

# RULE MAKING ACTIVITIES

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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; or C for first Continuation.)

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

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## Office of Alcoholism and Substance Abuse Services

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

#### Treatment of Chemical Dependence

**I.D. No.** ASA-37-03-00002-EP  
**Filing No.** 931  
**Filing date:** Aug. 27, 2003  
**Effective date:** Aug. 27, 2003

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

**Action taken:** Addition of Part 829 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01, 32.05(b), 32.07(a) and 32.09(b); Public Health Law, section 3351(5); 10 NYCRR section 80.84; and section 3502 of Public Law No. 106-310, Div. B., Title XXXV @ 3502(a), 114

**Finding of necessity for emergency rule:** Preservation of public health.  
**Specific reasons underlying the finding of necessity:** The Food and Drug Administration has approved physician use of a new form of buprenorphine, a controlled substance, to treat chemically dependent individuals. OASAS is required by law to regulate the provision of these services.

As the product is now available in the marketplace, OASAS must do so without unnecessary delay.

**Subject:** The authorization of qualified physicians to use buprenorphine in the treatment of chemical dependence.

**Purpose:** To set minimum standards for the authorization of physicians to use buprenorphine in the treatment of chemical dependence and ensuring the provision of quality addiction medicine services.

**Substance of emergency/proposed rule:** Title 14 NYCRR Part 829 applies to physicians who dispense, administer, deliver or prescribe a controlled substance (other than methadone) to a chemically dependent individual for maintenance or detoxification treatment in New York State. This regulation satisfies OASAS' statutory responsibility to regulate such services.

The federal Drug Addiction Treatment Act (DATA) authorizes qualified physicians to prescribe and dispense a drug to addicts once that drug has been approved by the Food and Drug Administration. The FDA recently approved buprenorphine to be used for this purpose. Due to the timing of the federal approval, buprenorphine was approved by the New York State Department of Health on an emergency basis. OASAS and DOH have jointly developed a physician application process to ensure that both agency's statutory responsibilities are fulfilled.

Requirements for OASAS physician authorization include the federal educational/experience/registration requirements as stated in DATA and federal regulations, as well as providing a signed statement affirming that there are current linkage agreements with Office-certified and/or other providers in effect for patients who require follow-up clinical chemical dependence treatment. In addition, authorized physicians seeking reauthorization must complete a minimum of five continuing medical education hours in the alcohol and other drug medical and/or clinical alcohol or other drug treatment for each year of the two-year authorization.

The process has been simplified into a joint OASAS/DOH application which will be free of charge. OASAS and DOH have developed this process to ensure that both treatment issues and medication issues are addressed.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire November 24, 2003.

**Text of rule and any required statements and analyses may be obtained from:** David R. Ross, Associate Counsel, Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2322, e-mail: DavidRoss@oasas.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:

Federal basis

United States Public Law 106-310, the Children's Health Act of 2000, was enacted on October 17, 2000. Title XXXV of this law, Waiver Authority for Physicians Who Dispense or Prescribe Certain Narcotic Drugs for Maintenance Treatment or Detoxification Treatment, is better known by its short title "the Drug Addiction Treatment Act of 2000" ("the DATA"). See Section 3502 of Public Law No. 106-310, Div. B., Title XXXV @ 3502(a), 114.

The DATA allows physicians to prescribe and dispense narcotics in Schedules III, IV, and V of the Controlled Substances Act that have been specifically approved by the Food and Drug Administration (FDA) for the

purpose of maintenance or detoxification of opiate addiction. A new form of the drug buprenorphine, a controlled substance, was recently approved by the FDA for this purpose. Significantly, the DATA specifically preempts any existing state law that prohibits such treatment.

#### State basis

Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services ("the Commissioner") to adopt standards including necessary rules and regulations pertaining to chemical dependence services.

Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

Section 32.05(b) of the Mental Hygiene Law provides that a controlled substance designated by the Commissioner of the New York State Department of Health as appropriate for such use may be used by a physician to treat a chemically dependent individual pursuant to Section 32.09(b) of the Mental Hygiene Law.

Section 32.09(b) of the Mental Hygiene Law provides that the Commissioner may, once a controlled substance is approved by the Commissioner of the New York State Department of Health as appropriate for such use, authorize the use of such controlled substance in treating a chemically dependent individual.

Section 3351(5) of the Public Health Law provides, among other things, that a controlled substance designated by the Commissioner of the Department of Health as appropriate for such use may be administered to a chemically dependent individual by a physician as part of a chemical dependence program approved pursuant to Article 32 of the Mental Hygiene Law. The federal DATA, by authorizing physicians to prescribe approved controlled substances to opiate dependent patients as part of a private medical practice, preempts Section 3350 of the Public Health Law which specifically prohibits such activity.

The new Title 10 NYCRR Part 80.84, recently filed on an emergency basis by the New York State Department of Health, authorizes qualified physicians to use buprenorphine, a controlled substance, to treat chemically dependent individuals.

#### Legislative Objectives:

Article 32 of the Mental Hygiene Law is designed to provide the legal framework for the regulation of chemical dependence treatment services in the State of New York. Enacted in 1999, Article 32 serves as the legal basis for numerous regulations governing the provision of chemical dependence services. Typical treatment modalities include inpatient, residential and outpatient services. This regulation, which seeks to establish minimum qualifications for physicians who voluntarily choose to provide buprenorphine services to opiate dependent individuals, is necessitated by Mental Hygiene Law Section 32.09(b) and made possible by recent changes in federal law as well as recent DOH regulatory changes. Part 829 establishes a private physician office based modality for the treatment of opiate addiction. Historically, opiate addicts have been treated at methadone clinics, the location of many of which posed real difficulties for patients in rural areas. Daily visits to methadone clinics are the norm and, given the relatively small number of such clinics in the upstate region, many addicts have not made it to treatment.

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted to govern and control the possession, prescribing, manufacturing, dispensing, administering, and distribution of licit controlled substances within New York State. In the year 2000 a legislative purpose was added to the law to clarify that its purpose is to allow for the legitimate use of controlled substances, while curtailing their illicit use.

#### Needs and Benefits:

Prior to the adoption of DATA, the treatment of opiate addiction was limited to OASAS certified methadone clinics. According to the National Institute of Drug Abuse (NIDA), the regulatory burden involved in delivering methadone to opioid dependent individuals has been so heavy that it has prevented expansion of the system. The result has been a treatment gap which is the difference between the total number of opioid dependent persons and those in treatment. In an effort to close this treatment gap, NIDA explored other strategies and studied the use of other drugs to treat

opiate addiction. Restrictions were intended to decrease abuse and diversion while permitting legitimate treatment. Despite these efforts, however, a treatment gap continues to exist.

There are approximately 125 methadone maintenance treatment programs (MMTPs) in New York State with a license capacity to treat 46,000, or 23%, of the estimated 200,000 opiate dependent individuals in New York State. Also, over three-quarters of the MMTPs are located in the New York City area which means that addicts living in rural areas may not have access to treatment. Significantly, it is also believed that many middle and upper class addicts do not seek enrollment in MMTPs due to the stigma associated with MMTPs.

The DATA expands the availability of treatment to opiate dependent patients by allowing qualified physicians to prescribe narcotic drugs for opiate addiction, requiring only self-certification, and moves the treatment of addiction from the methadone clinic to the private physician's office and the patient's own pharmacy. The federal law permits qualified physicians to prescribe and dispense Schedule III, IV, and V narcotics that have been approved by FDA for use in maintenance or detoxification treatment. Recently, the FDA approved the new form of buprenorphine as the first such drug for this application.

Buprenorphine is a partial opioid agonist with a significant potential for abuse. To meet the legislative purpose of Article 32 and the intent of the DATA, OASAS regulations are necessary to ensure the proper use of buprenorphine in treating opiate dependence while ensuring access to care. In a related emergency rulemaking, the New York State Department of Health ("DOH") has made its regulatory changes that enable OASAS to make its regulatory changes.

The proposed OASAS and DOH regulations require that the physician register with the Department of Health, as well as the Office of Alcohol and Substance Abuse Services (OASAS), to provide such treatment. This will ensure that the physician possesses the addiction treatment qualifications required by DATA and is in good standing with respect to adherence to controlled substance laws. Pharmacies that wish to dispense buprenorphine will also be required to register with DOH enabling DOH to monitor the utilization of buprenorphine by the analysis of this data in the same manner currently utilized for controlled substances with significant abuse potential.

#### Costs:

##### Costs to regulated parties:

This proposal does not pose any costs to physicians for the application process and the registration of physicians will be provided free of charge. The required addiction related continuing medical education hours, 10 hours over the two year authorization period, may be satisfied without cost to the physician by attending free seminars, via the Internet, at participating OASAS providers, through hospitals which typically provide at least one hour per week at no cost to the physician, subscribing to the New England Journal of Medicine which includes 20 CME hours, some of which may be addiction related, etc. This CME requirement is intended to provide maximum flexibility to physicians.

Costs to the agency, state and local governments for the implementation and continuation of the rule:

OASAS will process applications with existing staff and resources. There are no foreseeable costs to state and local governments.

##### Local Government Mandates:

The proposed rule does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other specific district.

##### Paperwork:

DOH has partnered with OASAS to streamline the registration process for physicians. OASAS will be utilizing a simple joint OASAS/DOH registration form for physicians that wish to register for this program. Participation in this program is entirely voluntary.

##### Duplication:

The requirements of this proposed regulation are essentially duplicative of the minimum mandated federal requirements in this area and are imposed only as a necessary condition to OASAS authorization. If a physician has not met the applicable federal requirements, under federal law, OASAS authorization is not possible. No state requirements are duplicated.

##### Alternatives:

The proposed regulation is designed to regulate the use of buprenorphine in this new treatment modality. Buprenorphine is a narcotic with significant abuse potential and will be utilized in a population of patients who have a prior history of controlled substance abuse. The federal law sets basic parameters for such treatment but leaves specific regulatory

oversight up to the individual states. OASAS believes that it is in the best interest of public health to monitor the use of this controlled substance for this new chemical dependence treatment modality. This regulation is also necessary to protect the public from the unauthorized use of buprenorphine. Greater access to addiction treatment will promote health for the opiate dependent patient, and protect society at large by reducing the violence associated with drug crimes. Public health will be protected by allowing opiate dependent patients a legal means of maintaining their addiction, as an alternative to seeking drugs from illegal sources.

#### Federal standards:

OASAS seeks to modestly exceed applicable minimum federal requirements by imposing a continuing medical education requirement of 10 hours for the two year authorization period. Historically, addicted persons, particularly opiate addicted persons, have been treated in a separate and distinct service system which specializes in the treatment of opiate addiction. Over the years, this separate system, by default, became responsible for providing a range of medical services to this population that were separate and apart from the general medical profession. One of the consequences of the federal DATA is that opiate addicted persons will be better able to access medical treatment from their own general practice doctors who have had little experience or training in the treatment of addiction.

While the basics of the use of the new medication is covered in the required 8 hour federal course, there are a wide variety of issues which are specific to addicted persons, and complications of addiction will require the patient to be able to access other services and professions. Five continuing medical education hours per year will provide some assurance to the public that those physicians who are treating opiate addicted patients have at least a minimal level of addiction-specific knowledge. Furthermore, states do frequently require CME credits in areas that they feel doctors need additional education. Examples include infectious diseases in New York and domestic violence in Florida.

In our educated opinion, treating a patient with a chemical dependence diagnosis requires more than an 8 hour course in order to protect patients. During the policymaking stage of this proposed regulation, we met with a focus group of physicians who were involved in the buprenorphine studies. As a result of physician input, the CME requirement was added. The Medical Society of New York and the OASAS Medical Advisory Panel were both consulted regarding the required CME. It should be noted that the CME credits earned pursuant to this regulation may be transferable to apply towards other CME requirements that a physician may be subject to (such as HMO requirements, etc.).

The CME requirement applicable here would better serve its purpose if it was not buprenorphine specific since the goal is to familiarize physicians with addiction related issues. The federal requirements are very weak because they assume, incorrectly, that the general practice physician will be able to work with and deal with our most difficult patients and not treat them beyond using buprenorphine.

Due to this concern, OASAS will also require participating physicians to have linkage agreements with other chemical dependence service providers when additional treatment services beyond the ability of the physician to provide (i.e., counseling) are needed. This is based upon the federal requirement that physicians have the capacity to refer patients for addiction services as needed. The federal waiver application that is signed by physicians states that "I certify that I have the capacity to refer patients for appropriate counseling and other appropriate ancillary services" so OASAS is proposing that physicians certify that they have linkage agreements to ensure that the capacity to refer was real.

This regulation does not prohibit the implementation of the provisions of the federal DATA but merely achieves consistency with the existing New York State statutory and regulatory schemes for chemical dependence services.

#### Compliance Schedule:

Physicians may apply to OASAS for Part 829 certification immediately. Once a physician has been approved by OASAS and DOH, and having attained all requisite federal approvals, as well as received his/her unique identification registration number from the Drug Enforcement Administration (DEA), he/she may begin to prescribe and/or dispense buprenorphine for the treatment of opiate addiction.

#### Regulatory Flexibility Analysis

##### Effect of rule:

Physician participation in this program is voluntary. There are currently approximately 73,000 physicians licensed to practice medicine in New York State. The rule has no applicability to local governments per se.

##### Compliance costs:

OASAS anticipates that there will be no significant compliance costs associated with this regulation. The application process is free of charge and the continuing medical education requirement of five hours per year imposes only a minimal burden on those physicians that voluntarily choose to provide these services.

##### Compliance requirements:

Compliance requirements are minimal since the primary regulatory burden imposed upon such physicians is imposed by federal law. The only requirements that exceed the pertinent federal requirements that are applicable to such physicians are (1) the requirement that each authorized physician have linkage agreements with OASAS certified and/or other chemical dependence service providers for those treatment needs that are beyond the ability of the physician to provide, and (2) the requirement that each physician receive 10 hours of continuing medical education over the two year authorization period.

##### Professional services:

OASAS does not expect a large number of physicians to become authorized to use buprenorphine in the treatment of chemical dependence. Of those that do, no professional services will be required.

##### Economic and technological feasibility:

The proposed rule is both economically and technologically feasible.

##### Minimizing adverse impact:

The proposed rule was designed to minimize the impact on small businesses by minimizing the burden on physicians in becoming OASAS authorized and retaining said authorization. The additional requirements beyond the required federal registration consist of the statutory requirement to have linkage agreements with other providers of chemical dependence services for those patient needs that cannot be met by the authorized physician and the five hours per year continuing medical education requirement.

##### Small business and local government participation:

Since this is an emergency rule, small businesses and local governments have not participated extensively in the rulemaking process. However, physician focus groups were consulted in the development of this rule.

#### Rural Area Flexibility Analysis

The proposed rule does not impose any adverse impact on rural areas. In fact, the proposed rule makes the treatment of opiate addiction in rural settings more available in rural areas where methadone treatment is often unavailable. Now an opiate dependent patient can be treated by a local physician who has linkages with local OASAS certified providers, obviating the need for the patient to travel far distances to a methadone clinic to obtain their medication. The linkage agreement requirement ensures more comprehensive treatment for the opiate-dependent patient who otherwise would have no options for addiction medications to assist them in their treatment and assists providers with adjunct medical care for this population. Rural areas have an adequate number of treatment providers available to enter into linkage agreements with authorized physicians.

Physicians in rural areas should not encounter any adverse impact by virtue of the medical education requirements since the proposed requirement, 10 hours over the two year authorization period, may be satisfied without cost to the physician by attending free seminars, via the Internet, free if a physician subscribes to the New England Journal of Medicine which includes 20 continuing medical education hours, via hospitals which typically provide at least one hour per week at no cost to the physician, etc. This medical education requirement may be satisfied in many different ways and is intended to provide maximum flexibility to physicians. Finally, the continuing medical education credits may be transferable to apply towards other continuing medical education requirements that a physician may be subject to.

#### Job Impact Statement

##### Nature of impact:

This regulatory proposal will not have a negative impact on jobs and employment opportunities. This rule establishes a voluntary physician authorization system which expands the chemical dependence treatment options for physicians and accordingly is not expected to have an impact on increasing or decreasing jobs overall.

##### Categories and numbers affected:

It is anticipated that a very small percentage of the 72,920 physicians in the State will register to participate in this voluntary new program.

##### Regions of adverse impact:

There are no regions of the State where this rule would have a disproportionate adverse impact on jobs or employment opportunities.

##### Minimizing adverse impact:

There are no unnecessary adverse impacts on existing jobs pursuant to this rule. Therefore, no measures to minimize such impacts were necessary. Promotions of the development of new employment opportunities are not affected by this rule.

Self-employment opportunities:

This proposal does not have any measurable impact on opportunities for self-employment.

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## Education Department

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

#### Classroom Teaching Certification

**I.D. No.** EDU-37-03-00008-P

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

**Proposed action:** Amendment of sections 80-3.3, 80-4.3, and 80-4.4, and addition of section 80-3.7 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided); 305(1), (2) and (7); 3004(1); and 3006(1)(b)

**Subject:** Individual evaluation requirements and other requirements for certification in the classroom teaching service.

**Purpose:** To establish requirements for classroom teaching certification through the individual evaluation of candidates who have not completed registered teacher education programs, streamline examination requirements for candidates who already hold classroom teaching certification, establish coursework requirements for extensions and annotations of certificates, and remove unnecessary certification requirements.

**Substance of proposed rule:** The State Education Department proposes to amend Commissioner's regulations, sections 80-3.3, 80-4.3, and 80-4.4, and to add a new section 80-3.7. The following is a summary of the proposed rulemaking.

Section 80-3.3(a) is amended to delete requirements for candidates who have not applied for the initial certificate within two years of completing his or her teacher education program.

Section 80-3.3(a)(3) authorizes the satisfaction of education requirements for certification in the classroom teaching service through equivalent study as determined by individual evaluation in accordance with the requirements of section 80-3.7.

Section 80-3.3(a)(4) is added, as follows:

(4) A candidate seeking certification to teach a specific career and technical subject requiring Federal or State licensure and/or registration to legally perform that service shall hold such valid Federal or State licensure and/or registration. A candidate seeking certification to teach practical nursing shall hold a valid license and registration in New York State as a registered professional nurse.

Section 80-3.3(b)(1) concerns education requirements for the initial certificate in all titles in the classroom teaching service, excluding specific career and technical subjects. Subparagraph (i) is amended to require candidates to hold a baccalaureate degree from specified institutions and permit candidates to meet the education requirement for the initial certificate through completion of study that is equivalent to a registered teacher education program. Subparagraphs (iii) and (iv), concerning education requirements for candidates who have completed study at certain institutions of higher education and education requirements for candidates who already hold certification, respectively, are deleted.

Section 80-3.3(b)(2) is amended to establish an examination requirement for the initial certificate in all titles in the classroom teaching service, excluding specific career and technical subjects, for candidates that already hold teaching certification.

Section 80-3.3(c)(1)(i) concerns education requirements under Option A for the initial certificate in a specific career and technical subject. Clauses (c) and (d), concerning education requirements for candidates who have completed study at certain institutions of higher education and education requirements for candidates who already hold certification, respectively, are deleted.

Section 80-3.3(c)(1)(ii) is amended to establish an examination requirement under Option A for the initial certificate in a specific career and technical subject, applicable to candidates who already hold teaching certification.

Section 80-3.3(c)(2)(i) concerns education requirements under Option B for the initial certificate in a specific career and technical subject. Clauses (c) and (d), concerning education requirements for candidates who have completed study at certain institutions of higher education and education requirements for candidates already holding certification, respectively, are deleted.

Section 80-3.3(c)(2)(ii) is amended to require a candidate for the initial certificate under Option B in a specific career and technical subject to pass the communication and quantitative skills test, and establishes an examination requirement under this option for candidates already holding certification.

Section 80-3.7 is added. This section prescribes requirements for meeting the education requirements for classroom teaching certificates through individual evaluation.

Section 80-3.7(a) establishes requirements for the satisfaction of education requirements through individual evaluation for initial certificates in all titles in classroom teaching service, except in specific career and technical subjects.

Paragraph (1) of subdivision (a) requires candidates to meet the general requirements in paragraph (2), and the additional requirements, if any, prescribed in paragraph (3). It also specifies certificate titles in which no additional requirements are prescribed.

Paragraph (2) of subdivision (a) establishes general requirements, as follows:

(i) Degree completion. The candidate shall possess a baccalaureate degree.

(ii) The candidate shall complete study in child abuse identification and school violence prevention and intervention, as prescribed in section 80-1.4 of this Part.

(iii) General education core in the liberal arts and sciences. The candidate shall complete 30 semester hours of coursework that includes study in each of the following subjects: artistic expression, communication, information retrieval, concepts in history and social sciences, humanities, a language other than English, scientific and mathematical processes, and written analysis and expression.

(iv) Content core. The candidate shall complete 30 semesters hours of coursework in the subject area of the certificate title, which may include no more than six of the 30 semester hours in a cognate, meaning a related field as determined by the department.

(v) Pedagogical core. The candidate shall complete pedagogical coursework as prescribed in clause (a) of this subparagraph and teaching experience as prescribed in clause (b) of this subparagraph.

(a) Coursework. The candidate shall complete 15 semester hours of coursework that includes study in each of the following subjects:

(1) human development and learning;

(2) teaching students with disabilities and special health-care needs within the general education classroom, including assistive technology;

(3) teaching literacy skills, three semester hours;

(4) curriculum, instruction, and assessment, including instructional technology; and

(5) foundations of education (historical, philosophical, sociological and/or legal).

(b) Teaching experience. The candidate shall satisfactorily complete 40 school days in a college-supervised student teaching experience or as an employed teacher. Such experience must be in a school offering instruction in any grade, pre-kindergarten through grade 12. For experience as an employed teacher, the candidate shall submit a statement verifying the period of employment from the employing school district administrator in the case of a public school and the appropriate school administrator in the case of a nonpublic school.

Paragraph (3) of subdivision (a) establishes the additional requirements in the following:

(i) Early childhood education, childhood education, and generalist in middle childhood education.

(ii) Specialist in middle childhood education (5-9) and adolescence education (7-12).

(iii) English to speakers of other languages.

(iv) Literacy (birth-grade 6) and literacy (grades 5-12).

(v) Students with disabilities (birth-grade 2).

(vi) Students with disabilities (grades 1-6).

(vii) Students with disabilities (grades 5-9).

- (viii) Students with disabilities (grades 7-12).
- (ix) Deaf and hard of hearing (all grades).
- (x) Blind or visually impaired (all grades).
- (xi) Speech and language disabilities (all grades).
- (xii) Library media specialist (all grades).

Section 80-3.7(b) establishes requirements for the satisfaction of education requirements through individual evaluation for initial certificates in specific career and technical subjects, as follows:

(1) A candidate seeking to fulfill the education requirement for an initial certificate through individual evaluation of education requirements shall meet the requirements prescribed in paragraphs (2) or (3) of this subdivision.

(2) Option A. For holders of an associate or higher degree.

(i) Degree completion. The candidate shall possess an associate or higher degree in the subject of the certificate title.

(ii) The candidate shall complete study in child abuse identification and school violence prevention and intervention, as prescribed in section 80-1.4 of this Part.

(iii) Content core. The candidate shall complete 30 semester hours in the subject area of the certificate title, which may include no more than six of the 30 semester hours in a cognate, meaning a related field as determined by the department.

(iv) Pedagogical core. The candidate shall complete pedagogical coursework as prescribed in clause (a) of this subparagraph and teaching experience as prescribed in clause (b) of this subparagraph.

(a) Coursework. The candidate shall compete nine semester hours of coursework that includes study in each of the following subjects:

- (1) human development and learning;
- (2) teaching students with disabilities and special health-care needs within the general education classroom, including assistive technology; and

(3) curriculum, instruction, and assessment, including instructional technology.

(b) Teaching experience. The candidate shall satisfactorily complete 40 school days in a college-supervised student teaching experience or as an employed teacher. Such experience must be in a school offering instruction in any grade, pre-kindergarten through grade 12. For experience as an employed teacher, the candidate shall submit a statement verifying the period of employment from the employing school district administrator in the case of a public school and the appropriate school administrator in the case of a nonpublic school.

(3) Option B. For holders of a high school diploma or its equivalent but no college degree. This option shall not be available in specific family and consumer sciences, business and marketing, and technical subject titles.

(i) The candidate shall possess a high school diploma or its equivalent.

(ii) The candidates shall complete study in child abuse identification and school violence prevention and intervention, as prescribed in section 80-1.4 of this Part.

(iii) Pedagogical core and coursework in the liberal arts and sciences. The candidate shall complete pedagogical coursework and coursework in the liberal arts and sciences, as prescribed in clause (a) of this subparagraph, and teaching experience as prescribed in clause (b) of this subparagraph.

(a) Coursework. The candidate shall complete twelve semester hours of coursework that includes study in each of the following subjects:

- (1) human development and learning;
- (2) teaching students with disabilities and special health-care needs within the general education classroom, including assistive technology;
- (3) curriculum, instruction, and assessment, including instructional technology; and
- (4) English language arts or communication skills.

(b) Teaching experience. The candidate shall satisfactorily complete 40 school days in a college-supervised student teaching experience or as an employed teacher. Such experience must be in a school offering instruction in any grade, pre-kindergarten through grade 12. For experience as an employed teacher, the candidate shall submit a statement verifying the period of employment from the employing school district administrator in the case of a public school and the appropriate school administrator in the case of a nonpublic school.

Section 80-3.7(c) establishes requirements for the satisfaction of education requirements through individual evaluation for professional certificates in specific career and technical subjects, as follows:

(1) A candidate seeking to fulfill the education requirement for a professional certificate through individual evaluation of education require-

ments shall meet the requirements prescribed in paragraphs (2) or (3) of this subdivision.

(2) Option A. For candidates who completed the Option A track for the initial certificate.

(i) Degree completion. The candidate shall possess an associate or higher degree in the subject of the certificate title.

(ii) The candidate shall complete 30 semester hours of coursework in addition to that required for the initial certificate under Option A. Such coursework shall include study in the liberal arts and sciences, career and technical education, and pedagogy, including each of the following areas of pedagogy:

- (a) teaching literacy skills, three semester hours; and
- (b) foundations of education (historical, philosophical, sociological and/or legal).

(3) Option B. For individuals who completed the Option B track for the initial certificate. This option shall not be available in specific family and consumer science, business and marketing, and technical subject titles. The candidate shall complete 30 semester hours of coursework in addition to that required for the initial certificate under Option B. Such coursework shall include study in the liberal arts and sciences, career and technical education, and pedagogy, including each of the following areas of pedagogy:

- (a) teaching literacy skills, three semester hours; and
- (b) foundations of education (historical, philosophical, sociological and/or legal).

Section 80-4.3 is amended to establish equivalent coursework requirements that a candidate may complete instead of completing a registered program, for the following extensions of certificates: extension in bilingual education, extension to teach a subject in grades 5-6, extension to teach a subject in grades 7-9, extension for gifted education, extension in coordinator of work-based learning programs for career awareness, and extension in coordinator of work-based learning programs for career development.

Section 80-4.4(b) is amended to establish equivalent coursework requirements that a candidate may complete instead of completing a registered program for the annotation of a certificate in severe or multiple disabilities.

**Text of proposed rule and any required statements and analyses may be obtained from:** Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Johanna Duncan-Poitier, Deputy Commissioner, Office of the Professions, Education Department, 2M West Wing Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: opdepcom@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 (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

**2. LEGISLATIVE OBJECTIVES:**

The proposed amendment to the Regulations of the Commissioner of Education carries out the objectives of the above-referenced statutes by establishing requirements for teacher certification, including requirements for the individual evaluation of candidates who have not completed regis-

tered teacher education programs, and examination requirements for candidates who already hold teacher certification.

### 3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to establish requirements for classroom teaching certification through the individual evaluation of candidates who have not completed registered teacher education programs, streamline examination requirements for candidates who already hold classroom teaching certification, establish coursework requirements for extensions and annotations of certificates, and remove unnecessary certification requirements. These new requirements will apply to candidates who apply for certification in a classroom title after February 1, 2004.

The proposed amendment specifically establishes new requirements for teacher certification through the individual evaluation of candidates who have not completed registered teacher education programs. Significantly, the amendment establishes clearly defined standards to ensure the quality of the education and experience of teachers certified by this route. Historically, approximately 40 percent of the certified classroom teachers in New York State each year have been certified through the Department's evaluation of individual candidate education and experience rather than completion of a registered teaching program. The Department's current authority to conduct such individual evaluations of teacher candidate credentials is scheduled to expire on February 1, 2004. The proposed amendment is therefore critical to facilitate the Department's continuing ability to certify a sufficient number of properly qualified candidates to fill vacant teaching positions in the State's public schools.

The amendment is needed to streamline the current examination requirements for the issuance of additional certificates to individuals already holding a classroom teaching certification. In such cases, candidates need only pass the content specialty test in the area for which application is made because they have already shown pedagogical competence through meeting requirements for the original certificate. It also is needed to require a candidate for the initial certificate under Option B in a specific career and technical subject to pass the communication and quantitative skills test, which is a necessary assessment for these candidates who do not hold a college degree.

The amendment is needed to remove unnecessary provisions in Commissioner's regulations. It removes requirements applicable to candidates who complete out-of-state teacher education programs that are not registered by the State Education Department and not offered by an institution that is a party to the interstate agreement on the qualifications of educational personnel. It also removes education requirements for candidates who already hold certification in another area. These provisions will not be needed because the new individual evaluation requirements will apply.

Finally, the amendment is needed to remove a provision that would establish additional requirements for candidates who have not applied for the initial certificate within two years of completing his or her teacher education program. The Department believes that these additional requirements are unnecessary and removing them will help alleviate the shortage of certified teachers in New York State.

### 4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to process applications for individual evaluations.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. The amendment will not impose costs on regulated parties. It will provide a route to certification for candidates who have not completed registered teacher education program, but have completed prescribed coursework and experience requirements that qualify them for certification through individual evaluation. The application fee of \$100 for certification by means of individual evaluation is established in section 3006 of the Education Law.

(d) Costs to the regulatory agency. As stated above in Costs to State Government, the amendment will not impose any additional costs on the State Education Department.

### 5. LOCAL GOVERNMENT MANDATES:

The amendment will not impose any program, service, duty or responsibility on local governments.

### 6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking teaching certification, including those seeking such certification through individual evaluation, will be required to make written application with the State

Education Department and provide all evidence of having met the requirements for the certificate sought, including the education and experience requirements. In cases in which the candidate is meeting the teaching experience requirement for individual evaluation through employment as a teacher, the candidate must submit a statement verifying the period of employment from the employing school district administrator in the case of a public school and the appropriate school administrator in the case of a nonpublic school.

### 7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

### 8. ALTERNATIVES:

No alternative proposals were considered.

### 9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment.

### 10. COMPLIANCE SCHEDULE:

The amendment is part of the new classroom teaching certification requirements, applicable for candidate who apply for certification after February 1, 2004.

### *Regulatory Flexibility Analysis*

The proposed amendment establishes requirements for teacher certification for candidates who apply to the State Education Department for certification to teach in the public schools of the State. The amendment does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or compliance requirements or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

### *Rural Area Flexibility Analysis*

#### 1. Types and estimated of number of rural areas:

The proposed amendment will affect candidates for teaching certification in all parts of the State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

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

The proposed amendment establishes new requirements for teacher certification through the individual evaluation of candidates who have not completed registered teacher education programs, including those that live in rural areas. The amendment establishes clearly defined standards to ensure the quality of the education and experience of teachers certified by this route.

In addition, the amendment establishes examination requirements for the issuance of additional certificates to individuals already holding a classroom teaching certification, including such individuals who live in rural areas. In such cases, candidates need only pass the content specialty test in the area for which application made because they have already shown pedagogical competence through meeting requirements for the original certificate. It establishes a requirement that a candidate for the initial certificate under Option B in a specific career and technical subject pass the communication and quantitative skills test.

The amendment also removes unnecessary provisions that are addressed by the new individual evaluation requirements, and a provision that established additional requirements for candidates who have not applied for the initial certificate within two years of completing his or her teacher education program.

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking teaching certification, including those seeking such certification through individual evaluation, will be required to make written application with the State Education Department and show the education and experience required for the certificate sought. In cases in which the candidate is meeting the teaching experience requirement for individual evaluation through employment as a teacher, the candidate must submit a statement verifying the period of employment from the employing school district administrator in the case of a public school and the appropriate school administrator in the case of a nonpublic school.

The proposed amendment will not require regulated parties, including those located in rural areas, to hire profession services in order to comply, other than educational services needed to complete college coursework for certification.

3. Costs:

The amendment will not impose costs on regulated parties. It will provide a route to certification through individual evaluation for candidates who have not completed registered teacher education program, but have completed prescribed coursework and experience requirements. The application fee of \$100 for certification by means of individual evaluation is established in section 3006 of the Education Law.

4. Minimizing adverse impact:

The amendment establishes requirements for teacher certification. The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and BOCES. The Department also solicited comment on this amendment from the State Education Department's Rural Advisory Committee, whose membership includes representatives of school districts located in rural areas. Comments were solicited from school districts, including those located in rural areas, through the offices of the district superintendents of each supervisory district in the State. Finally, comments were solicited from every postsecondary institution in the State that offers teacher education programs, including those located in rural areas on the State.

**Job Impact Statement**

The purpose of the proposed amendment is to establish requirements for classroom teaching certification through the individual evaluation of candidates who have not completed registered teacher education programs, streamline examination requirements for candidates who already hold classroom teaching certification, establish coursework requirements for extensions and annotations of certificates, and remove unnecessary certification requirements.

The proposed amendment establishes a necessary route to teacher certification for candidates who have not completed teacher education programs. Historically, approximately 40 percent of the classroom teachers certified in New York State are certified through the Department's evaluation of individual candidates education and experience rather than completion of a registered teacher education program. The Department's current authority to conduct such individual evaluations of teacher candidate credentials is scheduled to expire on February 1, 2004. The proposed amendment is, therefore, critical to facilitate the Department's continuing ability to certify a sufficient number of properly qualified candidates to fill vacant teaching positions in the State's public schools and BOCES.

The proposed amendment will increase the supply of teachers by increasing the pool of individuals who may qualify for teaching positions in the State's public schools. However, it will have no effect on the number of jobs or the number of employment opportunities available in this field. Because it is evident from the nature of the rule that it will have no impact on the number of jobs and number employment opportunities in teaching or any other field, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

**Department of Environmental Conservation**

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

**Migratory Game Bird Hunting Regulations**

**I.D. No.** ENV-37-03-00003-EP

**Filing No.** 932

**Filing date:** Aug. 28, 2003

**Effective date:** Aug. 28, 2003

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

**Action taken:** Amendment of section 2.30 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 11-0307, 11-0903, 11-0905, 11-0909 and 11-0917

**Finding of necessity for emergency rule:** Preservation of general welfare.

**Specific reasons underlying the finding of necessity:** The Department of Environmental Conservation (department) is adopting this rule by emergency rule making in order to conform State migratory game bird hunting regulations with the Federal regulations for the 2003-2004 season and flyway guidelines for resource conservation. Migratory game bird population levels fluctuate annually in response to a variety of environmental factors, including weather conditions, predation, and human activities, such as land use changes and harvest. As a result, Federal regulations pertaining to hunting of migratory birds are reviewed and adjusted annually. Environmental Conservation Law, section 11-0307 requires that the Department adjust State migratory game bird regulations to maintain consistency with Federal regulations. The final Federal regulations are adopted in late summer, thereby necessitating emergency adoption of State regulations in order to have them in place for the migratory game bird seasons that begin in September.

Immediate adoption of this rule is necessary to preserve the general welfare by implementing New York State's 2003-2004 waterfowl hunting regulations. Law enforcement problems, public dissatisfaction, and adverse economic impacts would ensue if migratory game bird hunting regulations were not adjusted annually to conform with Federal regulations and hunter preferences.

**Subject:** Migratory game bird hunting regulations for the 2003-2004 season.

**Purpose:** To adjust hunting areas, season dates, bag limits and other migratory game bird hunting regulations to conform with Federal regulations and to provide recreational opportunities consistent with desires of New York's 30,000+ waterfowl hunters.

**Text of emergency/proposed rule:** Title 6 of NYCRR, Section 2.30, entitled "Migratory game birds," is amended to read as follows:

Section 2.30 through paragraph 2.30(d)(1) remains unchanged.

Existing paragraph 2.30(d)(2) is repealed and new paragraph 2.30(d)(2) is adopted to read as follows:

(2) *The Long Island Zone is Nassau County, Suffolk County, and that part of Westchester County east of Interstate Highway 95, and any tidal waters existing within these areas.*

Existing paragraph 2.30(d)(3) through paragraph 2.30(e)(1) remains unchanged.

Existing subparagraphs 2.30(e)(1)(i) through (iv) are repealed and new subparagraphs 2.30(e)(1)(i) through (iv) are adopted to read as follows:

(i) *ducks, coot and mergansers*

(a) *Western Zone*      *October 18-December 2 and December 27-January 9; pintails may be taken October 18-November 16; canvasbacks may be taken November 17-December 2 and December 27-January 9.*

- (b) *Northeastern Zone* October 4-November 15 and November 27-December 13; pintails may be taken October 4-November 2; canvasbacks may be taken November 3-November 15 and November 27-December 13.
- (c) *Lake Champlain Zone* October 11-October 13 and October 25-December 20; pintails may be taken October 11-October 13 and October 25-November 20; canvasbacks may be taken November 1-November 30.
- (d) *Southeastern Zone* October 11-October 19 and November 8-December 28; pintails may be taken October 11-October 19 and November 8-November 28; canvasbacks may be taken November 29-December 28.
- (e) *Long Island Zone* November 21-November 30 and December 7-January 25; pintails may be taken November 21-November 30 and December 7-December 26; canvasbacks may be taken December 7-January 5.

- (ii) *Canada geese*
- (a) *Lake Champlain Goose Hunting Area* October 25-December 8.
- (b) *St. Lawrence Goose Hunting Area* October 25-January 2.
- (c) *Northeast Goose Hunting Area* October 25-November 16 and November 22-December 13.
- (d) *Southwest Goose Hunting Area* October 25-January 2.
- (e) *South Central Goose Hunting Area* October 25-January 2.
- (f) *West Central Goose Hunting Area* October 25-November 16 and December 27-January 17.
- (g) *East Central Goose Hunting Area* November 1-November 16 and November 30-December 28.
- (h) *Western Long Island Goose Hunting Area* November 21-January 29.
- (i) *Eastern Long Island Goose Hunting Area* November 21-November 30 and December 7-January 25.

- (iii) *snow geese*
- (a) *Western Zone* October 18-January 17 and February 25-March 10.
- (b) *Northeastern Zone* October 4-January 3 and February 25-March 10.
- (c) *Lake Champlain Zone* October 11-December 31.
- (d) *Southeastern Zone* October 11-January 10 and February 25-March 10.
- (e) *Long Island Zone* October 4-October 22 and November 21-November 30 and December 24-March 10.
- (iv) *brant*
- (a) *Western Zone* October 11-December 9.
- (b) *Northeastern Zone* October 4-December 2.
- (c) *Lake Champlain Zone* October 11-December 9.
- (d) *Southeastern Zone* October 11-December 9.
- (e) *Long Island Zone* November 21-November 30 and December 7-January 25.

Existing subparagraph 2.30(e)(1)(v) through paragraph 2.30(e)(2) remains unchanged.

Existing subparagraph 2.30(e)(2)(i) is amended to read as follows:

- (i) Hunters may take scoters, eiders and long-tailed ducks in the Special Sea Duck Area for 107 days ending on the last [Sunday] Sunday in January.

Existing subparagraph 2.30(e)(2)(ii) through clause 2.30(e)(2)(ii)(b) remains unchanged.

Existing subparagraph 2.30(e)(2)(iii) is amended to read as follows:

- (iii) Hunters may take Canada geese in the Special Late Canada Goose Hunting Area from [January 15 through February 15] February 7 through February 12.

Existing subparagraph 2.30(e)(2)(iv) remains unchanged.

Repeal existing clauses 2.30(e)(2)(iv)(a) through (e) and adopt new clauses 2.30(e)(2)(iv)(a) through (e) as follows:

- (a) *Western Zone* October 4 and 5
- (b) *Northeastern Zone* September 20 and 21
- (c) *Lake Champlain Zone* September 27 and 28
- (d) *Southeastern Zone* September 27 and 28
- (e) *Long Island Zone* November 8 and 9

Existing paragraph 2.30(e)(3) through subparagraph 2.30(g)(3)(ii) remains unchanged.

Existing subparagraph 2.30(g)(3)(iii) is amended to read as follows:

- (iii) Canvasback

Times and/or places within seasons	Daily bag limit	Possession limit
<i>During open seasons specified in 2.30(e)(1)(i)</i>	1	2
All other times and places:	0	0

Existing subparagraph 2.30(g)(3)(iv) through subparagraph 2.30(g)(3)(vi) remains unchanged.

Repeal existing subparagraph 2.30(g)(3)(vii) and adopt new subparagraph 2.30(g)(3)(vii) to read as follows:

- (vii) *Canada geese*

Times and/or places within seasons	Daily bag limit	Possession limit
<i>During youth waterfowl hunt days</i>	2	4
<i>During September in the Lake Champlain Goose Hunting Area and during the regular goose hunting season in the Western Long Island Goose Hunting Area</i>	3	6
<i>During September in all other areas</i>	8	16
<i>During the regular goose hunting season in all areas except the St. Lawrence, South Central, and Western Long Island Goose Hunting Areas</i>	2	4
<i>During the regular goose hunting season in the St. Lawrence and South Central Goose Hunting Areas and during the Special Late Canada Goose Season</i>	5	10

Existing subparagraphs 2.30(g)(3)(viii) through (xiii) remain unchanged.

Existing first footnote to paragraph 2.30(g)(3) is amended to read as follows:

\*The daily limit for ducks may include no more than 4 mallards (no more than 2 hens), 1 black duck, 1 pintail (except during closed periods specified in subparagraph 2.30(e)(1)(i) of this Part), 1 canvasback (except during closed periods specified in subparagraph 2.30(e)(1)(i) of this Part), 2 wood ducks, 2 redheads, 3 scaup or 4 scoters. [In the Lake Champlain Zone only, the daily limit may include no more than 4 goldeneye.] Possession limits for all duck species are twice the daily limit.

Amend existing paragraph 2.30(g)(4) to read as follows:

(4) Additional bag limit. Hunters may take an additional daily bag limit of seven (14 in possession) sea ducks (scoter, eider, and [oldsquaw] long-tailed ducks), singly or in the aggregate, of which no more than four (eight in possession) may be scoters, in the special sea duck area during the special sea duck season and in the remaining coastal waters of the Long Island Zone during the regular duck, coot and merganser seasons.

Existing paragraph 2.30(g)(5) through end of section 2.30 remains unchanged.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire November 25, 2003.

**Text of rule and any required statements and analyses may be obtained from:** Gordon R. Batcheller, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8885, e-mail: grbatc@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.

**Additional matter required by statute:** State Environmental Quality Review Act (SEQR; ECL art. 8). Establishment of hunting regulations is covered by a final programmatic impact statement (FPIS) on wildlife game species management (DEC 1980) and supplemental findings (DEC 1994), and by a Federal EIS on issuance of annual regulations permitting the sport hunting of migratory birds (USFWS 1988). The proposed action does not involve any significant departure from established and accepted practices as described in the FPIS and is therefore classified as a "type II" action pursuant to DEC's SEQR regulations (6 NYCRR § 618.2[d][5]).

### **Regulatory Impact Statement**

#### 1. Statutory Authority

Section 11-0303 of the Environmental Conservation Law (ECL) authorizes the Department of Environmental Conservation (DEC) to provide for the recreational harvest of wildlife giving due consideration to ecological factors, the natural maintenance of wildlife, public safety, and the protection of private property. ECL Sections 11-0307, 11-0903, 11-0905 and 11-0909 and 11-0917 authorize DEC to regulate the taking, possession, transportation and disposition of migratory game birds.

#### 2. Legislative Objectives

The legislative objective of the above cited laws is to ensure adoption of state migratory game bird hunting regulations that conform with federal regulations made under authority of the Migratory Bird Treaty Act (16 U.S.C. '703-711). Season dates and bag limits are used to achieve harvest objectives and equitably distribute hunting opportunity among as many hunters as possible. Regulations governing the manner of taking upgrade the quality of recreational activity, provide for a variety of harvest techniques, afford migratory game bird populations with additional protection, provide for public safety and protect private property.

#### 3. Needs and Benefits

The purpose of this rulemaking is to adjust annual migratory game bird hunting regulations to conform with the federal regulations for the 2003-2004 season and flyway guidelines for resource conservation, and to reflect preferences of hunters in New York.

Migratory game bird population levels fluctuate annually in response to a variety of environmental factors, including weather conditions, predation, and human activities, such as land use changes and harvest. As a result, federal regulations pertaining to hunting of migratory birds are reviewed and adjusted annually. The Department annually reviews and promulgates state regulations in order to maintain conformance with federal regulations, as required by Environmental Conservation Law Sections 11-0307 and 11-0903, and to address ecological considerations and user desires.

In order to conform with federal regulations, the Department is proposing the following regulatory changes: an increase in the bag limit for Canada geese taken during the September hunting seasons (except in the Lake Champlain Zone), minor season date adjustments for other waterfowl species (ducks, geese, and brant), establishment of a thirty-day canvasback hunting season, and elimination of the special bag limit for goldeneye in the Lake Champlain Zone.

Other season date and bag limit adjustments contained in this rulemaking are intended to maximize hunting opportunities when they are most desired (for example, maximizing the number of weekend days open to hunting), within constraints established by the U.S. Fish and Wildlife Service (USFWS). Season dates and bag limits for the Lake Champlain Zone are consistent with the regulations established in adjoining areas of Vermont, in accordance with federal regulations and a long standing interstate agreement.

#### 4. Costs

These revisions to 6 NYCRR 2.30 will not result in any increased expenditures by state or local governments or the general public. Costs to DEC for implementing and administering this rule are continuing and annual in nature. These involve preparation and distribution of annual regulations brochures and news releases to inform the public of migratory game bird hunting regulations for the coming season.

#### 5. Paperwork

The proposed revisions to 6 NYCRR 2.30 do not require any new or additional paperwork from any regulated party.

#### 6. Local Government Mandates

This amendment does not impose any program, service, duty or responsibility upon any county, city, town village, school district or fire district.

#### 7. Duplication

Section 2.30 largely duplicates federal migratory game bird hunting regulations. Each year, the USFWS establishes "framework" regulations which specify allowable season lengths, dates, bag limits and shooting hours for various migratory game bird species based on their current population status. Within constraints of the federal framework, New York selects specific hunting season dates and bag limits for various migratory game birds, based primarily on hunter preferences. These selections are subsequently included in a final federal rule making (50 CFR Part 20 Section 105), which appears annually in the Federal Register in September. However, Sections 11-0307 and 11-0905 of the ECL specify that DEC shall fix annually by regulation, migratory game bird hunting seasons and bag limits which conform with the federal regulations. This requires that Section 2.30 be amended annually.

#### 8. Alternatives

The principal alternative, no action, would result in state waterfowl hunting regulations that do not conform with federal guidelines. Leaving season dates and bag limits unchanged would also result in a significant loss of hunting opportunity, public dissatisfaction, and adverse economic impacts because they would not reflect hunter preferences or alleviate goose damage through sport harvest to the extent possible.

#### 9. Federal Standards

There are no federal environmental standards or criteria relevant to the subject matter of this rulemaking. However, there are federal regulations for migratory game birds. This rule making will conform state regulations to federal regulations, but will not establish any environmental standards or criteria.

#### 10. Compliance Schedule

All waterfowl hunters must comply with this rule making during the 2003-2004 and subsequent hunting seasons. No lead time is necessary for compliance.

### **Regulatory Flexibility Analysis**

The purpose of this rulemaking is to amend migratory game bird hunting regulations. This rule will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local government. Therefore, a Regulatory Flexibility Analysis is not required.

All reporting or recordkeeping requirements associated with migratory bird hunting are administered by the New York State Department of Environmental Conservation (DEC) or the U.S. Fish and Wildlife Service (USFWS). Small businesses may, and town or village clerks do, sell hunting licenses, but this rule does not affect that activity. Thus, there will be no effect on reporting or recordkeeping requirements imposed on those entities.

Based on the Department's past experience in promulgating regulations of this nature, and based on the professional judgement of Department staff, the Department has determined that this rulemaking may slightly increase the number of participants or the frequency of participation in migratory game bird hunting, especially for Canada geese. Small businesses currently benefit when migratory bird hunters spend money on goods and services. Additional goose hunting activity will not require any new or additional reporting or recordkeeping by any small businesses or local governments. For these reasons, the Department has concluded that this rulemaking does not require a Regulatory Flexibility Analysis.

### **Rural Area Flexibility Analysis**

The purpose of this rulemaking is to amend migratory game bird hunting regulations. This rule will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, other than individual hunters. Therefore, a Rural Area Flexibility Analysis is not required.

All reporting or recordkeeping requirements associated with hunting are administered by the New York State Department of Environmental Conservation (Department) or the U.S. Fish and Wildlife Service (USFWS). Small businesses may, and town or village clerks do, issue hunting licenses, but this rulemaking does not affect that activity.

Based on the Department's past experience in promulgating regulations of this nature, and based on the professional judgement of Department staff, the Department has determined that this rulemaking may slightly increase the number of participants or the frequency of participation in migratory game bird hunting, especially for Canada geese. Rural areas benefit when migratory bird hunters spend money on goods and services. However, additional hunting activity will not require any new or additional reporting or recordkeeping by entities in rural areas, and no professional services will be needed for people living in rural areas to comply with the proposed rule. Furthermore, this rulemaking is not expected to have any adverse impacts on any public or private interests in rural areas of New York State. For these reasons, the Department has

concluded that this rulemaking does not require a Rural Area Flexibility Analysis.

#### **Job Impact Statement**

The purpose of this rulemaking is to amend migratory game bird hunting regulations. The Department of Environmental Conservation (Department) has historically made regular revisions to its migratory game bird hunting regulations. Based on the Department's experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not have a substantial adverse impact on jobs and employment opportunities. Few, if any, persons actually hunt migratory game birds as a means of employment. Hunters will not suffer any substantial adverse impact as a result of this rulemaking because it is not expected to significantly change the number of participants or the frequency of participation in the regulated activities. In fact, this rulemaking may slightly increase the number of participants or the frequency of participation in migratory game bird hunting, especially for Canada geese. For this reason, the Department anticipates that this rulemaking will actually have no impact on jobs and employment opportunities. Therefore, the Department has concluded that a job impact statement is not required.

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## Department of Health

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### EMERGENCY RULE MAKING

#### **Physician Profiling**

**I.D. No.** HLT-37-03-00004-E

**Filing No.** 934

**Filing date:** Aug. 29, 2003

**Effective date:** Aug. 29, 2003

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

**Action taken:** Addition of Part 1000 to Title 10 NYCRR.

**Statutory authority:** Patient Health Information and Quality Improvement Act of 2000

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

**Specific reasons underlying the finding of necessity:** Immediate adoption of this rule is necessary for preservation of public health and general welfare and to prevent patient harm due to lack of information. The Patient Health Information and Quality Improvement Act requires the Department to collect information and create individual profiles on physicians that shall be available for dissemination to the public to improve the quality of health care in the State. The Department must also provide each physician with a copy of his/her profile prior to dissemination to the public. Information to be disseminated includes criminal conviction and medical malpractice information.

The development and passage of the Patient Health Information and Quality Improvement Act received significant support from patients who had experienced serious injury, and from families of patients and members of advocacy organizations, who had experienced death or serious injury of relatives or friends as a result of medical errors, including negligence. In these cases, the patients did not have ready access to meaningful information that would have been very important in guiding their decisions regarding choice of physician. For example, graduate medical education and board certification(s) are very important in choosing the most appropriate physician to perform complex surgical procedures on infants and children. Deaths can be avoided by providing patients with access to information that better informs them of physicians' education, training, credentials and experience and enables patients as consumers to actively participate in one of the most important health care decisions - the choice of physician.

Immediate adoption of this rule is necessary in order to provide access to information, as well as the timely reporting of updated or new information, which is of the utmost importance to consumers making decisions concerning access to high quality health care services.

**Subject:** Physician profiling.

**Purpose:** To implement the Patient Health Information and Quality Improvement Act of 2000.

**Text of emergency rule:** Pursuant to the authority vested in the Commissioner of Health by section 2995(1)(b) of the Public Health Law, a new Chapter VIII consisting of Part 1000 is hereby added to Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York to be effective upon filing with the Department of State to read:

*Chapter VIII  
Physician Profiling  
Part 1000  
Physician Profiles*

*1000.1 Definitions.*

*For purposes of making individual physician profiles available for dissemination to the public, pursuant to the provisions of section 2995-a of the Public Health Law, the following definitions shall apply:*

(a) "Board certification" means a specialty or subspecialty in which a physician is certified by the American Board of Medical Specialties (ABMS), American Osteopathic Association (AOA), Royal College of Physicians and Surgeons of Canada (RCPSC) or The College of Family Physicians of Canada (CFPC).

(b) "Concise Statement" means a typewritten statement not exceeding one thousand words which relates solely to information contained in the physician's profile. Statements which include the following prohibited language shall not be published with a physician's profile:

(1) potentially defamatory information that includes names of specific individuals or groups of individuals or any potentially defamatory information that could result in identification of an individual or individuals other than the physician who is making the concise statement;

(2) general statements relating to physician disciplinary or judicial processes; or

(3) statements that do not relate to the factual information contained in the physician's profile.

(c) "Graduate medical education" means a graduate medical education program accredited by the Accreditation Council for Graduate Medical Education (ACGME), American Osteopathic Association (AOA), Royal College of Physicians and Surgeons of Canada (RCPSC) or The College of Family Physicians of Canada (CFPC).

(d) "Loss or involuntary restriction of hospital privileges or failure to renew professional privileges at hospitals for reasons related to the quality of patient care delivered" means the loss or involuntary restriction of hospital privileges or failure to renew professional privileges at hospitals for reasons including, but not limited to:

(1) incompetence in providing direct patient care;

(2) sexual abuse or harassment of hospital staff or patients;

(3) disciplinary actions taken because of professional misconduct in any state related to the quality of patient care delivered;

(4) commission of crimes related to the quality of patient care delivered; and

(5) lack of maintaining accurate medical records.

(e) "Physician profile" means information collected on physicians currently licensed and registered in New York State that shall be available for dissemination to the public in accordance with section 2995-a of the Public Health Law.

(f) "Place" means, for purposes of reporting malpractice award, judgment, and settlement information, the geographic location where the injury occurred as a result of the malpractice or alleged malpractice, office practice location of the particular physician at the time of the malpractice or alleged malpractice, or county in which the malpractice award or judgment is filed. The Department shall specify which of such places shall be included on reports required to be submitted by medical malpractice insurance companies or hospitals self-insured for professional medical malpractice in accordance with section 315 of the Insurance Law.

(g) "Within the most recent 10 years" means:

(1) For purposes of physician self-reporting, the period beginning 10 years prior to January 1, 2002 or the date the Department initially collects information from a licensed registered physician, whichever is later.

(2) For purposes of public dissemination of physician profiles, the period beginning 10 years prior to the day a physician profile is being made available for dissemination to the public.

*1000.2 Criminal convictions.*

(a) The Department shall collect and make available to the public, and physicians shall submit, if applicable, information regarding criminal convictions within the most recent 10 years for any and all offenses under the laws of New York State or any other jurisdiction.

(1) "Offenses" shall include only felonies or misdemeanors, as defined under the laws of the jurisdiction within which such felonies or misdemeanors take place.

(2) "Conviction" means the entry of a plea of guilty to, or a verdict of guilty upon, an accusatory instrument other than a felony complaint, or to one or more counts of such instrument, as defined in section 1.20 of the Criminal Procedure Law.

(b) Physicians shall submit to the Department, if applicable, information regarding criminal convictions within the most recent 10 years that includes:

- (1) Name of the offense;
- (2) State, province or country in which the conviction occurred; and
- (3) Date of conviction.

1000.3 Malpractice awards, judgments and settlements.

(a) Collection. The Department shall collect and physicians shall submit, if applicable, the following information regarding all medical malpractice court judgments, arbitration awards and malpractice settlements within the most recent 10 years in which a payment has been awarded or made to a complaining party:

(1) Date of each award, judgment or settlement, determined as follows:

- (i) For arbitration awards, the date the arbitrator issued the award;
- (ii) For judgments, the date of entry of the judgment;
- (iii) For settlements, the date of entry of the stipulation or, if no entry, the last date on which any person signed the settlement document.

(2) Date payment was made or date claim was closed. The date a claim was closed is the date entered by an insurance company or third party reporter that the claim is resolved.

(3) Amount of each award, judgment or settlement;

(4) Place(s) of each award, judgment or settlement as specified by the Department in accordance with subdivision (f) of section 1000.1 of this Part; and

(5) Any other information deemed necessary by the Department to implement the provisions of this subdivision.

(b) Public Dissemination. (1) The Department shall make available to the public information collected in accordance with subdivision (a) of this section regarding:

(i) all medical malpractice court judgments and arbitration awards within the most recent 10 years in which a payment has been awarded or made to a complaining party; and

(ii) malpractice settlements which exceed two in number within the most recent 10 years in which a payment has been awarded or made to a complaining party.

(2) In the case where the total number of malpractice settlements is two or fewer, the Department shall make available to the public information collected in accordance with subdivision (a) of this section in those cases where it is alleged that a malpractice event resulted in death or permanent injury, and where the Department has considered any information submitted in accordance with subparagraph (ii) of this paragraph.

(i) "Permanent injury" shall include, but is not limited to, the following:

- loss of finger or fingers;
- loss or permanent damage to organ or organs;
- deafness;
- loss of any limb or limbs;
- loss of eyes or eyesight;
- loss of kidney or kidneys;
- loss of lung or lungs;
- paraplegia;
- brain damage;
- quadriplegia;
- severe brain damage;
- lifelong care;
- fatal prognosis;
- any permanent loss or impairment (unable to function at same level prior to occurrence) of body part;
- any permanent loss or impairment of bodily function;
- any permanent physical or mental impairment that substantially limits one or more of the major life activities of an individual; or
- death

For purposes of this subparagraph, the Department of Health may use information collected in accordance with section 315 of the Insurance Law, including information relating to death or the seriousness of injury,

or self-reported by physicians as required by subdivision (3) of section 2995-a of the Public Health Law;

(ii)(a) A physician may provide additional factual clinical information pertinent to the Department's determination of whether settlement information is relevant to patient decision-making. Such information, if provided, will be reviewed by a panel appointed by the Department to conduct such reviews. The panel is comprised of at least three persons, the majority of whom are physicians, at least one of whom is a physician of the same specialty as the physician whose settlement is under review. The panel shall submit its recommendation to the Commissioner of Health regarding whether, based upon the information provided by the physician whose settlement is under review, the settlement is relevant to patient decision-making. The recommendation of the panel that a settlement is not relevant for patient decision-making shall be predicated upon a preponderance of clinical information indicating that, despite the awarding of a payment to a complaining party, appropriate provision of patient care was provided.

(b) Additional clinical information provided by a physician must be received by the Department postmarked within 30 days of the date of the letter transmitting the physician's medical malpractice review copy as specified in subdivision (c) of section 1000.4 of this Part. Requests for an extension of the 30-day period will be considered only if they:

(1) are in writing and received by the Department or its agent within the 30-day period or received orally by the Department or its agent within the 30-day period followed by a written request for the extension postmarked within 5 days of the Department receiving the oral request or the expiration of the 30-day period, whichever is later;

(2) include the reason(s) why the extension is needed, which must be related to circumstances that are beyond the physician's control; and

(3) indicate the amount of additional time needed.

This clause does not obligate the Department to grant extensions. Further, the Department may deny any request received beyond the required time frames or missing information required by subclauses (1) - (3) of this clause. Public dissemination of medical malpractice settlement information will be suspended while the Department is reviewing the request for an extension. The Department will notify the physician in writing of its decision to either grant or deny an extension.

(iii) Consumers shall be advised by the Department on a physician profile to contact the physician for more information regarding malpractice awards, judgments and settlements in order to facilitate patient decision-making concerning health care quality.

(3) Public dissemination of information regarding medical malpractice judgments, arbitration awards, and settlements under this section shall be made in graduated categories indicating whether the payment award is average, above average or below average, as set forth in subparagraph (i) of this paragraph, in comparison to other payment awards made to complaining parties within the same specialty. For purposes of this paragraph, "specialty" shall mean a specified area of medical practice including, but not limited to, anesthesiology, family practice, internal medicine, obstetrics and gynecology, pediatrics, physical medicine and rehabilitation, psychiatry, radiology and general surgery. For purposes of comparing payment awards, the Department may calculate average, above average and below average amounts, and periodically update them, at least annually, based upon the most recent malpractice payment award information submitted to the Department by medical malpractice insurance companies or hospitals self-insured for professional medical malpractice in accordance with section 315 of the Insurance Law, consistent with geographic areas of the State used by the Insurance Department to establish medical malpractice insurance premiums, as set forth in subparagraph (ii) of this paragraph. Average, above average, and below average amounts are based upon quartiles. Quartiles are developed by taking all claims for doctors within a certain specialty in a certain geographic region and dividing them, lowest to highest, into four groups (quartiles) of equal numbers.

(i)(a) An "average" payment award means a payment award amount falling in the middle two quartiles of payment award amounts for a certain specialty in a certain geographic region.

(b) A "below average" payment award means a payment award amount falling in the lowest quartile of payment award amounts for a certain specialty in a certain geographic region.

(c) An "above average" payment award means a payment award amount in the highest quartile of payment award amounts for a certain specialty in a certain geographic region.

(ii) (a) If there are at least eight claims in each of four regions, quartiles will be developed for each of four regions for a particular specialty as follows:

Region A = New York, Orange, Rockland, Sullivan, Westchester, Bronx, Kings, Queens, Richmond, Nassau and Suffolk Counties

Region B = Columbia, Dutchess, Greene, Putnam and Ulster Counties

Region C = Erie and Niagara Counties

Region D = All Other Counties

(b) If there are an insufficient number of claims to develop quartiles for each of four regions as specified in clause (a) above, then quartiles will be developed for each of two regions for a specialty if there are at least eight claims in each of two regions as follows:

Downstate = Region A

Upstate = Combined Regions B, C, and D

(c) If there is an insufficient number of claims to develop quartiles for downstate and upstate, quartiles will be developed on a statewide basis for a specialty.

1000.4 Collection of initial profile information.

(a) The Department shall send an initial profile survey to every currently or newly State licensed and registered physician in New York State which reflects all the data elements required by Public Health Law Section 2995-a(1), some elements of which shall be prepared by the Department using data sources other than the physician. Such initial profile survey must be completed, signed and returned by each physician to the address designated by the Department on the survey and postmarked within 30 days of the date of the letter transmitting such initial profile survey to the physician.

(b) Physicians shall be given the opportunity to correct factual inaccuracies that appear in the profile. Once the Department receives a physician's completed and signed initial profile survey and enters the data into the physician profile database, the Department will provide to the physician a copy of his or her profile in the form to be used for public dissemination, hereafter referred to as the review copy, prior to such public dissemination. The physician shall note any corrections on the review copy and return it to the Department signed and postmarked within 10 days of the date of the letter transmitting the review copy to the physician; otherwise, the Department will publicly disseminate the physician's profile information as received on the physician's initial profile survey.

(c) Subsequent to receiving the physician's review copy, if returned within the time frame required by subdivision (b) of this section, the Department will provide to the physician a copy of any medical malpractice information in the form to be used for public dissemination, hereafter referred to as the medical malpractice review copy. Physicians shall correct any factual inaccuracies on the medical malpractice review copy and return it to the Department postmarked within 10 days of the date of the letter transmitting the medical malpractice review copy to the physician, or, in the instance where the physician has two or fewer medical malpractice settlements over the most recent 10-year period and opts to access the panel review process, shall provide additional factual clinical information pursuant to subparagraph (ii) of paragraph (2) of subdivision (b) of section 1000.3 of this Part. If the physician does not respond in accordance with the timeframes set forth in this subdivision, the Department will publicly disseminate the physician's medical malpractice information provided on the medical malpractice review copy.

1000.5 Updating self-reported information.

(a) Except for optional information provided on physician profiles, physicians shall notify the Department of any change in profile information within 30 days of such change. Any change in optional information must be reported to the Department within 365 days of such change.

(b) Physicians shall submit changes to physician profile information either electronically using the Department's secure web site or on forms prescribed by the Department. Physicians shall attest to the truthfulness, completeness and correctness of any changes submitted to the Department.

**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 November 26, 2003.

**Text of emergency rule and any required statements and analyses may be obtained from:** William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

#### Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2995(1) (b) of the Public Health Law which directs the Department of Health to promulgate rules for the purpose of implementing provisions of Title 1 of Article 29-D of the Public Health Law, the Patient Health Information and Quality Improvement Act of 2000.

#### Legislative Objectives:

Article 29-D of the Public Health Law creates a statewide health information system, the purpose of which is to increase information available to patients about health care providers and health care plans, and improve the quality of health care in New York State. The statewide health information system will collect information on physicians, hospitals, and health care plans and disseminate such information to the public for purposes of improving health care decision-making.

#### Needs and Benefits:

These regulations will enable the Department to collect from physicians information which is required to be made available to the public, and publicly disseminate such information. Certain provisions of Section 2995-a of the Public Health Law require clarification in order for the Department to meet its mandate of collecting information from physicians to create individual profiles on licensees subject to the authority of the Office of Professional Medical Conduct. Without such clarification, physicians would not know what to report, to what period the reporting of information pertains, and how frequently to report changes in such information.

Additionally, these regulations clarify how the Department will publicly disseminate medical malpractice information that has been collected on individual physicians. Without such clarification, the Department would not be able to meet the legislative mandate of reporting medical malpractice information as an important component of physician profiles.

#### Costs:

##### Costs to Regulated Parties:

There are no costs to regulated parties resulting from these regulations since clarification of malpractice information relates to which malpractice information is collected and how it is publicly disseminated. The actual collection of malpractice information from physicians is mandated by statute. These regulations also clarify what specific data physicians must report on criminal convictions and require physicians to update profile information at regular intervals. There are no out-of-pocket costs anticipated to be incurred by physicians in obtaining the information necessary to meet the requirements of these regulations.

##### Costs to State and Local Governments:

There will be additional costs to the State to implement the statewide health information system required by Title 1 of Article 29-D of the Public Health Law and to conduct panel reviews of the medical malpractice settlements in the instance where a physician has two or fewer and has opted to provide additional factual information to the Department under the process set forth in these regulations. The current cost to establish and operate the physician profile database required by statute is approximately \$1.8 million on an annual basis. The initial annual cost of conducting panel reviews under these regulations is estimated to be \$100,000 with an annual cost of \$10,000 thereafter. There will be no additional costs to local governments as a result of the reporting clarifications set forth in these regulations.

##### Cost to the Department of Health:

As discussed in the preceding section, to conduct panel reviews of the medical malpractice settlements in the instance where a physician has two or fewer and has opted to provide additional factual information to the Department under the process set forth in these regulations will result in additional costs. The Department estimates the initial annual cost of doing these reviews to be \$100,000. The annual cost thereafter is estimated to be \$10,000. Existing Department staff will implement other aspects of these regulations.

##### Local Government Mandates:

These regulations do not impose any substantial new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district, or other special district.

##### Paperwork:

These regulations clarify the reporting requirements mandated by Section 2995-a of the Public Health Law pertaining to the creation of physician profiles. The new reporting requirements imposed as a result of these regulations are voluntary in nature. If a physician with two or fewer medical malpractice settlements over the past ten years opts to access the panel review process set forth in section 1000.3(b)(2)(ii), the physician is required to provide additional factual clinical information pertinent to the

Department's determination of whether such settlement information is relevant to patient decision-making within specified timeframes.

**Duplication:**

These regulations will not duplicate, overlap or conflict with federal or state statutes or regulations. Further, Section 2995-a(13)(a) of the Public Health Law requires that the department identify the types of physician data to which the public has access, including all information available from federal, state or local agencies which is useful for making determinations concerning health care quality determinations. The department shall study all physician data reporting requirements and develop recommendations to consolidate data collection and eliminate duplicate and unnecessary reporting requirements, or to supplement existing reporting requirements in order to meet the requirements of physician profiling.

**Alternatives:**

The alternative of taking no regulatory action was rejected because of the potential confusion concerning what information is to be reported by physicians and how frequently it is to be updated to the Department. Additionally the Department believes it necessary to clarify the definition of "Concise Statement" since several physicians submitted such statements that were neither concise nor did they pertain to "information contained in their profiles." Also, in the instance where a physician has two or fewer settlements and has opted to provide additional factual information to the Department, the Department feels it is very important to conduct the panel reviews of such medical malpractice settlements utilizing a panelist that is in the same specialty as the physician whose settlement is under review. The above were alternatives considered by the Department and incorporated into these regulations.

**Federal Requirements:**

These regulations do not exceed any minimum standards of the federal government for the same or similar subject areas.

**Compliance Schedule:**

The regulations will go into effect upon filing a Notice of Adoption in the New York State Register.

**Regulatory Flexibility Analysis**

Types and Estimated Number of Small Businesses and Local Governments:

These regulations govern what individual physicians, not their professional corporations, must report to the New York State Department of Health to comply with the statutory provisions of Title 1 of Article 29-D of the Public Health Law.

To the extent these regulations may impact certain physicians who are operating as professional corporations, the Department does not have the data to estimate the number of such professional corporations. These regulations do not apply to local government.

**Compliance Requirements:**

Physicians as individual licensees, including those practicing as professional corporations, are required to report certain information to the Department to be made available to the public on a physician profile pursuant to Section 2995-a of the Public Health Law. These regulations require physicians to report specific data on criminal convictions, medical malpractice court judgments, arbitration awards and malpractice settlements. These regulations also require physicians to update profile information at regular intervals.

It is anticipated that physicians will provide the required information themselves, therefore, no additional professional services are likely to be needed by physicians in order to comply with these regulations.

**Compliance Costs:**

The Department anticipates that there will be no initial capital costs, or annual ongoing costs, for physicians practicing as professional corporations to comply with these regulations. There are no out-of-pocket costs anticipated to be incurred by physicians in obtaining the information necessary to meet the requirements of these regulations. There is no variation in costs for different types and sizes of small businesses since the regulations apply uniformly to individual physicians.

**Economic/Technological Feasibility:**

The Department anticipates no economic or technological hardships for physicians practicing as professional corporations to comply with these regulations. The information physicians must provide pursuant to these regulations is readily available to them and does not require specific technology to submit to the Department. Physicians have the choice of submitting required information electronically or via the mail using a hard copy survey provided by the Department.

**Minimize Adverse Impact:**

These regulations are not expected to have any adverse impacts on physicians practicing as professional corporations.

**Small Business and Local Government Participation:**

The Department provided opportunity for small business and local government participation by convening three roundtable discussions in March, 2001. They were held around the state, in Albany, New York City, and Rochester. Physician representatives were invited as well as other professional organizations. A public notice regarding the meetings was published in the New York State Register on March 7, 2001. No participants raised any concerns regarding the economic impact of these proposed regulations on small businesses and local governments.

**Rural Area Flexibility Analysis**

**Types and Estimated Numbers of Rural Areas:**

These regulations apply uniformly throughout the State including all rural areas. Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, those counties which include towns with population densities of 150 persons or less per square mile. The following 44 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 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

**Compliance Requirements:**

Physicians, including physicians in rural areas, are required to report certain information to the Department to be made available to the public on a physician profile pursuant to Section 2995-a of the Public Health Law. These regulations require physicians to report specific data on criminal convictions, medical malpractice court judgments, arbitration awards and malpractice settlements. These regulations also require physicians to update profile information at regular intervals.

No additional professional services are likely to be needed by physicians in rural areas in order to comply with these regulations.

**Compliance Costs:**

The Department anticipates that there will be no initial capital costs for physicians in rural areas to comply with these regulations. There are no out-of-pocket costs anticipated to be incurred by physicians in obtaining the information necessary to meet the requirements of these regulations. There is no variation in costs for different types of public and private entities in rural areas since the Department anticipates no out-of-pocket costs to physicians as a result of these regulations and they apply uniformly to individual physicians.

**Minimizing Adverse Impact:**

These regulations are not expected to have any adverse impact on physicians in rural areas.

**Rural Area Participation:**

The Department provided opportunity for physicians in rural areas to participate in the rule-making process by convening three roundtable discussions in March, 2001. Two of these roundtable discussions were held in Albany and Rochester. Physician representatives were invited as well as other professional organizations. A public notice regarding the meetings was published in the New York State Register on March 7, 2001.

**Job Impact Statement**

In accordance with Section 201-a(2)(a) of the State Administrative Procedure Act, the Department has determined that these regulations will have no impact on jobs and employment opportunities. It is evident from the subject matter of the regulation that it has no impact on jobs and employment opportunities since they simply clarify what otherwise is required to

be reported by physicians to the Department pursuant to the Patient Health Information and Quality Improvement Act.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Treatment of Opiate Addiction

**I.D. No.** HLT-37-03-00001-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 80.86 and addition of section 80.84 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 3308(2), 3351 and 3352

**Subject:** Treatment of opiate addiction.

**Purpose:** To allow the treatment of opiate addiction in an office-based setting while curtailing controlled substance diversion.

**Text of proposed rule:** Section 80.84 is added to read as follows:

*80.84 Physicians and pharmacies; prescribing, administering and dispensing for the treatment of narcotic addiction.*

*Pursuant to the provisions of the federal Drug Addiction Treatment Act of 2000 (106 P.L. 310, Div. B, Title XXXV @ 3502(a), 114), an authorized physician may prescribe, administer or dispense an approved controlled substance, and a licensed registered pharmacist may dispense an approved controlled substance, to a patient participating in an authorized controlled substance maintenance program approved pursuant to Article 32 of the Mental Hygiene Law for the treatment of narcotic addiction.*

*(a) An approved controlled substance shall mean the following controlled substance which has been approved by the Food and Drug Administration (FDA) and the New York State Department of Health for the treatment of narcotic addiction:*

*(1) buprenorphine.*

*(b) An authorized physician is a physician registered with the department to prescribe, administer or dispense an approved controlled substance for the treatment of narcotic addiction pursuant to this section and specifically registered with the Drug Enforcement Administration to prescribe, administer or dispense an approved controlled substance for the treatment of narcotic addiction, and approved for such purpose pursuant to the provisions of Article 32 of the Mental Hygiene Law.*

*(1) The total number of such patients of an authorized physician or group practice at any one time shall not exceed 30.*

*(2) A physician must register with the department every two years to provide such treatment. Such registration will be provided at no cost.*

*(3) An authorized physician prescribing an approved controlled substance for the treatment of narcotic addiction, in addition to preparing and signing a prescription in accordance with Section 3335 of the Public Health Law, shall also write his/her unique DEA identification number on the prescription.*

*(4) An authorized physician dispensing an approved controlled substance for the treatment of narcotic addiction shall file with the department a report summarizing the dispensing by the 10th day of the month following the month in which the approved controlled substance was dispensed. Such report shall be distinct from the patient's medical record, and prepared on forms provided by the department which will include but not be limited to the following information:*

- (i) patient name;*
- (ii) patient address, including street, city, state, zip code;*
- (iii) patient date of birth;*
- (iv) patient's sex;*
- (v) date of dispensing;*
- (vi) metric quantity;*
- (vii) national drug Code number of the drug;*
- (viii) number of days supply;*
- (ix) prescriber's Narcotic Addiction Drug Enforcement Administration number;*

*(x) date prescription written;*

*(c) An authorized pharmacy is a pharmacy registered with the department to dispense an approved controlled substance for the treatment of narcotic addiction.*

*(1) A pharmacy must register with the department every two years to provide such treatment. Such registration will be provided at no cost.*

*(2) A pharmacist may dispense an approved controlled substance for the treatment of narcotic addiction pursuant to a prescription issued by an*

*authorized physician. Such dispensing shall be in accordance with Section 3336 of the Public Health Law.*

*(3) A pharmacist dispensing such a prescription shall file the prescription information with the department either electronically in accordance with Section 80.73(c)(2) of this Part, or manually on an approved departmental form. The pharmacist shall report the practitioner's narcotic addiction treatment registration number in lieu of the practitioner's Drug Enforcement Administration registration number.*

*(d) Each incident or alleged incident involving the theft, loss or possible diversion of controlled substances shall also be reported to the department immediately.*

Section 80.86 is amended to read as follows:

*80.86 Records and reports of treatment programs. (a) All persons approved pursuant to article [23] 32 of the Mental Hygiene Law to operate a [substance abuse] chemical dependence program, other than authorized physicians and pharmacists as defined in Section 80.84 of this Part who are registered with the department to prescribe, administer or dispense approved controlled substances for the treatment of narcotic addiction, and who possess a Federal registration by the Drug Enforcement Administration, United States Department of Justice to purchase, possess and use controlled substances shall keep the following records:*

*(1) records of controlled substances received by approved persons including date of receipt, name and address of distributor, type and quantity of such drugs received and the signature of the individual receiving the controlled substance. A duplicate invoice or separate itemized list furnished by the distributor will be sufficient to satisfy this record requirement provided it includes all required information and is maintained in a separate file. In addition, duplicate copies of Federal order forms for schedule II controlled substances must be retained; and*

*(2) records of controlled substances administered or dispensed including date of administration or dispensing, name of patient, signature of person administering or dispensing, type and quantity of drug and such other information as may be required by this Part.*

*(b) By the 10th day of each month, a person other than an authorized physician as defined in Section 80.84(b) of this Part, approved to conduct a maintenance program pursuant to article [23] 32 of the Mental Hygiene Law, shall file with the department a report summarizing its controlled substances activity in the preceding month. Such a report shall be on forms provided by the department and shall include:*

*(1) an inventory of the quantity of controlled substances on hand at the commencement and at the conclusion of such month's activity;*

*(2) the date of the inventory;*

*(3) the signature of the persons performing the inventory;*

*(4) the total quantity of controlled substances received, the distributor from whom each order was received, and the form and dosage unit in which such substance was received;*

*(5) a separate list of the total quantity of controlled substances prescribed, dispensed and administered during such month;*

*(6) total quantity of methadone surrendered to the department for destruction;*

*(7) total number of patients treated during the month; and*

*(8) each incident or alleged incident involving the theft, loss or possible diversion of controlled substances.*

*(c) Each incident or alleged incident involving the theft, loss or possible diversion of controlled substances shall also be reported to the department immediately.*

**Text of proposed rule and any required statements and analyses may be obtained from:** William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@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:

United States Public Law 106-310, the Children's Health Act of 2000 was enacted on October 17, 2000. Title XXXV of this law, Waiver Authority for Physicians Who Dispense or Prescribe Certain Narcotic Drugs for Maintenance Treatment or Detoxification Treatment, is better known by the short title Drug Addiction Treatment Act of 2000 (DATA).

DATA allows physicians to prescribe and dispense narcotics in Schedules III, IV, and V of the Controlled Substances Act (CSA) that have been specifically approved by the Food and Drug Administration (FDA) for the purpose of maintenance or detoxification of opiate addiction.

The drug buprenorphine was just approved by FDA for this purpose. The federal law supercedes any existing state law that prohibits such treatment.

New York State Public Health Law, Article 33, Section 3308 states that the Commissioner is authorized and empowered to make any regulations necessary to supplement the purpose of Article 33. Section 3351 states that the Commissioner shall designate in regulation the name of all controlled substances appropriate for use in the treatment of opiate addiction. Section 3352 states that persons certified to operate treatment programs should follow certain record-keeping requirements, as the Commissioner shall require by regulation.

#### Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted to govern and control the possession, prescribing, manufacturing, dispensing, administering, and distribution of licit controlled substances within New York State. In the year 2000 a legislative purpose was added to the law to clarify that its purpose is to allow for the legitimate use of controlled substances, while curtailing their illicit use.

#### Needs and Benefits:

Prior to the adoption of DATA, the treatment of opiate addiction was limited to authorized methadone clinics and licensed substance abuse programs. According to the National Institute of Drug Abuse (NIDA), the regulatory burden involved in delivering methadone to opioid-dependent individuals has been so heavy that it has prevented expansion of the system.

The result has been a "treatment gap," which NIDA defines as the difference between the total number of opioid-dependent persons and those in treatment. In an effort to close the treatment gap, NIDA explored other strategies and studied the use of other drugs to treat opioid addiction. Restrictions were intended to decrease abuse and diversion while permitting legitimate treatment. However a treatment gap continues to exist.

There are approximately 125 MMTPs in New York State with a license capacity to treat 46,000, or 23%, of the estimated 200,000 opiate dependent patients in New York State. Also, over three-quarters of the MMTPs are located in the New York City area, therefore addicts living in rural areas may not have access to an MMTP. It is also believed that many middle and upper class addicts do not seek enrollment in MMTPs due to the stigma associated with MMTPs.

The DATA expands availability of treatment of opiate dependent patients allowing physicians to prescribe narcotic drugs for opiate addiction, requiring only self-certification, and moves the treatment of addiction from the clinic to the private physician's office and the patient's own pharmacy. The law allows qualified physicians to prescribe and dispense Schedule III, IV, and V narcotics that have been approved by FDA for use in maintenance or detoxification treatment. Currently the only such drug approved for such use is buprenorphine.

Buprenorphine is a partial opioid agonist with a significant potential for abuse. To meet the legislative purpose of Article 33 and the intent of the DATA, additional regulations are necessary to ensure buprenorphine is not diverted into illegal channels, while ensuring access to care.

These regulations require that the physician register with the Department of Health, as well as the Office of Alcohol and Substance Abuse Services (OASAS), to provide such treatment. This will ensure that the physician possesses the addiction treatment qualifications required by DATA and is in good standing with respect to adherence to controlled substance laws. The physician will be required to report the names of such patients whom they are providing such treatment. Pharmacies that wish to dispense buprenorphine will also be required to register with the department. Registered pharmacies will be required to file buprenorphine prescription data with the department in the same manner they currently follow for Schedule II controlled substances and benzodiazepines. The department will have the capability of monitoring the utilization of buprenorphine by the analysis of this data in the same manner currently utilized for controlled substances with significant abuse potential.

#### DOH/OASAS Task Force:

In the fall of 2000, the Department of Health (DOH) partnered with the Office of Alcoholism and Substance Abuse Services (OASAS) to begin planning for the implementation of DATA. The agencies established a joint task force charged with establishing complementary regulations, as well as a joint application process by which New York State physicians could register to provide this new treatment modality.

The task force met routinely for over two years. The result was a streamlined application process by which physicians could register with

New York State to provide such treatment, as well as streamlined regulations.

The agencies sent a joint mailing to physicians detailing the regulatory requirements and registration process. The agencies established a joint registration application by which qualified physicians. Qualified physicians simply completed the joint application and sent it to OASAS. Once OASAS reviews and approves the application, the approved application is sent to DOH for their approval. Due to the joint application process, the agencies work closely together through the registration process.

Both agencies also adopted emergency regulations in the fall of 2002. The task force ensured the adoption of emergency regulations that meet the needs and responsibilities of both agencies, while ensuring accessibility of this new treatment to the citizens of New York State.

#### Outreach:

DOH met with the pharmaceutical Society of the State of New York (PSSNY), as well as the Medical Society of the State of New York (MSSNY), during the drafting of this regulation. PSSNY did not have any concerns with the regulations. MSSNY was opposed to the concept of a patient registry. The original regulations contained a requirement for physicians to maintain a registry of the patients whom they were treating, and to share such registry with the DOH. MSSNY stated that the registry requirement might deter patients from seeking such treatment. Due to such concerns, DOH decided to remove the patient registry requirement from the regulations.

#### Costs:

This proposal does not pose any cost to the physician, pharmacy, or the department. The registration of physicians and pharmacies will be provided free of charge. 93% of all pharmacies in the state are already set up to transmit data to the department electronically in the required format, therefore only minimal software modification will be necessary. The remaining 7% submit the data manually on a departmental form.

#### Local Government Mandates:

The proposed rule does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other specific district.

#### Paperwork:

The Department of Health anticipates a simple registration form for physicians and pharmacies that wish to register for this program. Participation in this program is entirely voluntary. The Department of Health has partnered with OASAS to streamline the registration process for physicians.

Ninety-three percent of all New York State pharmacies currently have the capacity to send the department prescription data electronically. The department can't predict how many pharmacies will participate in this program. Approximately 60% of the pharmacies in the State have registered thus far to participate in the Expanded Syringe Access Program (ESAP), and it is anticipated that participation in this new incentive will be similar. Those choosing manual submission may simply complete a manual submission form in the same manner they currently utilize for Schedule II controlled substances and benzodiazepines.

Physicians who prescribe buprenorphine will be required to keep the same records they currently maintain for all controlled substances. Physicians choosing to dispense buprenorphine will be required to submit a manual submission form or submit the data electronically, in the same manner as required for pharmacies.

Methadone clinics are currently required to submit dispensing reports to the department; therefore the collection of dispensing data for drugs that treat addiction is not a new concept.

#### Duplication:

The requirements of this proposed regulation do not duplicate any other state or federal requirement.

#### Alternatives:

The proposed regulation is designed to curtail the potential diversion and abuse of buprenorphine in this new treatment modality. Buprenorphine is a narcotic with significant abuse potential and will be utilized in a population of patients who have a prior history of controlled substance abuse. The federal law sets basic parameters for such treatment but leaves specific oversight up to the individual states. The department believes it is in the best interest of public health to monitor the prescribing and dispensing of this drug for this new treatment modality.

There are no alternatives that would ensure accessibility to treatment while curtailing the potential for abuse and diversion.

#### Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government. This amendment does not prohibit the provisions

of the federal DATA, it simply achieves consistency with existing New York State standards aimed at curtailing the diversion of medication with a high potential for diversion.

**Compliance Schedule:**

Physicians and pharmacies may begin to register with the department immediately. Once a physician has registered with the department for this program, and has received his/her unique identification registration number from the Drug Enforcement Administration (DEA), he/she may begin to prescribe and/or dispense buprenorphine for the treatment of opiate addiction. Once a pharmacy has registered with the department for this program, they may begin to dispense buprenorphine for this treatment.

**Regulatory Flexibility Analysis**

**Effect of Rule:**

Physician and pharmacy participation in this program is voluntary. There are currently 72,920 physicians licensed to practice medicine in New York State. According to the New York State Board of Pharmacy, as of September 2002, there are a total of 4,434 pharmacies in New York State. Of these, 62 are sole proprietorship, 274 are partnerships, 72 are small chains (fewer than 3 pharmacies per chain) and the rest are large chains or other corporations (some of which may be small businesses) or located in public institutions.

**Compliance Requirements:**

Pharmacies that choose to register for this program will be required to submit the buprenorphine prescription information in the same manner that they currently utilize for CII and benzodiazepine prescriptions; either electronically or manually. Physicians who choose to dispense will also be required to submit buprenorphine prescription information either electronically or manually, in the same format they currently utilize when dispensing CII and benzodiazepines. The record-keeping requirements for physicians and pharmacies will be consistent with existing requirements.

**Professional Services:**

Registered pharmacies that choose to submit the required prescription data electronically may need to make a minor change to their current software. Because almost all New York State pharmacies already have a program in place to submit this data, the department does not anticipate that they will be charged for adding buprenorphine data to the current data they submit to the department. The department does not expect a large number of physicians to dispense buprenorphine. Of those that do, the department does not expect them to submit the required data electronically; therefore there no professional services will be required.

**Compliance Costs:**

The department anticipates that there will be no compliance costs associated with this regulation.

**Economic and Technological Feasibility:**

The proposed rule is both economically and technologically feasible. Small businesses may choose not to submit electronically, in which case no new, or additional, equipment would be required. Those businesses that do opt to submit data electronically will require only a standard personal computer and software already utilized by the pharmacy community.

**Minimize Adverse Impact:**

The proposed rule was designed to minimize the impact on small businesses by allowing the dispenser to have the choice of submitting specified data electronically or manually. The rule does not require non-computerized pharmacies or physicians to become computerized. The department has worked with the pharmacy societies and software vendors to adopt transmission standards already utilized by the pharmacy community. Also, at the request of the pharmacy societies, the department is allowing dispensers to submit electronic information in batch format, as opposed to a more costly point-of-sale transmission.

**Small Business and Local Government Participation:**

To ensure that small businesses were given the opportunity to participate in this rule making, the department met with the pharmacy societies representing independent pharmacies. Local governments are not affected.

**Rural Area Flexibility Analysis**

**Finding:**

Pursuant to 202-bb of the State Administrative Procedure Act, a Rural Area Flexibility Analysis is not required.

The proposed amendment does not impose any adverse impact on rural areas. The proposed amendment makes the treatment of addiction in rural settings more feasible, as addicts will no longer have to travel to a methadone clinic to obtain their medication. Many rural areas do not have a methadone clinic in close proximity.

**Measures Taken to A Certain Finding:**

Approximately 93% of the pharmacies in the State currently transmit controlled substance prescription data to the department in the format allowed by this proposal. The remaining 7%, many of which may be in rural areas, do not use computers and will not be forced to computerize. They, as well as physicians, will be allowed to transmit their data manually on a departmental form.

**Job Impact Statement**

**Nature of Impact:**

This proposal will not have a negative impact on jobs and employment opportunities. This proposal expands the treatment options for physicians and pharmacies and is not expected to have impact on increasing or decreasing jobs overall.

**Categories and Numbers Affected:**

This rule affects the 4,423 pharmacies in New York State. Approximately 93% of the pharmacies are currently submitting controlled substance prescription data to the department electronically.

It is anticipated that a small percentage of the 72,920 physicians in the State will register to participate in this program. Of that number, it is expected that most of the physicians will only perform the prescribing of buprenorphine. It is expected that a very small percentage of physicians will actually dispense buprenorphine. Most patients will be receiving their buprenorphine from a registered pharmacy.

**Regions of Adverse Impact:**

There are no regions of the State where this rule would have a disproportionate adverse impact on jobs or employment opportunities.

**Minimizing Adverse Impact:**

There are no unnecessary adverse impacts on existing jobs pursuant to this rule; therefore no measures to minimize such impacts were necessary. Promotions of the development of new employment opportunities are not affected by this rule.

**Self-Employment Opportunities:**

This proposal does not have any measurable impact on opportunities for self-employment.

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

**Fluoroscopic X-Ray Equipment**

**I.D. No.** HLT-37-03-00005-P

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

**Proposed action:** Amendment of section 16.58 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 225(5)(p) and (q)

**Subject:** Update protocol and quality control testing tool for fluoroscopic x-ray equipment.

**Purpose:** To assure uniformity in testing and compliance with standards for image quality and patient doses.

**Text of proposed rule:** Section 16.58 is amended as follows:

16.58 Fluoroscopic installations excluding veterinary installations.

(a) Equipment.

(1) The protective tube housing shall be of *the* diagnostic type.

(2) Equipment shall be [so] constructed so that the entire cross section of the useful beam is always intercepted by the primary protective barrier irrespective of the position.

(i) Collimators and adjustable diaphragms or shutters used to restrict the size of the useful beam shall provide the same degree of protection as is required of the tube housing.

(ii) The exposure shall automatically terminate when the barrier is removed from the useful beam.

(3) The aluminum equivalent of the total filtration in the useful beam shall not be less than that shown below:

(i) for equipment manufactured prior to August 1, 1974:

Operating kVp	Minimum total filtration (Inherent plus added)
Below 50 kVp	0.5 mm aluminum
50-70 kVp	1.5 mm aluminum
Above 70 kVp	2.5 mm aluminum

(ii) for equipment manufactured after August 1, 1974:

Designed Operating Range (kVp)	Measured Operating Potential (kVp)	Minimum HVL mm of Al
Below 51	30	0.3
	40	0.4
	50	0.5
51 to 70	51	1.2
	60	1.3
	70	1.5
Above 70	71	2.1
	80	2.3
	90	2.5
	100	2.7
	110	3.0
	120	3.2
	130	3.5
	140	3.8
	150	4.1

(4) Fluoroscopic exposure switch shall be of the dead-man type.

(5) The source-tabletop distance shall not be less than 12 inches (30 cm) and should not be less than 15 inches (38 cm).

(6) Fluoroscopy equipment shall not be operated for human use unless a cumulative timing device, activated by the fluoroscope exposure switch, is functioning. It shall indicate the passage of a period of irradiation, not exceeding five minutes, either by a signal audible to the operator [an audible signal] or by temporary interruption of the irradiation.

(7) The exposure rate as measured, at no less than 70 kVp in the mode of least magnification with the image intensifier at 40 cm above the table top or overtable fluoro tube at a source to image distance normally used for an average patient, with a patient phantom composed of 1 and 1/2 inches of Type 1100 aluminum in a 7 inch square or an equivalent device in the fluoroscopic beam shall not exceed 5 roentgens per minute except during recording of fluoroscopic images or during activation of optional high level control. The maximum exposure rate measured in air at a point where the center of the useful beam enters the patient shall not exceed 10 roentgens per minute except as follows:]

(7)(i) The fluoroscopic exposure rate when measured under the following conditions shall not exceed 5 Roentgens per minute:

(a) the controls are set to the dose rate mode used for the fluoroscopic procedure most commonly performed on that fluoroscopic unit;

(b) the image intensifier is set to the largest field of view;

(c) the image intensifier is at 12 inches (30 cm) above the tabletop or the overtable fluoro tube is at a source to image distance normally used for an average patient;

(d) a patient phantom composed of 1 and 1/2 inch (3.8 cm) thickness of Type 1100 aluminum and 0.02 inch (0.5 mm) thickness of copper or an equivalent device is completely intercepting the useful beam; and

(e) the measurement is made at the measurement location specified in 21 CFR Section 1020.32(d)(3) (see section 16.200 of this part).

(ii) If the exposure rate cannot be measured, the exposure integrated for one minute under the same conditions as subsection (7)(i) shall not exceed 5 Roentgens.

(8) Using the measurement locations specified in 21 CFR Section 1020.32(d)(3) (see section 16.200 of this part), the maximum exposure rate measured in air shall not exceed 10 roentgens per minute except as follows:

(i) Equipment manufactured before May 19, 1995 and certified in accordance with 21 CFR Part 1020 (see section 16.200 of this Part) and having an optional high level control is limited to a maximum output of 5 R[r]oentgens per minute unless the high level control is activated and an audible signal to that effect is provided. When the high level control is activated, the maximum exposure rate measured in air at a point where the center of the useful beam enters the patient shall not exceed 20 R[r]oentgens per minute.

(ii) Certified equipment manufactured after May 19, 1995 with automatic exposure rate and having an optional high level control is limited to a maximum output of 10 R[r]oentgens per minute unless the high level control is activated and an audible signal to that effect is provided. When the high level control is activated, the maximum exposure rate

measured in air at a point where the center of the useful beam enters the patient shall not exceed 20 R[r]oentgens per minute.

(iii) Certified equipment manufactured after May 19, 1995 without automatic exposure rate is limited to 5 R[r]oentgens per minute unless the high level control is activated and an audible signal to that effect is provided. When the high level control is activated, the maximum exposure rate measured in air at a point where the center of the useful beam enters the patient shall not exceed 20 R[r]oentgens per minute.

(9) With the system configured for the most frequently performed procedure, the fluoroscopic and fluorographic, if the system is equipped for image acquisition, exposure rates shall be measured with each of the following attenuators in the beam:

0.75 inches (19 mm) of aluminum (pediatric patient — 25 kg.),

1.50 inches (38 mm) of aluminum (small adult patient — 50 kg.),

1.50 inches (38 mm) of aluminum and 0.02 inches (0.5 mm) of copper (average adult patient — 75 kg.),

1.50 inches (38 mm) of aluminum and 0.08 inches (2.0 mm) of copper (large adult patient — 100 kg.),

1.50 inches (38 mm) of aluminum and 0.08 inches (2.0 mm) of copper and 0.12 inches (3.0 mm) of lead (for maximum fluoroscopic exposure rate only).

The fluoroscopic exposure rates for the most frequently performed procedure shall be posted so that they are conspicuous to the operator.

(8)(10) Primary protective barriers shall provide the following protection:

(i) for uncertified equipment, with the image intensifier 14 inches (36 cm) from the tabletop, the exposure rate two inches (5 cm) beyond the image intensifier shall not exceed 30 mR/hr for each roentgen per minute at the tabletop with the intensifier in the useful beam without a patient and with the fluoroscope operating at the highest potential available for use.

(ii) for certified equipment, the exposure rate due to transmission through the barrier with the attenuation block in the useful beam combined with radiation from the image intensifier, if provided, shall not exceed two milliroentgens per hour at four inches (10 cm) [10 centimeters] from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor for each roentgen per minute or entrance exposure rate.

(9)(11) In the absence of a tabletop, a cone or spacer frame shall limit the source-to-skin distance to not less than 12 inches (30 cm) for all mobile fluoroscopic equipment. Units intended for specific surgical application may be used at shorter source skin distances but in no case less than 8 inches (20 cm) [20 centimeters].

(10)(12) The spatial [The high contrast] resolution of the fluoroscopic system shall be [capable of resolving a minimum] measured using a test tool composed of a line pair (lp) plate with discreet line pair groups and a maximum lead foil thickness of 0.1 mm or an equivalent device. The test tool shall be placed on a 0.75 inch (19 mm) thickness of type 1100 aluminum, large enough to completely intercept the useful beam, with the test tool 12 inches (30 cm) from the entrance surface of the image receptor assembly. If the system has variable source-to-image distance (SID), the measurement SID shall not exceed 40 inches (100 cm). The image receptor of the fluoroscopic system shall be operated in the largest available field of view (FOV) that does not exceed six inches (15 cm). If all the fluoroscopic system's FOVs exceed six inches (15 cm), the system shall be operated in the smallest FOV. The minimum spatial resolution at center of the beam for all FOVs shall be determined by the following equation:

$$2 \text{ lp/mm} \times (6 \text{ inches (15cm)/size of FOV used}) = \text{minimum number of lp/mm.}$$

[mesh number of 24 for the center of the beam and 20 for the edges using a test tool composed of 8 groups of copper or brass mesh screening ranging from 16 to 60 lines/inch set in plastic or an equivalent device.]

(11)(13) The low contrast performance of the fluoroscopic system shall be capable of resolving a minimum hole size of 3 mm using a test tool composed of a 1.0 mm aluminum sheet with two sets of four holes of dimension 1.0, 3.0, 5.0 and 7.0 mm and a [patient equivalency] phantom composed of a 1 and 1/2 inch (3.8 cm) thickness of Type 1100 aluminum large enough to completely intercept the useful beam or an equivalent device. The test tool shall be 12 inches (30 cm) from the entrance surface of the image receptor assembly. The image receptor of the fluoroscopic system shall be operated in the largest available field of view (FOV) that does not exceed six inches (15 cm). If all the fluoroscopic system's FOVs exceed six inches (15 cm), the system shall be operated in the smallest FOV.

[(12)](14) Radiation therapy simulation systems shall be exempt from the requirements of paragraphs (2), (6), (7) and (8) of this subdivision provided that:

(i) the systems are designed and used in a manner such that no individual other than the patient is in the x-ray room during periods of time when the system is producing x-rays; and

(ii) systems which do not meet the requirements of paragraph (6) of this subdivision are provided with a means of indicating the cumulative time that an individual patient has been exposed to x-rays. Procedures shall require in such cases that the timer be reset between examinations.

(b) Conditions for operation of equipment.

(1) The operator of the installation shall make and record the [outputs] *exposure and exposure rate measurements* made pursuant to paragraph (a)(7) and (8) of this section, where the center of the useful beam enters the patient during routine fluoroscopy and cinefluoroscopy, at annual intervals or more frequently if outputs are found to exceed the limits defined in this section.

(2) Unless measurements indicate that they are not needed, protective garments of at least 0.25 mm lead equivalent each shall be worn by *all persons* [the physician, nurse, radiologic technologist and all other persons] within the fluoroscopic room *except for the patient*.

(3) Only persons needed in the fluoroscopic room shall be present during *irradiation* [the exposure].

(4) *The cumulative fluoroscopic timer must be reset for each new patient.*

**Text of proposed rule and any required statements and analyses may be obtained from:** William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsna@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

The statutory authority for this regulation amendment is Public Health Law Section 225 (4) and (5)(p) and (q), which give the Public Health Council the authority to adopt regulations for the registration and inspection of radiation sources in the interest of public health, safety and welfare. The regulations developed pursuant to this charge are contained in Part 16 of the State Sanitary Code.

##### Legislative Objectives

When the legislature amended the Public Health Law to permit the department to regulate radiation hazards associated with radiation sources and installations to protect public health, it evidenced its intention to reduce unnecessary exposure to patients, operators and the public. The proposed regulations further that legislative purpose of protecting public health by ensuring the proper functioning of fluoroscopic x-ray equipment at installations using that type of radiation source.

##### Needs and Benefits

Part 16 was amended in 1991 to require radiation installation operators to have their diagnostic x-ray equipment periodically tested to assure its proper operation. At that time Part 16 also specified certain quality assurance test tools which were to be used to test fluoroscopic x-ray equipment. During the intervening years, fluoroscopic x-ray technology has continued to evolve. Manufacturers have made technological improvements to fluoroscopic equipment, including changes requested by equipment users, which improved image quality and reduce patient radiation exposure. The increased use of digital imaging has also necessitated adjustments to the radiation output of fluoroscopic x-ray units.

These technological advances to fluoroscopic equipment call for the use of newly developed quality assurance tools rather than the quality assurance tools specified in Part 16 more than a decade ago. For example, Part 16 currently requires the use of a patient equivalent phantom exposed in a fluoroscopic unit with the hardened x-ray beam which may under represent the radiation exposure received by an actual patient. In addition, the high contrast test tool currently specified in Part 16, which is used to measure the resolving power of the fluoroscopic imaging system, is no longer considered state of the art. Most medical physics professionals use the line pair test tool proposed in the amendment to Part 16 because it is a more precise and more consistently manufactured test tool. Measurements made with the line pair test tool will represent a more accurate indication of the fluoroscopic imaging system's resolving power. The resolving power of the fluoroscopic imaging system is a measure of how well the system can image small structures within a patient's body. Testing with the

line pair test tool will help facilities maintain an optimum level of resolving power. This will in turn enable the fluoroscopist to visualize body structures more easily and reduce the amount of time that the fluoroscope needs to be on, thereby reducing radiation exposure to the patient, the fluoroscopist and any other personnel present during the examination.

The proposed amendment would also establish standard measurement protocols for all the test tools specified in Part 16. These protocols would facilitate comparison of measurements made by state and county inspectors during radiation safety inspections with those measurements made by the registrants or their quality assurance contractors.

The amendment also makes the regulations more accurate and easier to understand. Metric equivalents will be included for all English system dimensions noted in the section. A missing word will be inserted into one subparagraph. The generic term "outputs" will be replaced with the accurate term "exposure and exposure rate measurements." A list of people required to wear protective garments while in fluoroscopic room will be simplified with the term "all persons except for the patient." The more precise term "irradiation" will replace the term "the exposure" in a subparagraph. The subparagraph requiring the emission of an audible signal by the fluoroscopic unit's cumulative timer will be reworded to better state the purpose of the requirement that the signal be heard by the fluoroscopist. The amendment also requires the fluoroscopic unit's cumulative timer to be reset for each new patient so that the operator is aware of the amount of time each patient is exposed to radiation.

##### Costs

##### Cost to Regulated Parties

It is estimated that 400 of 10,200 registrants possess fluoroscopic units. However, very few of the 400 registrants perform their own quality assurance (QA) tests. Those few that do may have to purchase a test tool for approximately \$250 unless they already have a line pair tool. Most registrants contract with outside vendors to perform their QA tests. If a vendor must purchase the required test tool, all their customers would share the cost. Each customer would incur a small to negligible cost increase.

##### Cost to the Department of Health

The Department will need to purchase test tools for its inspectors. It is anticipated that ten test tools will be needed for a total cost of about \$2500. The cost is estimated from the price of test tools listed in current catalogs of test equipment distributors.

##### Cost to State Government

There are no costs to state government associated with the amendment unless a state operated health facility has a fluoroscopic unit(s) and does its own QA testing. In that case, the cost would be similar to the cost to privately regulated parties.

##### Cost to Local Governments

The New York City Health Department and the six county health departments that conduct x-ray inspection programs certified by the New York State Department of Health will need to purchase the line pair test tool. Most of the counties would need to purchase one test tool at a cost of \$250. One or two of the counties may need to purchase two test tools at a cost of \$500. The NYC Health Department would probably have to purchase about ten test tools. Their cost would be approximately \$2500. If a local government operates a health facility with fluoroscopic equipment and performs its own QA tests, the cost to the local government would be similar to the cost to private regulated parties.

##### Local Government Mandates

If a locality operates a health facility with fluoroscopic equipment and performs their own QA tests, their testing protocols may need to be changed. However, this regulation imposes no new mandates on any county, city, town, or village government, or school, fire or special district.

##### Paperwork

This amendment does not change the existing reporting requirements, forms, or other paperwork required of regulated facilities.

##### Duplication

The proposed amendment would not duplicate any existing State or Federal regulations.

##### Alternatives

The alternative is to continue to use the currently specified test tools to perform QA tests on fluoroscopic units. This was rejected based on the considerations of the factors that are addressed in the "Needs and Benefits" section.

##### Federal Standards

There are no minimum standards issued by the federal government for the same or similar subject areas.

##### Compliance Schedule

Installations with fluoroscopic equipment which perform their own QA tests would be given ninety days after the effective date of the amendment to obtain the required test tools. Installations with fluoroscopic equipment which contract out their QA testing would be required to ensure that their testing contractor is performing the tests with the specified tests tools at their next required testing period or ninety days after the effective date of the amendment which ever is longer.

**Regulatory Flexibility Analysis**

**Effect of Rule**

About 200 of 10,100 registered small businesses have fluoroscopic x-ray units. These businesses include clinics and radiology offices. Very few if any of these businesses perform their own quality assurance (QA) tests. They would not, therefore, be purchasing the test tool specified in the amendment. Most registrants contract with outside vendors to perform their QA tests. If a vendor must purchase the required test tool, all their customers would share the cost. Each customer would incur a small to negligible cost increase. Erie County Medical Center and an unknown number of hospitals within the New York City Health and Hospital Corporation may be affected. The hospitals that perform their own QA tests would need to purchase a test tool if they did not already have one. Those hospitals, which contract out QA testing, may or may not incur a small increase in the price of that service.

**Compliance Requirements**

No additional record keeping is required as a result of this amendment. Professional Services

Facilities without in-house technical support already contract with an outside vendor to have QA tests performed.

**Compliance Costs**

For the vast majority of our registrants there will be little or no cost. A very small number of registrants who do their own QA testing and do not already have the specified test tool would have to purchase one at a cost of about \$250 per tool.

**Economic and Technical Feasibility**

As previously stated, the highest cost to any our registrants would probably be \$250. That cost should be economically feasible for all affected facilities. The technology involved is technology many registrants or their contractors are already employing. The use of the test tool specified in the proposed amendment would not involve any new or modified technology.

**Minimizing Adverse Impact**

The regulations were drafted to have minimum impact. No adverse impact is anticipated. Approaches similar to those suggested in SAPA section 202-b(1) for minimizing adverse economic impact were considered.

**Small Business and Local Government Participation**

This amendment was shared with the certified local health departments, New York State Radiological Society, the Healthcare Association of New York State, and the American Association of Physicists in Medicine. These organizations have membership from and interest in small business and local government.

**Rural Area Flexibility Analysis**

**Types and Estimated Number of Rural Areas**

It is estimated that 100 rural facilities may be impacted. These would include hospitals, clinics and radiologists.

**Reporting, Recordkeeping, and Other Compliance Requirements and Professional Services**

No additional recordkeeping is required as a result of this amendment.

Most facilities with fluoroscopic units already contract with outside vendors for QA testing.

**Costs**

Those facilities using outside vendors for QA testing will see little or no increase in the cost of that service. Any facility performing their own QA testing will need to purchase a test tool at a cost of about \$250 if they do not already own one.

**Minimizing Adverse Impact**

The proposed regulations were drafted to have minimum impact. No adverse impact is anticipated.

**Rural Area Participation**

The New York State Radiological Society, the Healthcare Association of New York State, and the American Association of Physicists in Medicine were consulted. These organizations have membership from and interest in rural areas.

**Job Impact Statement**

**Nature of Impact**

This rule does not impact on jobs or employment opportunities.

**Reasons for the Finding**

This regulation requires that a certain test tool be used to test fluoroscopic x-ray units for compliance with Part 16. Since most facilities do not perform their own equipment testing the amendment will have no economic impact on them. Facilities that do perform their own QA testing would have to purchase the specified test tool at a cost of about \$250. Therefore, no impact on jobs or employment opportunities is anticipated.

**Measures Taken to Ascertain Finding**

The regulations were drafted to have minimal impact. The New York State Radiological Society, the Healthcare Association of New York State and the American Association of Physicists in Medicine were consulted.

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

**Physician Profiling**

**I.D. No.** HLT-37-03-00006-P

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

**Proposed action:** Addition of Part 1000 to Title 10 NYCRR.

**Statutory authority:** Patient Health Information and Quality Improvement Act of 2000

**Subject:** Physician profiling.

**Purpose:** To implement the Patient Health Information and Quality Improvement Act of 2000.

**Text of proposed rule:** The text is published in Emergency Rule Making I.D. No. HLT-37-03-00004-E in this issue of the *State Register*.

**Text of proposed rule and any required statements and analyses may be obtained from:** William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

The Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are published in Emergency Rule Making I.D. No. HLT-37-03-00004-E in this issue of the *State Register*.

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**Department of Labor**

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**NOTICE OF ADOPTION**

**Public Employee Occupational Injuries and Illnesses**

**I.D. No.** LAB-22-03-00008-A

**Filing No.** 935

**Filing date:** Sept. 2, 2003

**Effective date:** Sept. 17, 2003

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

**Action taken:** Amendment of section 801.29(c)(6) of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 27-a(9)

**Subject:** Recordkeeping and reporting of occupational injuries and illnesses by public employers.

**Purpose:** To promulgate requirements for recordkeeping and reporting on public employee occupational injuries and illnesses that are "substantially identical" to those promulgated by the U.S. Department of Labor's Occupational Safety and Health Administration for private employers in the State.

**Text or summary was published** in the notice of proposed rule making, I.D. No. LAB-22-03-00008-P, Issue of June 4, 2003.

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

**Text of rule and any required statements and analyses may be obtained from:** Brian Reichenbach, Deputy Counsel, Department of Labor, Counsel's Office, Rm. 509, State Campus, Bldg. 12, Albany, NY 12240, (518) 457-4380

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Motor Vehicles

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

#### Drivers' Schools

**I.D. No.** MTV-37-03-00007-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 add sections 76.15(b)(8) and 76.16(e) to Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 394 and 501

**Subject:** Drivers' schools.

**Purpose:** To impose an age requirement that driving school instructors must be at least 21 years of age before they can provide behind-the-wheel instruction to learner permit holders and require such instructors to certify the number of hours of behind-the-wheel instruction received by the student while under the immediate supervision of the instructor.

**Text of proposed rule:** Subdivision (b) of Part 76.15 is amended by adding a new paragraph (8) to read as follows:

(8) *an instructor must be at least twenty-one years of age in order to be the supervising driver giving behind-the-wheel instruction where the student driver is the holder of a learner permit.*

Part 76.16 is amended by adding a new subdivision (e) to read as follows:

(e) *The driving instructor shall, upon the request of a student who is the holder of a class DJ or MJ learner's permit, certify on a form prescribed by the Commissioner the number of hours such student has spent operating a motor vehicle while under the immediate supervision of such driving instructor.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Michele Welch, Legal Bureau, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

**Data, views or arguments may be submitted to:** Sean J. Martin, Assistant Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

#### Consensus Rule Making Determination

Chapter 644 of the Laws of 2002 mandates that driving school instructors be at least twenty-one years of age before they can provide behind-the-wheel driving instruction to students of any age holding a learner permit. Currently there is no age restriction for driving school instructors, but the statute creating the new Graduated License System imposes a minimum age for supervising drivers of permit holders, consistent with the statute's rationale of ensuring safer driving by less experienced motorists. Because driving school instructors will be the designated "supervising driver" while the behind-the-wheel instruction is being given, the statute requires that they be at least twenty-one years old.

Chapter 644 also requires the driving school instructor to certify, upon request of the student, the number of hours such student received in behind-the-wheel instruction supervised by that instructor. This certification requirement stems from the provisions in Ch. 644 mandating proof of 20 hours of behind-the-wheel experience before the permit holder may take the road test. The student is given a blank certification form (MV-262) at the time he/she takes the permit test. The student then undertakes supervised driving and the number of hours received is entered on the

form, which must contain certification by the supervising driver who provided the instruction of the number of hours of supervised driving. Without the completed certification form, the student will be unable to take the road test. Similar age restriction and certification requirements for Driver Education instructors is being codified in the State Education Department regulations, which govern driver education in the schools.

This proposal is submitted for consensus rulemaking because the provisions therein merely reflect the statutory mandate of Chapter 644 of the Laws of 2002.

#### Job Impact Statement

A Job Impact Statement is not submitted with this regulation because the amendment will not result in a substantial adverse impact on jobs and employment opportunities. These amendments, which concern the minimum age of driving school instructors providing behind-the-wheel instruction and the certification by such instructors of students' behind-the-wheel experience, do not go beyond the strictures established in the enabling legislation. Therefore, the regulation itself has no impact on jobs and/or employment opportunities.

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## Public Service Commission

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### NOTICE OF ADOPTION

#### Water Rates and Charges by Farms Water Company, Inc.

**I.D. No.** PSC-39-02-00008-A

**Filing date:** Aug. 27, 2003

**Effective date:** Aug. 27, 2003

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

**Action taken:** The commission, on Aug. 20, 2003, adopted an order in Case 02-W-1149, approving modifications to Farms Water Company, Inc.'s tariff schedule, P.S.C. No. 2—Water.

**Statutory authority:** Public Service Law, section 89-c(10)

**Subject:** Tariff filing.

**Purpose:** To increase annual rates.

**Substance of final rule:** The Commission authorized an increase in Farms Water Company, Inc.'s annual revenues and directed the company to file Second Revised Leaf No. 12 and file Supplement No. 3 to P.S.C. No. 2—Water, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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.

(02-W-1149SA1)

### NOTICE OF ADOPTION

#### Purchased Water Statement by Aquarion Water Company of New York

**I.D. No.** PSC-24-03-00008-A

**Filing date:** Aug. 28, 2003

**Effective date:** Aug. 28, 2003

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

**Action taken:** The commission, on Aug. 20, 2003, adopted an order in Case 00-W-0157, directing Aquarion Water Company of New York (formerly known as New York-American Water Company, Inc.) to file revenue true-up statement no. 4 to recover increased purchased water costs.

**Statutory authority:** Public Service Law, section 89-c(10)

**Subject:** Increase in purchased water expenses.

**Purpose:** To recover increased purchased water costs.

**Substance of final rule:** The Commission directed Aquarion Water Company of New York, Inc. (formerly known as New York-American Water Company, Inc.) to file Revenue True-Up Statement No. 4 to recover the increase in purchased water expenses, on not less than one day's notice, to become effective September 1, 2003, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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.

(00-W-0157SA2)

**NOTICE OF ADOPTION**

**Adjustment to Charges by Niagara Mohawk Power Corporation**

**I.D. No.** PSC-27-03-00005-A

**Filing date:** Aug. 28, 2003

**Effective date:** Aug. 28, 2003

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

**Action taken:** The commission, on Aug. 28, 2003, adopted an order in Case 03-E-0905, allowing Niagara Mohawk Power Corporation to revise its tariff schedule, P.S.C. No. 207—Electricity.

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

**Subject:** Tariff filing.

**Purpose:** To implement New York Power Authority hydropower benefit reconciliation mechanism statement no. 7.

**Substance of final rule:** The Commission authorized Niagara Mohawk Power Corporation to implement the revised New York Power Authority reconciliation rate effective September 2, 2003 through February 29, 2004, subject to the terms and conditions of the order.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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.

(03-E-0905SA1)

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

**Local Circuit Switches Serving DS1 Capacity and Higher Enterprise Customers**

**I.D. No.** PSC-37-03-00009-P

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

**Proposed action:** As a result of the recent Federal Communication Commission's triennial review order, the Public Service Commission will consider what special circumstances, if any, may create impairment for carriers to provide competitive services to DS1 enterprise customers (i.e., customers that are or could be served by competitors using DS1 capacity and above facilities) without access to unbundled incumbent LEC local circuit switching, recognizing the significant deployment of competitive LEC switches to service such customers.

**Statutory authority:** Public Service Law, section 94(2)

**Subject:** Local circuit switches serving DS1 capacity and higher enterprise customers.

**Purpose:** To undertake a review of specific operational and economic criteria regarding facilities based entry in specific geographic markets.

**Substance of proposed rule:** The Commission will investigate whether special circumstances exist that may create impairment for competitive LECs to serve DS1 and above enterprise customers without access to incumbent LEC unbundled local circuit switching in particular markets. According to the FCC's Triennial Review Order, issued August 21, 2003, the Public Service Commission has 90 days from the effective date of the FCC order to petition to rebut the FCC's national finding that competitive LEC's are not impaired without access to unbundled local circuit switching when servicing DS1 and above enterprise customers.

In order to rebut the FCC's national finding the PSC must conduct a granular analysis in individual markets based on specific operational evidence regarding loop, collocation and transport provisioning and specific economic evidence including the actual deployment of competitive switches and competitors' costs in serving enterprise customers. The Commission may, as a result of its inquiry, seek a waiver from the FCC to require incumbent LEC's to provide unbundled local circuit switching where the Commission finds impairment.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaelyn A. Brillig, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(03-C-0821SA1)

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

**Rates for Standby Electric Service by Orange & Rockland Utilities, Inc.**

**I.D. No.** PSC-37-03-00010-P

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

**Proposed action:** The Public Service Commission issued an order July 29, 2003, in Case 02-E-0780, which established rates for standby electric service provided by Orange & Rockland Utilities, Inc. By petition dated Aug. 27, 2003, the company has submitted proposals for interpreting the order with respect to customers' eligibility for exemption from, or gradual phase-in of, standby rates. The commission is considering whether to grant the petition in whole or in part.

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

**Subject:** Rates for standby electric service.

**Purpose:** To determine conditions of eligibility for exemption from, or phase-in of, standby rates.

**Substance of proposed rule:** The Public Service Commission issued an order July 29, 2003, in Case 02-E-0780, which established rates for standby electric service provided by Orange & Rockland Utilities, Inc. By petition dated August 27, 2003, the company has submitted proposals for interpreting the order with respect to customers' eligibility for exemption from, or gradual phase-in of, standby rates. The Commission is considering whether to grant the petition in whole or part.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaelyn A. Brillig, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(02-E-0780SA2)

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

**Rates for Standby Electric Service by Consolidated Edison Company of New York, Inc.**

I.D. No. PSC-37-03-00011-P

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

**Proposed action:** The Public Service Commission issued an order July 29, 2003, in Case 02-E-0781, which established rates for standby electric service provided by Consolidated Edison Company of New York, Inc. By petition dated Aug. 27, 2003, the company has submitted proposals for interpreting the order with respect to customers' eligibility for exemption from, or gradual phase-in of, standby rates. The commission is considering whether to grant the petition in whole or in part.

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

**Subject:** Rates for standby electric service.

**Purpose:** To determine conditions of eligibility for exemption from, or phase-in of, standby rates.

**Substance of proposed rule:** The Public Service Commission issued an order July 29, 2003, in Case 02-E-0781, which established rates for standby electric service provided by Consolidated Edison Company of New York, Inc. By petition dated August 27, 2003, the company has submitted proposals for interpreting the order with respect to customers' eligibility for exemption from, or gradual phase-in of, standby rates. The Commission is considering whether to grant the petition in whole or part.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(02-E-0781SA3)

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

**Change in Ownership by Global Common Greenport, LLC**

I.D. No. PSC-37-03-00012-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, reject or modify a petition filed by Global Common Greenport, LLC (GCG) for approval of the transfer of member interests from Hawkeye Electric, LLC to Hawkeye Group, LLC and William Haugland.

**Statutory authority:** Public Service Law, section 70

**Subject:** Change in ownership of lightly regulated electric corporation, and related matters.

**Purpose:** To consider granting approval.

**Substance of proposed rule:** By petition filed August 21, 2003, GCG seeks approval of a transaction that will result in a change in ownership of a lightly regulated electric corporation (99% to be held by Hawkeye Group, LLC and 1% by William S. Haugland). Moreover, GCG requests that the transfer be approved on an emergency basis, pursuant to § 202(6) of the State Administrative Procedure Act.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(03-E-1180SA1)

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

**Metering by Central Hudson Gas & Electric Corporation**

I.D. No. PSC-37-03-00013-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject in whole or in part, or modify a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 15—Electricity to become effective Dec. 1, 2003.

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

**Subject:** Metering.

**Purpose:** To eliminate special metering provisions contained in Service Classification No. 2.

**Substance of proposed rule:** On August 22, 2003, Central Hudson Gas & Electric Corporation (the company) made a tariff filing to eliminate Special Provisions 2.1 and 2.2 contained in Service Classification No. 2 of P.S.C. No. 15—Electricity to become effective December 1, 2003. These special provisions allowed customers or the company to choose primary metering with secondary service or secondary metering with primary service due to unusual economic or geographic restrictions present at the customers' locations. As there are no customers billed under these provisions, the company proposes to eliminate them.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(03-E-1207SA1)

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

**Change in Ownership by KeySpan-Port Jefferson Energy Center, LLC and KeySpan Generation LLC**

I.D. No. PSC-37-03-00014-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, reject, or modify a petition filed by KeySpan-Port Jefferson Energy Center, LLC (Port Jefferson) and KeySpan Generation LLC (Generation) (collectively, petitioners) for: authority under section 70 of the Public Service Law for a transaction that will result in a change in ownership of the electric generation assets of Port Jefferson to Generation; and related relief.

**Statutory authority:** Public Service Law, section 70

**Subject:** Change in ownership of lightly regulated electric generation assets, and related matters.

**Purpose:** To consider granting approval.

**Substance of proposed rule:** By petition filed August 25, 2003, Petitioners seek approval of a transaction that will result in a change in ownership of the lightly regulated electric generation assets of Port Jefferson to

Generation, which is also a lightly regulated company. The change in ownership would result from the proposed transfer of the membership interest of Port Jefferson to Generation, and is proposed in order to obtain certain advantages and benefits available under the United States Internal Revenue Code of 1986. The Commission is also considering approval of Petitioners' request that the Commission retain for Port Jefferson the lightened regulation to which it, as a wholesale generator, is subject, and that has been granted by the Commission. In addition, Petitioners seek waiver of certain regulatory provisions specifying the content of petitions under PSL § 70. Moreover, the Petitioners' request that the transfer be approved on an emergency basis, pursuant to § 202(6) of the State Administrative Procedure Act.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(03-E-1212SA1)

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

**Change in Ownership by KeySpan-Glenwood Energy Center, LLC and KeySpan Generation LLC**

**I.D. No.** PSC-37-03-00015-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, reject, or modify a petition filed by KeySpan-Glenwood Energy Center, LLC (Glenwood) and KeySpan Generation LLC (Generation) (collectively, petitioners) for: authority under section 70 of the Public Service Law for a transaction that will result in a change in ownership of the electric generation assets of Glenwood to Generation; and related relief.

**Statutory authority:** Public Service Law, section 70

**Subject:** Change in ownership of lightly regulated electric generation assets, and related matters.

**Purpose:** To consider granting approval.

**Substance of proposed rule:** By petition filed August 25, 2003, Petitioners seek approval of a transaction that will result in a change in ownership of the lightly regulated electric generation assets of Glenwood to Generation, which is also a lightly regulated company. The change in ownership would result from the proposed transfer of the membership interest of Glenwood to Generation, and is proposed in order to obtain certain advantages and benefits available under the United States Internal Revenue Code of 1986. The Commission is also considering approval of Petitioners' request that the Commission retain for Glenwood the lightened regulation to which it, as a wholesale generator, is subject, and that has been granted by the Commission. In addition, Petitioners seek waiver of certain regulatory provisions specifying the content of petitions under PSL § 70. Moreover, the Petitioners' request that the transfer be approved on an emergency basis, pursuant to § 202(6) of the State Administrative Procedure Act.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(03-E-1213SA1)

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

**Economic Development Plan by Rochester Gas and Electric Corporation**

**I.D. No.** PSC-37-03-00016-P

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

**Proposed action:** The Public Service Commission is considering a revised economic development plan filed by Rochester Gas and Electric Corporation (RG&E) pursuant to an order adopting recommended decision with modifications in Cases 02-E-0198 and 02-G-0199, (issued March 7, 2003).

**Statutory authority:** Public Service Law, sections 5(1)(b), 64, 65(1), (2), (3), (5), 66(1), (4), (5), (10), (12), 71 and 72

**Subject:** Economic development plan for commercial and industrial electric and gas customers.

**Purpose:** To revise the plan.

**Substance of proposed rule:** The Public Service Commission is considering whether to adopt, reject or modify, in whole or in part, a revised Economic Development Plan filed by Rochester Gas and Electric Corporation (RG&E), pursuant to an Order Adopting Recommended Decision with Modifications in Case 02-E-0198 and Case 02-G-0199, (issued March 7, 2003).

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(02-G-0199SA3)

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

**Real Estate Tax Reconciliation by United Water New Rochelle Inc.**

**I.D. No.** PSC-37-03-00017-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition of United Water New Rochelle Inc. for a real estate tax reconciliation for the 12 months ended June 30, 2003, filed in Case 99-W-0948.

**Statutory authority:** Public Service Law, section 113(2)

**Subject:** Real estate tax reconciliation.

**Purpose:** To defer the difference between actual property tax expense and the rate year allowance for the 12 months ended June 30, 2003, in accordance with methodology set forth in Opinion 00-10.

**Substance of proposed rule:** The Commission is considering the petition of United Water New Rochelle Inc. for a Real Estate Tax Reconciliation for the twelve months ended June 30, 2002, filed in Case 99-W-0948. The company proposes to defer \$756,134 due to customers for disposition in the company's next general rate case.

In Opinion 00-10, the Commission directed the company to defer 90% to 100% of the difference between actual property tax expense and the rate year allowance for each year of the three year rate agreement. If actual tax expense is greater than the rate year allowance the company will defer 90% of the difference for recovery from rate payers. If actual property taxes are less than the rate allowance, the company would retain 10% only on that portion of the difference where it could demonstrate that the tax expense reduction was the result of its own intervention and action. The remainder would be deferred for reimbursement to rate payers. These deferrals are recovered from or returned to customers in rates in the year following the

one for which the reconciliation was performed, with the exception that any amounts due to or owed by customers from the third year would be deferred for disposition in the company's next general rate case.

As claimed in the petition, actual property tax expense was \$4,119,543 for the twelve months ended June 30, 2003, whereas the forecast for the rate year was \$4,959,692, or a difference of \$840,149 of which the company purposes to retain \$84,015. The Commission may approve, modify, or reject, in whole or in part the requests of United Water New Rochelle Inc.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.  
(03-W-1162SA1)

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

**Property Tax Refunds by United Water New York, Inc.**

**I.D. No.** PSC-37-03-00018-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition of United Water New York Inc. for permission to defer \$63,367.35 in property tax refunds.

**Statutory authority:** Public Service Law, section 113(2)

**Subject:** Property tax refunds.

**Purpose:** To resolve the amount to be deferred for subsequent return to customers.

**Substance of proposed rule:** By letter dated July 22, 2003, United Water New York Inc. notified the Commission they had received property tax refunds from the Ramapo Central School District in the amount of \$75,309.87 and from the Town of Ramapo in the amount of \$9,179.93. These additional refunds amount to \$84,489.80. The company proposes to defer \$63,367.35, or 75% of the refunds received for subsequent disposition to its customers, and retain the remaining \$21,122.45, 25% of the refunds. The Company's proposal to retain 25% of the refunds is based upon the guidelines of the extension of the multi-year settlement agreement in Case 94-W-0486, wherein the Company was allowed to retain 25% of any decrease in property taxes if it could demonstrate that the decrease was a result of its intervention and efforts. The Commission may approve, modify, or reject, in whole or in part the request of United Water New York Inc.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.  
(03-W-1170SA1)

**State University of New York**

**NOTICE OF ADOPTION**

**Traffic and Parking Regulations at SUNY Plattsburgh**

**I.D. No.** SUN-25-03-00003-A

**Filing No.** 933

**Filing date:** Aug. 29, 2003

**Effective date:** Sept. 17, 2003

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

**Action taken:** Amendment of sections 565.2(j), 565.4(e) and 565.7(c)(3) of Title 8 NYCRR.

**Statutory authority:** Education Law, section 360(1)

**Subject:** Traffic and parking regulations at the State University of New York College at Plattsburgh.

**Purpose:** To add to and redesignate approved campus parking spaces, change the designation of prohibited parking areas, and increase the length of time in which to appeal a violation of campus parking regulations from 72 hours to two weeks.

**Text of final rule:** Subdivision (j) of section 565.2 is amended to read as follows:

§ 565.2 General.

\* \* \*

(j) [No parking is permitted where curbs are painted yellow.] *Parking is prohibited in those areas designated by posted signs.*

Subdivision (e) of section 565.4 is amended to read as follows:

§ 565.4 Parking areas.

\* \* \*

(e) Areas designated in these regulations as parking areas shall be restricted to parking by college faculty, staff and students between the hours of 6 a.m. and 5 p.m., Monday through Friday, *with the exception of parking lot #27. The restricted hours for parking lot #27 shall be between the hours of 8 a.m. and 5 p.m., Monday through Friday.* During the hours when lots are not specifically restricted, they shall be used by people on college-related business. Emergencies, such as snow conditions, can result in the closing of any lot.

**APPROVED PARKING AREAS  
RESTRICTED TO FACULTY AND STAFF:**

- [C]2 Hawkins Hall (*section closest to Cornelia Street and west*)
- [D]4 Redcay Hall Lot and 133 Court Street Lot
- [6]23 Sibley Hall Front Lot
- [10]20 Sibley Hall Side Lot
- [N]24 Service Building Front Lot (at all times)
- [Q]26 Service Building South Lot (at all times)
- [3]15 Memorial Hall Lot (rear lower level)
- [E]5 Hudson Hall Lot (south)
- [H] [Yokum Hall Lot]
- [M]25 Algonquin Dining Hall Lot
- [R]28 C.V. Hall Lot
- [11]29 Field House (behind Field House)
- 6 Hudson Hall Lot (*west*)
- 7 *One Half of Draper Avenue Lot (section closest to Feinberg Library)*
- 11 *One Half of Kehoe Lot (section closest to Broad Street)*
- 16 *Saranac Hall and Health Center Building Lots*
- 22 *Sibley (Rear)*

**VISITORS LOT (CLOSED TO FACULTY, STAFF AND STUDENTS):**

- [Visitors] Kehoe Building (*front of building*)
- 10
- 9 *Yokum Lot*
- 17 *First Row of Saranac Hall Lot*

**RESTRICTED LOTS (OFF-CAMPUS STUDENTS[, FACULTY AND STAFF]):**

- [G] 8 *One Half of Draper Avenue Lot (section closest to Broad Street)*

- [F] [Hudson Hall Lot (west)]
- [B] 3 [Hawkins Hall Lot (north/Draper Avenue)]
- [8] [Tower Drive Roadway Parking Spaces]
- 1 [President's Lot]
- 12 [One Half of Kehoe Lot (section closest to Myers)]
- 27 [Banks Hall Lot (Sanborn Park Avenue Lot)]
- 21 [Sibley Hall New Lot (section closest to Angell Drive)]

**RESTRICTED TO ON-CAMPUS STUDENTS:**

- [2] 14 [Harrington Hall Lot]
- [1] 13 [Macdonough Hall Lots (east, [and] front, and rear)]
- [7] 18 [Resident Hall River Lot (Towers Roadway), New Lot (Wilson Tennis Courts), and Tower Drive Parking Spaces]
- [L] [Sanborn/Park Avenue Lot]
- 19 [Sibley Hall New Lot (section closest to residence halls)]

**[RESTRICTED TO FACULTY, STAFF AND COMMUTING STUDENTS:]**

- [3A] [Memorial Field Lot]
- [4] [Saranac Dining Hall Lot (between Saranac and Memorial Halls)]
- [5] [Health Center Lot]
- [9] [Sibley (Rear)]
- [J] [Kehoe]
- [D1] [133 Court Street Lot]

**[RESTRICTED TO FACULTY, STAFF AND VISITORS:]**

- [A] [President's Lot]

\* \* \*

Subdivision (c)(3) of section 565.7 is amended to read as follows:  
 § 565.7 Penalties and procedures; violations of campus traffic and parking regulations.

(c) A complaint regarding any violation of a campus rule shall be in writing, reciting the time and place of the violation and the title, number or substance of the applicable rule.

(1) The complaint must be subscribed by the officer witnessing the violation and attached to the vehicle involved.

(2) The complaint shall indicate the amount of the fine assessable for the violation, and advise that if the person charged does not dispute the violation, fines will be paid in the Bursar's Office within a 72-hour period (not to include Saturdays and Sundays).

(3) The complaint shall recite that a hearing may be requested by registering either orally or in writing within [(72 hours not to include Saturdays and Sundays)] *two weeks* an intention to appeal, and within two weeks actually appealing either orally or in writing, to the chairman of the traffic and parking appeals board, and such an appeal will preclude the payment of fine within [72 hours] *two weeks*. Failure to request a hearing within two weeks or failure to appear at the time fixed for the hearing mandates that the violation will stand. Forms for appealing complaint tickets may be picked up in the University Police Department in the Health Services Building.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 565.2(j).

**Text of rule and any required statements and analyses may be obtained from:** Carolyn J. Pasley, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: pasleycj@sysadm.suny.edu

**Regulatory Impact Statement**

The change made to the rule does not necessitate revision to the previously published Regulatory Impact Statement because the only change was deleting a reference to prohibited parking where curbs or pavement are painted yellow and adding that parking was prohibited where designated by signs. This was a non-substantive change which does not alter the accuracy of the Regulatory Impact Statement.

**Regulatory Flexibility Analysis**

The change made to the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. No regulatory flexibility analysis was submitted with the Notice of Proposed Rule Making because the proposed rule making addressed internal parking and traffic regulations on the campus of the State University of New York College at Plattsburgh and it was determined that this proposal did not impose any adverse economic impact or any reporting, recordkeeping or other compliance requirements on small businesses and local governments. Since the change made was

merely to delete the reference to prohibited parking where curbs or pavements are painted yellow and to substitute language prohibiting parking in areas designated by signs, it was determined again that this would not impose any adverse economic impact or requirements on small businesses or local governments.

**Rural Area Flexibility Analysis**

The change made to the rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. No rural area flexibility analysis was submitted with the Notice of Proposed Rulemaking because the proposed rulemaking addressed the internal parking and traffic regulations on the campus of the State University of New York College at Plattsburgh and it was determined that the proposal did not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Since the change made was merely to delete the reference to prohibited parking where curbs or pavements are painted yellow and to substitute language prohibiting parking in areas designated by signs, it was determined again that this would not impose any adverse economic impact or requirements on public or private entities in rural areas.

**Job Impact Statement**

The change made to the rule will have no impact on jobs and employment opportunities. No job impact statement was submitted with the Notice of Proposed Rulemaking because the proposed rulemaking addressed the internal parking and traffic regulations of the State University of New York College at Plattsburgh and it was determined that the proposal would have no impact on jobs and employment opportunities. Since the change made was merely to delete the reference to prohibited parking where curbs or pavements are painted yellow and to substitute language prohibiting parking in areas designated by signs, it was determined again that this would not have any impact on jobs or employment opportunities.

**Assessment of Public Comment**

The State University of New York received one comment on the Notice of Proposed Rulemaking for Parking and Traffic Regulations at State University of New York College at Plattsburgh from the Traffic Operations Bureau in the Department of Transportation. The Department of Transportation objected to section 565.2(j) of the proposed rule which prohibited parking at curbs or on pavement painted yellow on the basis that such a prohibition does not comply with the manual of uniform traffic devices as codified in 17 NYCRR Chapter V. In accordance with these regulations, prohibited parking areas should be delineated by posted parking signs.

In response to these comments, State University of New York revised the proposed section 565.2(j) to prohibit parking in those areas designated by posted signs. This change to the rule will make the State University of New York at Plattsburgh's parking rules consistent with statewide standards and practices for traffic control.