

# 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; or EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

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## Department of Civil Service

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

#### Jurisdictional Classification

I.D. No. CVS-20-08-00011-P

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

**Proposed action:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

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

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading “Commission on Quality of Care and Advocacy For Persons With Disabilities,” by increasing the number of positions of Quality Care Facility Review Specialist 1 from 31 to 33.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

#### Jurisdictional Classification

I.D. No. CVS-20-08-00012-P

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

**Proposed action:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a position from and classify a position in the non-competitive class in the Department of Correctional Services.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Correctional Services, by deleting therefrom the position of φSupervising Hearing Officer (Inmate Discipline) (1) and by adding thereto the position of φPrincipal Hearing Officer (Inmate Discipline) (1).

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

#### Jurisdictional Classification

I.D. No. CVS-20-08-00013-P

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

**Proposed action:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete positions from the non-competitive class in the Department of Mental Hygiene and the Department of Taxation and Finance.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading “Office of Alcohol-

ism and Substance Abuse Services,” by deleting therefrom the position of Supervisor of Substance Abuse Outreach and Referral (1); and, in the Department of Taxation and Finance, by deleting therefrom the position of Director of Tax Compliance (1).

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-20-08-00014-P

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

**Proposed action:** Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the exempt class and delete positions from the non-competitive class in the Department of Mental Hygiene.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading “Office of Mental Retardation and Developmental Disabilities,” by adding thereto the positions of Associate Commissioner for County Services (3); and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading “Office of Mental Retardation and Developmental Disabilities,” by deleting therefrom the positions of Associate Commissioner for County Services (2).

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-20-08-00015-P

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

**Proposed action:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a title from the non-competitive class in the State Department Service.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State Department Service under the subheading “All State Departments

and Agencies,” by deleting therefrom the title of Conservation Operations Supervisor 1.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-20-08-00016-P

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

**Proposed action:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class in the Department of State.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State, by adding thereto a position of Director Affirmative Action Programs.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-20-08-00017-P

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

**Proposed action:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class in the Executive Department.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “Division of Housing and Community Renewal,” by increasing the number of positions of Deputy Counsel from 1 to 2.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-20-08-00018-P

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

**Proposed action:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class in the Executive Department.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Homeland Security," by adding thereto the position of Assistant Director Public Information.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-20-08-00019-P

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

**Proposed action:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class in the Department of Mental Hygiene.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office of Mental Retardation and Developmental Disabilities," by increasing the number of positions of Assistant Public Information Officer from 2 to 3.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-20-08-00020-P

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

**Proposed action:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class in the Executive Department.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Governor's Office for Regulatory Reform," by increasing the number of positions of Assistant Counsel from 6 to 7.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-20-08-00021-P

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

**Proposed action:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the exempt class in the Executive Department.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of the Governor," by increasing the number of positions of Assistant Secretary to the Governor from 1 to 3 and Deputy Secretary to the Governor from 6 to 7.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-20-08-00022-P

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

**Proposed action:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the non-competitive class in the Executive Department.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of the Budget," by increasing the number of positions of Chief Budget Examiner from 13 to 14.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

#### Jurisdictional Classification

I.D. No. CVS-20-08-00023-P

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

**Proposed action:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the non-competitive class in the Department of Agriculture and Markets.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Agriculture and Markets, by adding thereto the position of Agency Emergency Management Coordinator (1).

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

#### Jurisdictional Classification

I.D. No. CVS-20-08-00024-P

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

**Proposed action:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the non-competitive class in the Department of Environmental Conservation.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by adding thereto the positions of Communications Equipment Specialist.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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

#### Jurisdictional Classification

I.D. No. CVS-20-08-00025-P

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

**Proposed action:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a title in the non-competitive class in the State Department Service.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State Department Service under the subheading "All State Departments and Agencies," by adding thereto the title of Lifeguard 2.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 30, 2008 under the notice of proposed rule making I.D. No. CVS-05-08-00003-P.

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## Department of Correctional Services

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### NOTICE OF ADOPTION

**Standard of Inmate Behavior in All Facilities, Institutional Rules of Conduct and Inmate Correspondence Program**

I.D. No. COR-09-08-00002-A

Filing No. 358

Filing date: April 28, 2008

Effective date: May 14, 2008

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

**Action taken:** Amendment of sections 270.2(B)(14)(vi) and 720.8(a)(2) of Title 7 NYCRR.

**Statutory authority:** Correction Law, sections 112 and 138

**Subject:** Standards of inmate behavior in all facilities, institutional rules of conduct and inmate correspondence program.

**Purpose:** To increase the maximum allowable value of postage stamps that an inmate may possess.

**Text or summary was published** in the notice of proposed rule making, I.D. No. COR-09-08-00002-P, Issue of February 27, 2008.

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

**Text of rule and any required statements and analyses may be obtained from:** Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, 1220 Washington Avenue, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951, e-mail: AJAnnucci@docs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## Education Department

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### State-Level Review of Impartial Hearing Officer Determinations Regarding Services for Students with Disabilities

I.D. No. EDU-20-08-00032-P

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

**Proposed action:** Amendment of Part 279 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101 (not subdivided), 207 (not subdivided), 311 (not subdivided), 4403(1), (3), 4404(2) and 4410(13)

**Subject:** Procedures for State-level review of impartial hearing officer determinations regarding services for students with disabilities.

**Purpose:** To correct citations and references; provide clarification of the procedures concerning appeals of impartial hearing officer decisions to a State review officer; expedite and otherwise facilitate the processing of petitions for review to State review officers.

**Public hearing(s) will be held at:** 1:00 p.m.-4:00 p.m., June 11, 2008 at Education Department, 89 Washington Ave., Seminar Rms. 5A and B, Albany, NY; 1:00 p.m.-4:00 p.m., June 11, 2008 at Office of Professional Discipline, regional office, 85 Allen St., Suite 120, Rochester, NY; 1:00 p.m.-4:00 p.m., June 12, 2008 at Education Department, 89 Washington Ave., Seminar Rms. 5A and B, Albany, NY; and 1:00 p.m.-4:00 p.m., June 12, 2008 at Education Department, 55 Hanson Place, Rm. 416, Brooklyn, NY.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Interpreter Service:** Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Substance of proposed rule (Full text is posted at the following State website: [www.sro.nysed.gov/](http://www.sro.nysed.gov/)):** The State Education Department proposes to amend Part 279 of the Regulations of the Commissioner, effective August 21, 2008. The following is a summary of the substantive provisions of the proposed rule.

Section 279.1 is amended to correct an inaccurate cross reference to the Education Law.

Section 279.2 is amended to clarify that a petitioning parent must personally serve a notice of intention to seek review and petition upon the school district; that a petitioning school district must personally serve a notice of petition, petition, memorandum of law and additional documentary evidence upon the parent; that a school district must file a copy of any interim and final decision of the impartial hearing officer and a true copy of the exhibits accepted into evidence with the Office of State Review; and add a notice of certification requirement.

Section 279.3 is amended to correct the mailing address of the Office of State Review.

Section 279.4 is revised to clarify the timelines for filing the petition for review and proof of service with the Office of State Review; clarify the timelines for filing an answer to a cross-appeal; and clarify that filing of a petition and answer to cross-appeal cannot be filed by electronic transmission.

Section 279.5 is revised to clarify that filing of an answer by electronic transmission is not permitted.

Section 279.6 is revised to clarify the timelines for proper service and filing of a reply; and to clarify that a reply cannot be filed by electronic transmission.

Section 279.8 is revised to clarify the page limitations for pleadings and memoranda of law, and to clarify practices that circumvent page limitations. The section is also revised to clarify the form requirements for the petition, answer, reply and memorandum of law.

Section 279.9 is revised to clarify the content of the record; clarify the certification of the record and the timelines for filing the certification of the record with the Office of State Review; and clarify that a State Review Officer has the discretion to dismiss an appeal by a school district when the record is not certified within the necessary timelines.

Section 279.10 is revised to correct a cross-reference to the section of the Title which addresses the student's status during proceedings; and clarify procedures relating to extensions of time to answer, cross-appeal or reply.

Section 279.11 is revised to clarify the procedures relating to computation of days within which services of a petition, answer and cross-appeal, and a reply must be made.

Section 279.13 is revised to clarify the timelines for filing and serving a petition for review and that a State Review Officer may dismiss a petition for failure to meet those timelines.

**Text of proposed rule and any required statements and analyses may be obtained from:** Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Kathy A. Ahearn, Counsel and Deputy Commissioner for Legal Affairs, State Education Bldg., Rm. 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, e-mail: legal@mail.nysed.gov

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

#### Regulatory Impact Statement

##### STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Regents to appoint the Commissioner as chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 provides the Regents with authority to establish the educational policies of the State and to adopt rules to carry into effect such policies and the powers and duties of the Department under the laws relating to education.

Education Law section 301 authorizes the Regents to adopt rules conferring and imposing upon the Commissioner such additional powers and duties as may be required for the effective administration of the Department and of the State system of education.

Education Law section 311(1) authorizes the Commissioner to regulate the practice of appeals from actions of local school officials brought pursuant to Education Law section 310.

Education Law section 4403(1) and (3) provide the Department with general authority to adopt regulations concerning the provision of a free appropriate public education to students with disabilities.

Education law section 4404(2) provides for the review of determinations of impartial hearing officers regarding services for students with disabilities by a State Review Officer (SRO), and directs the Commissioner to adopt regulations governing the practice and procedures to be followed in proceedings before such Officer.

Education Law section 4410(13) authorizes the Commissioner to adopt regulations to implement the provisions of that statute, concerning special education services to preschool students with disabilities.

##### LEGISLATIVE OBJECTIVES:

The proposed amendment provides clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, pursuant to the authority conferred on the Commissioner by the aforementioned statutes to regulate the practice and procedures to be followed in proceedings before State Review Officers.

##### NEEDS AND BENEFITS:

The proposed amendment is needed to correct citations and references, provide clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, and to expedite and otherwise facilitate the processing of petitions for review to State Review Officers.

The revision to section 279.1 corrects an inaccurate cross reference to the Education Law.

The revisions to sections 279.2(a) and 279.9(a) direct that true copies of decisions of the impartial hearing officer and the impartial hearing record be filed with the Office of State Review (OSR). The filing of copies alleviates confusion over the type of record held by the State Education Department by clearly identifying that the Office of State Review uses certified copies of those educational records that are relevant to due process proceedings, while the local educational agency remains the holder of original and complete educational records for students who have been the subject of an impartial hearing.

The revisions to section 279.2 also clarify that both a notice of intention to seek review and a petition for review must be personally served upon the opposing party to initiate a review. Current regulations already require personal service of these documents; however, parties are required to refer to multiple parts of the NYCRR to determine the proper time and method of service, and this change will clarify existing requirements to reduce confusion.

The revisions to section 279.3 amend the address for filing papers with the Office of State Review consistent with the change in the physical location of the Office. Amending the filing address will reduce confusion and expedite the processing of appeals.

The revisions to section 279.4 clarify that a petition for review must be filed with the Office of State Review in order for an SRO to take action on it. The amendment alleviates confusion that has occurred when parties have served papers on each other, but neglected to file them with the Office of State Review.

The revisions to section 279.6 further distinguish the timelines for serving and filing a reply to reduce confusion experienced by parties.

The revisions to sections 279.4, 279.5 and 279.6 clarify that filing papers with the Office of State Review cannot be achieved through electronic means such as electronic mail.

The revisions to section 279.8 provide greater specificity with regard to the current format requirements for pleadings and memoranda submitted to the Office of State Review. The document format continues to loosely mirror Federal court local rules promulgated in the Northern District of New York.

The revisions to section 279.9(b) and (c) clarify the filing timelines and requirements for hearing records consistent with the notice provisions currently set forth in section 279.2.

The revisions to section 279.10(b) and (c) correct references in Part 200 that have been renumbered. The revisions to section 279.10(e) clarify that the timeline applicable to an extension for filing an answer is applicable to a cross appeal filed with such answer and provide that such an extension request must disclose whether the opposing party consents to or opposes the request.

The revisions to section 279.11 will clarify the computation of the timelines for serving a cross appeal or a reply.

The revisions to section 279.13 clarify, consistent with section 279.2, that service of a petition for review upon the opposing party is necessary to initiate an appeal.

#### COSTS:

Costs to State government: none.

Costs to local governments: it is possible that additional costs may be incurred in duplicating exhibits to forward to the office of State Review. Many districts have already been submitting copies, therefore, the impact will be limited. Furthermore, when a district provides original records, it is still responsible to retain duplicates for the educational records of students, and this proposed regulation would simply require the district transmit the duplicates to the Office of State review rather than the originals. Overall, it is expected that any additional costs will be minimal, and will be absorbed using existing staff and resources.

Costs to private regulated parties: none.

Costs to the regulating agency for implementation and continued administration of the rule: none.

The proposed amendment will reduce costs to State government, local government, private regulated parties and the State Education Department by reducing costs associated with redirecting and refilling papers that have been addressed to the prior location of the Office of State Review. Also, the proposed clarifications in the format of pleadings and memoranda of law as well as filing requirements will reduce the need of parties and staff of Office of State Review to spend time clarifying these issues on a case-by-case basis.

#### LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearing relating to the provision of special education to students with disabilities by school districts. The proposed amendment is needed to correct citations and references, provide clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, and to expedite and otherwise facilitate the processing of petitions for review to State Review Officers.

Sections 279.2, 279.3, 279.4, 279.5, 279.6, 279.11 and 279.13, as revised, clarify the timelines and procedures for service on opposing parties and filing of documents with the Office of State Review.

Section 279.8, as revised, clarifies the format of papers filed with the Office of State Review.

Section 279.9, as revised, requires a board of education involved in an appeal to an appeal to an SRO to file with the Office of State Review a copy of the decision of the impartial hearing officer and a copy of the original exhibits accepted into evidence at the hearing. The board of education shall also submit a certification that the record submitted is a true and complete copy of the hearing record before the impartial hearing officer.

Section 279.10(e), as revised, provides that a party seeking an extension of time to file an answer or reply request must disclose whether the opposing party consents to or opposed the request.

#### PAPERWORK:

The proposed amendment imposes no additional reporting requirements, forms or other paperwork.

#### DUPLICATION:

The proposed amendment is consistent with Federal and State requirements concerning the provision of special education services to students with disabilities and does not duplicate, overlap or conflict with such requirements.

#### ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed amendment is needed to correct citations and references, provide clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, and to expedite and otherwise facilitate the processing of petitions for review to State Review Officers.

#### FEDERAL STANDARDS:

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

#### COMPLIANCE SCHEDULE:

It is anticipated that regulated persons will be able to comply with the proposed amendment by its effective date.

#### **Regulatory Flexibility Analysis**

##### Small Businesses:

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearings relating to the provision of special education to students with disabilities by school districts. The rule does not apply to small businesses since they are not parties to such hearings. The amendment will not impose any additional reporting, recordkeeping or other compliance requirements on small businesses, nor will it have any adverse economic impact on small businesses. Because it is evident from the nature of the rule that it does not apply to small businesses, no further steps were needed to ascertain that fact and none were taken. Therefore, a regulatory flexibility analysis for small businesses is not required, and one has not been prepared.

##### Local Governments:

##### EFFECT OF RULE:

The proposed amendment is applicable to all public school districts in the State.

##### COMPLIANCE REQUIREMENTS:

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearing relating to the provision of special education to students with disabilities by school districts. The proposed amendment is needed to correct citations and references, provide clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, and to expedite and otherwise facilitate the processing of petitions for review to State Review Officers.

Sections 279.2, 279.3, 279.4, 279.5, 279.6, 279.11 and 279.13, as revised, clarify the timelines and procedures for service on opposing parties and filing of documents with the Office of State Review.

Section 279.8, as revised, clarifies the format of papers filed with the Office of State Review.

Section 279.9, as revised, requires a board of education involved in an appeal to an appeal to an SRO to file with the Office of State Review a copy of the decision of the impartial hearing officer and a copy of the original exhibits accepted into evidence at the hearing. The board of education shall also submit a certification that the record submitted is a true and complete copy of the hearing record before the impartial hearing officer.

Section 279.10(e), as revised, provides that a party seeking an extension of time to file an answer or reply request must disclose whether the opposing party consents to or opposed the request.

**PROFESSIONAL SERVICES:**

The proposed amendment will not increase the level of professional services needed by local governments to comply with its requirements. By clarifying matters concerning documents filed with the Office of State Review, the proposed amendment will reduce the need for professional services regarding routine matters.

**COMPLIANCE COSTS:**

The proposed amendment will reduce costs to local government by reducing the need to redirect and refile papers that have been addressed to the prior location of the Office of State Review. The emphasis on timelines in which to serve and file papers reduce the time the parties spend on raising and arguing timeline issues unnecessarily before State Review Officers.

Additional costs may be incurred by school district, including those in rural areas, in producing copies of impartial hearing officer decisions and impartial hearing exhibits. Many districts have already been submitting copies; therefore, the impact will be limited. Furthermore, when a district provides original records, it is still responsible to retain duplicates for the educational records of students, and this proposed regulations would simply require the district transmit the duplicates to the Office of State Review rather than the originals. Overall, it is expected that costs will be minimal, and will be absorbed using existing staff and resources.

**ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

The proposed amendment does not impose any additional technological requirements on local governments. Economic feasibility is addressed under the compliance costs section above.

**MINIMIZING ADVERSE IMPACT:**

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearing relating to the provision of special education to students with disabilities by school districts, and is designed to expedite and otherwise clarify the procedures used in proceedings before State Review Officers. The proposed amendment is needed to correct citations and references, provide clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, and to expedite and otherwise facilitate the processing of petitions for review to State Review Officers. It will reduce costs and paperwork associated with the prosecution or defense of appeals of determinations of impartial hearing officers, as discussed in the Compliance Cost section. The proposed amendment has been carefully drafted to meet Federal and State statutory requirements and Regents policy, while minimizing impact on school districts.

**LOCAL GOVERNMENT PARTICIPATION:**

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

**Rural Area Flexibility Analysis**

**TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The proposed amendment is applicable to all public school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

**REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:**

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearing relating to the provision of special education to students with disabilities by school districts. The proposed amendment is needed to correct citations and references, provide clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, and to expedite and otherwise facilitate the processing of petitions for review to State Review Officers.

Sections 279.2, 279.3, 279.4, 279.5, 279.6, 279.11 and 279.13, as revised, clarify the timelines and procedures for service on opposing parties and filing of documents with the Office of State Review.

Section 279.8, as revised, clarifies the format of papers filed with the Office of State Review.

Section 279.9, as revised, requires a board of education involved in an appeal to an appeal to an SRO to file with the Office of State Review a copy of the decision of the impartial hearing officer and a copy of the original exhibits accepted into evidence at the hearing. The board of education shall also submit a certification that the record submitted is a true and complete copy of the hearing record before the impartial hearing officer.

Section 279.10(e), as revised, provides that a party seeking an extension of time to file an answer or reply request must disclose whether the opposing party consents to or opposed the request.

The proposed amendment will not increase the level of professional services needed by entities in rural areas to comply with its requirements. By clarifying procedural matters concerning documents filed with the Office of State Review, the proposed amendment will reduce the need for professional services regarding routine matters.

**COMPLIANCE COSTS:**

The proposed amendment will reduce costs to school districts, including those in rural areas, by reducing costs associated with redirecting and refiling papers that have been addressed to the prior location of the Office of State Review. The clarification of timelines in which to serve and file papers will reduce the time the parties spend on raising and arguing timeline issues unnecessary before State Review Officers.

Additional costs may be incurred by school districts, including those in rural areas, in producing copies of impartial hearing officers decisions and impartial hearing exhibits. Many districts have already been submitting copies; therefore, the impact will be limited. Furthermore, when a district provides original records, it is still responsible to retain duplicates for the educational records of students, and this proposed regulation would simply require the district transmit the duplicates to the Office of State review rather than the originals. Overall, it is expected that costs will be minimal, and will be absorbed using existing staff and resources.

**MINIMIZING ADVERSE IMPACT:**

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearings relating to the provision of special education to students with disabilities by school districts, and is designed to expedite and clarify the procedures used in proceedings before State Review Officers. The proposed amendment is needed to correct citations and references, provide clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, and to expedite and otherwise facilitate the processing of petitions for review to State Review Officers. The proposed amendment has been carefully drafted to meet Federal and State statutory requirements and Regents policy, while minimizing impact on school districts. Since these proposed requirements must of necessity apply to school districts State-wide, it was not possible to establish different compliance and reporting requirements for school districts located in rural areas, or exempt them from the provisions of the proposed amendment.

**RURAL AREA PARTICIPATION:**

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

**Job Impact Statement**

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearings relating to the provision of special education to student with disabilities by school districts and will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the rule that it will not affect job and employment opportunities, 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.

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

**Licensure as a Clinical Laboratory Technologist**

**I.D. No.** EDU-20-08-00030-P

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

**Proposed action:** Addition of sections 52.38, 52.39, 52.40, 79-13.1, 79-14.1, 79-15.1 and repeal of sections 79-13.1, 79-14.1, and 79-15.1 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 210 (not subdivided), 6501 (not subdivided), 6504 (not subdivided), 6507(2)(a), (3)(a), (4)(a), 6508(1), 8605(1)(b), (2)(b) and 8606(2)

**Subject:** Licensure as a clinical laboratory technologist and cytotechnologist and certification as a clinical laboratory technician.

**Purpose:** To implement the provisions of article 165 of the Education Law by establishing educational requirements for licensure as a clinical laboratory technologist or cytotechnologist and for certification as a clinical laboratory technician, and standards for registered college preparation programs for these professions.

**Substance of proposed rule (Full text is posted at the following State website: [www.op.nysed.gov](http://www.op.nysed.gov)):** The Commissioner of Education proposes to promulgate regulations, relating to licensure as a clinical laboratory technologist and as a cytotechnologist and certification as a clinical laboratory technician. The following is a summary of the substance of the regulations.

Section 52.38 of the Regulations of the Commissioner of Education is added to establish requirements for the registration of college preparation programs leading to licensure as a clinical laboratory technologist.

Subdivision (a) of section 52.38 requires registered programs to be programs in clinical laboratory technology leading to a baccalaureate or higher degree or advanced certificate which contains didactic and clinical education that integrates pre-analytical, analytical, and post-analytical components of laboratory services, including the principles and practices of quality assurance/ quality improvement, and which is designed and conducted to prepare graduates to practice clinical laboratory technology using independent judgment and responsibility.

Subdivision (b) of section 52.38 requires programs to include coursework, including a laboratory component, in each of the listed subject areas, or their equivalent as determined by the Department.

Subdivision (c) requires programs to include curricular content in each of the listed subject areas, or their equivalent, as determined by the Department.

Subdivision (d) requires supervised clinical experience of at least 30 hours per week for at least 24 weeks or its equivalent in the practice of clinical laboratory technology.

Section 52.39 is added to establish requirements for the registration of programs leading to licensure as a cytotechnologist.

Subdivision (a) of section 52.39 requires the registered program to be a program in cytotechnology leading to a baccalaureate or higher degree or advanced certificate which contains didactic and clinical education that integrates pre-analytical, analytical, and post-analytical components of laboratory services, including the principles and practices of quality assurance/ quality improvement; and which is designed to prepare graduates to practice cytotechnology using independent judgment and responsibility.

Subdivision (b) requires the program to include coursework, including a laboratory component, in each area, in each of the listed subject areas.

Subdivision (c) requires the program to include curricular content in each listed subject areas, or their equivalent, as determined by the department.

Subdivision (d) requires supervised clinical experience of at least 30 hours per week for at least 10 weeks or its equivalent, as determined by the department in the practice of cytotechnology.

Section 52.40 is added to establish requirements for the registration of programs leading to certification as a clinical laboratory technician.

Subdivision (a) of section 52.40 requires the registered program to be a program in clinical laboratory technician leading to an associate or higher degree which contains didactic and clinical education that integrates pre-analytical, analytical, and post-analytical components of laboratory services, including the principles and practices of quality assurance/quality improvement.

Subdivision (b) requires the program to include coursework, including a laboratory component, in each area, in each listed subject area or its equivalent as determined by the department.

Subdivision (c) requires the registered program to include curricular content in each listed subject area.

Subdivision (d) requires the program to include supervised clinical experience of at least 30 hours per week for at least 10 weeks or its equivalent in the practice of clinical laboratory technician.

Section 79-13.1 is repealed and a new section 79-13.1 is added establishing professional study requirements for licensure as a clinical laboratory technologist.

Subdivision (a) of section 79-13.1 states that applicants applying for licensure as a clinical laboratory technologist prior to September 1, 2013 shall meet the professional education requirements for admission to the

licensing examination set forth in either subdivision (b) or (c) of this section. Applicants applying for licensure as a clinical laboratory technologist on or after September 1, 2013 shall meet the professional education requirements for admission to the licensing examination set forth in subdivision (b) of this section.

Subdivision (b) of section 79-13.1 sets forth the general professional education requirements for applicants applying for licensure as a clinical laboratory technologist.

Paragraph (1) of subdivision (b) of section 79-13.1 defines acceptable accrediting agency.

Paragraph (2) of subdivision (b) of section 79-13.1 sets forth the professional education requirements for admission to the licensing examination for clinical laboratory technologists which includes presenting satisfactory evidence of one of the following: (1) holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in clinical laboratory technology registered as leading to licensure; (2) holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in clinical laboratory technology that is substantially equivalent to such a registered program as leading to licensure as a clinical laboratory technologist; or (3) both, holding a baccalaureate or higher degree awarded upon successful completion of an acceptable baccalaureate or higher degree program in the major of biology, chemistry, or the physical sciences and completing a credit bearing program in clinical laboratory technology that is registered as leading to licensure as a clinical laboratory technologist or its substantial equivalent.

Subdivision (c) of section 79-13.1 sets forth time-limited professional education requirements for applicants applying for licensure as a clinical laboratory technologist prior to September 1, 2013.

Paragraph (1) of subdivision (c) of section 79-13.1 defines acceptable accrediting agency.

Paragraph (2) of subdivision (c) of section 79-13.1 establishes alternative professional education requirements for applicants applying for licensure as clinical laboratory technologists prior to September 1, 2013. Such applicants may meet the educational requirements for admission to the licensing examination for clinical laboratory technologists if the program is registered by the department for general educational purposes but need not be specifically registered for licensure purposes or, if the program is accredited by an acceptable accrediting agency, or recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as a clinical laboratory technologist.

Subdivision (d) of section 79-13.1 requires that applicants certify to the department that they have reviewed the regulations of the New York State Department of Health and the U.S. Department of Health and Human Services, relating to the practice of a clinical laboratory technologist.

Section 79-14.1 is repealed and a new section 79-14.1 is added establishing professional study requirements for licensure as a cytotechnologist.

Subdivision (a) of section 79-14.1 states that applicants applying for licensure as a cytotechnologist prior to September 1, 2013 shall meet the professional education requirements for admission to the licensing examination set forth in either subdivision (b) or (c) of this section. Applicants applying for licensure as a cytotechnologist on or after September 1, 2013 shall meet the professional education requirements for admission to the licensing examination set forth in subdivision (b) of this section.

Subdivision (b) of section 79-14.1 sets forth the general professional education requirements for applicants applying for licensure as a cytotechnologist.

Paragraph (1) of subdivision (b) of section 79-14.1 defines acceptable accrediting agency.

Paragraph (2) of subdivision (b) of section 79-14.1 sets forth the professional education requirements for admission to the licensing examination for cytotechnologists which includes presenting satisfactory evidence of one of the following: (1) holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in cytotechnology registered as leading to licensure; (2) holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in cytotechnology that is substantially equivalent to such a registered program as leading to licensure as a cytotechnologist; or (3) both, holding a baccalaureate or higher degree awarded upon successful completion of an acceptable baccalaureate or higher degree program in the major of biology, chemistry, or the physical sciences and completing a credit bearing program in cytotechnology that is registered as leading to licensure as a cytotechnologist or its substantial equivalent.

Subdivision (c) of section 79-14.1 sets forth time-limited professional education requirements for applicants applying for licensure as a cytotechnologist prior to September 1, 2013.

Paragraph (1) of subdivision (c) of section 79-14.1 defines acceptable accrediting agency.

Paragraph (2) of subdivision (c) of section 79-14.1 establishes alternative professional education requirements for applicants applying for licensure as a cytotechnologist prior to September 1, 2013. Such applicants may meet the educational requirement for admission to the licensing examination for cytotechnologists as an alternative to satisfying the requirements of subdivision (b) of this section by presenting satisfactory evidence of a baccalaureate or higher degree in cytotechnology or a related title that is registered by the department for general educational purposes, but need not be specifically registered for licensure purposes, or is accredited by an acceptable accrediting agency, or is recognized by the appropriate civil authorities of the jurisdiction in which the programs are offered as programs that prepare the applicant for professional practice as a cytotechnologist.

Subdivision (d) of section 79-14.1 requires that applicants certify to the department that they have reviewed the regulations of the New York State Department of Health and the U.S. Department of Health and Human Services, relating to practice as a cytotechnologist, as directed by the department.

Section 79-15.1 is repealed and a new section 79-15.1 is added establishing professional study requirements for licensure as a clinical laboratory technician.

Subdivision (a) of section 79-15.1 states that applicants applying for licensure as a clinical laboratory technician prior to September 1, 2013 shall meet the professional education requirements for admission to the licensing examination set forth in either subdivision (b) or (c) of this section. Applicants applying for licensure as a clinical laboratory technician on or after September 1, 2013 shall meet the professional education requirements for admission to the licensing examination set forth in subdivision (b) of this section.

Subdivision (b) of section 79-15.1 sets forth the general professional education requirements for applicants applying for licensure as a clinical laboratory technician.

Paragraph (1) of subdivision (b) of section 79-15.1 defines acceptable accrediting agency.

Paragraph (2) of subdivision (b) of section 79-15.1 sets forth the professional education requirements for admission to the licensing examination for clinical laboratory technicians which includes presenting satisfactory evidence of one of the following: (1) holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in clinical laboratory technician registered as leading to licensure; (2) holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in clinical laboratory technician that is the substantial equivalent of such a registered program as leading to licensure as a clinical laboratory technician; or (3) both, holding a baccalaureate or higher degree awarded upon successful completion of an acceptable baccalaureate or higher degree program in the major of biology, chemistry, or the physical sciences and completing a credit bearing program in clinical laboratory technician that is registered as leading to licensure as a clinical laboratory technician or its substantial equivalent.

Subdivision (c) of section 79-15.1 sets forth time-limited professional education requirements for applicants applying for licensure as a clinical laboratory technician prior to September 1, 2013.

Paragraph (1) of subdivision (c) of section 79-15.1 defines acceptable accrediting agency.

Paragraph (2) of subdivision (c) of section 79-15.1 establishes alternative professional education requirements for applicants applying for licensure as a clinical laboratory technician prior to September 1, 2013. Such applicants may meet the educational requirement for admission to the licensing examination for clinical laboratory technicians as an alternative to satisfying the requirements of subdivision (b) of this section by presenting satisfactory evidence of a baccalaureate or higher degree in a clinical laboratory technician program or a related title that is registered by the department for general educational purposes, but need not be specifically registered for licensure purposes, or is accredited by an acceptable accrediting agency, or is recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as a clinical laboratory technician.

Subdivision (d) of section 79-15.1 requires that applicants certify to the department that they have reviewed the regulations of the New York State

Department of Health and the U.S. Department of Health and Human Services, relating to the practice of a clinical laboratory technician.

**Text of proposed rule and any required statements and analyses may be obtained from:** Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Frank Muñoz, Associate Commissioner, Education Department, Office of the Professions, State Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 486-1765, e-mail: opopr@mail.nysed.gov

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

#### **Regulatory Impact Statement**

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

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

Section 210 of the Education Law grants to the Board of Regents the authority to register domestic and foreign institutions in terms of New York standards.

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the article of the Education Law that pertains to the particular profession.

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

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

Paragraph (a) of subdivision (3) of section 6507 of the Education Law provides that the State Education Department shall establish standards for pre-professional and professional education, experience, and licensing examinations, as required to implement the article for each profession.

Paragraph (a) of subdivision (4) of section 6507 of the Education Law authorizes the State Education Department to establish standards for and register or approve educational programs designed for the purpose of providing educational preparation for licensure.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Regents and the Department in matters of professional licensure and practice.

Paragraph (b) of subdivision (1) of section 8605 of the Education Law authorizes the State Education Department to establish implementing standards for education that must be successfully completed by an applicant to qualify for a license as a clinical laboratory technologist.

Paragraph (b) of subdivision (2) of section 8605 of the Education Law authorizes the State Education Department to establish implementing standards for education that must be successfully completed by an applicant to qualify for a license as a cytotechnologist.

Subdivision (2) of section 8606 of the Education Law authorizes the State Education Department to establish implementing standards for education that must be successfully completed to qualify for certification as a clinical laboratory technician.

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

The proposed regulation carries out the intent of Article 165 of the Education Law by establishing educational standards for licensure as a clinical laboratory technologist and cytotechnologist and certification as a clinical laboratory technician.

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

The purpose of the proposed regulation is to implement the provisions of Article 165 of the Education Law by establishing educational requirements for licensure as a clinical laboratory technologist or cytotechnologist and for certification as a clinical laboratory technician and the standards for registered college preparation programs for these professions.

Chapter 755 of the Laws of 2004 added a new Article 165 to the Education Law. Article 165 provides for the licensing of clinical laboratory technologists and cytotechnologists and the certification of clinical laboratory technicians, and establishes these three professions as practice and title protected, under a State Board for Clinical Laboratory Technology. The proposed regulation is needed to implement Article 165 of the Education Law by establishing specific education requirements that an applicant for licensure or certification must meet.

In addition, the proposed regulation is needed to set forth standards for registered college preparation programs that lead to licensure in these professions.

##### **4. COSTS:**

(a) Costs to State government: The proposed regulation will not impose any additional cost on State government, including the State Education Department, over and above the costs imposed by Article 165 of the Education Law for administering these professions.

(b) Cost to local government: The proposed amendment establishes requirements for licensure as a clinical laboratory technologist and cytotechnologist and certification as a clinical laboratory technician. The regulation will not impose additional costs on local government.

(c) Cost to private regulated parties: The proposed regulation will not impose any other costs on applicants for the three new licenses over and above those imposed by Article 165 of the Education Law. The proposed regulation simply establishes the content of the coursework and imposes no additional educational costs beyond those imposed by the statutory requirement.

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

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements the requirements of Article 165 of the Education Law by establishing educational standards that individuals must meet to be licensed as clinical laboratory technologists and cytotechnologists and certified as clinical laboratory technicians and the standards for college preparation programs in these professions. Therefore, the proposed regulation does not impose any program, service, duty or responsibility upon local governments.

#### 6. PAPERWORK:

The proposed regulation imposes no additional reporting or record-keeping requirements beyond those imposed by Article 165 of the Education Law. In accordance with Article 165, applicants for licensure will be required to submit to the State Education Department evidence of meeting licensure requirements. Colleges and universities seeking registration of college preparation programs leading to licensure in these three professions will be required to submit to the State Education Department evidence of meeting program registration requirements.

#### 7. DUPLICATION:

The proposed regulation does not duplicate other existing State or Federal requirements.

#### 8. ALTERNATIVES:

There have been extensive discussions concerning the content of the college preparation program requirements. The proposed regulation incorporates some of the suggestions made during those discussions.

#### 9. FEDERAL STANDARDS:

There are no Federal standards for the licensure of clinical laboratory technologists, cytotechnologists or clinical laboratory technicians, the subject of the proposed regulation. The education requirements for licensure or certification in these fields requires applicants to certify that they have reviewed the rules and regulations of the U.S. Department of Health and Human Services, relating to practice in these fields, in accordance with written guidance by the State Education Department.

#### 10. COMPLIANCE SCHEDULE:

Applicants for licensure or certification must comply with the regulation on the stated effective date. The regulation includes a transition period of approximately five years for college preparation programs to implement the new requirements.

#### **Regulatory Flexibility Analysis**

The proposed amendment implements the provisions of Article 165 of the Education Law by establishing educational requirements for the licensure of individuals as clinical laboratory technologists or cytotechnologists and certification of individuals as clinical laboratory technicians and standards for registered college preparation programs leading to licensure in these fields. The proposed amendment will have no effect on small businesses and does not regulate local governments.

The amendment will not impose any adverse economic impact, record-keeping, reporting, or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the regulation that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken.

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

##### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation will apply statewide to all individuals who apply for licensure as clinical laboratory technologists and cytotechnologists and certification as clinical laboratory technicians (approximately 18,000 individuals), and colleges statewide that seek registration of programs leading to licensure and certification in these field, including those located in the 44 rural counties of New York State with less than 200,000

inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

Chapter 755 of the Laws of 2004 added a new Article 165 to the Education Law. Article 165 provides for the licensing of clinical laboratory technologists and cytotechnologists and the certification of clinical laboratory technicians, and establishes these three professions as practice and title protected, under a State Board for Clinical Laboratory Technology. The proposed regulation implements the requirements of Article 165 of the Education Law by establishing specific education standards that an applicant for licensure or certification must meet.

In addition, in accordance with the requirements of Article 165 of the Education Law, the proposed regulation sets forth standards for registered college preparatory programs that lead to licensure or certification in these fields.

The proposed regulation does not impose reporting requirements over and above those required by statute. In accordance with statutory requirements, applicants for licensure or certification in these three professions will have to submit to the State Education Department evidence of meeting licensure or certification requirements. Colleges and universities seeking registration of programs leading to licensure or certification in these fields will be required to submit to the State Education Department evidence of meeting program registration requirements.

The proposed regulation will not impose recordkeeping requirements on regulated parties beyond those already required by statute or regulation, and will not require regulated parties to obtain professional services to comply.

#### 3. COSTS:

The proposed regulation will not impose any other costs on applicants for the three new licenses over and above those imposed by Article 165 of the Education Law. The proposed regulation simply establishes the content of the coursework and imposes no additional educational costs beyond those imposed by the statutory requirement.

#### 4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements and clarifies education standards required for licensure as a clinical laboratory technologist or cytotechnologist and certification as a clinical laboratory technician, as directed by Article 165 of the Education Law. It also establishes requirements for college programs registered as leading to licensure in these fields. The statute makes no exception for individuals or entities located in rural areas of the State. The State Education Department has determined that such requirements should apply to all individuals seeking licensure no matter their geographic location to ensure an adequate standard of competency across the State. Likewise, the Department has determined that registered college programs that lead to licensure should be subject to the same requirements, regardless of their geographic location, to ensure that candidates for licensure are adequately prepared. Because of the nature of the proposed rule, alternative approaches for entities located in rural areas of the State were not considered.

#### 5. RURAL AREA PARTICIPATION:

Comments on the proposed regulation were solicited from statewide organizations representing parties having an interest in the practice of the three professions. Included in this group were the State Board for Clinical Laboratory Technology, colleges and universities, professional associations and collective bargaining organizations representing individuals practicing these professions. These groups have members who live or work in rural areas. Staff of the State Education Department met with large groups of individuals who are employed in the three fields to obtain their input during the development of the regulation. These groups included individuals from rural areas of New York State. In addition, comments were solicited from colleges and universities in the State that offer programs that prepare clinical laboratory technologists, cytotechnologists, and clinical laboratory technicians, some of which are located in rural areas. The Department also sent the proposed regulation to licensed clinical laboratories across the State, including those that are located in rural areas of New York State.

#### **Job Impact Statement**

Article 165 of the Education Law establishes a requirement that clinical laboratory technologists and cytotechnologists be licensed to practice in New York State and that clinical laboratory technicians be certified to practice in this State. The proposed amendment implements the requirements of Article 165 of the Education Law by establishing education standards for licensure or certification. It also sets forth standards for

registered college preparation programs that lead to licensure or certification in these fields, in accordance with statutory requirements.

The proposed regulation implements statutory requirements and directives. Because it is evident from the nature of the proposed regulation that it will have no impact on jobs or employment opportunities, no further 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.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Certification in the Classroom Teaching Service through Individual Evaluation

**I.D. No.** EDU-20-08-00031-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 80-3.7 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207, 305, 3001, 3004 and 3006

**Subject:** Certification in the classroom teaching service through individual evaluation.

**Purpose:** To extend the expiration date for applicants seeking certification through the individual evaluation pathway in all classroom titles except childhood education from Feb. 1, 2009 to Feb. 1, 2012, thus extending the time that the individual evaluation pathway remains available for these applicants.

**Text of proposed rule:** Section 80-3.7 of the Regulations of the Commissioner of Education is amended, effective August 21, 2008, as follows:

§ 80-3.7 Satisfaction of education requirements for certification in the classroom teaching service through individual evaluation.

This section prescribes requirements for meeting the education requirements for classroom teaching certificates through individual evaluation. This option for meeting education requirements shall only be available for candidates who apply for a certificate in childhood education by February 1, 2007 and for candidates who apply for any other certificate in the classroom teaching service by February 1, 2012 [2009], and who upon application qualify for such certificate. The candidate must have achieved a 2.5 cumulative grade point average or its equivalent in the program or programs leading to any degree used to meet the requirements for a certificate under this section. In addition, a candidate must have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course in order for the semester hours associated with that course to be credited toward meeting the content core or pedagogical core semester hour requirements for a certificate under this section. All other requirements for the certificate, including but not limited to, examination and/or experience requirements, as prescribed in this Part, must also be met.

- (a) . . .
- (b) . . .
- (c) . . .

**Text of proposed rule and any required statements and analyses may be obtained from:** Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Johanna Duncan-Poitier, Senior Deputy Commissioner of Education - P16, Education Department, 2M West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: p16education@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 authorizes the Commissioner to execute educational policies determined by the Regents.

Subdivision (2) of section 3001 establishes certification by the State Education Department as a qualification to teach in the State's public schools.

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.

Subdivision (2) of Section 3006 authorizes the Commissioner of Education to endorse a certificate issued by another state.

##### 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 registered teacher education programs.

##### 3. NEEDS AND BENEFITS:

The proposed amendment extends the expiration date for applicants seeking certification through the individual evaluation pathway in all classroom titles except childhood education from February 1, 2009 to February 1, 2012, thus extending the time that the individual evaluation pathway remains available for these applicants. 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.

In 2003, the Board of Regents established requirements for teacher certification through the individual evaluation of candidates who have not completed registered teacher education programs. Under the individual evaluation pathway, candidates are required to submit evidence of course work and field experience to the State Education Department for evaluation and issuance of the certificate.

The provision regarding individual evaluation included a sunset date for individual evaluation of February 1, 2007 for certificates in childhood education and February 1, 2009 for all other certificates in the classroom teaching service. The purpose in establishing these sunset dates was to allow the Department time to assess the continued need for the individual evaluation pathway, based on how many candidates use this pathway to become certified, particularly in subject areas where there are teacher shortages.

The individual evaluation pathway ended for candidates seeking certificates in childhood education last February because there was no evidence of continuing shortages in this subject area. In the 2006-2007 school year, almost half of the new teachers certified through the college recommended pathway were childhood education teachers (7,848).

However, with respect to all other classroom teaching subject areas, there is evidence of a persistent teacher shortage and, therefore, there is a continued need for the individual evaluation pathway for candidates applying for certificates in these titles. Available data from 2006-2007 show that individual evaluation continues to be an important source of new teachers. Excluding childhood education certificates, the Department issued a total of 9,501 Initial certificates to new teachers, 8,449 (89 percent) by college recommendation and 1,052 (11 percent) by individual evaluation. All subject areas except speech had at least five percent of certificates issued to new teachers from the individual evaluation pathway. The individual evaluation pathway accounted for 20 percent or more of initial certificates issued to new teachers in languages other than English and students with disabilities.

The 2005-06 data show that there were shortages of teachers even when the individual evaluation pathway was available, as detailed in the State Education Department's most recent *Teacher Supply and Demand Report* issued in March 2007. New York State had teacher shortages in many subject areas when shortages are defined as five or more percent of full-time equivalent teaching positions held by teachers without appropriate certification, the measure used for federal loan forgiveness for teachers. Shortages existed in all geographic regions in at least one subject area. Statewide, there were shortages in every subject area except elementary education and special education (not bilingual). The most severe statewide shortages were in bilingual education, career and technical education, English as a Second Language, languages other than English, library/school media specialist, and bilingual special education. Geographically, shortages occurred even in subject areas that are not considered shortages on a statewide basis, for example, New York City, which continued to experience a shortage of elementary and early childhood teachers.

Further, the report showed that there may have been far more shortages in given areas of the state if the college recommended pathway had been the only pathway available in 2005-2006. There would have been

shortages of new teachers in every geographic region; in New York City, in all subject areas except childhood special education and literacy; and in many regions in special education at the middle and adolescent levels, languages other than English, career and technical education, library/school media specialist, and mathematics.

Extending the sunset date for individual evaluation will, therefore, address these persistent shortages and will allow the Board of Regents and State Education Department to monitor and assess teacher supply and demand data for three additional years, from 2009 to 2012.

#### 4. COSTS:

(a) Costs to State government: The amendment will not impose any additional costs on State government, including the State Education Department. The amendment continues the current processing of applications for initial certificates through individual evaluation.

(b) Costs to local governments: There are no costs to local governments, including school districts and BOCES.

(c) Costs to regulating agency for implementing and continued administration of the rule: As stated above in "Costs to State Government," the amendment will impose no additional costs on the State Education Department.

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES.

#### 6. PAPERWORK:

The amendment does not entail any additional paperwork requirements. Applicants seeking certification through individual evaluation will continue to apply online.

#### 7. DUPLICATION:

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

#### 8. ALTERNATIVES:

The Board of Regents considered various alternatives to address the persistent shortages of classroom teachers. One alternative considered was to permit the sunset date to take effect and to establish a new type of transitional certificate to address persistent shortages in a focused way, by issuing restricted certificates for employment in specific school districts based upon documentation by the schools of their inability to fill specific vacancies. However, it was projected that the number of individuals who would become certified through this alternative approach would likely be fewer than the total number of new teachers certified through the existing individual evaluation pathway. Also, there is no data to assure that there is a sufficient field of qualified, interested people in specific geographic regions to fill the districts' vacancies.

The Regents also considered identifying statewide shortage areas on a regular (five-year) cycle for the purpose of allowing first-time applicants for certification to continue to apply through the individual evaluation pathway in classroom teaching titles in these shortage areas only. However, the State Education Department can only identify shortage areas based on historical data; lagging indicators may not reflect current market conditions. Also, this approach is administratively complex and would be confusing for prospective teachers. Further, it would not address shortages that are of lower incidence, but which nevertheless may be severe in particular regions or local districts and, therefore, it would not meet the needs of all districts.

#### 9. FEDERAL STANDARDS:

There are no related Federal standards.

#### 10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with this amendment by its stated effective date.

#### **Regulatory Flexibility Analysis**

The proposed amendment extends the expiration date for applicants seeking certification through the individual evaluation pathway in all classroom titles except childhood education from February 1, 2009 to February 1, 2012, thus extending the time that the individual evaluation pathway remains available for these applicants. It does not establish any requirements for small businesses or local governments, including school districts or BOCES.

The amendment will not impose any adverse economic impact, record-keeping, reporting, or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the rule that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken.

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

##### 1. TYPES AND ESTIMATE OF NUMBER OF RURAL AREAS:

The proposed amendment will affect applicants seeking certification through the individual evaluation pathway in all classroom teaching titles except childhood education including applicants in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The proposed amendment extends the expiration date for applicants seeking certification through the individual evaluation pathway in all classroom teaching titles except childhood education from February 1, 2009 through February 1, 2012. The amendment does not impose additional recordkeeping requirements and it does not require regulated parties to secure professional services to comply.

#### 3. COSTS:

The proposed amendment extends the expiration date for applicants seeking certification through the individual evaluation pathway in all classroom teaching titles except childhood education. The proposed amendment does not impose any additional fees beyond the \$100 application fee currently charged to applicants seeking certification through individual evaluation.

#### 4. MINIMIZING ADVERSE IMPACT:

The amendment is permissive in nature as it extends the period during which the individual evaluation pathway to certification remains available for applicants in certain classroom teaching titles. 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:

The State Education Department solicited comments on the proposed amendment from the State Professional Standards and Practices Board for Teaching. The Standards Board 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 the proposed amendment from the State Education Department's Rural Advisory Committee, whose membership includes representatives of school districts located in rural areas.

#### **Job Impact Statement**

The proposed amendment extends the expiration date for applicants seeking certification through the individual evaluation pathway in all classroom titles except childhood education from February 1, 2009 to February 1, 2012, thus extending the time that the individual evaluation pathway remains available for these applicants.

Because it is evident from the nature of the amendment that it could only have a positive impact or no impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

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

### **Standing Committees of the Board of Regents**

**I.D. No.** EDU-09-08-00009-RP

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

**Revised action:** Amendment of sections 3.2 and 4-1.5 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 207 (not subdivided)

**Subject:** Standing committees of the Board of Regents.

**Purpose:** To conform to the rules of the Board of Regents to a recent reorganization of the committee structure of the Board of Regents, which separated the Committee on Higher Education and Professional Practice into the Committee on Higher Education and the Committee on Professional Practice, and which separated the Committee on Elementary, Middle, Secondary and Continuing Education and Vocational and Educational Services for Individuals with Disabilities into the Committee on Elementary, Middle, Secondary and Continuing Education and the Committee on Vocational and Educational Services for Individuals with Disabilities.

**Text of revised rule:** 1. Subdivision (a) of section 3.2 of the Rules of the Board of Regents is amended, effective July 17, 2008, as follows:

(a) The chancellor shall appoint the following standing committees and designate the leadership of each committee:

(1) Policy Integration and Innovation.

- (2) Higher Education [and Professional Practice].
- (3) Elementary, Middle, Secondary and Continuing Education [and Vocational and Educational Services for Individuals with Disabilities].
- (4) Cultural Education.
- (5) Ethics.
- (6) *Professional Practice*.
- (7) *Vocational and Educational Services for Individuals with Disabilities*.

2. Subdivision (d) of section 3.2 of the Rules of the Board of Regents is amended, effective July 17, 2008, as follows:

- (d) The functions of the standing committees shall include:
  - (1) . . .
  - (2) Committee on Higher Education [and Professional Practice]:
    - (i) develops policy recommendations regarding postsecondary education and retraining programs, [and develops policy recommendations regarding standards of professional conduct, continuing competence standards, professional practice issues, professional assistance programs, and the disciplinary process,] and monitors implementation of such functions by the department;
    - (ii) oversees preparation of the statewide plan for [the development of postsecondary] *higher* education and reviews and approves amendments to institutional or sectorial master plans for new programs and facilities [,and amendments relating to professional practice and professional conduct];
    - (iii) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education pertaining to postsecondary education issues, including academic [and professional] program approval, *and* student and institutional financial aid [, professional licensure requirements, and the administration of continuing professional competence requirements and amendments relating to professional practice and professional conduct;
    - (iv) oversees administration of continuing competence requirements for professional licensure and registration;
    - (v) develops policy recommendations concerning professional manpower, examination and licensure issues and requirements, including minority access to professional education and licensure;
    - (vi) reviews and approves appointments to the State boards for regular service (advising on licensure, examinations, practice and discipline) for the professions;
    - (vii) reviews and approves the recommendations of the Staff Committee on the Professions on application for waiver of licensure requirements;
    - [(viii)] (iv) monitors the financial conditions of the postsecondary institutions;
    - [(ix)](v) develops legislative and budgetary proposals for higher [and professional] education [, professional practice and professional discipline,] and monitors advocacy of such proposals;
    - [(x)](vi) recommends appointments to advisory councils and boards; [and]
    - [(xi)](vii) seeks input from the public and the field concerning postsecondary education policies and practices; and
    - [(xii)](viii) reviews and makes recommendations to the full board on incorporation and chartering of higher education institutions and organizations, [professional organizations,] and institutions offering professional education programs[;
    - (xiii) reviews and approves appointments to the State Boards for the Professions for service on licensure/disciplinary panels;
    - (xiv) reviews Regents Review Committee recommendations and proposed consent orders and surrenders of license in professional discipline cases;
    - (xv) reviews the recommendations of the Staff Committee on the Professions on petitions for restoration of a professional license; and
    - (xvi) seeks input from the public and the professions concerning professional practice and professional discipline policies and practices].
  - (3) Committee on Elementary, Middle, Secondary and Continuing Education [and Vocational and Educational Services for Individuals with Disabilities]:
    - (i) develops policy recommendations regarding elementary, middle and secondary education, workforce preparation and continuing education, [vocational rehabilitation and special education, overall coordination of vocational and educational services for individuals with disabilities,] and coordination of interagency agreements and activities;
    - (ii) . . .
    - (iii) . . .
    - (iv) . . .

- (v) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education pertaining to elementary, middle and secondary education and workforce preparation and continuing education[, and amendments relating to vocational rehabilitation, special education and related educational services for individuals with disabilities];
- (vi) . . .
- (vii) develops legislative and budgetary proposals for elementary, middle and secondary education and workforce preparation and continuing education[, vocational rehabilitation, special education and related educational services for individuals with disabilities,] *and* monitors the advocacy of such proposals, and leads in pressing for legislative and budgetary priorities within the department and with the Legislature;
- (viii) initiates studies and activities leading to the improvement of educational conditions and outcomes for children from birth through high school graduation and adults in workforce preparation and continuing education programs; *and*
- (ix) reviews and makes recommendations to the full board on incorporation and chartering of institutions and organizations proposing to offer prekindergarten, kindergarten, elementary, middle or secondary education programs[.];
- [(x) monitors the implementation of vocational rehabilitation and special education programs and services and of interagency agreements;
- (xi) reviews the development and implementation of the Regents Comprehensive Plan for the Office of Vocational and Educational Services for Individuals with Disabilities; and
- (xii) seeks input from the public and professional field on policies and practices concerning vocational rehabilitation; special education and related educational services for individuals with disabilities.]
- (4) . . .
- (5) . . .
- (6) *Committee on Professional Practice*:
  - (i) *develops policy recommendations regarding standards of professional conduct, continuing competence standards, professional practice issues, professional manpower issues, professional licensure requirements including licensing examination requirements, which shall include issues concerning minority access to professional education, licensing examinations and licensure, professional assistance programs, and the professional disciplinary process, and monitors implementation of such functions by the department;*
  - (ii) *reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education relating to professional education, licensure, continuing competence, practice, and discipline;*
  - (iii) *develops legislative and budgetary proposals relating to professional practice and professional discipline policies and practices;*
  - (iv) *oversees administration of continuing competence requirements for professional licensure and registration;*
  - (v) *reviews Regents Review Committee recommendations and proposed consent orders and surrenders of license in professional discipline cases;*
  - (vi) *reviews Regents Review Committee recommendations in proceedings relating to the unauthorized practice of the professions or the unauthorized use of a professional title;*
  - (vii) *reviews the recommendations of the Staff Committee on the Professions on petitions for restoration of a professional license;*
  - (viii) *reviews and approves the recommendations of the Staff Committee on the Professions on application for waiver of licensure requirements;*
  - (ix) *seeks input from the public and professions concerning professional practice and professional discipline policies and practices; and*
  - (x) *reviews and approves appointments to the State board for the professions;*
  - (xi) *reviews and makes recommendations to the full board on incorporation and chartering of professional organizations and non-degree granting institutions or organizations related to the professions.*
- (7) *Committee on Vocational and Educational Services for Individuals with Disabilities*:
  - (i) *develops policy recommendations regarding vocational rehabilitation and special education, overall coordination of vocational and educational services to individuals with disabilities, and coordination of interagency agreements and activities;*
  - (ii) *monitors the implementation of vocational rehabilitation and special education programs and services and interagency agreements;*

(iii) develops legislative and budgetary proposals for vocational rehabilitation, special education and related educational services for individuals with disabilities, and monitors the advocacy of such proposals, and leads in pressing for legislative and budgetary priorities within the department and with the Legislature;

(iv) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education relating to vocational rehabilitation, special education and related educational services for individuals with disabilities; and

(v) seeks input from the public and professional field on policies and practices concerning vocational rehabilitation; special education and related educational services for individuals with disabilities.

3. Subparagraph (iv) of paragraph (11) of subdivision (a) of section 4-1.5 of the Rules of the Board of Regents is amended, effective July 17, 2008, as follows:

(iv) The commissioner shall transmit the appeal papers to a standing subcommittee on accreditation appeals of the committee on higher education [and professional practice] of the Board of Regents.

**Revised rule compared with proposed rule:** Substantial revisions were made in sections 3.2(d)(2)(ii), (iii), (v) and (viii) and (6).

**Text of revised proposed rule and any required statements and analyses may be obtained from:** Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Kathy A. Ahearn, Counsel and Deputy Commissioner for Legal Affairs, Office of Counsel, State Education Department, 89 Washington Ave., Albany, NY 12234, (518) 474-6400

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

#### **Regulatory Impact Statement**

Since publication of a Notice of Proposed Rule Making in the State Register on February 27, 2008, the following substantial revisions were made to the proposed rule:

Subdivision (d) of section 3.2 of the Rules of the Board of Regents was revised to further define and distinguish the responsibilities of the Committee on Higher Education and the Committee on Professional Practice in conformity with the performance of both Committees under the recent reorganization of the standing committees of the Board of Regents primarily relating to the review of amendments to the Rules of the Board of Regents and the Commissioner's Regulations, legislative and budgetary proposals, and recommendations regarding the incorporation and chartering of certain institutions and/or organizations, and to make other technical corrections therewith. The proposed amendment, as revised, enables the Board of Regents to efficiently and effectively carry out its functions and responsibilities.

The revisions do not require any further changes to the previously published Regulatory Impact Statement.

#### **Regulatory Flexibility Analysis**

Since publication of a Notice of Proposed Rule Making in the State Register on February 27, 2008, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement.

The proposed amendment, as revised, is necessary to conform the Rules of the Board of Regents to a recent reorganization of the committee structure of the Board of Regents. The proposed amendment, as revised, relates to the internal organization of the Board of Regents and therefore does not have any adverse economic impact or impose any compliance requirements on small businesses or local governments. Because it is evident from the nature of the revised amendment that it will have no impact on small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

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

Since publication of a Notice of Proposed Rule Making in the State Register on February 27, 2008, the proposed rule was revised as set forth in the Statement concerning the Regulatory Impact Statement filed herewith.

The proposed amendment, as revised, is necessary to conform the Rules of the Board of Regents to a recent reorganization of the committee structure of the Board of Regents. The proposed amendment, as revised, relates to the internal organization of the Board of Regents and therefore does not have any adverse economic impact or impose any compliance requirements on entities in rural areas. Because it is evident from the nature of the revised amendment that it will have no impact on entities in rural areas of the State, no further steps were needed to ascertain that fact and

none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

#### **Job Impact Statement**

Since publication of a Notice of Proposed Rule Making in the State Register on February 27, 2008, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement.

The proposed amendment, as revised, is necessary to conform the Rules of the Board of Regents to a recent reorganization of the committee structure of the Board of Regents. The proposed amendment, as revised, relates to the internal organization of the Board of Regents and therefore will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the revised amendment that it will have no impact on jobs or employment opportunities, no further 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.

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

The agency received no public comment.

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## Department of Environmental Conservation

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### EMERGENCY RULE MAKING

#### **Recreational Harvest and Possession of Tautog**

**I.D. No.** ENV-08-08-00003-E

**Filing No.** 360

**Filing date:** April 28, 2008

**Effective date:** April 28, 2008

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

**Action taken:** Amendment of Part 40 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 3-0301, 13-0105 and 13-0340-d

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

**Specific reasons underlying the finding of necessity:** The Department is re-adopting an amendment to 6 NYCRR Part 40 which implemented a reduction in the recreational possession limit and in the number of days in the fishing season for tautog, effective January 31, 2008. These regulations are necessary in order for New York to maintain compliance with the Fishery Management Plan (FMP) for Tautog as adopted by the Atlantic States Marine Fisheries Commission (ASMFC).

Pursuant to section 13-0371 of the ECL, New York State is a party to the Atlantic States Marine Fisheries Compact which established the Atlantic States Marine Fisheries Commission (ASMFC). The Commission facilitates cooperative management of marine and anadromous fish species among the fifteen member states. The principal mechanism for implementation of cooperative management of migratory fish are the ASMFC's Interstate Fishery Management Plans for individual species or groups of fish. The Fisheries Management Plans (FMPs) are designed to promote the long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have implemented, in a timely manner, provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

In addition to federal requirements, Environmental Conservation Law section 13-0340-d, which authorizes the Department to adopt regulations for the management of tautog, provides that such regulations must be consistent with the fishery management plans for tautog adopted by ASMFC and with applicable provisions of fishery management plans

adopted pursuant to the Federal Fishery Conservation and Management Act.

Addendums IV and V to the Fishery Management Plan (FMP) for Tautog require that New York implement measures which will achieve a reduction in the harvest of tautog for 2008 equivalent to a 25.6 percent reduction in total landings, relative to the base year. (The base year is calculated by using an average of the tautog landings in 2003, 2004 and 2005.) In order to accomplish this reduction, the Department is: 1) lowering the current recreational possession limit from ten (10) fish to four (4) fish; and 2) shortening the open season, which currently runs from October 1st through May 30th, to a two-part season running from October 1st through December 20th and from January 17th through April 30th.

Failure by New York to re-adopt these amendments could result in a determination of non-compliance by ASMFC and the Secretary of Commerce and the imposition of a tautog fishery closure - a complete ban on fishing for tautog in New York. The promulgation of this regulation on an emergency basis is necessary in order for the Department to meet compliance deadlines and avoid closure of the tautog fishery and the economic hardship that would be associated with such closure.

**Subject:** Recreational harvest and possession of tautog.

**Purpose:** To control recreational harvest of tautog consistent with the fishery management plan.

**Text of emergency rule:** Section 40.1(f) is amended to read as follows:  
(f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Striped Bass (except the Hudson River north of the George Washington Bridge)	Apr 15 - Dec 15	Licensed Party/ Charter Boat anglers	2
		28" TL	
Red Drum	All year	All other anglers	1
		28" to 40" TL	
		>40" TL (Total Length) *	1
Tautog	Oct. 1 - [May 31] Dec. 20 and Jan. 17 - Apr. 30	14" TL	No limit for fish less than 27" TL Fish greater than 27" TL shall not be possessed [10] 4
American Eel	All year	6" TL	50
Pollock	All year	19" TL	No limit
Haddock	All year	19" TL	No limit
Atlantic cod	All year	22" TL	No limit
Summer flounder	None (closed as of September 17, 2007)		
Yellowtail Flounder	All year	13" TL	No limit
Atlantic Sturgeon	No possession allowed		
Spanish Mackerel	All year	14" TL	15
King Mackerel	All year	23" TL	3
Cobia	All year	37" TL	2
Monkfish (Goosefish)	All year	17" TL	No limit
Weakfish	All year	11" tail length #	
		16" TL	6
Bluefish	All year	10" Fillet length+	
		12" Dressed length**	
Winter Flounder	All year	No minimum size limit for the first 10 fish; 12" TL for the next 5 fish.	15, no more than 10 of which shall be less than 12" TL.
		12" TL	10
Scup (porgy) licensed Party/Charter Boat anglers	April 1 - May 30 Sept. 1 - Oct. 31 June 1 - Aug. 31	10.5" TL	25
		10.5" TL	60
Scup (porgy) All other anglers	June 1 - Oct. 31	10.5" TL	25
Black Sea Bass	All year	12" TL	25
American Shad	All year	No minimum size limit	5
Hickory Shad	All year	No minimum size limit	5
Oyster toadfish	Jan 1 - May 14 and July 16 - Dec 31	10" TL	3
Large & Small Coastal Sharks	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###

Pelagic Sharks ++, ###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Prohibited Sharks***, ###	No possession allowed		

\* Total length is the longest straight line measurement from the tip of the snout, with the mouth closed, to the longest lobe of the caudal fin (tail), with the lobes squeezed together, laid flat on the measuring device.

# The tail length is the longest straight line measurement from the tip of the caudal fin (tail) to the fourth cephalic dorsal spine (all dorsal spines must be intact), laid flat on the measuring device.

+ The fillet length is the longest straight line measurement from end to end of any fleshy side portion of the fish cut lengthwise away from the backbone, which must have the skin intact, laid flat on the measuring device.

\*\* Dressed length is the longest straight line measurement from the most anterior portion of the fish, with the head removed, to the longest lobe of the caudal fin (tail), with the caudal fin intact and with the lobes squeezed together, laid flat on the measuring device.

## Large and Small Coastal Sharks include those shark species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

++ Pelagic sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

\*\*\* Prohibited sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

### Applicable provisions of the following are incorporated herein by reference: 50 CFR Part 635-Atlantic Highly Migratory Species, final rule as adopted by U.S. Department of Commerce as published in the Federal Register, Volume 64, Number 103, pages 29135-29160, May 28, 1999, and as amended in volume 68, Number 247, pages 74746-74789, December 24, 2003. A copy of the federal rule incorporated by reference herein may be viewed at: New York State Department of Environmental Conservation, Bureau of Marine Resources, 205 N. Belle Mead Road, East Setauket, New York, 11733.

\*\*\*\* See Special Regulations contained in 6NYCRR 40.1(h)(3).

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. ENV-08-08-00003-EP, Issue of February 20, 2008. The emergency rule will expire June 26, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Stephen W. Heins, Department of Environmental Conservation, 205 N. Belle Meade Rd., Suite 1, East Setauket, NY 11733-3400, (631) 444-0435, e-mail: swheins@gw.dec.state.ny.us

**Additional matter required by statute:** Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the department.

**Regulatory Impact Statement**

1. Statutory authority:

Environmental Conservation Law (ECL) sections 3-0301, 13-0105 and 13-0340-d authorize the Department of Environmental Conservation (DEC or Department) to establish, by regulation, the open season, size and catch limits, possession and sale restrictions, and manner of taking for tautog.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manage marine fisheries to optimize resource use for commercial and recreational harvesters, consistent with marine fisheries conservation and management policies and interstate Fishery Management Plans (FMPs).

3. Needs and benefits:

The Department is adopting amendments to 6 NYCRR Part 40 which will implement a reduction in the possession limit and shortening of the recreational tautog season. These regulations are necessary in order for New York to maintain compliance with the FMP for Tautog as adopted by the Atlantic States Marine Fisheries Commission (ASMFC).

Pursuant to section 13-0371 of the ECL, New York State is a party to the Atlantic States Marine Fisheries Compact which established the Atlantic States Marine Fisheries Commission. The Commission facilitates cooperative management of marine and anadromous fish species among the fifteen member states. The principal mechanism for implementation of cooperative management of migratory fish are ASMFC's Interstate Fishery Management Plans for individual species or groups of fish. The FMPs are designed to promote the long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have implemented, in a timely manner, provisions of FMPs with which they are required to comply. If ASMFC determines that a state is non-compliant with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secre-

tary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

In addition to federal requirements, Environmental Conservation Law section 13-0340-d, which authorizes the Department to adopt regulations for the management of tautog, provides that such regulations must be consistent with the fishery management plans for tautog adopted by ASMFC and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act.

Addendums IV and V to the Fishery Management Plan (FMP) for Tautog require that New York implement measures which will achieve a reduction in the harvest of tautog for 2008 equivalent to a 25.6 percent reduction in total landings, relative to the base year. (The base year is calculated by using an average of the tautog landings in 2003, 2004 and 2005.) In order to accomplish this reduction, the Department is: 1) lowering the current recreational possession limit from ten (10) fish to four (4) fish; and 2) shortening the open season, which currently runs from October 1st through May 30th, to a two-part season running from October 1st through December 20th and from January 17th through April 30th.

Failure by New York to adopt these amendments could result in a determination of non-compliance by ASMFC and the Secretary of Commerce and the imposition of a tautog fishery closure - a complete ban on fishing for tautog in New York. The promulgation of this regulation on an emergency basis is necessary in order for the Department to meet compliance deadlines and avoid closure of the tautog fishery and the economic hardship that would be associated with such closure.

4. Costs:

(a) Cost to State government:

There are no new costs to state government resulting from this action.

(b) Cost to Local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

Certain regulated parties (party/charter vessels, bait and tackle shops) may experience some adverse economic effects due to the loss of several days in the fishing season. Some charter operations may have already booked fishing trips for tautog in the time frame affected by the season closure. Some bait and tackle shops may have ordered and purchased bait, and bait dealers may have done the same. There may be some economic loss to these businesses. It is also possible that the reduction of the bag limit from 10 to 4 may result in fewer angler trips for tautog, which has the potential to negatively affect the number of angler trips taken aboard party and charter boats.

(d) Costs to the regulating agency for implementation and continued administration of the rule:

The Department of Environmental Conservation will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational harvesters, party and charter boat operators and other recreational support industries of the new rules.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

The following significant alternatives have been considered by the Department and rejected for the reasons set forth below:

(1) Reduce exploitation in the commercial fishery at the same rate as the recreational fishery. Addendum IV to the tautog FMP specified that reductions taken in the fishery in order to meet the fishing mortality target must come solely from the recreational sector, but Addendum V changed that to allow states to take reductions in the commercial fishery as well. If New York had chosen this option, the measures imposed on the recreational fishery could have been somewhat less restrictive, as the total reduction in exploitation was spread over both the recreational and commercial fisheries. However, the commercial fishery in New York is currently capped at a 25-fish possession limit, resulting in reported annual landings of 60,000 pounds or less. These landings constitute about 10-12 percent of the combined recreational and commercial landings. Department staff believe that this level of exploitation is consistent with a sustain-

able fishery and does not see the need for a reduction in the commercial fishery at this time.

(2) Alternative season closures and bag limit. The Marine Resources Advisory Council (MRAC) provided a recommendation for an open season of October 16th through April 30th and a bag limit of 5 fish, with no reduction in the commercial fishery. The Department is concerned that moving the season opening further into the fall favors the party and charter fishing modes over the private and rental boat and shore fishing modes. The Department would like to maintain the October 1 opening date to avoid this situation. In addition, the 5-fish bag limit was recommended by MRAC because the party and charter industry believe that a lower limit will discourage participation. The Department disagrees, and the 4-fish limit will match that of Connecticut, a state with which New York shares the waters of Long Island Sound.

(3) No Action (no amendment to regulations).

The "no action" alternative would leave current regulations in place and put New York in a position to exceed the fishing mortality target and over-harvest the resource. This result would be contrary to the objectives of the FMP and subject New York to the potential for a determination of non-compliance and a federally imposed closure of the fishery for tautog in New York. For these reasons, this alternative was rejected.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC fishery management plan for tautog.

10. Compliance schedule:

The emergency regulations will take effect immediately upon filing with the Department of State. Regulated parties will be notified of the changes to the regulations by mail, through appropriate news releases and via the Department's website.

**Regulatory Flexibility Analysis**

1. Effect of the regulations:

These amendments to 6 NYCRR Part 40 reduce the recreational possession limit for tautog and shorten the recreational tautog season. Because this rule making addresses recreational fishing, the only businesses that will be directly affected are party and charter boat operations. These regulations do not apply directly to local governments, and will not have any direct effects on local governments.

Addendums IV and V to the Fishery Management Plan (FMP) for Tautog require that New York implement measures which will achieve a reduction in the harvest of tautog for 2008 equivalent to a 25.6 percent reduction in total landings, relative to the base year. (The base year is calculated by using an average of the tautog landings in 2003, 2004 and 2005.) In order to accomplish this reduction, the Department is: 1) lowering the current recreational possession limit from ten (10) fish to four (4) fish; and 2) shortening the open season, which currently runs from October 1 through May 30, to a two-part season running from October 1 through December 20 and from January 17 through April 30. Failure by New York to adopt these amendments could result in a determination of non-compliance by ASMFC and the Secretary of Commerce and the imposition of a tautog fishery closure - a complete ban on fishing for tautog in New York.

In 2006, there were 503 licensed party/charter vessels operating in New York. The 2007 tautog fishing season was open from January 1 through May 30, and also open from October 1 through December 31 - a total of 243 potential fishing days. This rule making sets an open season of January 17 through April 30 and October 1 through December 20, a reduction to 185 potential fishing days. The closures of the fishery means the loss of 58 potential fishing days, though these losses are split between the mid-season closure and the reduction in the spring. A reduction in the number of fishing days for tautog will likely have an adverse effect on the number of fishing trips these businesses make during the tautog fishing season. However, only a small percentage of the party/charter boats typically fish during the January period which will now be closed, so that particular amendment should not affect the majority of the fishery.

In the long term, the maintenance of sustainable fisheries will have a positive effect on small businesses in the fisheries in question, including party and charter boat owners and operators. Any short-term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. Protection of the tautog resource is essential to the survival of the party and charter boat operations in these fisheries. These regulations are designed to protect stocks while allowing appropriate harvest, to prevent over-harvest, and to continue to rebuild or maintain them for future utilization.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule.

5. Minimizing adverse impact:

The promulgation of this regulation is necessary in order for the Department to maintain compliance with the FMP for tautog. The regulations are intended to protect the tautog resource and avoid the adverse impacts that would be associated with closure of the fishery for non-compliance with the FMP.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries, as well as wholesale and retail outlets and other support industries for recreational fisheries. Failure to comply with an FMP and take required actions to protect a marine fishery could cause the collapse of the stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. These regulations are being adopted in order to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

6. Small business and local government participation:

The Department consulted the Marine Resources Advisory Council regarding the proposed action. The Council is comprised of representatives from recreational and commercial fishing interests, including recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners, and recreational anglers. The Board voted on the Department's proposed action, and a majority voted to support the Department's proposal in order to comply with the Tautog FMP.

Local governments were not contacted because the rule does not affect them.

7. Economic and technological feasibility:

The proposed regulations do not require any expenditures on the part of affected businesses in order to comply with the changes. The changes required by this action have been determined to be economically feasible for the affected parties.

There is no additional technology required for small businesses, and this action does not apply to local governments. Therefore, there are no economic or technological impacts for any such bodies.

**Rural Area Flexibility Analysis**

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. The tautog fishery directly affected by the emergency rule is entirely located within the marine and coastal district, and is not located adjacent to any rural areas of the state. There are no rural areas within the marine and coastal district. Further, the emergency rule does not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas.

Since no rural areas will be affected by the emergency amendments of Part 40, the Department has determined that a Rural Area Flexibility Analysis is not required.

**Job Impact Statement**

These amendments to 6 NYCRR Part 40 reduce the recreational possession limit for tautog and shorten the recreational tautog season.

Addendums IV and V to the Fishery Management Plan (FMP) for Tautog require that New York implement measures which will achieve a reduction in the harvest of tautog for 2008 equivalent to a 25.6 percent reduction in total landings, relative to the base year. (The base year is calculated by using an average of the tautog landings in 2003, 2004 and 2005.) In order to accomplish this reduction, the Department is: 1) lowering the current recreational possession limit from ten (10) fish to four (4) fish; and 2) shortening the open season, which currently runs from October 1st through May 30th, to a two-part season running from October 1st through December 20th and from January 17th through April 30th.

This rule making addresses recreational fishing. The only jobs or employment opportunities that will be directly affected are those associated with party and charter boat operations. There were 503 licensed party/charter vessels operating in New York during 2006. Many currently licensed party and charter boat owners and operators hire seasonal employees during the fishing season, the majority of which occurs from May through October, with a peak in the summer months. Reduction in the number of fishing days for tautog will likely have an adverse effect on the number of fishing trips these businesses make during the tautog fishing season. However, because the tautog fishing season will remain open in

2008, although shorter than in 2007, the potential for seasonal employees to lose their jobs on party/charter boats is minimal. Only a small percentage of the party/charter boats fish during the January period which will now be closed. If any seasonal employees should lose their jobs due to these amendments, the number would be relatively small, and would not rise to the level necessary to constitute a significant adverse impact on jobs (equivalent of decrease of 100 full-time annual jobs).

This rule making will avoid the potential for closure of the tautog fishery in New York. If the fishery to close, a significantly higher number of jobs could be affected. Thus, the restrictions are in fact an effort to minimize the potential for job loss due to a closure of the fishery. In the long term, the maintenance of sustainable fisheries will have a positive effect on party and charter boat owners and operators. Any short-term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. Protection of the tautog resource is essential to the survival of the party and charter boat operations and bait and tackle businesses that support in these fisheries.

Based on the above and Department staff's knowledge and past experience with similar regulations, the Department has concluded that there will not be any substantial adverse impacts on jobs or employment opportunities as a consequence of this rule making. Therefore, a job impact statement is not required.

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## Department of Health

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### EMERGENCY RULE MAKING

**Controlled Substances Data Submissions**

**I.D. No.** HLT-20-08-00027-E

**Filing No.** 361

**Filing date:** April 29, 2008

**Effective date:** April 29, 2008

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

**Action taken:** Amendment of sections 80.2, 80.23, 80.67, 80.68, 80.69, 80.71, 80.73, 80.74, 80.132 and 80.134 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 3308(2)

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

**Specific reasons underlying the finding of necessity:** We are proposing that these regulations be adopted on an emergency basis as authorized by Section 21 of the Public Health Law because immediate adoption is necessary to protect the public health from the threat posed by prescription drug abuse. Statistics from the National Institute on Drug Abuse indicate that the abuse of prescription pain relievers, stimulants, sedatives, and depressants is second only to the abuse of marijuana. The federal Drug Abuse Warning Network reports that emergency room visits due to abuse of prescription drugs are more than the visits due to abuse of cocaine and heroin combined. Experts in addiction medicine estimate that for every person addicted to heroin, there are two persons addicted to prescription narcotics. The trafficking in prescription controlled substances increases the threat to the public health by exponential proportions.

Immediate adoption of these regulations is necessary to protect the public health from an alarming increase in the non-medical use of prescription controlled substances, by both adults and children. The emergency regulations will provide immediate enhancements to the monitoring capability of the Official Prescription Program to detect and prevent drug diversion by allowing the Department to immediately begin more efficient monitoring of the acquisition of controlled substances by healthcare professionals authorized to possess them for legitimate medical use. Such monitoring will detect non-legitimate use and protect the public health from professionals who are impaired by their own drug abuse or traffic in drugs for profit. The regulations will also immediately allow practitioners increased flexibility to treat chronic pain from conditions other than diseases and afford hospice patients with more time to partial fill their controlled substance prescriptions to better meet their medication needs at this crucial stage in their lives.

Immediate adoption of these regulations is also necessary to facilitate more humane euthanasia of animals in animal control facilities through the utilization of additional drugs. Immediate adoption is also necessary to bring Part 80 regulations regarding euthanasia of animals in conformity with statute. Section 3305(1)(d) of the Public Health Law was previously enacted to authorize the safe and efficient use of ketamine hydrochloride and sodium pentobarbital for euthanasia in animal shelters, however, regulations implementing the statute were not promulgated at the time.

**Subject:** Controlled substances data submissions.

**Purpose:** To prevent diversion of prescription controlled substances, pharmacies would be required to submit information regarding method of payment and whether the dispensed prescription was a refill or an original and distributors and manufacturers of controlled substances would be required to submit controlled substance sales data. To provide practitioners increased flexibility when treating chronic pain from conditions other than diseases. To increase the time for hospice patients to partial fill their controlled substance prescriptions. To allow more humane euthanasia of animals in municipal animal shelters.

**Text of emergency rule:** Section 80.2, paragraph (6), of Title 10 NYCRR is hereby amended to read as follows:

Section 80.2 Exemptions.

(a) Pursuant to section 3305 of the Public Health Law, the provisions of this Part restricting the possession of controlled substances shall not apply to:

\* \* \*

(6) a duly authorized agent of an incorporated society for the prevention of cruelty to animals or a municipal animal control facility for the limited purpose of purchasing, possessing and dispensing sodium pentobarbital to registered and certified personnel, to euthanize animals *and ketamine hydrochloride to anesthetize animals prior to euthanasia.*

Section 80.23, a new subdivision (f), of Title 10 NYCRR is hereby added to read as follows:

Section 80.23 - Records and reports

\* \* \*

(f) *Reports. Manufacturers and distributors shall report to the Department, in a manner approved by the Department, information of the sale of controlled substances. Such information shall be filed electronically with the Bureau of Narcotic Enforcement, utilizing a transmission format acceptable to the Department. The information filed with the Department shall include, but not be limited to:*

(i) *the manufacturer's or distributor's name, address, phone number, DEA registration number and controlled substance license number issued by the Department;*

(ii) *the name, address and DEA registration number of the entity to whom the controlled substance was sold;*

(iii) *the date of the sale of the controlled substance;*

(iv) *the name and National Drug Code (NDC) of the controlled substance sold; and*

(v) *the number of containers and the strength and metric quantity of controlled substance in each container of controlled substance sold.*

Section 80.67, subdivision (d), of Title 10 NYCRR is hereby amended to read as follows:

Section 80.67 - Schedule II and certain other substances

\* \* \*

(d)(1) A practitioner may issue a prescription for up to a three month supply of a controlled substance, including chorionic gonadotropin, or up to a six month supply of an anabolic steroid if used in accordance with the directions for use, provided that the prescription has been issued for the treatment of:

(i) panic disorders, designated as code A;

(ii) attention deficit disorder, designated as code B;

(iii) chronic debilitating neurological conditions characterized as a movement disorder or exhibiting seizure, convulsive or spasm activity, designated as code C;

(iv) relief of pain in patients suffering from *conditions or* diseases known to be chronic [and] *or* incurable, designated as code D;

(v) narcolepsy, designated as code E; or

(vi) hormone deficiency states in males, gynecologic conditions that are responsive to treatment with anabolic steroids or chorionic gonadotropin, metastatic breast cancer in women, anemia and angioedema, designated as code F.

\* \* \*

Section 80.68, subdivision (d), paragraph (2), of Title 10 NYCRR is hereby amended to read as follows:

Section 80.68 - Emergency oral prescriptions for schedule II substances and certain other controlled substances

\* \* \*

(d)(1) The pharmacist filling the prescription shall endorse upon the prescription the date of delivery, and his/her signature.

(2) The endorsed prescription shall be retained by the proprietor of the pharmacy for a period of five years. The prescription information shall be filed electronically with the Bureau of Narcotic Enforcement, utilizing a transmission format acceptable to the Department, not later than the 15th day of the next month following the month in which the substance was delivered. The information filed with the department shall include but not be limited to:

(i) pharmacy prescription number;

(ii) pharmacy's National Identification Number;

(iii) patient name;

(iv) patient address, including street, city, state, zip code;

(v) patient date of birth;

(vi) patient's sex;

(vii) date prescription filled;

(viii) metric quantity;

(ix) National Drug Code number of the drug;

(x) number of days supply;

(xi) prescriber's Drug Enforcement Administration (DEA) number;

(xii) date prescription written; [and]

(xiii) serial number of official prescription form or an identifier designated by the department[.]; *and*

(xiv) *payment method.*

\* \* \*

Section 80.69, subdivision (d), of Title 10 NYCRR is hereby amended to read as follows:

80.69 Schedule III, IV and V substances.

\* \* \*

(d)(1) A practitioner may issue a prescription for up to a three month supply of a controlled substance if used in accordance with the directions for use, provided that the prescription has been issued for the treatment of:

(i) panic disorders, designated as code A;

(ii) attention deficit disorder, designated as code B;

(iii) chronic debilitating neurological conditions characterized as a movement disorder or exhibiting seizure, convulsive or spasm activity, designated as code C;

(iv) relief of pain in patients suffering from *conditions or* diseases known to be chronic [and] *or* incurable, designated as code D;

(v) narcolepsy, designated as code E; or

(vi) hormone deficiency states in males, gynecologic conditions that are responsive to treatment with anabolic steroids or chorionic gonadotropin, metastatic breast cancer in women, anemia and angioedema, designated as code F.

\* \* \*

Section 80.71, subdivision (e), of Title 10 NYCRR is hereby amended to read as follows:

Section 80.71 Practitioner; dispensing controlled substances

\* \* \*

(e) The practitioner shall submit dispensing information, for all controlled substances dispensed, electronically to the department utilizing a transmission format acceptable to the department by not later than the 15th day of the next month following the month in which the substance was delivered. The information filed with the department shall include but not be limited to:

(i) *dispenser* [practitioner] identifier;

(ii) patient name;

(iii) patient address, including street, city, state, zip code;

(iv) patient date of birth;

(v) patient's sex;

(vi) date controlled substance dispensed;

(vii) metric quantity;

(viii) National Drug Code number of the drug;

(ix) number of days supply; [and]

(x) prescriber's Drug Enforcement Administration (DEA) number[.]; *and*

(xi) *payment method.*

Section 80.73, subdivision (f) and subdivision (l), paragraph (5), of Title 10 NYCRR are hereby amended to read as follows:

Section 80.73 - Pharmacists; dispensing schedule II substances and certain other controlled substances

\* \* \*

(f) The endorsed official New York State prescription shall be retained by the proprietor of the pharmacy for a period of five years. The prescription information shall be filed electronically with the Bureau of Narcotic Enforcement, utilizing a transmission format acceptable to the department, not later than the 15th day of the next month following the month in which the substance was delivered. The information filed with the department shall include but not be limited to:

- (1) pharmacy prescription number;
- (2) pharmacy's National Identification Number;
- (3) patient name;
- (4) patient address, including street, city, state, zip code;
- (5) patient date of birth;
- (6) patient's sex;
- (7) date prescription filled;
- (8) metric quantity;
- (9) National Drug Code number of the drug;
- (10) number of days supply;
- (11) prescriber's Drug Enforcement Administration number;
- (12) date prescription written; and
- (13) serial number of official prescription form, or an identifier designated by the Department;
- (14) payment method;
- (15) number of refills authorized; and
- (16) refill number.

\* \* \*

(5) The official New York State prescription shall be valid for a period not to exceed 30 days from the date the prescription was issued by the practitioner unless terminated sooner upon notification from the practitioner of the discontinuance of medication. All partial fillings filled under subdivision (1) of this section must occur within 30 days from the date the prescription was issued[.], *except that partial fillings of prescriptions issued for more than a 30 day supply for patients residing in a residential healthcare facility or for patients enrolled in a hospice program that is licensed or approved by the Department must occur within 60 days from the date the prescription was issued.*

\* \* \*

Section 80.74, subdivision (e), of Title 10 NYCRR is hereby amended to read as follows:

Section 80.74 - Pharmacists; dispensing schedule III, IV and V controlled substances

\* \* \*

(e) The pharmacist filling the official prescription shall endorse on the face of such prescription his/her signature, the date of filling, and the number of the prescription under which it is recorded in the pharmacy prescription file. Such endorsed prescription shall be retained by the proprietor of the pharmacy for a period of five years. Prescription information [form] from the [original] filling of such prescription shall be filed with the department in accordance with section 80.73(f) of the Part.

\* \* \*

Section 80.132, subdivision (a), paragraph 14, of Title 10 NYCRR is hereby amended to read as follows:

Section 80.132 Hypodermic syringes and needles; designation of persons or classes of persons.

\* \* \*

(14) a duly authorized agent of an incorporated society for the prevention of cruelty to animals or a municipal animal control facility for the limited purpose of purchasing, possessing and dispensing sodium pentobarbital to registered and certified personnel to euthanize animals and *ketamine hydrochloride to anesthetize animals prior to euthanasia;*

\* \* \*

Section 80.134, subdivision (a), paragraphs (3) and (4) and subdivision (f) of Title 10 NYCRR are hereby amended to read as follows:

Section 80.134. Authorization for the purchase, possession and dispensing of *ketamine hydrochloride only to anesthetize animals for euthanasia and sodium pentobarbital to euthanize animals.*

- \* \* \*
- (3) Solution shall mean:
- (i) a premixed solution of sodium pentobarbital, manufactured only and specifically for the euthanasia of animals, which contains such other ingredients as to place such solution within schedule III of the Controlled Substances Act (article 33, Public Health Law);
  - (ii) *schedule II sodium pentobarbital; and*
  - (iii) *ketamine hydrochloride only to anesthetize animals for euthanasia.*

(4) An agent is a person or persons other than a licensed veterinarian appointed by the incorporated society or municipal animal control facility, and duly registered with the department, authorized to purchase, possess and dispense *ketamine hydrochloride only to anesthetize animals for euthanasia and sodium pentobarbital to euthanize animals.*

\* \* \*

(f) Registration and certification of individuals to administer solution for euthanasia of animals. (1) No person other than a licensed veterinarian shall receive a controlled substance from a duly authorized agent of a society or facility to euthanize [dogs and cats] *animals* unless the person is certified and registered with 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 July 27, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqna@health.state.ny.us

**Regulatory Impact Statement**

Statutory Authority:

Section 3308(2) of the Public Health Law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provisions of Article 33 of the Public Health Law in order to effectuate its purposes and intent. Section 21 of the Public Health Law authorizes the Commissioner to promulgate any emergency regulations in furtherance of Section 21, which expanded the Official Prescription Program, the Department's Prescription Drug Monitoring Program(PDMP).

Section 3305(1)(d) authorizes the Department to adopt regulations that provide for the safe and efficient use of ketamine hydrochloride to anesthetize animals only as part of the euthanasia procedure and sodium pentobarbital to euthanize animals by incorporated societies for the prevention of cruelty to animals and animal control facilities.

Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administering and distribution of controlled substances within New York. The legislative purposes of Article 33 are to combat the illegal use of and trade in controlled substances and to allow the legitimate use of controlled substances in health care, including palliative care, veterinary care, research and other uses authorized by the law.

Needs and Benefits:

The Department of Health's most valuable means of combating drug abuse is its Official Prescription Program, which effectively monitors the prescribing and dispensing of controlled substances highly prone to diversion and trafficking. Current Part 80 regulations require pharmacies to submit specific information from the original fillings of all prescriptions dispensed for controlled substances. These regulations also require practitioners to submit information when they dispense controlled substances. Analysis of the prescription and dispensing data curtails diversion of controlled substances by detecting individuals who seek drugs because of addiction or for trafficking.

Because the existing regulations do not require pharmacies to submit information from the refilling of controlled substance prescriptions, the data may indicate that an individual has only obtained a controlled substance once, when it may have been obtained numerous times as refills. Because the regulations also do not require pharmacies or practitioners to submit prescription or dispensing information indicating method of payment, drug-seeking individuals can obtain controlled substances or prescriptions from multiple practitioners. They do so by filling the prescriptions at different pharmacies, paying cash to evade detection by pharmacies and third party payers. Drug-seekers obtaining controlled substances directly from dispensing practitioners also avoid detection when the payment for dispensing the drugs is included in the practitioner's overall fee for the office visit.

The Department is proposing amendments to Part 80 regulations to require pharmacies to submit prescription information indicating whether a controlled substance was dispensed as a new prescription or a refill. Proposed amendments will also require pharmacies and practitioners who dispense controlled substances to patients to submit information on the method of payment for the dispensed substance. These amendments will prevent diversion by allowing the Department to continue to monitor the

dispensing of controlled substance prescriptions, as well as controlled substances dispensed to patients by practitioners, but with a more complete history of a drug-seeking individual's prescription and controlled substance activity.

The Department also combats drug diversion through the analysis of records and reports of licensed manufacturers and distributors to detect inappropriate procurement of controlled substances by practitioners, pharmacies and institutional dispensers. While four companies voluntarily submit reports to the Bureau of Narcotic Enforcement regarding their sales of controlled substances, more than 500 do not because it is not required by existing regulations.

Amendments to Part 80 will require all such companies to submit to the Department information from distribution of controlled substances. Such information will be reported electronically through a secure account established with the Department's Health Provider Network. These amendments will protect the public health by enhancing the Department's monitoring capability-through the use of remote analyses comparing distribution and dispensing records-to detect and prevent controlled substance diversion by healthcare professionals who are authorized by law to purchase and possess these drugs solely for legitimate use within their scope of practice.

In the past, the Bureau has discovered diversion by monitoring and analysis of company distribution records indicating individual practitioners ordering large quantities of controlled substances. These identified practitioners have obtained controlled substances under the guise of dispensing them to their patients. However, they instead abused these substances to sustain their own addiction or trafficked in them for profit. Requiring that these records of distribution be reported electronically to the Department on a monthly basis will ensure a more efficient method of monitoring by the Bureau and result in timely identification of those practitioners who divert controlled substances to non-legitimate use. Controlled substance distribution records can be compared with controlled substance administration and dispensing records to detect unlawful activity.

While one purpose of the regulations is to prevent the diversion of controlled substances, an equally important purpose is to ensure access to controlled substances for treatment of legitimate medical conditions. The Department proposes to amend the regulations to allow practitioners who treat patients for chronic pain from conditions other than diseases the ability to issue prescriptions for greater than a thirty-day supply when such prescriptions are designated with the Code D. This flexibility in issuing prescriptions for larger quantities will aid those patients by not requiring them to obtain a new prescription from their practitioner each month, which they then must bring to their pharmacy. This amendment will ease some of the burden for these patients, who may be experiencing decreased mobility in addition to their chronic pain. By also amending the regulations to allow hospice patients up to 60 days to partial fill their controlled substance prescriptions, it will allow the patients to better adjust their changing medication needs.

Part 80 regulations authorize an incorporated society for the prevention of cruelty to animals and a municipal animal control facility to utilize sodium pentobarbital to euthanize animals. Such facilities and their agents also must first register with the Department and the federal Drug Enforcement Administration in order to purchase, possess, and dispense sodium pentobarbital for euthanasia.

Animal control facilities provide a valuable public service by treating stray, injured, aged, sick, and feral animals. However, current Part 80 regulations authorize such animal shelters to euthanize animals only with a schedule III formulation of sodium pentobarbital, which is not approved by the U.S. Food and Drug Administration for use with cats and smaller animals. While licensed veterinarians are authorized to euthanize with Schedule II sodium pentobarbital, they are not regularly available to perform the euthanasia in animal shelters.

Humane Societies and animal control facilities have apprised the Department that the available schedule III sodium pentobarbital formulation is recommended only for the euthanizing of dogs and larger animals. The formulation's high viscosity renders it difficult to utilize for cats and other small pets. Required use of this drug often results in seizures, fear and pain to the animals at the time of euthanasia and creates a hardship for the shelters. The facilities state that such difficulty results in less humane treatment of the animals when necessary to euthanize.

The Department is proposing amendments to Part 80 that authorize animal control facilities to utilize ketamine hydrochloride for anesthesia only as part of the euthanasia procedure and a schedule II formulation of

sodium pentobarbital for euthanasia. The amendments will allow pets and animals of all sizes to be more humanely treated when these drugs are indicated for use.

#### COSTS:

##### Costs to Regulated Parties:

Pharmacies currently collect and maintain the dispensing information that the Department proposes to be additionally included with the information that is now submitted; therefore, there are only minor anticipated additional costs to pharmacies. Because practitioners are currently required to electronically submit dispensing information to the Department, there are only minor anticipated increased costs to practitioners to submit a minimal addition to that information. Practitioners and pharmacies who dispense small amounts of controlled substances submit dispensing information through the Department's Health Provider Network (HPN) by manually uploading the data into fields already provided on the HPN site. A minimal addition to those data fields should only incur a minor increase in data submission costs. The American Society for Automation in Pharmacy (ASAP) is the nationwide software system that pharmacies and practitioners that dispense large amounts of controlled substances utilize to submit required dispensing information to the Department. The ASAP software already contains the capability to transmit the additional data fields required by the proposed regulations. Activating those additional ASAP data fields will require only minor programming costs by pharmacies and dispensing practitioners.

Manufacturers and distributors are required to maintain records of distribution. The requirement to report this information electronically to the Department may create a slight expenditure, but because manufacturers and distributors currently maintain these records in an electronic format, such expense is anticipated to be minimal to make the format compatible with the Department's system of receiving the information.

There will be no increased costs associated with the proposed amendment to allow practitioners to issue controlled substance prescriptions in quantities greater than a 30-day supply to treat patients suffering from chronic pain caused by an incurable condition or disease. No increased costs are anticipated by allowing hospice patients more time to partial fill their controlled substance prescriptions.

There may be a minimal cost to the incorporated society for the prevention of cruelty to animals, municipal animal control facility or animal shelter utilizing the additional drugs proposed for euthanasia. This cost is associated with the purchase of ketamine hydrochloride and schedule II pentobarbital for more humane euthanasia of all sizes of animals.

##### Costs to State and Local Government:

There will be no costs to state or local government.

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

There will be no additional costs to the Department.

##### 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:

No additional paperwork is required for pharmacies, practitioners, manufacturers and distributors. Pharmacies and practitioners currently maintain the records that the Department will require to be transmitted electronically. Manufacturers and distributors are required to maintain records of distribution of controlled substances. The electronic transmission of such records will not create any additional paperwork, and may actually reduce some paperwork.

There will not be any additional paperwork associated with the proposed amendment to allow practitioners to issue controlled substance prescriptions in quantities greater than a 30-day supply to treat patients suffering from chronic pain caused by an incurable condition or disease. In fact, there may be less paperwork, as practitioners would be able to issue a controlled substance prescription every three months as opposed to monthly.

There may be a minimal increase in paperwork for pharmacies to document partially filled prescriptions for hospice patients.

Including ketamine hydrochloride for anesthesia only as part of the euthanasia procedure and schedule II formulation of sodium pentobarbital for euthanasia may involve a minimal increase in recordkeeping paperwork for animal control facilities.

##### Duplication:

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

##### Alternatives:

There are no alternatives that would support the approach to be taken under the regulations. The information the Department is seeking through these new regulations is not available from any other source.

**Federal Standards:**

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

**Compliance Schedule:**

These regulations will become effective upon filing with the Department of State.

**Regulatory Flexibility Analysis**

**Effect of Rule on Small Business and Local Government:**

This proposed rule would affect retail pharmacies that partially dispense controlled substance prescriptions for hospice patients. The rule will also affect practitioners who dispense controlled substances and prescribe them for the treatment of chronic pain. The rule will also affect licensed manufacturers and distributors of controlled substances.

According to the New York State Board of Pharmacy, there are approximately 4,500 registered pharmacies in New York State. According to the Bureau of Narcotic Enforcement, there are approximately 600 manufacturers and distributors licensed by the Department to distribute controlled substances in New York State.

**Compliance Requirements:**

The proposed regulations follow the intent of Article 33 of Public Health Law and will further enhance the Department's ability to curtail diversion of controlled substances.

Currently, pharmacies are required to submit the dispensing data for the original dispensing of all controlled substance prescriptions. The only new compliance requirement is the submission of the method of payment for the controlled substance prescription and whether the drug was the original dispensing or the refill dispensing of a controlled substance prescription. The only new compliance requirement for dispensing practitioners is to submit a minimal amount of additional information.

Manufacturers and distributors are required to maintain records of distribution of controlled substances. The proposed regulations will require reports based upon these records to be electronically transmitted to the Department.

Proposed regulations place compliance requirements on animal control facilities only if they choose to utilize ketamine hydrochloride for anesthesia only as part of the euthanasia procedure and/or schedule II sodium pentobarbital for euthanasia of animals.

**Professional Services:**

No additional professional services are necessary.

**Compliance Costs:**

Pharmacies and dispensing practitioners may require minor adjustments in computer software programming due to additional dispensing and prescription data submission requirements; however, this should require only minimal additional costs. The system utilized by pharmacies and practitioners already contains the additional data fields for submission of information. A slight expenditure may be necessary for activation of those fields by an Information Technology technician. Manufacturers and distributors may incur a slight expenditure due to the requirement for electronic transmission of data, but such expenditure should not create a financial hardship. There will be no compliance costs for authorizing practitioners to prescribe more than a 30-day supply of a controlled substance to treat a patient for chronic pain cause by an incurable condition or disease. Compliance costs to animal control facilities will be as a result of utilizing the proposed drugs for more humane euthanasia of animals, however, while the proposed regulations authorize the use of the additional drugs, the regulations do not require their use.

**Economic and Technological Feasibility:**

The proposed rule is both economically and technologically feasible. The process utilizes existing electronic systems for reporting of dispensing by pharmacies and practitioners. The regulations will create new requirements for manufacturers and distributors but the Department expects most of these entities to currently maintain the required records of distribution in an electronic format. There are minimal technological and economic constraints anticipated for animal control facilities because the proposed rule authorizes the use of ketamine hydrochloride and schedule II pentobarbital for the euthanasia process but does not require that facilities utilize the additional drugs.

**Minimize Adverse Impact:**

The regulations require only a minimal increase in reporting requirements. These requirements are for the electronic transmission of records that current regulations require pharmacies, practitioners, manufacturers and distributors to maintain.

**Small Business and Local Government Participation:**

During the drafting of these regulations, the Department met with or solicited comment from the Pharmaceutical Society of the State of New York, the Medical Society of the State of New York, the National Association of Pharmaceutical Manufacturers, the Humane Society of the United States, the Community Hospice and the Mohawk & Hudson River Humane Society. Local governments are not affected, except for those municipalities operating animal shelters.

**Rural Area Flexibility Analysis**

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

The proposed rule will apply to pharmacies, practitioners, manufacturers and distributors located in all rural areas of the state. Outside of major cities and metropolitan population centers, the majority of counties in New York contain rural areas. These can range in extent from small towns and villages and their surrounding areas, to locations that are sparsely populated.

**Compliance Requirements:**

The only compliance requirements are for the electronic transmission of information to the Department that pharmacies, practitioners, manufacturers and distributors are required by current regulations to maintain.

**Professional Services:**

None necessary.

**Compliance Costs:**

The systems utilized by pharmacies and practitioners to submit dispensing data already contain the additional data fields. The compliance costs to activate those fields are anticipated to be minimal. The cost for an Information Technology technician to make electronic record systems of manufacturers and distributors compatible with the Department's system of receipt of controlled substance sales information is also anticipated to require minimal expenditures.

**Minimizing Adverse Impact:**

The regulations require only a minimal increase in reporting and recordkeeping requirements.

**Rural Area Participation:**

During the drafting of this regulation, the Agency met with and solicited comments from pharmacy, practitioner, hospice and manufacturer associations who represent these professions in rural areas. No particular issues relating to the effect of this program on rural areas were expressed.

**Job Impact Statement**

This proposal will not have a negative impact on jobs and employment opportunities. In benefiting the public health by ensuring that drug diversion is curtailed through enhanced analysis of information from controlled substance prescriptions and the dispensing and distribution of controlled substances, the proposed amendments are not expected to either increase or decrease jobs overall. No overall increase or decrease in jobs is anticipated for animal control facilities utilizing the proposed additional drugs for more humane euthanasia of animals.

**NOTICE OF WITHDRAWAL**

**Ketamine Hydrochloride and Schedule II Sodium Pentobarbital**

**I.D. No. HLT-44-07-00032-W**

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

**Action taken:** Notice of proposed rule making, I.D. No. HLT-44-07-00032-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on October 31, 2007.

**Subject:** Use of ketamine hydrochloride and schedule II sodium pentobarbital by animal control facilities.

**Reason(s) for withdrawal of the proposed rule:** Upon publication, the consensus regulation received two comments from the public. It is now being promulgated as an emergency.

## Office of Mental Health

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

#### Rights of Patients

**I.D. No.** OMH-20-08-00026-EP

**Filing No.** 357

**Filing date:** April 25, 2008

**Effective date:** April 25, 2008

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

**Action taken:** Amendment of Part 527 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene, arts. 7 and 33

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

**Specific reasons underlying the finding of necessity:** To clarify that persons confined or committed to secure treatment facilities are afforded the same rights to object to care and treatment as those involuntarily committed to hospitals.

**Subject:** Rights of patients.

**Purpose:** To make Part 527 applicable to persons confined/committed to secure treatment facilities operated by OMH as defined in Mental Health Law, section 10.03.

**Text of emergency/proposed rule:** 1. Paragraph (1) of Subdivision (a) of Section 527.1 of Title 14 NYCRR is amended as follows:

(1) Except as otherwise indicated by the specific context, and with the exception of sections 527.4 and 527.6, this Part shall apply to all psychiatric hospitals operated by the Office of Mental Health, all residential treatment facilities for children and youth, and to all psychiatric hospital services required to have an operating certificate from the Office of Mental Health, and provided further that section 527.8 shall also apply to all secure treatment facilities operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law.

2. Subdivision (b) of Section 527.1 of Title 14 NYCRR is amended as follows:

(b) The intent of this Part is to define the rights of patients receiving treatment at psychiatric hospitals and to extend certain rights provided in section 527.8 of this Part to persons confined or committed to secure treatment facilities operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law.

3. Section 527.2 of Title 14 NYCRR is amended to read as follows:

(a) [Mental Hygiene Law, section 7.07(c),] *Section 7.07 of the Mental Hygiene Law* gives the Office of Mental Health responsibility for seeing that the personal and civil rights of mentally ill persons receiving care and treatment are adequately protected.

(b) Section [7.09(c)] *7.09 of the Mental Hygiene Law* authorizes the [commissioner] *Commissioner* to adopt regulations necessary and proper to implement any matter under his jurisdiction. [Section 7.09(i)] *Such section* also requires the [commissioner] *Commissioner* to promulgate regulations to address the communications needs of non-English-speaking individuals seeking or receiving services in facilities operated or licensed by the Office of Mental Health.

(c) *Sections 10.06 and 10.10 of the Mental Hygiene Law* give the Office of Mental Health responsibility for providing care, treatment, and control to sex offenders confined or committed to a secure treatment facility, as defined in Section 10.03 of such law.

[(b)] (d) Article 31 of the Mental Hygiene Law authorizes the commissioner to visit and inspect all services for the mentally ill in the State, and requires providers of certain mental health services to have an operating certificate issued by the Office of Mental Health. Section 31.04 of such law further empowers the [commissioner] *Commissioner* to issue regulations setting standards for licensed programs for the rendition of services for the mentally ill.

[(c)] (e) Section 33.02 of the Mental Hygiene Law establishes statutory rights of mentally disabled persons and requires the commissioner to publish regulations informing residents of facilities or programs operated or licensed by the Office of Mental Health of their rights under law.

[(d)] (f) Section 33.05 of the Mental Hygiene Law provides that each patient in a facility shall have the right to communicate freely and privately with persons outside the facility as frequently as he wishes, subject to regulations of the commissioner designed to assure the safety and welfare of patients and to avoid serious harassment to others.

[(e)] (g) Article 29-C of the Public Health Law establishes the right of competent adults to appoint an agent to make health care decisions in the event they lose decision-making capacity. Article 29-C further empowers the Office of Mental Health to establish regulations regarding the creation and use of health care proxies in mental health facilities.

[(f)] (h) The Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, sections 4206 and 4751) requires that institutional providers participating in the Medicare or Medical Assistance programs inform patients about their rights, under State law, to express their preferences regarding health care decisions.

4. Paragraphs (3) and (6) of Subdivision (a) of Section 527.8 of Title 14 NYCRR are amended as follows:

(3) Clinical director means the individual in charge of clinical services at the hospital or a secure treatment facility operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law, where the patient is receiving care and treatment, or a physician designated by that individual to carry out the responsibilities of the clinical director described in this section.

(6) Patients on involuntary status for the purposes of this section includes patients retained on an involuntary basis pursuant to article 9 of the Mental Hygiene Law, patients retained pursuant to the Criminal Procedure Law, Family Court Act or Correction Law patients on voluntary status for whom application to a court for involuntary retention has been made, [and] minors, other than those admitted on their own application, for whom consent of a parent or guardian cannot be obtained, and persons confined or committed to a secure treatment facility operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law.

**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 June 23, 2008.

**Text of rule and any required statements and analyses may be obtained from:** Joyce Donohue, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: cocbjdd@omh.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

1. Statutory authority: Section 7.07 of the Mental Hygiene Law gives the Office of Mental Health responsibility for seeing that the personal and civil rights of mentally ill persons receiving care and treatment are adequately protected. Section 7.09 authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his jurisdiction.

Article 33 of the Mental Hygiene Law establishes statutory rights of mentally disabled persons. Section 33.02 of such law requires the Commissioner to publish regulations informing patients of their rights under law.

Article 29-C of the Public Health Law establishes the right of competent adults to appoint an agent to make health care decisions in the event they lose decision-making capacity. Article 29-C further empowers the Office of Mental Health to establish regulations regarding the creation and use of health care proxies in mental health facilities.

The Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, sections 4206 and 4751) requires that institutional providers participating in the Medicare or Medical Assistance programs inform patients about their rights, under State law, to express their preferences regarding health care decisions.

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. In 2007, the Legislature enacted Article 10 of the Mental Hygiene Law to provide for the civil management of sex offenders who suffer from a "mental abnormality." Such offenders who are predisposed to engage in repeated sex offenses may be involuntarily confined or committed to secure treatment facilities. Such secure treatment facilities were newly created by this legislation and could not have been contemplated when Section 527.8 of Part 527 of Title 14 NYCRR was promulgated. This emergency amendment clarifies that such persons are afforded the same rights to object to care and treatment as those non-sex offenders who are involuntarily committed to hospitals.

3. Needs and benefits: Section 527.8 of Part 527 of Title 14 was originally promulgated in response to the 1986 Court of Appeals decision in *Rivers v. Katz*, 67 NY2d 485. There, the Court held that, absent an emergency, persons held involuntarily at psychiatric facilities could only be treated with antipsychotic medication over their objection following a judicial finding that, first, the person lacks the mental capacity to make a reasoned decision with respect to proposed treatment, and second, the proposed treatment is narrowly tailored to give substantive effect to the patient's liberty interest. The rights provided by the Court apply with equal force to persons committed to secure treatment facilities under Article 10, as they do to person committed to psychiatric hospitals under Article 9 of the Mental Hygiene Law.

4. Costs:

(a) cost to State government: These regulatory amendments will not result in any additional costs to State government.

(b) cost to local government. These regulatory amendments will not result in any additional costs to local government.

(c) cost to regulated parties: These regulatory amendments will not result in any additional costs to regulated parties.

5. Local government mandates: These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not substantially increase the paperwork requirements of those affected.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only alternative considered was not addressing whether persons determined to be detained or dangerous sex offenders who are involuntarily confined or committed to secure treatment facilities are afforded the same rights to object to care and treatment as those non-sex offenders who are involuntarily committed to hospitals. This alternative was necessarily rejected.

9. Federal standards: The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The regulatory amendments could be implemented immediately.

**Regulatory Flexibility Analysis**

Because it is evident from the nature of the proposed rule that there will be no adverse economic impact on small businesses or local governments, a regulatory flexibility analysis is not submitted with this notice.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas.

**Job Impact Statement**

It is clear from the nature of this regulatory amendment, which simply clarifies the rights of persons who are confined or committed to secure treatment facilities operated by the Office of Mental Health, that there will be no adverse impact on jobs or employment opportunities in New York State.

**Subject:** Fee setting in home and community-based (HCBS) waiver community residential habilitation services, clinical treatment facilities, and day treatment facilities for persons with developmental disabilities.

**Purpose:** To establish cost of living (COLA) adjustments and trend factors applicable to these facilities and services, effective Aug. 1, 2008.

**Public hearing(s) will be held at:** 10:30 a.m., June 30, 2008\* at Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., 3rd Fl., Counsel's Office Conference Rm., Albany, NY; and 10:30 a.m., July 1, 2008\* at Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., 3rd Fl., Counsel's Office Conference Rm., Albany, NY.

\* Please call OMRDD at (518) 474-1830 no later than Monday, June 23, 2008 to indicate that you intend to participate.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Interpreter Service:** Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Text of proposed rule:** Paragraph 671.7(a)(1) - Add new subparagraphs (xxviii) and (xxix):

(xxviii) *Effective August 1, 2008, community residences are eligible for a cost of living adjustment (COLA) to be included in their final net fee. This add-on is a 3.2 percent increase to the operating portion of allowed reimbursement and is for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2008 through March 31, 2009. From August 1, 2008 to March 31, 2009, community residences will be reimbursed operating costs that result in a full annual COLA of 3.2 percent as if the COLA were reimbursed from April 1, 2008 through March 31, 2009. In order to receive this adjustment, a provider which did not submit a COLA attestation for 2007-2008 is required to submit to OMRDD a Letter of Attestation, signed by the Executive Director and President or equivalent of the governing body, which details how the COLA is expended.*

(xxix) *Facilities initially certified on or after April 1, 2009, shall be deemed to have met the requirements for an approved COLA add-on described in subparagraph (xxviii) of this paragraph, and a corresponding factor shall be included in the final net fee.*

Subparagraph 679.6(j)(1)(v) - Add new clauses (ad) and (ae):

(ad) *Effective August 1, 2008, facilities are eligible for a cost of living adjustment (COLA) of 3.2 percent to the operating portion of allowed reimbursement that was in effect on March 31, 2008. This adjustment is for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2008 through March 31, 2009. From August 1, 2008 to March 31, 2009, facilities will be reimbursed operating costs that result in a full annual COLA of 3.2 percent as if the COLA were reimbursed from April 1, 2008 through March 31, 2009. In order to receive this adjustment, a provider which did not submit a COLA attestation for 2007-2008 is required to submit to OMRDD a Letter of Attestation, signed by the Executive Director and President or equivalent of the governing body, which details how the COLA is expended.*

(ae) *Facilities initially certified on or after April 1, 2009 shall be deemed to have met the requirements for the Letter of Attestation required in clause (ad) of this subparagraph.*

Note: current clause (v)(ad) is renumbered as (af).

Subparagraph 690.7(d)(6)(iii) - add new clause (f):

(f) *Effective August 1, 2008, facilities are eligible for a trend factor of 3.2 percent to the operating portion of the fee. This trend factor is for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2008 through March 31, 2009. From August 1, 2008 to March 31, 2009, facilities will be reimbursed operating costs that result in a full annual trend factor of 3.2 percent as if the trend factor were reimbursed from April 1, 2008 through March 31, 2009. In order to receive this trend factor, a provider which did not submit a Letter of Attestation for 2007-2008 is required to submit to OMRDD a Letter of Attestation, signed by the Executive Director and President or equivalent of the governing body, which details how the trend factor monies are expended. Facilities initially certified on or after April 1, 2009 shall be deemed to have met the requirements for the Letter of Attestation required by this clause.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland

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## Office of Mental Retardation and Developmental Disabilities

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### PROPOSED RULE MAKING HEARING(S) SCHEDULED

**Fee Setting**

**I.D. No.** MRD-20-08-00033-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 671.7, 679.6 and 690.7 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.07, 13.09(b) and 43.02

Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

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

**Public comment will be received until:** five days after the last scheduled public hearing.

**Additional matter required by statute:** Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

#### **Regulatory Impact Statement**

##### 1. Statutory Authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

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

c. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates for services in facilities licensed by OMRDD.

2. Legislative Objectives: These proposed amendments further the legislative objectives embodied in sections 13.07, 13.09(b), and 43.02 of the Mental Hygiene Law. The enactment of these proposed amendments will ensure the funding to voluntary agency providers of the following services:

a. Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7).

b. Clinic Treatment Facilities (amendments to section 679.6).

c. Day Treatment Facilities for Persons with Developmental Disabilities (amendments to section 690.7).

This funding is necessary in order to enable voluntary agencies that operate the above facilities to maintain services in the areas of care, treatment, rehabilitation, and training of persons with mental retardation and developmental disabilities.

3. Needs and Benefits: From the time of their inception and implementation in New York State, OMRDD has provided funding for the above referenced facilities and services. Such funding is necessary to assure the continued delivery of services to persons with developmental disabilities. The proposed amendments are concerned with establishing the respective cost of living (COLA) adjustments and trend factors applicable to these facilities and services, effective August 1, 2008.

##### 4. Costs:

a. Costs to the agency and to the State and its local governments. The aggregate cost of the application of the COLAs and trend factors contained in the proposed amendments is approximately \$4.45 million. This represents approximately \$2.22 million in State funds and \$2.22 million in federal funds.

Pursuant to Social Services Law sections 365 and 368-a, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. Further, for the current State fiscal year, there are no costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

The specific impacts by facility or program type are as follows:

For Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). Currently, OMRDD funds voluntary operated community residence facilities which are providing services to approximately 490 persons as of January 2008. The amendments implement a COLA of 3.2 percent on the operating portion of allowed reimbursement for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2008 through March 31, 2009. OMRDD anticipates that all eligible providers will avail themselves of this increase. The estimated total cost for implementation of this COLA on an aggregate annualized basis is approximately \$1,488,000 for the period beginning April 1, 2008. This represents approximately \$744,000 in State share and \$744,000 in federal funds. There are no costs to local governments as a result of the amendments.

For Clinic Treatment Facilities (amendments to section 679.6). As of January 2008, OMRDD certified Clinic Treatment facilities were providing services to approximately 30,000 individuals statewide. The proposed amendments establish fee schedules which include a COLA of 3.2 percent on the operating portion of allowed reimbursement for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2008 through March 31, 2009. OMRDD anticipates that all eligible providers will avail themselves of this increase. The estimated total cost for implementation of this COLA on an aggregate annualized basis is approximately \$2.16 million for the period beginning April 1, 2008. This represents approximately \$1.08 million in State share and \$1.08 million in federal funds. There are no costs to local governments as a result of the amendments.

For Day Treatment facilities serving persons with developmental disabilities (amendments to section 690.7). As of January 2008, OMRDD certified Day Treatment facilities were serving approximately 3,500 persons statewide. The proposed amendments implement a trend factor of 3.2 percent on the operating portion of allowed reimbursement for expenditures related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2008 through March 31, 2009. OMRDD anticipates that all eligible providers will avail themselves of this increase. The aggregate cost of this trend factor for day treatment facilities is approximately \$804,000. This represents approximately \$402,000 in State share and \$402,000 in federal government funding. There will be no additional costs to local governments as a result of these trend factor amendments.

In all instances, these estimated cost impacts have been derived by applying the COLA and trend factor provisions of the proposed amendments within the context of the respective reimbursement methodologies to the providers of services certified or authorized as of January 2008.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. The proposed amendments are necessary to maintain funding of the above cited facilities at revised levels of reimbursement in effect as of August 1, 2008. Since the amendments provide for COLA and trend factor increases to the providers of the various facilities and services, the amendments will result in increased funding to provider agencies.

There will be some minor administrative effort involved in the submission of the required Letters of Attestation signed by the Executive Director and President or equivalent of the governing body for those providers required to do so. Consistent with the requirements of Chapter 57 of the Laws of 2006 and Chapter 58 of the Laws of 2008, these letters are to attest that the COLA is or was used for the purposes of promoting recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2008 through March 31, 2009. The letters must detail how the COLA or trend factor is to be or was expended.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: As discussed above, there will be some paperwork associated with the preparation and forwarding of the required Letters of Attestation signed by the Executive Director and President or equivalent of the governing body if the participating provider had not already prepared one last year.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited facilities or services for persons with developmental disabilities.

8. Alternatives: The current course of action as embodied in these emergency/proposed amendments reflects what OMRDD believes to be a fiscally prudent, cost-effective reimbursement of the facilities and developmental disabilities services in question. No alternatives to these COLAs and trend factors were considered.

9. Federal Standards: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: The proposed regulations have been filed to achieve a August 1, 2008 effective date consistent with time frames set forth in the State Administrative Procedure Act (SAPA). The proposed amendments are concerned with revising the various reimbursement methodologies to implement COLA and trend factor adjustments for facilities and providers of services to persons with developmental disabilities. The amendments do not impose any significant new requirements with which regulated parties are expected to comply since similar Letter of Attestation

or Board Resolution requirements have, in the past, been associated with such COLA and trend factor provisions. For some providers there will be a minimal compliance effort associated with the preparation and forwarding of the previously discussed Letters of Attestation, but this will be more than offset by the benefits.

#### **Regulatory Flexibility Analysis**

1. Effect on small business: These regulatory amendments will apply to voluntary not-for-profit corporations that operate the following facilities and/or provide the following services for persons with developmental disabilities in New York State:

Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). Currently, OMRDD funds voluntary operated community residence facilities which were serving approximately 490 persons as of January 2008.

Clinic Treatment facilities serving persons with developmental disabilities in New York State (amendments to section 679.6). As of January 2008, OMRDD certified Clinic Treatment facilities were providing services to approximately 30,000 persons.

Day Treatment Facilities for Persons with Developmental Disabilities (amendments to section 690.7). As of January 2008, OMRDD certified Day Treatment facilities were providing services to approximately 3,500 persons.

The OMRDD has determined, through a review of the certified cost reports, that most of the organizations which operate the above referenced facilities or provide the developmental disabilities services employ fewer than 100 employees at the discrete certified or authorized sites and would, therefore, be classified as small businesses.

The amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will continue to provide appropriate funding for small business providers of developmental disabilities services. Further, OMRDD expects that the amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements. In fact, the provisions contained in the amendments will provide for increased reimbursements to small business providers of services, due to the application of the COLAs and trend factor established by the amendments. Specific impacts of the increased funding are set forth in the accompanying Regulatory Impact Statement as costs to State and Federal government.

The increased funding in the COLA and trend factor adjustments must be used by providers for purposes related to the promotion of recruitment and retention of staff or to respond to other critical non-personal service costs during the period of April 1, 2008 through March 31, 2009. As discussed in the Regulatory Impact Statement, for some providers there will be a minimal administrative effort involved in the submission of the required Letters of Attestation signed by the Executive Director and President or equivalent of the governing body of eligible facilities. These requirements will be kept to a minimum, consistent with Chapter 57 of the Laws of 2006 and Chapter 58 of the Laws of 2008.

Pursuant to Social Services Law sections 365 and 368-a, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. Further, for the current State fiscal year, there are no costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

2. Compliance requirements: There are no significant additional compliance requirements for small businesses or local governments resulting from the implementation of these amendments. For eligible facilities which did not participate in the previous year's COLA or trend factor, there will be some minor administrative effort involved in the submission of the required Letters of Attestation signed by the Executive Director and President or equivalent of the governing body. Chapter 57 of the Laws of 2006 requires that these letters are to attest that the COLA or trend factor is used for the purposes of promoting recruitment and retention of staff or to respond to other critical non-personal service costs for the period of April 1, 2008 through March 31, 2009. The letters must detail how the COLA or trend factor is to be or was expended. These requirements will be kept to a minimum, consistent with Chapter 57 of the Laws of 2006 and Chapter 58 of the Laws of 2008.

Since this minimal compliance effort will be required of only a very small number of small business providers, OMRDD does not, at this time, contemplate, or see the need for, the development of a small business regulation guide as provided for by new section 102-a of the State Admin-

istrative Procedure Act. OMRDD will assist those few providers that need to submit the required Letters of Attestation.

3. Professional services: In accordance with existing practice, providers are required to submit annual cost reports by certified accountants. The amendments do not alter this requirement. Therefore, no additional professional services are required as a result of these amendments. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these amendments.

5. Economic and technological feasibility: The amendments are concerned with rate/fee setting in the affected facilities or services, and only revise the reimbursement methodologies which describe the ways in which OMRDD calculates the appropriate reimbursement of such facilities and services. The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: The purpose of these amendments is to allow OMRDD to reimburse providers of the referenced facilities and services at revised levels as of April 1, 2008. Specifically, these amendments establish trend factor and COLA adjustments of 3.2 percent on the operating portion of allowed reimbursement of the referenced facilities or services for the period beginning April 1, 2008 through March 31, 2009. The trend factor and COLA provisions will have positive impacts resulting from increased reimbursements to the providers.

The amendments will have no fiscal impact on local governments due to the implementation of the 3.2 percent COLA and trend factor provisions. Pursuant to Social Services Law sections 365 and 368-a, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. Further, there are no costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

7. Small business and local government participation: To the extent that information regarding provider reimbursement has been available, OMRDD has shared and discussed such information with provider representatives.

In addition, OMRDD is required to hold public hearings only on those amendments to section 671.7 as they may affect reimbursement of the room and board components of the community residence fees. OMRDD has scheduled public hearings to be held on June 30, 2008 and July 1, 2008 according to the information provided in the Notice of Proposed Rule Making.

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

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. The amendments are concerned with providing necessary revisions to the reimbursement methodologies which OMRDD uses in determining the reimbursement of the affected developmental disabilities services or facilities. OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations (rural/urban). The amendments themselves only increase funding for providers regardless of location. Also, the Community Residence and Day Treatment reimbursement methodologies are primarily based upon reported costs of individual facilities, or of similar facilities operated by the provider or similar providers in the same area. Thus, the reimbursement methodologies have been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

As discussed in the Regulatory Impact Statement, there will be some minor administrative effort involved in the submission of the required Letters of Attestation signed by the Executive Director and President or equivalent of the governing body for some facilities. These requirements will be kept to a minimum, consistent with Chapter 57 of the Laws of 2006 and Chapter 58 of the Laws of 2008, and will be greatly offset by the benefits of the additional funding resulting from the trend factor and COLA increases.

#### **Job Impact Statement**

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. This finding is based on the fact that the amendments are con-

cerned with providing revisions to the reimbursement methodologies which OMRDD uses in determining the appropriate reimbursement of the affected developmental disabilities services or facilities. The amendments are primarily concerned with establishing trend factor and cost of living adjustments (COLA) to be applied within the context of reimbursement methodologies for the affected program and services. They will not have any adverse impacts. Consistent with Chapter 57 of the Laws of 2006 and Chapter 58 of the Laws of 2008, the trend factor and COLA increases are primarily intended to be used for expenditures related to the promotion of recruitment and retention of staff. Therefore, it is reasonable to expect that the amendments will have a positive impact on jobs or employment opportunities in New York State.

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## Public Service Commission

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### NOTICE OF ADOPTION

#### Mini Rate Filing by Bath Electric, Gas and Water Systems

**I.D. No.** PSC-28-07-00010-A

**Filing date:** April 23, 2008

**Effective date:** April 23, 2008

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

**Action taken:** The commission, on April 23, 2008, adopted an order approving Bath Electric, Gas & Water System's request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 1.

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

**Subject:** Mini rate filing by Bath Electric, Gas and Water Systems.

**Purpose:** To approve an increase in annual electric revenues by \$68,908 or 1.7 percent.

**Substance of final rule:** The Public Service Commission adopted an order approving the request of Bath Electric, Gas & Water Systems to increase annual electric revenues by \$68,908 or 1.7%, effective May 1, 2008.

**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.

(07-E-0754SA1)

### NOTICE OF ADOPTION

#### Estimating Customer Gas and/or Electric Usage by New York State Electric and Gas Corporation

**I.D. No.** PSC-39-07-00019-A

**Filing date:** April 24, 2008

**Effective date:** April 24, 2008

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

**Action taken:** The commission, on April 23, 2008, adopted an order approving the petition filed by New York State Electric & Gas Corporation (NYSEG) to revise the procedures for estimating customer usage of electricity and natural gas for billing purposes when metered usage data is not available.

**Statutory authority:** Public Service Law, section 39

**Subject:** NYSEG's procedures for estimating customer usage for the purpose of rendering billed charges.

**Purpose:** To modify the procedure for estimating customer usage in instances when metered usage data is not available.

**Substance of final rule:** The Commission adopted an order approving the petition filed by New York State Electric & Gas Corporation to revise the procedures for estimating customer usage of electricity and natural gas for billing purposes when metered usage data is not available.

**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.

(07-M-1052SA1)

### NOTICE OF ADOPTION

#### Estimating Customer Usage for the Purpose of Rendering Billed Charges by Rochester Gas & Electric Corporation

**I.D. No.** PSC-39-07-00020-A

**Filing date:** April 24, 2008

**Effective date:** April 24, 2008

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

**Action taken:** The commission, on April 23, 2008, adopted an order approving the petition filed by Rochester Gas & Electric Corporation (RG&E) to revise the procedures for estimating customer usage of electricity and natural gas for billing purposes when metered usage data is not available.

**Statutory authority:** Public Service Law, section 39

**Subject:** RG&E's procedures for estimating customer usage for the purpose of rendering billed charges.

**Purpose:** To modify the procedure for estimating customer usage in instances when metered usage data is not available.

**Substance of final rule:** The Commission adopted an order approving the petition filed by Rochester Gas & Electric Corporation to revise the procedures for estimating customer usage of electricity and natural gas for billing purposes when metered usage data is not available.

**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.

(07-M-1053SA1)

### NOTICE OF ADOPTION

#### Merger by United Water Owego Inc. and United Water Nichols Inc.

**I.D. No.** PSC-48-07-00013-A

**Filing date:** April 23, 2008

**Effective date:** April 23, 2008

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

**Action taken:** The commission, on April 23, 2008, adopted an order approving the joint petition to merge United Water Owego Inc. and United Water Nichols Inc. with United Water Owego-Nichols Inc. as the surviving corporation.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10), 89-h and 108

**Subject:** Merger of United Water Owego Inc. and United Water Nichols Inc.

**Purpose:** To approve the merger.

**Substance of final rule:** The Commission adopted an order approving the joint petition to merge United Water Owego Inc. and United Water Nichols Inc. with United Water Owego-Nichols Inc. as the surviving corporation, 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. (07-W-0872SA1)

## NOTICE OF ADOPTION

### Water Rates and Charges by United Water Owego Inc. and United Water Nichols Inc.

**I.D. No.** PSC-48-07-00014-A

**Filing date:** April 23, 2008

**Effective date:** April 23, 2008

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

**Action taken:** The commission, on April 23, 2008, adopted an order approving in part the terms and conditions of a joint proposal dated Feb. 13, 2008 by staff of the Department of Public Service, United Water Owego Inc. and United Water Nichols Inc. for a three year rate plan for the surviving corporation of United Water Owego-Nichols Inc.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10)

**Subject:** Water rates and charges.

**Purpose:** To adopt in part the terms and conditions of a joint proposal that provides for a three year rate plan for the surviving corporation of United Water Owego-Nichols Inc.

**Substance of final rule:** The Commission adopted an order approving in part the terms and conditions of a joint proposal dated Feb. 13, 2008 by staff of the Department of Public Service, United Water Owego Inc. and United Water Nichols Inc. for a three year rate plan for the surviving corporation of United Water Owego-Nichols Inc., 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. (07-W-0639SA1)

## NOTICE OF ADOPTION

### Rider C—Residential Distributed Generation Rates by Orange and Rockland Utilities, Inc.

**I.D. No.** PSC-05-08-00028-A

**Filing date:** April 25, 2008

**Effective date:** April 25, 2008

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

**Action taken:** The commission, on April 23, 2008, adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) request to make various changes in rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 4.

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

**Subject:** Rider C—residential distributed generation rates.

**Purpose:** To approve the revision of O&R's residential distributed generation rates.

**Substance of final rule:** The Public Service Commission approved Orange and Rockland Utilities Inc.'s (the company) tariff amendment, to update its rates for residential distributed generation customers to reflect the company's new delivery rates, effective May 1, 2008.

**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-M-0515SA20)

## NOTICE OF ADOPTION

### Investigation and Remediation of the Coney Island and the Citizens Former Manufactured Gas Plant Sites by National Grid plc, et al.

**I.D. No.** PSC-07-08-00012-A

**Filing date:** April 24, 2008

**Effective date:** April 24, 2008

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

**Action taken:** The commission, on April 23, 2008 denied National Grid plc's petition for rehearing of its order issued and effective Dec. 21, 2007.

**Statutory authority:** Public Service Law, sections 22, 65 and 66

**Subject:** National Grid plc's petition for rehearing.

**Purpose:** To deny National Grid plc's petition for rehearing of rate treatment.

**Substance of final rule:** The Public Service Commission denied National Grid plc's petition for rehearing of the Commission's order issued and effective December 21, 2007, in Cases 06-G-1185 and 06-G-1186 in all respects for the reasons discussed in the body 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. (06-G-1185SA3)

## NOTICE OF ADOPTION

### 25 and 60 Hertz Service by Niagara Mohawk Power Corporation d/b/a National Grid

**I.D. No.** PSC-09-08-00004-A

**Filing date:** April 23, 2008

**Effective date:** April 23, 2008

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

**Action taken:** The commission, on April 23, 2008, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 207.

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

**Subject:** Elimination of Service Classification No. 5—combined 25 and 60 hertz service.

**Purpose:** To approve the elimination of Service Classification No. 5—combined 25 and 60 hertz service, and modify rule No. 43—transmission revenue adjustment.

**Substance of final rule:** The Public Service Commission adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's request to eliminate Service Classification No. 5—Combined 25 and 60 Hertz Service, and to modify Rule No. 43—Transmission Revenue Adjustment, effective April 28, 2008.

**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.  
(08-E-0114SA1)

### NOTICE OF ADOPTION

**Rider U—Distribution Load Relief Program by Consolidated Edison Company of New York, Inc.**

**I.D. No.** PSC-10-08-00009-A

**Filing date:** April 24, 2008

**Effective date:** April 24, 2008

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

**Action taken:** The commission, on April 23, 2008, adopted an order approving Consolidated Edison Company of New York, Inc.'s request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 9—Electricity, to become effective April 28, 2008.

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

**Subject:** Rider U—Distribution Load Relief Program (Rider U).

**Purpose:** To approve revisions to Rider U including a revision to the penalty provision under the Summer Reservation Payments Program.

**Substance of final rule:** The Public Service Commission adopted an order approving Consolidated Edison Company of New York, Inc.'s request for tariff revisions to the Rider U—Distribution Load Relief Program including a revision to the penalty provision under the Summer Reservation Payments program, effective April 28, 2008, 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.  
(08-E-0176SA1)

### NOTICE OF ADOPTION

**Report on Rider U—Distribution Load Relief Program by Consolidated Edison Company of New York, Inc.**

**I.D. No.** PSC-10-08-00010-A

**Filing date:** April 24, 2008

**Effective date:** April 24, 2008

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

**Action taken:** The commission, on April 23, 2008, adopted an order regarding Consolidated Edison Company of New York, Inc.'s report on Rider U—Distribution Load Relief Program pursuant to commission order in Case 07-E-0392, issued June 21, 2007.

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

**Subject:** Report on Rider U—Distribution Load Relief Program (Rider U).

**Purpose:** To approve with modifications the report assessing the effectiveness of the Rider U Program changes on increasing the level of customer participation.

**Substance of final rule:** The Public Service Commission adopted an order regarding Consolidated Edison Company of New York, Inc.'s report on Rider U—Distribution Load Relief Program pursuant to Commission Order in Case 07-E-0392, issued June 21, 2007, and directed the company to make several changes to be implemented for the summer 2008 capability period, 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.  
(08-E-0176SA2)

### NOTICE OF ADOPTION

**Waiver of Rules by Orange and Rockland Utilities, Inc. and Sprint Spectrum L.P.**

**I.D. No.** PSC-10-08-00011-A

**Filing date:** April 25, 2008

**Effective date:** April 25, 2008

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

**Action taken:** The commission, on April 23, 2008, adopted an order approving the joint petition filed by Orange and Rockland Utilities, Inc. (O&R) and Sprint Spectrum L.P. for waiver of 16 NYCRR section 31.1(f) through (l), regarding contents of petitions under PSL section 70 for attachment of wireless equipment to O&R's transmission towers.

**Statutory authority:** Public Service Law, sections 4(1), 66(1) and 70

**Subject:** Waiver of rules by Orange and Rockland Utilities Inc. and Sprint Spectrum L.P.

**Purpose:** To approve a waiver of rules regarding leased property for wireless attachments to O&R's transmission facilities.

**Substance of final rule:** The Commission adopted an order approving the joint petition filed by Orange and Rockland Utilities, Inc. (O&R) and Sprint Spectrum L.P. for waiver of 16 NYCRR sections 31.1(f) through (l), regarding contents of petitions under PSL § 70 for attachment of wireless equipment to O&R's transmission towers.

**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.  
(07-M-0954SA2)

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

**Transfer of Ownership of Electric and Steam Plant by KeySpan Ravenswood Services Corporation**

**I.D. No.** PSC-20-08-00029-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 joint petition from KeySpan Ravenswood Services Corporation, KeySpan Ravenswood LLC, and TransCanada Facility USA, Inc. requesting approval of the transfer of ownership interests in electric and steam plant

located at the Ravenswood generating station in Queens, NY, and related relief.

**Statutory authority:** Public Service Law, sections 70 and 83

**Subject:** Transfer of ownership of electric and steam plant located at the Ravenswood Generating Station.

**Purpose:** To consider the transfer of ownership of electric and steam plant located at the Ravenswood Generating Station.

**Substance of proposed rule:** The Public Service Commission is considering a joint petition from KeySpan Ravenswood Services Corporation, KeySpan-Ravenswood LLC, and TransCanada Facility USA, Inc. requesting approval of the transfer of ownership interests in electric and steam plant located at the Ravenswood Generating Station in Queens, NY, and related relief. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**Data, views or arguments may be submitted to:** Jaelyn A. Brillig, 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. (08-M-0436SA1)

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## Racing and Wagering Board

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### NOTICE OF ADOPTION

**Licensing and Standard for Totalisator Companies**

**I.D. No.** RWB-32-07-00013-A

**Filing No.** 362

**Filing date:** April 29, 2008

**Effective date:** Jan. 1, 2009

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

**Action taken:** Addition of Part 5100 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 227, 301, 305, 401, 405, 520 and 1002

**Subject:** Creates standards and licensing requirements for totalisator companies involved in pari-mutuel activities in New York.

**Purpose:** To ensure the integrity of pari-mutuel wagering by adopting licensing and regulatory standards for totalisator companies.

**Text or summary was published** in the notice of proposed rule making, I.D. No. RWB-32-07-00013-P, Issue of August 8, 2007.

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

**Revised rule making(s) were previously published in the State Register on** February 20, 2008.

**Text of rule and any required statements and analyses may be obtained from:** Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: [info@racing.state.ny.us](mailto:info@racing.state.ny.us)

**Assessment of Public Comment**

The Board received one comment concerning the revised proposal. This comment is from the Director of Operations for Scientific Games Racing, LLC, a company that currently provides totalisator services to multiple New York pari-mutuel racing operators.

Citing 5100.35(a)(10), which pertains to wagering reports for multi-leg pools over four legs, it was noted that the report is not available from remote sites for certain pools. In response, the Board had added text at end of this paragraph as originally proposed to read, "This requirement is

applicable only to a host racetrack." In essence, the Board recognizes that the amount bet on every runner combination will be available only for all tickets sold on-site at the host wagering entity. To the extent that the Board would require the runner combination information for the remote locations, the Board would provide additional time for this information to be furnished. Accordingly, the Board has determined that no change is needed to address this current limitation with regard to the obligation of the host track's totalisator company.

### NOTICE OF ADOPTION

**Internet and Telephone Account Wagering on Horseracing**

**I.D. No.** RWB-33-07-00005-A

**Filing No.** 365

**Filing date:** April 29, 2008

**Effective date:** May 14, 2008

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

**Action taken:** Addition of Part 5300 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 222, 301, 401, 518, 520, 1002 and 1012

**Subject:** Internet and telephone account wagering on horseracing.

**Purpose:** To establish requirements for race track operators and off-track betting corporations that offer account wagering.

**Text or summary was published** in the notice of proposed rule making, I.D. No. RWB-33-07-00005-P, Issue of August 15, 2007.

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

**Revised rule making(s) were previously published in the State Register on** February 13, 2008.

**Text of rule and any required statements and analyses may be obtained from:** Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: [info@racing.state.ny.us](mailto:info@racing.state.ny.us)

**Assessment of Public Comment**

The Board received one comment concerning the revised proposal. This comment is from the Executive Director of Operations for the Nassau Regional Off-Track Betting Corporation, a New York authorized pari-mutuel operator.

Citing 5300.4(a)(5), which pertains to the retention of validated credentials used to confirm identity when the account is established, Nassau OTB suggests that the Board eliminate the requirement to retain copies of the credentials if the information has been verified with a credit reporting agency and the report is kept with the account application. The Board had previously amended the proposal to remove the file copy requirement for a social security card under identical circumstances.

The Board considered the comment but found that the requirement to keep copies is not a significant burden in relation to the need to maintain an audit trail to verify compliance with and completion of the account establishment process. Accordingly, the Board has determined that no change will be made in response to this suggestion.

### NOTICE OF ADOPTION

**Merchandise Wheels**

**I.D. No.** RWB-52-07-00007-A

**Filing No.** 363

**Filing date:** April 29, 2008

**Effective date:** May 14, 2008

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

**Action taken:** Amendment of section 5620.10 of Title 9 NYCRR.

**Statutory authority:** General Municipal Law, sections 188-a and 189(6)

**Subject:** Merchandise wheels and the maximum dollar amount of prizes that can be awarded before the wheel must be closed.

**Purpose:** To amend the board's games of chance rules and regulations.

**Text or summary was published** in the notice of proposed rule making, I.D. No. RWB-52-07-00007-P, Issue of December 26, 2007.

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

**Text of rule and any required statements and analyses may be obtained from:** Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: [info@racing.state.ny.us](mailto:info@racing.state.ny.us)

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION****Games of Chance**

**I.D. No.** RWB-07-08-00016-A

**Filing No.** 364

**Filing date:** April 29, 2008

**Effective date:** May 14, 2008

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

**Action taken:** Amendment of section 5603.8 of Title 9 NYCRR.

**Statutory authority:** General Municipal Law, sections 188-a and 195

**Subject:** Games of chance.

**Purpose:** To amend the board's games of chance rules and regulations.

**Text or summary was published** in the notice of proposed rule making, I.D. No. RWB-07-08-00016-P, Issue of February 13, 2008.

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

**Text of rule and any required statements and analyses may be obtained from:** Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: info@racing.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

ity's proposed toll adjustment. Both documents are available at the offices of the New York State Thruway Authority located at 200 Southern Blvd., Albany, NY 12209 and may be obtained by contacting Tracie M. Sandell, Assistant Counsel at (518) 436-3188

**Assessment of Public Comment**

The following is a summary of the Assessment of Public Comments document prepared pursuant to SAPA Section 202(5). As the full Assessment of Public Comments exceeds 2000 words, this summary is provided. A copy of the Assessment of Public Comments is available at the Authority's Headquarters, 200 Southern Blvd., Albany, NY or by calling Tracie M. Sandell, Assistant Counsel at 518-436-3188.

The following summarizes identifiable comments raised during the public comment process for the New York State Thruway Authority's (Authority) proposed toll adjustment, including the public hearings held in Albany, Buffalo, Rochester, Syracuse and West Nyack. Several interest groups have provided comments, including transportation/trucking/automobile interests; farming/dairy interests and contractors. Additionally, this memorandum discusses identifiable comments of localized and legislative interest raised during the public comment process.

While many comments were received in opposition to the toll increase, these individuals expressed support for the high levels of service provided by the Thruway in operating and maintaining a safe highway system. They also expressed opposition to the continued diversion of toll revenue to non-Thruway projects such as the Canal System and I-287. However, the Authority does not have the ability to divest itself of such mandates as the Canal System and I-287.

Many farming interests opposed the toll increase because of their inability to pass increased costs onto consumers. Many trucking and farming interests advocated for the retention of the commercial volume discount programs and for keeping the Temporary S-Discount in place. The proposed toll adjustment will be phased in over the next few years and will maintain its discount programs for commercial charge account customers. The Authority structured the toll adjustment with a phased approach and maintained its various discount programs with the intention of mitigating the impact of the toll adjustment on the states agricultural and trucking industries. In addition, the Authority's Temporary S-Discount program will not be eliminated as originally proposed but instead will be restricted to those customers of the E-ZPass New York Customer Service Center Authorities.

Comments were also received from the contracting industry. The contracting industry was generally in support of the toll adjustment and highlighted the need to properly operate and maintain the road and the consequences of inadequate funding for maintenance and operation, such as the recent tragedy of the bridge collapse in Minnesota. Some comments received even encouraged the Authority to undertake a larger toll increase at this time as inflation associated with construction materials continues to rise as does the cost of gasoline. The Authority believes, based on its own analysis and that of its independent consultant, Stantec Inc., the proposed toll adjustment is sufficient to meet the current operational and capital needs of the Authority/Corporation.

Others were opposed to the toll increase and encouraged the Authority to become more efficient before imposing a toll increase and some questioned why the Authority was still in existence when the tolls were originally supposed to be temporary. Many felt there should be no tolls collected at all and that the Authority should receive more federal aid and plan on receiving such aid. In 1989 (Chapter 634), Governor Cuomo and the State Legislature created the Thruway Authority Transition Advisory Council and charged it with the responsibility to "make recommendations concerning the future of the Thruway and the Thruway Authority after the scheduled retirement of the Authority's bondable debt in the year 1996" The Advisory Council, which by law was required to have membership from a diverse group of interests (including business, trucking and other highway users, state and local government, labor and highway planners) issued its report on September 30, 1991. The Advisory Council stated that while the Thruway could be made toll free, it could not be made free. Fundamentally, the State's choice in financing the Thruway after retirement of the bonds used to finance the construction of the system was between tolls and taxes. The Advisory Council concluded that tolls were the preferable choice because it was more appropriate for those who actually use the Thruway to pay for its maintenance and upkeep rather than the taxpayers of New York generally. Therefore, the Advisory Council recommended to the Legislature and the Governor that the tolls be maintained and that the Authority with its bonding ability, be retained to meet the highway transportation needs along the Thruway corridor. In order to eliminate the tolls, the Legislature would have had to enact legislation to

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**Thruway Authority**

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**NOTICE OF ADOPTION****Toll Rate Adjustments**

**I.D. No.** THR-06-08-00004-A

**Filing No.** 359

**Filing date:** April 25, 2008

**Effective date:** June 29, 2008

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

**Action taken:** Repeal of sections 101.2 and 101.4 and addition of new sections 101.2 and 101.4 to Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, sections 354(5), (8), (15) and 361(1); and Vehicle and Traffic Law, section 1630

**Subject:** Toll rate adjustments.

**Purpose:** To finance the authority's capital plan and comply with the relevant requirements of the general revenue bond resolution and the authority's fiscal management guidelines.

**Text or summary was published** in the notice of proposed rule making, I.D. No. THR-06-08-00004-P, Issue of February 6, 2008.

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

**Text of rule and any required statements and analyses may be obtained from:** Tracie M. Sandell, Assistant Counsel, Thruway Authority, 200 Southern Blvd., Albany, NY 12209, (518) 436-3188, e-mail: tracie.sandell@thruway.state.ny.us

**Additional matter required by statute:** Pursuant to Article 8 of the Environmental Conservation Law and Part 617 of the implementing regulations pertaining thereto, the Board of the New York State Thruway Authority determined as of April 25, 2008 that Notice of Determination of Non-Significance in relation to a Negative Declaration in connection with the SEQRA Unlisted Action, that being the adoption of revised toll rates, should be published herewith. A copy of the Negative Declaration is on file at the offices of the New York State Thruway Authority located at 200 Southern Blvd., Albany, NY 12209 and may be obtained by contacting Christopher Waite, Chief Engineer, at (518) 436-2810.

Public Authorities Law Section 2804 requires that a detailed financial report be submitted to the Governor, Comptroller and Chairs and Ranking Members of the Legislative Fiscal Committees. Said report was provided as required. In addition, the Comptroller published an audit on the Author-

remove the Authority's power to impose tolls and to issue debt secured by tolls once the original bonds were retired. Instead, in 1992, the Governor and the State Legislature enacted legislation to further expand the responsibilities of the Authority to include the operation and maintenance of the canal system and authorized additional indebtedness secured by toll revenues to assist with the financing and new responsibility. While other highways in New York are financed with tax dollars, the Thruway Authority receives no state tax dollars and depends on tolls to maintain, operate and police its roads and bridges. Further, the Authority's Bond covenants preclude free passage except in limited circumstances. In addition, operating under Board-imposed cost containment measures, the Authority has already eliminated more than 450 positions since 1995 and plans to eliminate at least another 50 positions by the end of 2012. Further, the Authority's overall operating expense budget is expected to grow 3.2 percent annually between 2008-2012, significantly less than the 5.0 percent growth rate included in the 2008-2009 New York State Operating Funds Budget. In addition, the Authority has already cut more than \$300 million of projects from the \$2.7 billion Multi-Year Highway and Bridge Capital Program due to inflationary costs. The Authority will continue to evaluate its own operating costs; however, as the Audit Report of the New York State Comptroller stated, the Authority has been given "additional areas of responsibility that went beyond its original mission of constructing, operating and maintaining the Thruway," spending more than \$1 billion since the early 1990's. The Authority has no control over the amount of federal aid that it will receive in the future.

Others were opposed to a toll increase because they feel commuters should travel toll free or at reduced tolls. The Authority has proposed a graduated toll adjustment plan that would have less of an impact on commuters who rely on the Thruway for their daily trip to and from their place of employment. Under the plan, the annual mainline commuter plan, upon payment of \$80 annually (where it has been since 1988) until 2009 when it would increase to \$84 and then to \$88 in 2010, a passenger car is entitled to the first 30 miles of every trip without further payment.

Many comments were received in opposition to the toll increase because of potential diversion of Thruway traffic to local roads. The Authority's independent consultant, Stantec, performed an analysis of peak hour diversions and traffic impacts along potential diversion routes. The volume of traffic that would divert from the Thruway due to the proposed toll increase is estimated to be relatively small. Specific information on diversion can be found in the full Assessment of Public Comments and in the Authority's Full Environmental Assessment.

The Authority also received many comments in support of the toll adjustment and compliments on the high levels of safety and service available to users of the Thruway. In addition, there was testimony received by the Authority opposing Canal cutbacks in seasonal hours and seasonal personnel from members of the public at the public hearings held throughout the state and via correspondence and thus supporting the proposed toll adjustment. As a result, the Authority will be restoring the canal hours between Memorial Day and Labor Day and not cutting as many seasonal personnel positions as a result of these comments.

In conclusion, the Authority undertook an extensive public outreach process and received many comments both in support and in opposition to its proposed toll adjustment. However, there were no suggestions within the Authority's control that raised suitable alternatives to the toll adjustment.