated. The Department will allow providers to access any prior Department determination about a prospective employee at such time as the prospective employee presents himself or herself to such provider for employment. In the event that the prospective employee has a permanent record already on file with the Department, this information will be made available promptly to the provider who intends to hire such prospective employee.

The provider will forward with the request for the criminal history review, \$75 to cover the projected fee established by the Division for processing a State criminal history record check, and a \$19.25 fee for a national criminal history record check. The Department estimates that the provider's administrative costs for obtaining the fingerprints will be \$13.00 per print. The total annual cost to providers is estimated to be approximately \$12 million.

Requests by licensed home care services agencies (LHCSAs) are estimated to constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual cost to LHCSAs is estimated to be approximately \$6 million. Reimbursement shall be made available to LHCSAs in an equitable and direct manner for the above fees and costs subject to funds being appropriated by the State Legislature in any given fiscal year for this purpose. Costs to State government will be determined by the extent of the appropriations.

The Department estimates that nursing homes, certified home health agencies and long term home health care programs will constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual costs to nursing homes, certified home health agencies and long term home health care programs is estimated to be approximately \$6 million. These providers may, subject to federal financial participation, claim the above fees and costs as reimbursable costs under the medical assistance program (Medicaid) and may recover the Medicaid percent of such fees and costs. Reimbursement to such providers will be determined by the percent of Medicaid days of care to total days of care. Therefore, approximately \$6 million of the total costs for these providers will be subject to a 50 percent federal share and approximately \$2.3 million will be borne entirely by the State.

##### Costs to Local Governments:

There will be no costs to local governments for reimbursement of the costs of the criminal history record check paid by LHCSAs. LHCSAs will receive reimbursement from the State subject to an appropriation (See "Costs to State Government").

Costs to local governments for reimbursement of the costs of the criminal history record check paid by nursing homes, certified home health agencies, and long term home health care programs will be the local government share of Medicaid reimbursement to such providers which is estimated to be annual additional cost to local governments of approximately \$700,000 (See "Costs to State Government").

##### Costs to Private Regulated Parties:

Costs to LHCSAs will be determined by the extent of annual appropriations by the State Legislature (See "Costs to State Government").

Costs to nursing homes, certified home health agencies and long term home health care programs will be determined by their Medicaid percentage of total costs (See "Costs to State Government").

##### Costs to the Department of Health:

Estimated start-up costs for the Department of Health which includes the purchase of equipment, activities and systems and staffing costs are approximately \$2.8 million.

##### Local Government Mandates:

The required criminal history record check is a statutory requirement, which does not impose any new or additional duties or responsibilities upon county, city, town, village, school or fire districts. The Chapter Laws state that they supercede any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

##### Paperwork:

Chapter 769 of the Laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 require that new forms be developed for use in the process of requesting criminal history record information. The forms are,

for example, an informed consent form to be completed by the subject party and the request form to be completed by the authorized person designated by the provider. Temporarily approved employees are required to complete an attestation regarding incidents/abuse. Provider supervision of temporary employees must be documented. In addition, other forms will be required by the department such as a form to designate an authorized party or forms to be completed when someone who has had a criminal history record check is no longer subject to the check.

The regulations also contain a requirement to keep a current roster of subject parties.

##### Duplication:

This regulatory amendment does not duplicate existing State or federal requirements. The Chapter Laws state that they supercede and apply in lieu of any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

##### Alternatives:

No significant alternatives are available. The Department is required by the Chapter Laws to promulgate implementing regulations.

##### Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

##### Small Business Guide:

A small business guide as required by section 102-a of the State Administrative Procedure Act is unnecessary at this time. The Department provided an intensive orientation of program operations to those providers affected by criminal history record program.

Information was provided and continues to be provided to providers about implementation; process and procedures; and compliance with rules and regulations through a message board, staff attendance at trade association meetings, dear administrator letters, a training script or frequently asked questions document, and a dedicated e-mail log.

##### Compliance Schedule:

The Chapter Laws mandate that the providers request criminal history record checks for certain unlicensed prospective employees on and after September 1, 2006. These regulations are proposed to be effective upon filing with the Secretary of State.

#### **Regulatory Flexibility Analysis**

##### Effect of Rule on Small Businesses and Local Governments:

For the purpose of this Regulatory Flexibility Analysis, small businesses are considered any nursing home or home care agency within New York State which is independently owned and operated, and employs 100 individuals or less. Approximately 100 nursing homes and 200 home care services agencies would therefore be considered "small businesses," and would be subject to this regulation.

For purposes of this regulatory flexibility analysis, small businesses were considered to be long term home health care programs with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the long term home health care program cost report 77 out of 110 long term home health care programs were identified as employing fewer than 100 employees. Twenty-eight local governments have been identified as operating long term home health care programs.

##### Compliance Requirements:

Providers must, by statute, on and after September 1, 2006, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform prospective unlicensed employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State and the FBI. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not the prospective employee's eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

##### Professional Services:

No additional professional services will be required by small businesses or local governments to comply with this rule.

##### Compliance Costs:

For programs eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers (See "Regulatory Impact Statement - Costs to State Government").

For LHCSAs which are unable to access reimbursement from state and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to an appropriation by the State Legislature (See "Regulatory Impact Statement - Costs to State Government").

There will be costs to local governments only to the extent such local governments are providers subject to the regulations.

**Economic and Technological Feasibility:**

The proposed regulations do not impose on regulated parties the use of any technological processes. Fingerprints will be taken generally by the traditional “ink and roll” process. Under the “ink and roll” method, a trained individual rolls a person’s fingers in ink and then manually places the fingers on a card to leave an ink print. Two cards would then need to be mailed to the Division by the Department. However, before the Department could submit the card, demographic information would need to be filled in on the card (such as the person’s name, address, etc.) into the Department databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint cards is difficult to read.

The Department hopes to move in the future to Live Scan. Live Scan is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Department to obtain criminal history information.

**Minimizing Adverse Impact:**

The Department considered the approaches for minimizing adverse economic impact listed in SAPA Section 202-b (1) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

**Small Businesses and Local Government Participation:**

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments were solicited from all affected parties. Informational briefings were held with such associations. There will be informational letters to providers prior to the effective date of the regulations.

**Rural Area Flexibility Analysis**

**Effect of Rule:**

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population of greater than 200,000 includes towns with population densities of 150 persons or less per square mile. The following 42 counties have a population less than 200,000.

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

**Reporting, Recordkeeping and Other Compliance Requirements:**

Providers, including those in rural areas, must, by statute, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform covered unlicensed prospective employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

**Professional Services:**

No additional professional services will be necessary to comply with the proposed regulations.

**Compliance Costs:**

For programs located in rural areas eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers. (See “Regulatory Impact Statement - Costs to State Government”).

For LHCSAs located in rural areas which are unable to access reimbursement from state/and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to appropriation by the State Legislature. (See “Regulatory Impact Statement - Costs to State Government”).

**Minimizing Adverse Impact:**

The Department considered the approaches for minimizing adverse economic impact listed in SAPA section 202-bb (2) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

**Rural Area Participation:**

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments solicited from all affected parties. Such associations include members from rural areas. Informational briefings were held with such associations. There will be informational letters to providers to include rural area providers prior to the effective date of the regulations.

**Job Impact Statement**

A Job Impact statement is not necessary for this filing. Proposed new 10 NYCRR Part 402 does not have any adverse impact on the unlicensed employees hired before September 1, 2006 as they apply only to future prospective unlicensed employees. The number of all future prospective unlicensed employees of providers who provide direct care or supervision to patients, residents or clients will be reduced to the degree that the criminal history record check reveals a criminal record barring such employment.

Since the inception of the program approximately 14% of all unlicensed employees applying for positions with nursing homes or home health care providers were found to have a criminal record barring such employment.

**Assessment of Public Comment**

The Department received comments from 16 individuals/organizations in regard to the Criminal History Record Check (CHRC) regulations. The Department believes this regulation simply fulfills the statutory requirement of Chapter 331 of the Laws of 2006, amending Public Health Law (PHL) Article 28-E and Executive Law (EL) Section 845-b relating to requiring the review of criminal history of prospective employees of nursing homes and home health care services agencies, and that most of the comments submitted are in opposition to several provisions of the Department of Health (DOH) regulations at 10 NYCRR Part 402 which were promulgated following the enactment of the statute. The specific issues raised and responses to those issues follow:

**Comment:**

In response to the provision that would require PHL Article 28 and Article 36 covered providers to designate one or more “Authorized Persons” to request, receive and maintain the confidentiality of criminal history information provided by the Department, virtually all comments received emphasized that this provision is unduly restrictive and recommended the automatic designation of two “Authorized Persons”. Likewise, the commenters also stated concerns that the need for backup “Authorized Persons” to cover potential employee absences such as vacation, employee turnover or other employment issues also requires the designation of at least two “authorized persons”. As such, the commenters stated that this change eliminates additional administrative burden for both providers and DOH.

**Response:**

The DOH disagrees because the designation of at least two authorized persons is already permitted by regulation. An “Authorized Person” is defined by the 2006 statute to mean the “one individual designated by a provider who is authorized to request, receive and review criminal history information, except that where the number of applications received by a provider is so great that one person cannot reasonably perform the functions of the authorized person, a provider may designate one or more additional persons to serve as authorized persons”. Executive Law 845-b(1)(b). Similarly, 10 NYCRR Section 402.4(a)(1) requires the designation of as many authorized persons as are needed to assure compliance with the CHRC requirements. In order for covered providers to comply with the timely access and response to criminal history information provided by the DOH, covered providers have been instructed in both DOH training sessions and CHRC administrative letters that the designation of at least two authorized persons is encouraged and will not require DOH pre-approval. This was encouraged because the Department requires that the providers not allow prospective employees to provide direct care or

supervision to patients, residents or clients in response to CHRC correspondence concerning proposed or final disapproval of eligibility for employment. It follows that due to the provider response requirements to CHRC correspondence, an authorized person should be made available at all times and notwithstanding a provider's internal staffing issues. Moreover, the larger PHL Article 28 and 36 entities have historically been encouraged by the Department to designate more than two authorized persons in recognition of the high volume of criminal history record checking requests submitted by them.

Comment:

Most raised the comment that the supervision requirements concerning prospective employees awaiting the results of the CHRC be revised to require one direct on-site visit and 3 telephone calls for the first month and then monthly calls thereafter to check-in with the patient/client or the patient/client's representative. The commenters also stated since providers speak with patients/clients on a continual basis already, such a requirement would provide financial relief from the restrictive supervision requirements currently imposed, while continuing to maintain appropriate supervision of those temporary employees. The commenters also stated that the supervision requirements be revised to allow the direct on-site visit to be completed by a licensed health care professional, senior aide or other paraprofessional who meets the one year requirement of employment in home care.

Response:

The DOH agrees in part, and to the extent that the current regulation requirement requires Certified Home Health Agencies (CHHAs), Licensed Home Care Services Agencies (LHCSAs) and Long Term Home Health Care Providers (LTHHCPs) to provide direct observation and evaluation of the temporary employee on-site in the home the first week by a registered professional nurse, licensed practical nurse or other professional personnel and should be modified. PHL 2899-a(10) requires that for the purposes of providing direct observation and evaluation, the provider shall utilize an individual employed by such provider with a minimum of one-year's experience working in an agency certified, licensed or approved under Article 36 of the Public Health Law. The DOH agrees that the language in the statute ensures appropriate oversight while allowing the health care agencies to determine what level of supervision is appropriate for the prospective employees. Therefore, the regulation will be changed to allow, solely for the purposes of the CHRC supervision, the direct on-site visits to be completed by a licensed health care professional, senior aide or other paraprofessional who meets the one year requirement of employment in home care. This regulation change, however, does not supplant the existing clinical supervision requirement to be completed by a Registered Nurse or Licensed Practical Nurse. The DOH, however, also recognizes that the home health care setting poses a greater risk to the home care client pending the completion of the criminal history record checking process. On several occasions, the DOH has been informed by law enforcement or media sources of criminal offenses, both physical and financial in nature, by prospective employees during the supervisory period. The regulations at 402.4(b)(2)(ii) provide for a minimal level of CHRC supervisory contacts that ensures providers are supervising individuals while awaiting a response from the Department. Commenters also noted that some providers are still experiencing long delays in turnaround time for processing and finalizing criminal record checks, thereby increasing their supervision costs. Current CHRC processing time has been reduced to about 7 to 10 days for a non-indent (no criminal history information on file) response. The Department strives to further reduce the response time to a provider's or applicant's request for a criminal history record check determination. Several factors may delay issuing a determination to the provider and the prospective employee where there is criminal history. Once the CHRC Legal unit receives a criminal history from the Division of Criminal Justice Services (DCJS) it must be reviewed for completeness and accuracy. Very often the information provided by the FBI and to a lesser extent, the DCJS, is incomplete. The legal unit's responsibility is to assure the completeness and the accuracy of the criminal history provided and the outcome of criminal charges before making a final determination about the individual's suitability for employment. Perfection of a criminal history requires the CHRC unit to contact a number of sources including courts, parole officers, probation officers and district attorneys in New York and other jurisdictions. This process can take several days to weeks. We appreciate that this may delay some responses and providers are incurring supervisory costs while awaiting a response from the Department, but we must resolve these issues first in order to protect the health, safety, and welfare of the resident or home care patient. The protections are wholly within the purview of the Department.

Comment:

Most also recommended the removal of the regulation provision allowing prospective employees to withdraw applications for employment prior to the completion of the CHRC process. Commenters stated that this provision subjects providers to additional CHRC related costs while waiting

for DOH reimbursement for applicants who may not complete the employment process because of withdrawal.

Response:

The DOH disagrees. Executive Law Section 845-b(3)(d) provides that a prospective employee may withdraw his or her application for employment, without prejudice, at any time before employment is offered or declined, regardless of whether the subject individual or provider has reviewed such individual's criminal history information. Furthermore, CHRC initial fingerprinting costs for the prospective employee remains reimbursable based on availability, whether or not the applicant completes the employment process. The DOH also wishes to underscore that the intent of the DOH CHRC Form 102 "Acknowledgement and Consent Form for Fingerprinting and Disclosure of Criminal History Record Information" is to also inform prospective employees of their right to withdraw their application for employment at any time. This right to withdraw is clearly noted on the consent form. This form was drafted with the intent of full disclosure. Moreover, the DOH CHRC Form 102 also required approval by both the NYS Division of Criminal Justice Services and the FBI prior to its implementation.

Comment:

Several commenters stated that there should be strict time lines, for example 5 days, for the DOH to review criminal history information and make employment eligibility determinations. In large part, due to the supervision costs associated with prospective employees waiting for the results of the CHRC, commenters added that such time limits would reduce their CHRC costs and also enable the DOH to more promptly notify the provider whether or not the CHRC has revealed any criminal history information, and if so, what actions shall or may be taken by the DOH and the provider.

Response:

Executive Law 845-b(5)(e) explicitly states that upon receipt of criminal history information from the division (NYS Division of Criminal Justice Services), the DOH may request, and is entitled to receive, information pertaining to any crime identified in such criminal history information from any state or local law enforcement agency, district attorney, parole officer, probation officer or court for the purposes of determining whether any ground relating to such crime exists for denying an application, renewal, or employment. Furthermore, paragraph (f) of the same subsection follows and states that the DOH shall thereafter promptly notify the provider concerning whether its check has revealed any criminal history information, and if so, what actions shall or may be taken by the DOH and the provider. As mentioned above, several factors may delay issuing a determination to the provider and the prospective employee where there is criminal history. Once the CHRC Legal unit receives a criminal history from the Division of Criminal Justice Services (DCJS) it must be reviewed for completeness and accuracy. Very often the information provided by the FBI and to a lesser extent, the DCJS, is incomplete. The legal unit's responsibility is to assure the completeness and the accuracy of the criminal history provided and the outcome of criminal charges before making a final determination about the individual's suitability for employment. Therefore, it is not practical to limit the CHRC response time to 5 days.

Comment:

The proposed regulation at 10 NYCRR Section 402.9(a)(1) requiring providers to establish, maintain, and keep current, a record of employees should be withdrawn given the high turnover rate in the home care industry.

Response:

DOH does not agree. Executive Law Section 845-b(8) requires that providers notify DOH when an employee is no longer subject to a criminal history record check so that the Division of Criminal Justice Services and DOH no longer provides subsequent criminal history information to that provider. Further, the DOH is required by law to annually validate the records maintained on its behalf by the Division of Criminal Justice Services.

Comment:

The proposed regulation at 10 NYCRR Section 402.9(c)(1) requiring providers to retain CHRC records for six years is administratively burdensome.

Response:

The Departmental standard document retention requirement is six years.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Wastewater Treatment Standards—Individual Household Systems

I.D. No. HLT-05-09-00004-P

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

**Proposed Action:** Amendment of Appendix 75-A of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 201(1)(l)

**Subject:** Wastewater Treatment Standards—Individual Household Systems.

**Purpose:** To revise current standards for household onsite wastewater treatment systems.

**Substance of proposed rule (Full text is posted at the following State website: [www.health.state.ny.us](http://www.health.state.ny.us)):** Add, as an alternative to a conventional septic tank, a new category of onsite wastewater treatment systems called Enhanced Treatment Units (ETUs) that provide enhanced wastewater treatment prior to discharge to soil absorption systems.

Allow National Sanitation Foundation Class I Standard 40 or equivalently tested ETUs to be designed with a 33% absorption trench length reduction and to allow a 33% smaller basal area design for raised systems receiving effluent from an ETU. Due to increased maintenance required for these systems they will be only be considered for design approval in jurisdictions served by a responsible management entity (RME) or where maintenance of the systems is monitored and required by a local sanitary code or watershed rule or regulation.

Recognize that certain gravelless absorption system products provide increased infiltration surface area for wastewater treatment in soil absorption areas and therefore allow a 25% absorption trench length reduction for certain gravelless trench products.

Allow properly manufactured waste tire chips to be used as a replacement for stone aggregate in absorption trenches.

Revise the minimum design flow rate to 110-gallons per day per bedroom as installed fixtures must conform with water conservation standards for plumbing fixtures established in 1994.

Delete Evaporation-Transpiration (ET), Evapo-Transpiration Absorption (ETA) and engineered systems as wastewater treatment technology options.

Rescind the New Product/System Design Interim Approval section as the proposed amendments incorporate new products, revise existing design standards, expand the use of third party product certifications and include a specific waiver provision.

Recognize the use of Section 75.6 in Part 75 of existing Department regulations to address deviations from Appendix 75-A through the issuance of a specific waiver.

Make minor technical revisions to codify long standing technical guidance concerning, and provide flexibility in dosing tank size requirements, allowing for alternative fill material stabilization methods and allowing gravity distribution for small intermittent sand filters.

Note: The absorption trench length reductions for ETUs and gravelless systems do not apply within the New York City Watershed.

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

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

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

#### **Regulatory Impact Statement**

Statutory Authority:

Public Health Law Section 201(1)(l) authorizes the Department of Health (DOH) to regulate residential sewage disposal of less than 1,000 gallons per day. Environmental Conservation Law Section 17-0701 authorizes the Department of Environmental Conservation (DEC) to regulate of sewage disposal of commercial facilities of greater than 1,000 gallons per day. Pursuant to these statutes and memoranda of understanding between DOH and the DEC, regulatory responsibilities for sewage disposal are divided between the two agencies. DOH retains responsibility for onsite sewage disposal from residential dwellings with a design flow of 1,000 gallons per day or less.

Legislative Objectives:

The shared legislative and agency objective is to protect public health and the environment. The purpose of promulgating a regulation incorporating design standards for onsite wastewater treatment systems (OWTS) is to ensure that household wastewater is treated and dispersed in a manner protective of public health and the environment.

Needs and Benefits:

Existing regulations need to be updated to recognize new OWTS technologies that provide acceptable or enhanced treatment of household wastewater, additional options and economic benefits for homeowners, and environmental benefits for communities.

It is estimated that 3,500,000 to 4,000,000 New Yorkers rely upon 1,500,000 existing OWTSs for treating their household wastewater.

OWTS are located predominantly in suburban and rural areas not served by municipal sewerage facilities. Due to diminishing funding for new municipal sewer systems, and continuing residential development in areas not served by public sewers, many state residents will continue to rely on OWTSs into the foreseeable future. The United States Environmental Protection Agency (EPA) acknowledges this trend and has renewed an emphasis on the proper design, operation, and management of residential OWTS. The EPA has encouraged the development and testing of innovative OWTS technologies and products.

10 NYCRR Part 75, Appendix 75 A, "Wastewater Treatment Standards - Individual Household Systems" sets minimum standards for design and construction of new OWTS serving residential properties. The State Uniform Fire Prevention and Building Code references Appendix 75-A as the statewide design standard for OWTSs. Although not directly applicable to repair of existing OWTSs, many design professionals and local permitting officials also use these standards to guide the repair or replacement of existing systems.

The current, 1990 version of Appendix 75 A specifies design and installation standards for long proven OWTS technologies that work in soil and groundwater conditions found in New York. Since 1990, technological advances have expanded available OWTS products nationwide. Manufacturers of OWTS products, vendors, government agencies, and academics have been developing and testing new products that provide improved treatment and dispersal of household wastewater, often at significantly reduced costs. Manufacturers, vendors, homeowners, design professionals, public agencies, and environmental advocates all share an interest in a regulatory climate conducive to their use.

Summary of Proposed Revisions:

The proposed revisions primarily provide for the general use of two new categories of OWTS technology: gravelless absorption systems and enhanced treatment units (ETUs).

**Gravelless Systems:** Most OWTSs provide primary treatment of household wastewater in a septic tank followed by dispersal of wastewater to a soil absorption area for final, passive biological treatment. The most common absorption area is constructed of perforated pipe installed in gravel or stone filled trenches. The proposed revisions recognize that gravelless absorption technologies can provide increased infiltration surface area for biological treatment of septic tank effluent within an absorption field, and establish criteria for acceptable design and installation of gravelless technologies. Without the masking effects of stone, a significant increase in the soil infiltration surface area is available for biomat formation and therefore some gravelless systems will be allowed a corresponding reduction in trench lengths for absorption fields.

**ETUs:** The proposed revisions will incorporate ETUs as new alternative system options. Several new technologies fall under this category; all provide advanced wastewater treatment prior to dispersal to an absorption area. However, ETUs typically have additional electrical and mechanical components critical to their proper operation and therefore require more vigilant maintenance than conventional septic tanks. As proposed, effective performance of these units must be documented through independent third party testing and certification by a reputable organization such as the National Sanitation Foundation (NSF).

The enhanced treatment provided by ETUs allows for a corresponding reduction in trench lengths for absorption fields. However, because of the increased need for inspection and maintenance of ETUs, trench length reductions will only be allowed in locations with a regulatory program that ensures proper maintenance. These programs can be implemented by agencies with jurisdiction and enforcement authority over OWTSs (e.g., watershed protection agencies, local health departments, and municipal sewer districts), denoted as responsible management entities (RMEs). EPA encourages the establishment of RMEs as an effective means of OWTS management.

The proposed revisions will allow use of properly manufactured tire chip aggregate (TCA) as a substitute for gravel and stone in absorption area trenches. Research has shown TCA to be a safe and reliable replacement for gravel and stone in OWTS applications. TCA is used in OWTS applications in several other states.

The proposed revisions will eliminate a provision that provides for interim review and approval of OWTS products. This seldom used provision will no longer be needed because proposed provisions provide acceptance for entire classes of new OWTS products and independent third party certifications of OWTS products as well as recognizing specific waivers.

Finally, there are minor technical revisions to codify long standing technical procedures regarding the design of OWTS. These provisions

will provide flexibility in dosing tank size requirements, allowing for alternative fill material stabilization methods and allowing gravity distribution to small intermittent sand filters.

#### COSTS:

##### Costs to State Government:

There will be no additional costs to the State beyond distributing the revised regulation and providing training and outreach. The most significant effort will be training local health department staff and design professionals on new OWTS technologies addressed by the rule. Training will be provided through inter-agency coordination using existing resources.

Allowing use of tire chip aggregate will result in cost and environmental benefits to the State by encouraging a market for recycling discarded tires, an initiative promoted by the Empire State Development Corporation, and Department of Environmental Conservation. Empire State Development staff projected that using tire chip aggregate in OWTS has the potential to significantly reduce the statewide need for processing and disposing of waste tires.

##### Costs to Local Government:

The proposed revisions pose no new mandates on local governments. Initially local governments with OWTS regulatory programs will expend staff time training on the revision and the new technologies it addresses. However, the proposed revision shall provide clear standards on technologies and products already being used and may reduce staff time associated with inquiries and review and approval of OWTS applications.

Local governments may incur new costs if they elect to become a responsible maintenance entity (RME). Local governments will not be required to become RMEs, but may voluntarily do so as a means to improve OWTS oversight. Some county health departments already serve as RMEs by virtue of their own county code. Serving as a RME requires dedicated staff and resources. Such programs are typically funded by local fees and/or rates and become self-sustaining. RME startup costs could range from less than \$1,000 to more than \$20,000. EPA estimated that annual fees or rates to cover these costs can vary from about \$20 to \$300 per household, depending upon RME activities funded and challenges faced.

Allowing use of tire chip aggregate will result in cost benefits to all levels of government by encouraging a market for recycled tires.

##### Costs to Regulated Parties:

No additional costs to the manufacturers of gravelless products or ETUs have been identified. Appendix 75-A is a reference standard and the proposed revisions will allow for the routine use and recognition of their products.

##### Costs to Designers:

Beyond initial training, the rule will have minimal or no cost impacts to designers of OWTSs. Designers of OWTS may incur initial costs to become qualified to design and install the new technologies addressed by the proposed revisions. Some manufacturers and vendors of OWTS products provide this training free of charge. Professional and for-profit organizations are also available to provide this training at reasonable costs. Such costs are business investments that will be recouped. The proposed rule does not require such training or even use of the products; this will be driven by market-based incentive.

##### Costs to End-Users (Homeowners):

The rule will not impose additional costs on end-users (homeowners). Instead, the rule will potentially provide cost savings by allowing greater selection of OWTS technologies and products for site-specific application.

The rule could create cost impacts to residents in jurisdictions that form a responsible maintenance entity (RME). Such programs are typically implemented where non-ordinary wastewater treatment and disposal issues exist (e.g. waterfront lots or sensitive watersheds) and would be funded by user fees. These annual fees can vary from about \$20 to \$300 per household. The rule provides for smaller absorption fields in RMEs, where this occurs, there will be offsetting cost benefits.

Additionally, tire chip aggregate could create savings in areas of the state where gravel prices are at a premium.

##### Local Government Mandates:

Local agencies with OWTS regulatory oversight will have to become familiar with the new standards, but the proposed revision does not impose new program responsibilities on any county, city, town, village, school district, fire district or special district.

##### Paperwork:

No new reporting requirements are created by the proposal. Additional record keeping by RMEs is implicit in the proposed rule, however, the establishment of RMEs is a local option and not mandatory.

##### Duplication:

This regulation does not duplicate any existing federal, state or local regulation.

##### Alternatives Considered:

One alternative to the proposed revisions is to take no action and continue using current standards of Appendix 75 A. This approach ignores: (1) significant advances in OWTS technology, (2) nationwide trends in state-level OWTS management, (3) guidance by EPA, and (4) the developing market for improved OWTS products. Additionally, relying on the current standards limits options for environmentally responsible community development.

Another alternative is to maintain the current regulations and encourage county health departments to evaluate and accept new products under existing provisions of Appendix 75-A. This passes the responsibility for product acceptance and design standards to county health departments. This is not practical; few counties have resources for such a program. This would lead to disparity from county to county in specific product use and requirements, and confusion within the regulated community.

The State could opt to perform product assessments and verifications in lieu of requiring independent third-party evaluation, but these are resource intensive and not practical at this time.

##### Federal Standards:

No federal standards exist.

##### Compliance Schedule:

These regulations will be effective upon publication of a Notice of Adoption in the New York *State Register*.

##### Regulatory Flexibility Analysis

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

The proposed revision to 10 NYCRR Appendix 75-A will involve changes in design and construction specifications for onsite wastewater treatment system (OWTS) technologies and products included in the current version of the rule. The revision will also allow for the use of existing technologies and products not readily accommodated under the current rule. The result of the changes will generally mean increased options available for OWTS designers. Most OWTS designers and installers would be classified as small businesses (for example, engineering, architectural, and general contracting or soil excavating companies having fewer than 100 employees). OWTS designers and installers will need to be updated on the changes; the New York State Department of Health (DOH) will provide notices and information about the changes to individuals and organizations involved with OWTS design, approval, and construction.

No adverse impacts will be created for local government under the proposed rule. The proposed rule recognizes a category of legal entities known as responsible management entities (RMEs) that have the ability and authority to oversee OWTS operations. Under the proposal, certain types of potentially beneficial OWTSs will be allowed for use within RMEs. Local governments may voluntarily become RMEs, thereby increasing OWTS options and corresponding oversight responsibilities within their jurisdiction. Such programs are typically funded by local fees and/or rates and become self-sustaining. The proposed revision does not require RMEs, but recognizes their benefit to OWTS management.

##### Reporting and Record Keeping:

No new reporting or record-keeping requirements are created by the proposed rule. The importance of record keeping within RMEs is implicit in the proposed rule; however, the establishment of RMEs is a local decision.

##### Professional Services:

No additional requirement for professional licensing, certification, or registration is required under the proposed revision. Manufacturers and vendors of some OWTS products do require proper training and/or certification for those using and/or installing their products. Many of these also provide the training to interested designers and installers. The proposed rule does not require the use of these products, however; this will be driven by market-based incentive.

##### Other Compliance Requirements:

The proposed revision will allow for, but not require, modified sizing specifications for components of some OWTS technologies accommodated in the present rule. The proposed revision will allow the use of OWTS products and technologies not accommodated in the present rule, subject to specified design and construction requirements.

##### Costs:

##### Potential Costs to Manufacturers of OWTS Products:

No additional costs to the manufacturers of gravelless products or ETUs have been identified. Appendix 75-A is a reference standard and the proposed revisions will allow for the routine use and recognition of their products.

##### Potential Costs to Designers:

The rule will have minimal or no cost impacts to designers of OWTSs. Some may incur initial training costs in becoming qualified to install different types of systems/products, however some manufacturers and vendors of OWTS products provide free training to interested designers. The proposed rule does not require such training or even use of the products; this will be driven by market-based incentive.

#### Potential Costs to End-Users (Homeowners):

For end users (homeowners), the rule will not impose additional costs. Instead, the rule will potentially provide cost savings to end-users by allowing a greater selection of OWTS technologies and products for site-specific considerations. Additionally, the use of tire chip aggregate (TCA) could become cost competitive in some areas of the state, resulting in savings to the end-user.

The rule could have cost impacts to individuals who reside in municipalities or jurisdictions that decide to become RMEs. Such programs are typically funded by fees and/or rates and become self-sustaining. Based upon information and case studies recently provided to states by the US EPA (US EPA, 2003), these annual fees or rates can vary from about \$20 to about \$300 per household, depending upon the level of RME activities funded and/or the administrative and technical challenges faced within a given RME.

#### Potential Costs to Local Government:

There will be no additional costs to local governments. The proposed revision will potentially result in cost savings by providing clear standards to design professionals and permit issuing officials relative to OWTS technologies and products. Allowing use of TCA may also result in an environmental benefit by encouraging a market for the recycling of discarded tires, an initiative promoted by the Governor's Office and the NYS DEC.

Local governments may voluntarily become RMEs, thereby increasing OWTS options and oversight within their jurisdiction. Such programs are typically funded by fees and/or rates and become self-sustaining. As noted above, these annual fees or rates can vary from about \$20 to about \$300 per household, depending upon the level of RME activities funded and/or the technological challenges faced within a given RME. These annual costs may be additional to RME start-up costs that could range from less than \$10,000 to more than \$20,000 (US EPA, 2003). The proposed revision does not require that the local governments establish RMEs, but simply recognizes their benefit to OWTS management where municipalities do establish such.

#### Economic and Technological Feasibility:

The proposed rule is economically and technologically feasible. It will provide for the general use of technical advances already being used within the OWTS industry.

#### Minimizing Adverse Economic Impact:

The proposed rule modifies existing standards for household OWTSs in a manner that increases potential options for responsible, environmentally friendly, design. As with the current regulation, the option of specific waivers will be available pursuant to 10 NYCRR Part 75 in rare circumstances that cannot be reasonably accommodated within the provisions of the rule. Site specific OWTS performance with respect to the key objective of treating wastewater in a manner protective of public health and the environment is the primary consideration in these situations.

#### Small Business and Local Government Participation:

In April of 2003 DOH established the OWTS Advisory Committee. The Advisory Committee was established by DOH to provide technical advice and broader perspective to its OWTS regulatory program, including a potential revision of the Appendix 75-A regulations. The Committee includes representatives from DOH, New York State Conference of Environmental Health Directors, several county health departments (Madison, Suffolk, and Westchester), the Department of Environmental Conservation, the New York City Department of Environmental Protection, the New York Onsite Wastewater Association (an OWTS industry group), the New York Land Improvement and Contractors Association, NYS and Delaware County Soil and Water Conservation Committees, the New York State Society of Professional Engineers, and the Catskill Watershed Corporation. Other participants at the two Advisory Committee meetings included representatives of the Onsite Training Network (OTN), the Governor's Office of Regulatory Reform, Empire State Development, local health departments, the PreCasters Association of New York (septic tank manufacturers), the Lake George Waterkeeper, four OWTS product vendors and one environmental consulting firm.

Committee meeting participants received and discussed three drafts of potential revisions to the text of Appendix 75-A based upon the Committee's input. In this manner, proposed changes that would impact certain entities were developed with input from the potentially affected parties.

#### Rural Area Flexibility Analysis

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

In general, household onsite wastewater treatment systems (OWTS) are used in rural areas and suburban areas that do not have municipal sewage collection systems. Based upon information from the 1990 U.S. Census, populations in the upstate central New York/Finger Lakes counties, north-country/Adirondack counties, Catskill region counties, east-of-Hudson counties, and eastern Long Island are more likely to rely on OWTS than other means for wastewater needs. Statewide, 48 of New York's 62 counties have a sizable percentage of population (> 25%) that rely on OWTSs.

##### Reporting and Record Keeping:

No new reporting or record keeping requirements are created by the proposed rule. The importance of record keeping within responsible management entities (RMEs) is implicit in the proposed rule, however, the establishment of RMEs is not mandated by the proposed rule but is rather a local voluntary decision.

##### Professional Services:

No additional requirement for professional licensing, certification, or registration is required under the proposed revision. Manufacturers and vendors of some OWTS products do require proper training and/or certification for those using and/or installing their products. Many manufacturers of these products also provide the training to interested designers and installers. The proposed rule does not require the use of these products; however, this will be driven by market-based incentive.

##### Other Compliance Requirements:

The proposed revision will allow for, but not require, modified sizing specifications for components of some OWTS technologies accommodated in the present rule. The proposed revision will allow the use of existing OWTS products and technologies not accommodated in the present rule, subject to specified design and construction requirements.

##### COSTS:

##### Projected Costs of Compliance:

##### Potential Costs to Manufacturers of OWTS Products:

No additional costs to the manufacturers of gravelless products or ETUs have been identified. Appendix 75-A is a reference standard and the proposed revisions will allow for the routine use and recognition of their products already being used.

##### Potential Costs to Designers:

The rule will have minimal or no cost impacts to designers of OWTS other than for initial training. Designers of OWTS may incur initial training costs in becoming qualified to design and install the new technologies addressed in the proposed rule. Some manufacturers and vendors of OWTS products provide free training to interested designers. A number of training organizations are also available to provide this training at reasonable costs. The proposed rule does not require such training or even use of the products; this will be driven by market-based incentive.

##### Potential Costs to End-Users (Homeowners):

For end users (homeowners), the rule will not impose additional costs. Instead, the rule will potentially provide cost savings to end-users by allowing a greater selection of OWTS technologies and products for site-specific considerations. The rule could have cost impacts to individuals who reside in municipalities or jurisdictions that form a responsible maintenance entity (RME). Such programs are typically implemented where wastewater treatment and disposal is an environmental or health based concerns such as waterfronts, watersheds or drinking water sources. They would be funded by fees and/or rates and become self-sustaining. These annual fees or rates can vary from about \$20 to about \$300 per household.

Additionally, the use of tire chip aggregate (TCA) could become cost competitive in areas of the state where gravel is at a premium, resulting in savings to the end user.

##### Potential Costs to Local Government:

There will be no additional mandates on local governments. However, local governments may incur new costs if they voluntarily elect to take on the role of a responsible maintenance entity (RME). Local governments will not be required to become RMEs, but they may opt to do so as a means to increase OWTS options and oversight within their jurisdiction. Some county health departments already act in this capacity by virtue of their own county sanitary code. Serving as a RME requires dedicated staff and resources. Such programs are typically funded by fees and/or rates and become self-sustaining. Based upon information and case studies recently provided to states by the EPA, these annual fees or rates can vary from about \$20 to about \$300 per household, depending upon the level of RME activities funded and/or the administrative and technical challenges faced within a given RME. These annual costs may be additional to RME start-up costs that could range from less than \$1,000 to more than \$20,000.

The proposed revision does not require that the local governments establish RMEs, but simply recognizes their benefit to OWTS management where municipalities do establish such.

Initially local government agencies that implement OWTS regulatory programs will need to spend staff time to become trained on the proposed rule and the new technologies it addresses. However, the proposed revision will provide clear standards to design professionals and permit issuing officials and over the longer term, should reduce staff time associated with inquiries and review and approval of OWTS applications.

Allowing use of TCA may also result in cost benefits to all levels of government by encouraging a market for the recycling of discarded tires. Minimizing Adverse Economic Impact on Rural Areas:

The proposed rule modifies existing standards for household OWTS in a manner that increases potential options for responsible, environmentally friendly, design. As with the current regulation, the option of specific waivers will be available pursuant to 10 NYCRR Part 75 in rare circumstances that cannot be reasonably accommodated within the provisions of the rule. Site specific OWTS performance with respect to the key objective of treating wastewater in a manner protective of public health and the environment is the primary consideration in these situations.

Rural Area Participation:

In April of 2003 the New York State Department of Health (DOH) established the OWTS Advisory Committee. The Advisory Committee was established by DOH to provide technical advice and a broader perspective to its OWTS regulatory program, including a potential revision of the Appendix 75-A regulations. The Committee includes representatives from DOH, New York State Conference of Environmental Health Directors, several county health departments (Madison, Suffolk, and Westchester), the Department of Environmental Conservation, the New York City Department of Environmental Protection, the New York Onsite Wastewater Association (an OWTS industry group), the New York Land Improvement and Contractors Association, NYS and Delaware County Soil and Water Conservation Committees, the New York State Society of Professional Engineers, and the Catskill Watershed Corporation. Other participants at the two Advisory Committee meetings included representatives of the Onsite Training Network (OTN), the Governor's Office of Regulatory Reform, Empire State Development, local health departments, the PreCasters Association of New York (septic tank manufacturers), the Lake George Waterkeeper, four OWTS product vendors and one environmental consulting firm. Several of these organizations represent constituencies that include rural populations, and representatives from four local health departments represent several rural constituencies. The Advisory Committee has met three times to discuss the proposed rule changes. Additionally, DOH has solicited comments and input from its district offices on potential changes to the regulation. In this manner, proposed changes that would impact rural populations were developed with input from the potentially affected parties. Assessment of the collective input from these parties indicates general conceptual support for provisions in the proposed rule.

#### **Job Impact Statement**

The Department of Health has determined that the rule will not have substantial adverse impact on jobs or employment opportunities. The proposed rule allows modification of some design specifications for existing onsite wastewater treatment system (OWTS) technologies and includes provisions for the use of OWTS technologies and products not addressed in the present version of Appendix 75-A. The proposed revisions have the potential to increase use of certain OWTS technologies, products and create a market for tire chip aggregate (TCA). Thus, expanded work and marketing opportunities for those involved in the manufacture, distribution, design, and installation of these technologies, products or TCA processing has the potential to bring new employment opportunities to the state.

## Office of Mental Retardation and Developmental Disabilities

### EMERGENCY RULE MAKING

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

**I.D. No.** MRD-05-09-00001-E

**Filing No.** 54

**Filing Date:** 2009-01-14

**Effective Date:** 2009-01-14

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

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

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

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

**Specific reasons underlying the finding of necessity:** The appeals process may allow for persons who were determined incorrectly not to need OMRDD services, to actually be determined to be eligible for services upon appeal. The person will then receive the necessary services.

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

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

**Text of emergency rule:** Add a new Part 630 to 14 NYCRR as follows:

#### **PART 630**

#### **ELIGIBILITY DETERMINATIONS FOR CHILDREN WHO ARE AGING OUT**

##### **Section 630.1 Applicability.**

*This Part applies to the New York State Office of Mental Retardation and Developmental Disabilities (OMRDD) and its local administrative offices, the Developmental Disabilities Services Offices (DDSOs). It does not apply to voluntary agencies or private providers of services.*

##### **Section 630.2 Background.**

*(a) The Education Law and Social Services Law require that the committee on special education, multidisciplinary team or social services official send a report to OMRDD (if certain conditions are met) about a child who will be aging out and who may need adult services in the OMRDD system. A person ages out when he or she is no longer able to receive services in the educational system, foster care system or other system for children because of his or her age (usually related to the person attaining 21 years of age).*

*(b) Section 13.37 of the New York State Mental Hygiene Law sets forth the responsibilities of OMRDD related to the planning and referral process for children who are aging out.*

*(1) Once a report about the child has been received by OMRDD, OMRDD is charged with reviewing the report to determine whether the child will likely need adult services, including evaluating the child if necessary.*

*(2) If OMRDD determines that the child will not require adult services, OMRDD is required to notify the child's parent or guardian and referring entity. Chapter 508 of the Laws of 2008 amended Section 13.37 MHL to establish that if this determination is not acceptable to the child's parent or guardian, he or she may appeal the determination.*

*(c) Subdivisions 1.03(21) and (22) of the Mental Hygiene Law define "mental retardation" and "developmental disability."*

**Section 630.3. Determination of eligibility for services in the OMRDD system.**

*OMRDD shall determine whether individuals meet the criteria established in subdivision 1.03(22) of the Mental Hygiene Law and are therefore eligible to receive services in the OMRDD system. OMRDD determinations shall be in accordance with the eligibility determination process described in "Eligibility for OMRDD Services" which is inserted into this Part in section 630.5.*

##### **Section 630.4. Procedures for children aging out.**

*(a) For the purposes of meeting the requirements of Section 13.37 MHL, a child is determined to "likely need adult services" if the child is eligible for services in the OMRDD system.*

*(b) Upon receiving a report submitted pursuant to subparagraph 4402(1)(b)(5) of the Education Law or subdivision 398(13) of the Social*

Services Law, OMRDD shall determine whether the child is eligible for services utilizing the eligibility determination process described in "Eligibility for OMRDD Services."

(c) If OMRDD determines that the child is not eligible for services, it shall notify the child's parent or guardian and the committee on special education, multidisciplinary team or social services official which submitted the report.

(1) Such notice shall state the reasons for the determination and may recommend a state agency which may be responsible for determining and recommending adult services.

(2) If the determination is not acceptable to the child's parent or guardian, he or she may appeal the determination in accordance with the eligibility determination process described in "Eligibility for OMRDD Services." The notice to the parent or guardian shall also describe the procedures for appealing the determination.

Section 630.5. "Eligibility for OMRDD Services."

The following policy of OMRDD entitled "Eligibility for OMRDD Services" is hereby inserted into this Part.

**New York State Office of Mental Retardation  
and Developmental Disabilities**

**ELIGIBILITY FOR OMRDD SERVICES**

**Important Facts**

**Revised December, 2008**

OMRDD, through its local Developmental Disabilities Services Offices (DDSO), determines whether a person has a developmental disability and is eligible for OMRDD funded services. This fact sheet describes the Three-Step process used by OMRDD to make an eligibility determination of developmental disability.

NOTE: A determination of developmental disability does not mean the person is eligible for all OMRDD funded services. Some OMRDD funded services have additional eligibility criteria. For example, Intermediate Care Facilities, and Home and Community Based (HCBS) waiver programs include an additional level of care determination, and individuals are eligible for HCBS services only when they reside in appropriate living arrangements. These and other additional criteria for eligibility of specific OMRDD services are not reviewed through this process.

**ELIGIBILITY DETERMINATION PROCESS**

**Eligibility Request**

An OMRDD Transmittal Form must accompany all requests submitted to the DDSO for eligibility determinations. The Transmittal Form includes the name of the person, the name of the person's representative, and relevant contact information. Documentation of the person's developmental disability must also be included as part of the eligibility request.

**1st Step Review**

DDSO staff review the eligibility request for completeness and share the information with other staff designated by the Director, as necessary. After this review, the DDSO notifies the person in writing that:

- (a) Eligibility or provisional eligibility has been determined; or
- (b) The request is incomplete and requires additional documentation;

or

(c) The request has been forwarded for a **2nd Step Review**.

**2nd Step Review**

DDSO clinicians designated by the DDSO Director conduct a **2nd Step Review** of the eligibility request forwarded by the **1st Step Review**, along with any additional documentation provided by the person. If these clinicians require additional medical information, psychological test results, or historical documentation, the person is notified in writing of the type of information needed and the date by which it must be submitted to the DDSO.

Following the **2nd Step Review**, the DDSO provides the person with written notification of its determination. If the person is found ineligible for OMRDD services because he or she does not have a developmental disability, the letter shall offer the person and his or her representative the opportunity to:

- (a) Meet with DDSO staff to discuss the determination and documentation reviewed; and
- (b) Request a **3rd Step Review**; and
- (c) Request a Medicaid Fair Hearing in cases where Medicaid funded services are sought.

Note that a Notice of Decision informing the person of his or her right to request a Medicaid fair hearing is sent only when the Transmittal Form indicates that the person is interested in receiving Medicaid funded OMRDD services if determined eligible. If the person has not indicated Medicaid funded services, no fair hearing is offered and the decision of the DDSO is final.

The person may choose one, two or all three of the above options. If a

fair hearing is requested, a **3rd Step Review** will automatically be conducted.

**3rd Step Review**

3rd Step Eligibility Determination Committees established by OMRDD in NYC and Albany conduct the **3rd Step Reviews**. Committee members include licensed practitioners who are not directly involved in the determinations made at the **1st** and **2nd Step Reviews**. The Committee reviews the submitted eligibility request and any additional documentation provided by or on behalf of the person. The Committee forwards its recommendations to the DDSO Eligibility Coordinator. The DDSO Director or designated staff person considers the 3rd Step recommendations and informs the person of any change in the DDSO's determination. **3rd Step Reviews** will be made prior to any fair hearing date.

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires April 13, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Barbara Brundage, Director of Regulatory Affairs, Office of Mental Retardation & Developmental Disabilities, 44 Holland Avenue, Albany, NY 12229, (518) 474-1830, email: barbara.brundage@omr.state.ny.us

**Additional matter required by statute:** Pursuant to the requirements of SEQRA and 14 NYCRR Part 602, OMRDD has on file a Negative Declaration with respect to this Action. OMRDD has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

**Regulatory Impact Statement**

1. Statutory Authority:

a. The OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

b. Section 13.37 of the New York State Mental Hygiene Law establishes OMRDD's responsibilities in relation to the planning and referral of children with developmental disabilities for adult services. The statute requires OMRDD to determine whether a child referred to OMRDD through the planning and referral processes will likely need adult services.

2. Legislative Objectives: The amendments further the legislative objectives embodied in Mental Hygiene Law Section 13.37. Chapter 508 of the Laws of 2008 amended Section 13.37 to establish that if OMRDD determines that a child will not require adult services, and that if the determination is not acceptable to the child's parent or guardian, the parent or guardian "may appeal the determination pursuant to regulations adopted by the commissioner." Chapter 508 is effective on January 2, 2009.

3. Needs and Benefits: Section 13.37 of the Mental Hygiene Law (MHL) sets forth OMRDD's responsibility to review referrals from school and social services districts to determine whether a child aging out of those systems is likely to need adult services. These responsibilities date back to 1983 with several subsequent amendments including those added by Chapter 600, Laws of 1994.

Section 13.37 MHL requires that OMRDD provide written notification to the child's parents or guardian, and referring entity, of the reasons for its determination that the child does not need adult services in the OMRDD system. Chapter 508 of the Laws of 2008 adds a requirement to Section 13.37 MHL that the parent or guardian may appeal the determination if it is not acceptable to him or her pursuant to regulations adopted by OMRDD. The addition of new Part 630 of Title 14 NYCRR by this emergency regulation implements this new statutory requirement.

OMRDD has longstanding policy documents which establish a process for determining whether an individual has a developmental disability as defined by the Mental Hygiene Law and is therefore eligible for services in the OMRDD system. The pre-existing OMRDD process already includes procedures that can be utilized to appeal a determination that an individual does not have a developmental disability. A determination by OMRDD that a person does not have a developmental disability according to the legal definition is tantamount to a determination that the child does not require (or need) adult services, which is the standard established by Section 13.37 MHL.

In order to implement the new statute, OMRDD will continue to adhere to the procedures outlined in its longstanding policy documents regarding eligibility for services, which include appeals procedures. The new regulations therefore merely require adherence to these policies.

OMRDD plans to develop new regulations in the future which incorporate standards and procedures for rendering a determination regarding eligibility for services in the OMRDD system. OMRDD views the emergency regulations to implement Chapter 508 as temporary and plans to replace them with the more comprehensive eligibility regulations once the process of developing and promulgating the permanent regulations is complete.

4. Costs:

a. Costs to the Agency and the State and its local governments: There

will be no new costs to OMRDD or the State. OMRDD already has appeals processes pursuant to longstanding agency procedures regarding eligibility for services, which include appeals processes.

There will be no new costs to local governments as a result of the proposed amendments.

b. Costs to private regulated parties: There will be no new costs to private regulated parties.

5. Local Government Mandates: There are no new mandates on local governmental units or any other special districts.

6. Paperwork: There will be no new paperwork for private regulated parties or local government. There will be no new paperwork for OMRDD as it will merely continue to adhere to its longstanding procedures regarding eligibility for services.

7. Duplication: None.

8. Alternatives: OMRDD considered using general references in the regulations in lieu of including the actual text of its procedures for determining eligibility. However, OMRDD decided that it would be more valuable and clearer to regulated parties to include the existing eligibility determination process in the actual regulatory text.

9. Federal Standards: The proposed amendments do not exceed any minimum standards of the Federal government.

10. Compliance Schedule: OMRDD will continue to adhere to its longstanding policies regarding eligibility. No new compliance activities are necessary.

#### **Regulatory Flexibility Analysis**

1. Effect on small businesses: These amendments apply only to OMRDD and do not apply to small businesses that operate under the auspices of OMRDD.

The amendments result in no new costs for local government.

2. Compliance requirements: OMRDD will continue to adhere to its longstanding policies regarding eligibility, which include procedures to appeal a determination that a person is not eligible for services in the OMRDD system. The amendments contain no compliance requirements for small businesses or local governments.

3. Professional services: No additional professional services are required as a result of these amendments. The amendments will have no impact on the professional service needs of small businesses or local governments.

4. Compliance costs: There are no costs to local governments or to small businesses.

5. Economic and technological feasibility: The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: These amendments impose no adverse economic impact on local governments or small businesses.

7. Small business and local government participation: Providers, individuals receiving services and family members were involved in the original development of OMRDD's longstanding policies and procedures regarding eligibility for services and have been familiar with the processes for years, including the appeals procedures. In the future, OMRDD will involve all regulated parties in the review of those policies and procedures and the development of regulatory standards related to eligibility for services.

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

A Rural Area Flexibility Analysis for the proposed amendments has not been submitted. OMRDD has determined that the amendments will not impose any adverse impact, reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The amendments concern procedures for appealing a determination that a person aging out does not need services in the OMRDD system. No compliance activities are imposed on providers.

#### **Job Impact Statement**

A Job Impact Statement is not submitted because the amendment will not present an adverse impact on existing jobs or employment opportunities. The amendments concern procedures for appealing a determination that a person aging out does not need services in the OMRDD system. No compliance activities are imposed on providers and no new procedures will be utilized by OMRDD. OMRDD will continue to adhere to its longstanding policies and procedures related to determining eligibility for services in the OMRDD system.

## Department of Motor Vehicles

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

#### **Dutchess County Motor Vehicle Use Tax**

**I.D. No.** MTV-05-09-00006-P

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

**Proposed Action:** This is a consensus rule making to add section 29.12(ee) to Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

**Subject:** Dutchess County motor vehicle use tax.

**Purpose:** To impose a Dutchess County motor vehicle use tax.

**Text of proposed rule:** Section 29.12 is amended by adding a new subdivision (ee) to read as follows:

*(ee) Dutchess County. The Dutchess County Legislature adopted a resolution on December 19, 2008, to establish a Dutchess County Motor Vehicle Use Tax. The County Executive and the Commissioner of Finance of Dutchess County entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after May 1, 2009 and upon the renewal of registrations expiring on and after July 1, 2009. The Commissioner of Finance is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Dutchess County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be \$5.00 per annum on such motor vehicles weighing 3500 lbs. or less and \$10.00 per annum for such motor vehicles weighing in excess of 3500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Dutchess County, except for vehicles used in connection with the operation of a farm by the owner or tenant thereof shall be \$10.00 per annum.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Carrie L. Stone, Department of Motor Vehicles, Counsel's Office, Room 526, 6 Empire State Plaza, (518) 474-0871.

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

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

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

This proposed regulation would create a new 15 NYCRR Part 29.12(ee) to provide for the collection of an Dutchess County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On December 19, 2008, the Dutchess County Legislature enacted a resolution requiring that a motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this resolution, the Commissioner is required to collect the tax on behalf of the county and transmit the revenue to the County, minus the administrative costs required to process the tax. The tax is five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, i.e., it must be collected per the mandate of the Dutchess County resolution. The merits of the tax may have been debated before the Dutchess County Legislature, but are no longer the subject of debate—it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this rulemaking, because it will not have any impact on job creation or development in New York State.

## Public Service Commission

### NOTICE OF ADOPTION

#### Issues of Stock, Bonds and Other Forms of Indebtedness and Charges

**I.D. No.** PSC-30-08-00008-A

**Filing Date:** 2009-01-16

**Effective Date:** 2009-01-16

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

**Action taken:** On 1/15/09, the PSC adopted an order approving Pheasant Hill Water Corporation's petition for an interest-free loan for \$690,000 and authorized a customer surcharge to repay the loan.

**Statutory authority:** Public Service Law, sections 89-c(10) and 89-f

**Subject:** Issues of stock, bonds and other forms of indebtedness and charges.

**Purpose:** To approve Pheasant Hill Water Corporation's petition for a loan agreement and to charge customers a surcharge.

**Substance of final rule:** The Commission, on January 15, 2009, adopted an order approving the petition of Pheasant Hill Water Corporation for an interest-free loan for \$690,000 and authorized a customer surcharge of \$117.35 per quarter to repay the loan, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

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

(08-W-0775SA1)

### NOTICE OF ADOPTION

#### "Fast Track" Electric Energy Efficiency Programs

**I.D. No.** PSC-38-08-00005-A

**Filing Date:** 2009-01-16

**Effective Date:** 2009-01-16

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

**Action taken:** On 1/15/09, the PSC adopted an order, approving the petition of Niagara Mohawk Power Corporation to implement "fast track" energy efficiency programs, with modifications.

**Statutory authority:** Public Service Law, sections 2, 5 and 66

**Subject:** "Fast track" electric energy efficiency programs.

**Purpose:** To approve, with modifications, the petition for "fast track" electric energy efficiency programs.

**Substance of final rule:** The Commission, on January 15, 2009, adopted an order approving, with modifications, a petition by Niagara Mohawk Power Corporation for Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility administered electric energy efficiency programs, which consist of a Small Business Direct Installation Program and a Residential Energy Star E electric heating, ventilation and air conditioning program, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

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

(08-E-1014SA1)

### NOTICE OF ADOPTION

#### "Fast Track" Electric Energy Efficiency Programs

**I.D. No.** PSC-38-08-00006-A

**Filing Date:** 2009-01-16

**Effective Date:** 2009-01-16

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

**Action taken:** On 1/15/09, the PSC adopted an order, approving the petition of Orange and Rockland Utilities, Inc. (O&R) to implement "fast track" energy efficiency programs, with modifications.

**Statutory authority:** Public Service Law, sections 2, 5 and 66

**Subject:** "Fast track" electric energy efficiency programs.

**Purpose:** To approve, with modifications O&R's petition for "fast track" electric energy efficiency programs.

**Substance of final rule:** The Commission, on January 15, 2009, adopted an order approving, with modifications, a petition by Orange and Rockland Utilities, Inc. for Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility administered electric energy efficiency programs, which consist of a Small Business Direct Installation Program and a Residential Energy Star electric heating, ventilation and air conditioning program, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

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

(08-E-1003SA1)

### NOTICE OF ADOPTION

#### "Fast Track" Electric Energy Efficiency Programs

**I.D. No.** PSC-38-08-00007-A

**Filing Date:** 2009-01-16

**Effective Date:** 2009-01-16

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

**Action taken:** On 1/15/09, the PSC adopted an order, approving the petition of Consolidated Edison Company of New York, Inc. to implement "fast track" energy efficiency programs, with modifications.

**Statutory authority:** Public Service Law, sections 2, 5 and 66

**Subject:** "Fast track" electric energy efficiency programs.

**Purpose:** To approve, with modifications, the petition for "fast track" electric energy efficiency programs.

**Substance of final rule:** The Commission, on January 15, 2009, adopted an order approving, with modifications, a petition by Consolidated Edison Company of New York, Inc., for Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility administered electric energy efficiency programs, which consist of a Small Business Direct Installation Program and a Residential Energy Star electric heating, ventilation and air conditioning program, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

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

(08-E-1007SA1)

## NOTICE OF ADOPTION

**“Fast Track” Electric Energy Efficiency Programs****I.D. No.** PSC-38-08-00008-A**Filing Date:** 2009-01-16**Effective Date:** 2009-01-16

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

**Action taken:** On 1/15/09, the PSC adopted an order, approving the petition of Central Hudson Gas & Electric Corporation to implement “fast track” energy efficiency programs, with modifications.

**Statutory authority:** Public Service Law, sections 2, 5 and 66

**Subject:** “Fast track” electric energy efficiency programs.

**Purpose:** To approve with modifications, the petition for “fast track” electric energy efficiency programs.

**Substance of final rule:** The Commission, on January 15, 2009, adopted an order approving, with modifications, a petition by Central Hudson Gas & Electric Corporation for Energy Efficiency Portfolio Standard (EEPS) “Fast Track” utility administered electric energy efficiency programs, which consist of a Small Business Direct Installation Program and a Residential Energy Star electric heating, ventilation and air conditioning program, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(08-E-1019SA1)

## NOTICE OF ADOPTION

**Calendar of Gas Transportation Schedule, Retail Access Service Classifications and Transition Surcharge****I.D. No.** PSC-45-08-00021-A**Filing Date:** 2009-01-15**Effective Date:** 2009-01-15

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

**Action taken:** On 1/15/09, the PSC adopted an order approving Central Hudson Gas & Electric Corporation’s (company) request to make various changes to its schedule for Electric Service PSC No. 12—Electricity, eff. 2/1/09.

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

**Subject:** Calendar of Gas Transportation Schedule, retail access service classifications and Transition Surcharge.

**Purpose:** To approve the references and provisions in the company’s gas tariff and remove references to the Transition Surcharge.

**Substance of final rule:** The Commission, on January 15, 2009, adopted an order approving Central Hudson Gas & Electric Corporation’s (company) tariff revisions to update the references in its gas tariff to its Calendar of Gas Transportation Schedule, add tariff provisions to its retail access service classes which are subject to the tax rates as stated in the General Information Section of the company’s tariff and remove reference in its gas tariff to the Transition Surcharge which is no longer applicable.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(08-E-1224SA1)

## NOTICE OF ADOPTION

**Purchase Power Adjustment****I.D. No.** PSC-45-08-00022-A**Filing Date:** 2009-01-15**Effective Date:** 2009-01-15

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

**Action taken:** On 1/15/09, the PSC adopted an order approving Massena Electric Department’s request to make various changes to its schedule for Electric Service PSC No. 2—Electricity, eff. 1/29/09.

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

**Subject:** Purchase Power Adjustment.

**Purpose:** To approve a revision to the method of computing the monthly Purchased Power Adjustment.

**Substance of final rule:** The Commission, on January 15, 2009, adopted an order approving Massena Electric Department’s tariff revisions to revise the method of computing the monthly Purchased Power Adjustment Charge.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(08-E-1246SA1)

## NOTICE OF ADOPTION

**Request for Lightened Regulations as an Electric and Steam Corporation****I.D. No.** PSC-48-08-00018-A**Filing Date:** 2009-01-20**Effective Date:** 2009-01-20

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

**Action taken:** On 1/15/09, the PSC adopted an order approving the petition of Lockport Energy Associates, L.P. (LEA) for lightened regulation of LEA as an electric and steam corporation.

**Statutory authority:** Public Service Law, sections 4(1), 66(1), 80(1) and 110

**Subject:** Request for lightened regulations as an electric and steam corporation.

**Purpose:** To approve lightened regulation for Lockport Energy Associates L.P.

**Substance of final rule:** The Commission, on January 15, 2009, adopted an order approving the petition of Lockport Energy Associates, L.P. (LEA) for lightened regulation of LEA as an electric and steam corporation, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(08-M-1301SA1)

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

**Revenue Allocation, Rate Design, Performance Metrics, and Other Non-revenue Requirement Issues**

**I.D. No.** PSC-05-09-00008-P

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

**Proposed Action:** The Commission is considering parts of a proposal filed by Consolidated Edison Company of New York, Inc. (Company) to make various changes in the rates, charges, rules and regulations contained in its Schedules for electric service.

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

**Subject:** Revenue allocation, rate design, performance metrics, and other non-revenue requirement issues.

**Purpose:** To consider any remaining non-revenue requirement issues related to the Company's May 9, 2008 tariff filing.

**Substance of proposed rule:** Consolidated Edison Company of New York, Inc. (Company) made a major electric rate case filing on May 9, 2008. Evidentiary hearings and opportunities for comment by the active parties and general public have already been afforded on all issues. However, due to the number and complexity of issues, it is possible, if not likely, that issues concerning the Company's electric revenue requirement, on the one hand, and those that do not concern the Company's electric revenue requirement, on the other, will be decided separately. If so, it is also anticipated that the electric revenue requirement issues would be decided first. Accordingly, a second notice of proposed rulemaking is being issued to allow for the possibility of a separate, second Commission decision on the non-revenue requirement issues presented.

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

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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

(08-E-0539SA2)

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

**Numerous Decisions Involving the Steam System Including Cost Allocation, Energy Efficiency and Capital Projects**

**I.D. No.** PSC-05-09-00009-P

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

**Proposed Action:** Case 09-S-0029 has been initiated to consider numerous issues involving the Consolidated Edison Company of New York, Inc. steam system.

**Statutory authority:** Public Service Law, sections 79 and 80

**Subject:** Numerous decisions involving the steam system including cost allocation, energy efficiency and capital projects.

**Purpose:** To consider the long term impacts on steam rates and on public policy of various options concerning the steam system.

**Substance of proposed rule:** The Commission has instituted a proceeding to consolidate numerous issues relating to the steam system of Consolidated Edison Company of New York, Inc. The proceeding will examine: proposed allocation of costs of the East River Repowering Project; energy efficiency and customer retention programs; replacement of Hudson Avenue boilers and other Steam Resource Plan options, including overall fuel

efficiency and emission levels of the steam system; and an estimate of steam rates over the next ten years.

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

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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

(09-S-0029SA1)

---

**State University of New York**

---

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

**State University of New York Tuition and Fees Schedule**

**I.D. No.** SUN-05-09-00011-P

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

**Proposed Action:** Amendment of section 302.1 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 355(2)(b) and (h)

**Subject:** State University of New York Tuition and Fees Schedule.

**Purpose:** To amend the State University of New York Tuition and Fee Schedule to increase tuition for students in all programs.

**Text of proposed rule:** Amendments to Section 302.1(b) - (i) of Title 8 NYCRR.

(b) (1) Students enrolled in degree-granting undergraduate programs leading to an associate degree and nondegree granting programs of at least one regular academic term in duration which have been approved as eligible for tuition assistance program awards.

Tuition

(i) Students, New York State residents: [\$2,175] \$2,485 per semester or [\$1,450] \$1,657 per quarter.

(ii) Students, out-of-state residents: [\$5,305] \$6,435 per semester or [\$3,537] \$4,290 per quarter.

(iii) Special students, New York State residents: [\$181] \$207 per semester credit hour or [\$121] \$138 per quarter credit hour.

(iv) Special students, out-of-state residents: [\$442] \$536 per semester credit hour or [\$295] \$358 per quarter credit hour.

(v) The president of a college of technology or a college of agriculture and technology may establish differing rates of tuition for the college for students enrolled in degree-granting programs leading to an associate degree and non-degree granting programs, with the approval of the chancellor or designee, based on considerations which may include but are not limited to time, location, cost, services provided, enrollment management and access, so long as such tuition rates do not exceed the tuition rates specified in this subdivision.

(2) Students enrolled in degree-granting undergraduate programs leading to a baccalaureate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for tuition assistance program awards.

Tuition

(i) Students, New York State residents: [\$2,175] \$2,485 per semester or [\$1,450] \$1,657 per quarter.

(ii) Students, out-of-state residents: [\$5,305] \$6,435 per semester or [\$3,537] \$4,290 per quarter.

(iii) Special students, New York State residents: [\$181] \$207 per semester credit hour or [\$121] \$138 per quarter credit hour.

(iv) Special students, out-of-state residents: [\$442] \$536 per semester credit hour or [\$295] \$358 per quarter credit hour except that for non-matriculated students (as defined in section 145-2.4 of this Title), the president of a State-operated institution may establish a differing tuition rate(s), with the approval of the chancellor or designee, in accordance with guidelines to be issued by the chancellor, provided that such tuition rate(s) does not exceed the rate specified in this paragraph and is not lower than 15 percent above the rate in subparagraph (iii) of this paragraph. Tuition and fees charged to such non-matriculated students shall be set to cover total direct instructional costs for such students.

(c)(1) Students enrolled in graduate programs leading to a master's, doctor's or equivalent degree with the exception of those degrees set forth in paragraph (2) of this subdivision.

Tuition

(i) Students, New York State residents: [\$3,450] \$3,940 per semester or [\$2,300] \$2,627 per quarter.

(ii) Students, out-of-state residents: [\$5,460] \$6,625 per semester or [\$3,640] \$4,417 per quarter.

(iii) Special students, New York State residents: [\$288] \$328 per semester credit hour or [\$192] \$219 per quarter credit hour.

(iv) Special students, out-of-state residents: [\$455] \$552 per semester credit hour or [\$303] \$368 per quarter credit hour.

(2) Students enrolled in graduate programs leading to a master of business administration degree (M.B.A.).

Tuition

(i) Students, New York State residents: [\$3,550] \$4,055 per semester or [\$2,367] \$2,703 per quarter.

(ii) Students, out-of-state residents: [\$5,670] \$6,880 per semester or [\$3,780] \$4,587 per quarter.

(iii) Special students, New York State residents: [\$296] \$338 per semester credit hour or [\$197] \$225 per quarter credit hour.

(iv) Special students, out-of-state residents: [\$473] \$573 per semester credit hour or [\$315] \$382 per quarter credit hour.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(d) Students enrolled in the professional program of pharmacy.

Tuition

(1) Students, New York State residents: [\$6,850] \$7,825 per semester or [\$4,567] \$5,217 per quarter.

(2) Students, out-of-state residents: [\$11,850] \$14,375 per semester or [\$7,900] \$9,583 per quarter.

(3) Special students, New York State residents: [\$571] \$652 per semester credit hour or [\$381] \$435 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$988] \$1,198 per semester credit hour or [\$658] \$799 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(e) Students enrolled in the professional program of law (J.D. and LL.M).

Tuition

(1) Students, New York State residents: [\$6,600] \$7,535 per semester or [\$4,400] \$5,023 per quarter.

(2) Students, out-of-state residents: [\$10,000] \$12,130 per semester or [\$6,667] \$8,087 per quarter.

(3) Special students, New York State residents: [\$550] \$628 per semester credit hour or [\$367] \$419 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$833] \$1,011 per semester credit hour or [\$556] \$674 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(f) Students enrolled in medicine programs.

Tuition

(1) Students, New York State residents: [\$9,400] \$10,735 per semester or [\$6,267] \$7,157 per quarter.

(2) Students, out-of-state residents: [\$16,750] \$20,320 per semester or [\$11,167] \$13,547 per quarter.

(3) Special students, New York State residents: [\$783] \$895 per semester credit hour or [\$522] \$596 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$1,396] \$1,693 per semester credit hour or [\$931] \$1,129 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(g) Students enrolled in dentistry programs.

Tuition

(1) Students, New York State residents: [\$8,100] \$9,250 per semester or [\$5,400] \$6,167 per quarter.

(2) Students, out-of-state residents: [\$16,250] \$19,710 per semester or [\$10,833] \$13,140 per quarter.

(3) Special students, New York State residents: [\$675] \$771 per semester credit hour or [\$450] \$514 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$1,354] \$1,643 per semester credit hour or [\$903] \$1,095 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(h) Students enrolled in the professional program of physical therapy and students enrolled in the doctor of nursing practice degree program.

Tuition

(1) Students, New York State residents: [\$5,710] \$6,520 per semester or [\$3,807] \$4,347 per quarter.

(2) Students, out-of-state residents: [\$9,145] \$11,095 per semester or [\$6,097] \$7,397 per quarter.

(3) Special students, New York State residents: [\$476] \$543 per semester credit hour or [\$317] \$362 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$762] \$925 per semester credit hour or [\$508] \$616 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(i) Students enrolled in optometry programs.

Tuition

(1) Students, New York State residents: [\$6,810] \$7,775 per semester or [\$4,540] \$5,183 per quarter.

(2) Students, out-of-state residents: [\$13,075] \$15,860 per semester or [\$8,717] \$10,573 per quarter.

(3) Special students, New York State residents: [\$568] \$648 per semester credit hour or [\$378] \$432 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: [\$1,090] \$1,322 per semester credit hour or [\$726] \$881 per quarter credit hour or equivalent.

The Chancellor shall determine the equivalent of a credit hour.

**Text of proposed rule and any required statements and analyses may be obtained from:** Marti Anne Ellermann, Senior Counsel, State University of New York, State University Plaza, 353 Broadway, S-333, Albany, New York 12246, (518) 443-5400, email: Marti.Ellermann@SUNY.edu

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

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

**Regulatory Impact Statement**

1. Statutory Authority: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University.

2. Legislative Objectives: The present measure will provide essential financial support for the operations of the State University of New York, in furtherance of its statutorily defined mission as set forth in Article 8 of the Education Law.

3. Needs and Benefits: The present measure establishes a series of tuition increases in the degree programs of the State University of New York as necessitated by the 2008-2009 SUNY Budget and thereafter. The amendment also is the first stage in implementing the State University Trustees' Rational Tuition Policy which will result in modest annual increases to tuition based on the Higher Education Price Index (HEPI).

The tuition changes authorized by this measure affect associate, baccalaureate and graduate programs, including the Master of Business Administration, and the professional schools within the State University of New York including the School of Law and Pharmacy at the State University of New York at Buffalo, the four medical schools of the State University, the Schools of Dental Medicine, the Professional Programs in Physical Therapy and Nursing Practice at State University of New York at Buffalo and Stony Brook and the College of Optometry.

This measure is needed in order to provide essential financial support for the State-operated campuses of the State University of New York. The present amendment will increase tuition for New York State residents enrolled in associate's degree programs to \$4,970 per year (\$12,870 for nonresidents); for baccalaureate degree students also to \$4,970 per year (\$12,870 for nonresidents); and for master's and doctoral degree students to \$7,880 (\$13,250 for nonresidents). For students enrolled in Master of Business Administration degree programs, a new tuition rate of \$8,110 (\$13,760 for nonresidents) is established.

Tuition increases at the professional schools within the State University of New York are also affected by this amendment. Tuition for New York State residents at the School of Law will increase to \$15,070 per year (\$24,260 nonresidents), and at the Pharmacy School to \$15,650 per year (\$28,750 nonresidents).

The measure also increases tuition by \$2,670 per year to \$21,470 for New York State residents and by \$7,140 to \$40,640 for nonresidents enrolled in the four medical schools of the State University of New York.

The amendment also increases tuition for students in the professional dental program (D.D.S.) at the Universities at Buffalo and Stony Brook. Under this measure, tuition will increase \$2,300 per year to \$18,500 for New York State residents and \$6,920 per year to \$39,420 for nonresidents. Tuition for students enrolled in the Professional Program of Optometry at the College of Optometry is increased by \$1,930 to \$15,550 for residents and by \$5,570 to \$31,720 for nonresidents.

Finally, the amendment increases tuition for students pursuing the terminal Professional Degree in Physical Therapy and the Doctorate in Nursing Practice. The new annual rate is \$13,040 for New York State residents and \$22,190 for nonresidents.

4. Costs: Students enrolled in these programs of the State University of New York will be required to pay additional tuition ranging from \$620 per year for baccalaureate degrees to \$7,140 for nonresident students at the Schools of Medicine. In view of the lack of an across-the-board tuition increase since 2003, these increases are two times HEPI for residents of New York and three times HEPI for non-residents, consistent with the Rational Tuition Policy. In-state undergraduate tuition would remain under the Tuition Assistance Program ("TAP") ceiling.

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. Paperwork: No parties will experience any new reporting responsibilities. State University of New York publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: Delays in tuition increases as well as higher increases were considered, however, there is no acceptable alternative to the proposed increases. The revenue from these tuition increases is necessary in order for the University to maintain quality of instruction and essential services to students. Higher increases would have created additional financial hardships, particularly in light of the TAP ceiling. Students spoke at length at the November 18 Public Hearing before the Board of Trustees about the proposed increases and have had other opportunities for consultation about the decision.

9. Federal Standards: None.

10. Compliance Schedule: Compliance with the amendment is ongoing as the increases went into effect on November 24, 2008. Bills reflecting the increases have been sent out to registered students by the campuses and payment on these bills is due in accordance with State University policy.

#### **Regulatory Flexibility Analysis**

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

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

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

#### **Job Impact Statement**

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

## Susquehanna River Basin Commission

### INFORMATION NOTICE

#### **Notice of Actions Taken at September 11, 2008, Meeting; Correction**

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission Actions; correction.

SUMMARY: The Susquehanna River Basin Commission published a document in the *Federal Register* of October 1, 2008, concerning notice of project review actions taken at its September 11, 2008 meeting. The document contained certain discrepancies in the originally published list.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net; or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

#### **Correction**

In the *Federal Register* of October 1, 2008, in FR Doc. 73-191, on page 57191, in the first column, under "Supplementary Information," correct the "Public Hearing – Projects Approved" caption, and on page 57192, in the third column, correct the "Public Hearing – Projects Tabled" caption to read:

#### **Public Hearing – Projects Approved:**

1. Project Sponsor and Facility: East Resources, Inc. (Seeley Creek), Town of Southport, Chemung County, N.Y. Surface water withdrawal of up to 0.036 mgd.
2. Project Sponsor and Facility: Chesapeake Appalachia, LLC (for operations in Chemung and Tioga Counties, N.Y., and Bradford, Susquehanna, and Wyoming Counties, Pa.). Consumptive water use of up to 2.075 mgd from various surface water sources and the following public water suppliers: Towanda Municipal Authority, Aqua Pennsylvania, Inc. – Susquehanna Division, Canton Borough Authority, Borough of Troy, and Village of Horseheads, N.Y.
3. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Town of Tioga, Tioga County, N.Y. Surface water withdrawal of up to 0.999 mgd.
4. Project Sponsor and Facility: Cabot Oil & Gas Corporation (for operations in Susquehanna and Wyoming Counties, Pa.). Consumptive water use of up to 3.575 mgd from various surface water sources and the following public water suppliers: Tunkhannock Borough Municipal Authority, Pennsylvania American Water Company – Montrose System, and Meshoppen Borough Council.
5. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Susquehanna River), Great Bend Borough, Susquehanna County, Pa. Surface water withdrawal of up to 0.720 mgd.
6. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Athens Township, Bradford County, Pa. Surface water withdrawal of up to 0.999 mgd.
7. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Oakland Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.999 mgd.
8. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Susquehanna River), Susquehanna Depot Borough, Susquehanna County, Pa. Surface water withdrawal of up to 0.720 mgd.
9. Project Sponsor and Facility: Fortuna Energy Inc. (Susquehanna River), Sheshequin Township, Bradford County, Pa. Surface water withdrawal of up to 0.250 mgd.
10. Project Sponsor and Facility: East Resources, Inc. (Crooked

- Creek), Middlebury Township, Tioga County, Pa. Surface water withdrawal of up to 0.036 mgd.
11. Project Sponsor and Facility: Chief Oil & Gas, LLC (for operations in Bradford County, Pa.). Consumptive use of water of up to 5.000 mgd.
  12. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Wysox Township, Bradford County, Pa. Surface water withdrawal of up to 0.999 mgd.
  13. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Martins Creek), Lathrop Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.074 mgd.
  14. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Tunkhannock Creek), Lennox Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.250 mgd.
  15. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Meshoppen Creek-2), Lemon Township, Wyoming County, Pa. Surface water withdrawal of up to 0.054 mgd.
  16. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Meshoppen Creek-1), Lemon Township, Wyoming County, Pa. Surface water withdrawal of up to 0.054 mgd.
  17. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (operations in Potter and McKean Counties, Pa.). Consumptive water use of up to 4.900 mgd from various surface water sources and the following public water suppliers: Galetton Borough Authority and Austin Borough Water.
  18. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (East Fork of Sinnemahoning Creek – Horton), East Fork Township, Potter County, Pa. Surface water withdrawal of up to 0.008 mgd.
  19. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Mehoopany Township, Wyoming County, Pa. Surface water withdrawal of up to 0.999 mgd.
  20. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (First Fork of Sinnemahoning Creek – Costello), Sylvania Township, Potter County, Pa. Surface water withdrawal of up to 0.107 mgd.
  21. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (East Fork of Sinnemahoning Creek – East Fork), East Fork Township, Potter County, Pa. Surface water withdrawal of up to 0.025 mgd.
  22. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (East Fork of Sinnemahoning Creek – Purdy), Wharton Township, Potter County, Pa. Surface water withdrawal of up to 0.027 mgd.
  23. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Susquehanna River), Tunkhannock Township, Wyoming County, Pa. Surface water withdrawal of up to 0.720 mgd.
  24. Project Sponsor and Facility: Pennsylvania General Energy Company, LLC (First Fork of Sinnemahoning Creek – Mahon), Wharton Township, Potter County, Pa. Surface water withdrawal of up to 0.231 mgd.
  25. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Bowmans Creek), Eaton Township, Wyoming County, Pa. Surface water withdrawal of up to 0.290 mgd.
  26. Project Sponsor and Facility: PEI Power Corporation, Borough of Archbald, Lackawanna County, Pa. Consumptive water use and surface water withdrawal approval (Docket No. 20010406) for addition of up to 0.530 mgd from a public water supplier as a secondary supply source, and settlement of an outstanding compliance matter.
  27. Project Sponsor and Facility: Neptune Industries, Inc. (Lackawanna River), Borough of Archbald, Lackawanna County, Pa. Surface water withdrawal of up to 0.499 mgd.
  28. Project Sponsor and Facility: Range Resources – Appalachia, LLC (for operations in Bradford, Centre, Clinton, Lycoming, Sullivan, and Tioga Counties, Pa.). Consumptive water use of up to 5.000 mgd from various surface water sources and the following public water suppliers: Jersey Shore Joint Water Authority, Williamsport Municipal Water Authority, City of Lock Haven Water Department, Borough of Bellefonte, Borough of Montoursville, Milesburg Water System, and Towanda Municipal Authority.
  29. Project Sponsor and Facility: Range Resources – Appalachia, LLC (Lycoming Creek-2), Lewis Township, Lycoming County, Pa. Surface water withdrawal of up to 0.200 mgd.
  30. Project Sponsor and Facility: Range Resources – Appalachia, LLC (Lycoming Creek-1), Hepburn Township, Lycoming County, Pa. Surface water withdrawal of up to 0.200 mgd.
  31. Project Sponsor and Facility: Chief Oil & Gas, LLC (for operations in Lycoming County, Pa.). Consumptive water use of up to 5.000 mgd from various surface water sources and the following public water suppliers: Jersey Shore Joint Water Authority, Williamsport Municipal Water Authority, Borough of Montoursville, and Towanda Municipal Authority.
  32. Project Sponsor and Facility: Chief Oil & Gas, LLC (Muncy Creek-2), Penn Township, Lycoming County, Pa. Surface water withdrawal of up to 0.099 mgd.
  33. Project Sponsor and Facility: Chief Oil & Gas, LLC (Larrys Creek), Mifflin Township, Lycoming County, Pa. Surface water withdrawal of up to 0.086 mgd.
  34. Project Sponsor and Facility: Chief Oil & Gas, LLC (Muncy Creek-1), Picture Rocks Borough, Lycoming County, Pa. Surface water withdrawal of up to 0.099 mgd.
  35. Project Sponsor and Facility: Chief Oil & Gas, LLC (Loyalsock Creek), Montoursville Borough, Lycoming County, Pa. Surface water withdrawal of up to 0.099 mgd.
  36. Project Sponsor and Facility: Range Resources – Appalachia, LLC (West Branch Susquehanna River), Colebrook Township, Lycoming County, Pa. Surface water withdrawal of up to 0.200 mgd.
  37. Project Sponsor and Facility: Rex Energy Corporation (for operations in Centre and Clearfield Counties, Pa.). Consumptive water use of up to 5.000 mgd from various surface water sources and the following public water supplier: Clearfield Municipal Authority.
  38. Project Sponsor and Facility: Rex Energy Corporation (West Branch Susquehanna River), Goshen Township, Clearfield County, Pa. Surface water withdrawal of up to 2.160 mgd.
  39. Project Sponsor and Facility: Range Resources – Appalachia, LLC (Beech Creek), Snow Shoe Township, Centre County, Pa. Surface water withdrawal of up to 0.200 mgd.
  40. Project Sponsor and Facility: Rex Energy Corporation (Moshannon Creek), Snow Shoe Township, Centre County, Pa. Surface water withdrawal of up to 2.000 mgd.
  41. Project Sponsor and Facility: Rex Energy Corporation (Moshannon Creek Outfall), Rush Township, Centre County, Pa. Surface water withdrawal of up to 1.584 mgd.
  42. Project Sponsor and Facility: Rex Energy Corporation (Moshannon Creek – Peale), Rush Township, Centre County, Pa. Surface water withdrawal of up to 1.440 mgd.
  43. Project Sponsor: Suez Energy North America, Inc. Project Facility: Viking Energy of Northumberland, Point Township, Northumberland County, Pa. Groundwater withdrawal of 0.391 mgd and consumptive water use of up to 0.387 mgd.
  44. Project Sponsor: New Enterprise Stone & Lime Co., Inc. Project Facility: Tyrone Quarry, Warriors Mark Township, Huntingdon County, and Snyder Township, Blair County, Pa. Consumptive water use of up to 0.294 mgd; groundwater withdrawals of 0.095 mgd from Well 1, 0.006 mgd from Well 2, 0.050 mgd from Well 3, 0.010 mgd from Well 4, and 0.0003 mgd from Well 5; and surface water withdrawals of up to 0.200 mgd from Logan Spring Run and up to 0.216 mgd from the Little Juanita River.
  45. Project Sponsor and Facility: Papetti's Hygrade Egg Products,

- Inc., d.b.a. Michael Foods Egg Products Co., Upper Mahantango Township, Schuylkill County, Pa. Consumptive water use of up to 0.225 mgd; groundwater withdrawals of 0.266 mgd from Well 1, 0.079 mgd from Well 2, and 0.350 mgd from Well 3; and a total system withdrawal limit of 0.350 mgd.
46. Project Sponsor: Old Castle Materials, Inc. Project Facility: Pennsy Supply, Inc. – Hummelstown Quarry, South Hanover Township, Dauphin County, Pa. Surface water withdrawal of up to 29.000 mgd.
  47. Project Sponsor and Facility: Dart Container Corporation of Pennsylvania, Upper Leacock Township, Lancaster County, Pa. Groundwater withdrawals of 0.144 mgd from Well 4 and 0.058 mgd from Well 12; and a total system withdrawal limit of 0.367 mgd.
  48. Project Sponsor: East Berlin Area Joint Authority. Project Facility: Buttercup Farms, Hamilton Township, Adams County, Pa. Groundwater withdrawals (30-day averages) of 0.130 mgd from Well TW-1 and 0.029 mgd from Well TW-2.

Public Hearing – Projects Tabled

1. Project Sponsor and Facility: Chief Oil & Gas, LLC (Sugar Creek), West Burlington Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.053 mgd.
2. Project Sponsor and Facility: Fortuna Energy Inc. (Sugar Creek), West Burlington Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.033 mgd.
3. Project Sponsor and Facility: Fortuna Energy Inc. (Towanda Creek), Franklin Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.093 mgd.
4. Project Sponsor and Facility: Chief Oil & Gas, LLC (Pine Creek), Cummings Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.099 mgd.
5. Project Sponsor and Facility: Rex Energy Corporation (Upper Little Surveyor Run), Girard Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.400 mgd.
6. Project Sponsor and Facility: Rex Energy Corporation (Lower Little Surveyor Run), Girard Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.400 mgd.

AUTHORITY: Pub. L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

### INFORMATION NOTICE

#### Notice of Actions Taken at December 4, 2008, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission Actions.

SUMMARY: At its regular business meeting on December 4, 2008, in Bel Air, Maryland, the Commission held a public hearing as part of its regular business meeting. At the public hearing, the Commission: 1) approved and tabled certain water resources projects; 2) denied a request for extension of an emergency certificate issued on October 30, 2008; and 3) adopted a revised fee schedule to take effect on January 1, 2009. Details concerning these and other matters addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATE: December 4, 2008.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net; or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the following items were also presented or acted on at the business meeting: 1) a special presentation titled “Water for Maryland’s Future: What We Must Do

Today” by Maryland Member Dr. Robert Summers; 2) a report on the present hydrologic conditions of the basin indicating below normal levels of precipitation and stream flow across the basin; 3) adoption of a revised Comprehensive Plan for management of the Susquehanna Basin’s water resources; 4) adoption of a final rulemaking action regarding gas well development in the Marcellus and Utica shale formations; 5) adoption of a resolution emphasizing the importance of the basin’s stream gaging network and urging federal funding for the Susquehanna Flood Forecast and Warning System in the amount of \$2.4 million; 6) approval/ratification of several grants and contracts related to water resources management; 7) acceptance of the Fiscal Year 2008 Annual Independent Audit Report; 8) approval of an expenditure of \$500,000 from the Commission’s Water Management Fund for the completion of the Whitney Point Lake Section 1135 Project Modification; and 9) approval of an expenditure of \$65,000 for the replacement of the Commission’s three main computer servers. The Commission also heard counsel’s report on legal matters affecting the Commission.

The Commission also convened a public hearing and took the following actions:

Public Hearing – Projects Approved:

1. Project Sponsor and Facility: Chesapeake Appalachia, LLC (for operations in Chemung and Tioga Counties, N.Y., and Bradford, Sullivan, Susquehanna, Tioga, Wayne, and Wyoming Counties, Pa.). Consumptive water use of up to 7.500 mgd from various surface water sources and the following previously approved public water suppliers: Towanda Municipal Authority, Aqua Pennsylvania, Inc. – Susquehanna Division, Canton Borough Authority and Borough of Troy.
2. Project Sponsor and Facility: Chief Oil & Gas, LLC (for operations in Clearfield County, Pa.). Consumptive water use of up to 5.000 mgd from various surface water sources and the following public water suppliers: BCI Municipal Authority and Jersey Shore Joint Water Authority.
3. Project Sponsor and Facility: Chief Oil & Gas, LLC (Clearfield Creek), Boggs Township, Clearfield County, Pa. Surface water withdrawal of up to 2.000 mgd.
4. Project Sponsor and Facility: Chief Oil & Gas, LLC (Pine Creek), Cummings Township, Lycoming County, Pa. Surface water withdrawal of up to 0.099 mgd.
5. Project Sponsor and Facility: Citrus Energy (for operations in Wyoming County, Pa.). Consumptive water use of up to 5.000 mgd from various surface water sources.
6. Project Sponsor and Facility: Citrus Energy (North Branch Susquehanna River), Washington Township, Wyoming County, Pa. Surface water withdrawal of up to 0.499 mgd.
7. Project Sponsor and Facility: Dillsburg Area Authority, Franklin Township, York County, Pa. Groundwater withdrawal of 0.022 mgd from Well 1.
8. Project Sponsor and Facility: Dillsburg Area Authority, Franklin Township, York County, Pa. Groundwater withdrawal of 0.101 mgd from Well 3.
9. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (unnamed tributary to Sandy Run), Burnside Township, Centre County, Pa. Surface water withdrawal of up to 0.300 mgd.
10. Project Sponsor and Facility: Fortuna Energy, Inc. (Towanda Creek), Franklin Township, Bradford County, Pa. Surface water withdrawal of up to 0.250 mgd.
11. Project Sponsor and Facility: J-W Operating Company (for operations in Cameron, Clearfield and Elk Counties, Pa.). Consumptive water use of up to 4.500 mgd from various surface water sources and the following public water supplier: Emporium Water Company.
12. Project Sponsor: J-W Operating Company (Driftwood Branch – Sinnemahoning Creek), Lumber Township, Cameron County, Pa. Surface water withdrawal of up to 0.245 mgd.
13. Project Sponsor: KBK-HR Associates, LLC. Project Facility:

- Honey Run Golf Club, Dover Township, York County, Pa. Consumptive water use of up to 0.382 mgd.
14. Project Sponsor: KBK-HR Associates, LLC. Project Facility: Honey Run Golf Club, Dover Township, York County, Pa. Surface water withdrawal of up to 0.382 mgd from Honey Run.
  15. Project Sponsor: KBK-HR Associates LLC. Project Facility: Honey Run Golf Club, Dover Township, York County, Pa. Surface water withdrawal of up to 1.440 mgd from Little Conewago Creek.
  16. Project Sponsor and Facility: New Oxford Foods, LLC, New Oxford Borough, Adams County, Pa. Consumptive water use of up to 0.380 mgd and groundwater withdrawal of 0.035 mgd from Well 1.
  17. Project Sponsor and Facility: Rex Energy Corporation (Upper Little Surveyor Run), Girard Township, Clearfield County, Pa. Surface water withdrawal of up to 0.400 mgd.
  18. Project Sponsor and Facility: Rex Energy Corporation (Lower Little Surveyor Run), Girard Township, Clearfield County, Pa. Surface water withdrawal of up to 0.400 mgd.
  19. Project Sponsor: Sunbury Generation, LP. Project Facility: Sunbury Generation Facility, Monroe Township and Shamokin Dam Borough, Snyder County, Pa. Consumptive water use of up to 8.000 mgd and surface water withdrawal of up to 354.000 mgd.
  20. Project Sponsor and Facility: Turm Oil, Inc. (for operations in Susquehanna County, Pa.). Consumptive water use of up to 5.000 mgd from various surface water sources and the following public water suppliers: Dushore Water Authority and Towanda Municipal Authority.
  21. Project Sponsor and Facility: Turm Oil, Inc. (Deer Lick Creek), Rush Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.216 mgd.
  22. Project Sponsor and Facility: Turm Oil, Inc. (East Branch Wyalusing Creek), Rush Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.216 mgd.
  23. Project Sponsor and Facility: Turm Oil, Inc. (Elk Lake Stream), Rush Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.216 mgd.
  24. Project Sponsor and Facility: Turm Oil, Inc. (Main Branch Wyalusing Creek), Rush Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.216 mgd.
  25. Project Sponsor and Facility: Ultra Resources (for operations in Tioga and Potter Counties, Pa.). Consumptive water use of up to 4.990 mgd from a various surface water source.
  26. Project Sponsor and Facility: Ultra Resources (Cowanesque River), Deerfield Township, Tioga County, Pa. Surface water withdrawal of up to 0.217 mgd.

Public Hearing – Projects Tabled

1. Project Sponsor and Facility: J-W Operating Company (Abandoned Mine Pool), Shippen Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.090 mgd.
2. Project Sponsor and Facility: J-W Operating Company (Sterling Run), Lumber Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.026 mgd.
3. Project Sponsor: PPL Holtwood, LLC. Project Facility: Holtwood Hydroelectric Station, Martic and Conestoga Townships, Lancaster County, and Chanceford and Lower Chanceford Townships, York County, Pa. Applications for amendment to existing FERC license (FERC Project No. 1881) and for redevelopment of the project with modification of its operations on the lower Susquehanna River, including the addition of a second power station and associated infrastructure.
4. Project Sponsor and Facility: Ultra Resources (Elk Run), Gaines Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.020 mgd.
5. Project Sponsor and Facility: Ultra Resources (Pine Creek), Pike

Township, Potter County, Pa. Application for surface water withdrawal of up to 0.430 mgd.

Public Hearing – Project Withdrawn

1. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (for operations in Centre County, Pa.). Application for consumptive water use of up to 5.000 mgd from various water sources.

Public Hearing – Extension of Emergency Certificate:

The Commission denied a request for an extension of an Emergency Certificate previously issued to the following project:

CAN DO, Inc., Hazle Township, Luzerne County, Pa. – Use of Site 14 Test Well to serve Humbolt Industrial Park.

Public Hearing – Project Fee Schedule

The Commission adopted a revised fee schedule to take effect on January 1, 2009. As mandated by the Commission in 2005, the revised schedule incorporates 10 percent categorical fee increases and a Consumer Price Index Adjustment. It also contains new provisions for project fees applying to large scale hydroelectric facilities, “Approvals by Rule” issued to gas well development projects, and aquatic surveys performed by SRBC staff in connection with project approvals.

AUTHORITY: Pub. L. 91-575, 84 Stat. 1509 *et seq.*, 18 CFR Parts 806, 807, and 808.

---



---

## Office of Temporary and Disability Assistance

---



---

### NOTICE OF ADOPTION

**Child Support Standards Chart**

**I.D. No.** TDA-42-08-00003-A

**Filing No.** 73

**Filing Date:** 2009-01-20

**Effective Date:** 2009-02-04

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

**Action taken:** Amendment of section 347.10 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3), 111-a and 111-i

**Subject:** Child support standards chart.

**Purpose:** To reflect the revised poverty income guidelines amount, the revised self-support reserve and the updated child support standards chart.

**Text or summary was published** in the October 15, 2008 issue of the Register, I.D. No. TDA-42-08-00003-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jeanine Stander Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@OTDA.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

---



---

## Department of Transportation

---



---

### NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Transportation publishes a new notice of proposed rule making in the *NYS Register*.

**Payment of Moving and Related Expenses to Displaced Persons**

I.D. No.	Proposed	Expiration Date
TRN-03-08-00003-P	January 16, 2008	January 15, 2009

---

---

## Triborough Bridge and Tunnel Authority

---

---

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### A Proposal to Establish a New Crossing Charge Schedule for Use of Bridges and Tunnels Operated by the Authority

I.D. No. TBA-05-09-00002-P

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

**Proposed Action:** Repeal of section 1021.1 and addition of new section 1021.1 to Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, section 553(5)

**Subject:** A proposal to establish a new crossing charge schedule for use of bridges and tunnels operated by the Authority.

**Purpose:** A proposal to raise additional revenue.

**Public hearing(s) will be held at:** 6:00 p.m., Jan. 14, 2009 at Hilton NY, Trianon Ballroom, 1335 Avenue of the Americas, New York, NY; 6:00 p.m., Jan. 20, 2009 at Sheraton LaGuardia East Hotel, Phoenix Ballroom, 135-20 39th Ave., Flushing, NY; 6:00 p.m., Jan. 21, 2009 at The Garden City Hotel, The Grand Ballroom, 45 7th St., Garden City, NY; 6:00 p.m., Jan. 26, 2009 at College of Staten Island, CSI Center for the Arts, Springer Concert Hall, 2800 Victory Blvd., Staten Island, NY; 6:00 p.m., Jan. 28, 2009, Westchester County Center, Rms. A-C, 198 Central Ave., White Plains, NY; 6:00 p.m., Jan. 28, 2009 at NY Marriott at the Brooklyn Bridge, 333 Adams St., Brooklyn, NY; 6:00 p.m., Feb. 2, 2009 at Palisades Center, Raso Community Rm., 1000 Palisades Center Dr., West Nyack, NY; and 6:00 p.m., Feb. 4, 2009 at Lehman College, CUNY, 11 Lovinger Theater, 250 Bedford Park Blvd. West, Bronx, NY.

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

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

**Text of proposed rule:** See Appendix in the back of this issue.

**Text of proposed rule and any required statements and analyses may be obtained from:** Robert M. O'Brien, Esq., Triborough Bridge and Tunnel Authority, Two Broadway, 24th Floor, New York, NY 10004, (646) 252-7617, email: RO'Brien@mtabt.org

**Data, views or arguments may be submitted to:** Judie Glaves, Triborough Bridge and Tunnel Authority, Two Broadway, 22nd Floor, New York, NY 10004, (646) 252-7276, email: JGlaves@mtabt.org

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

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

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