

# RULE MAKING ACTIVITIES

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

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

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

---

---

## Department of Audit and Control

---

---

### NOTICE OF ADOPTION

#### Reporting Requirements of Service, Salary and Deduction Information for Employers to NYSLRS

I.D. No. AAC-17-08-00002-A

Filing No. 1062

Filing Date: 2008-10-24

Effective Date: 2008-11-12

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

**Action taken:** Amendment of sections 315.2 and 315.3 of Title 2 NYCRR.

**Statutory authority:** Retirement and Social Security Law, sections 11, 34, 311 and 334

**Subject:** Reporting requirements of service, salary and deduction information for employers to NYSLRS.

**Purpose:** To provide guidance to participating employees concerning whether an individual is an employee or independent contractor.

**Text of final rule:** Section 315.2 is amended to read as follows:

§ 315.2 [Definition]Definitions.

(a) As used in this Part, the term employer shall mean the State, a participating employer, and any other unit of government or organization obligated or agreeing to make contributions to the retirement system on behalf of its employees.

(b) *The term employee shall mean an individual performing services for the employer for which the employer has the right to control the means and methods of what work will be done and how the work will be done.*

(c) *The term independent contractor shall mean a consultant or other individual engaged to achieve a certain result who is not subject to the direction of the employer as to the means and methods of accomplishing the result. For purposes of this part, when making a determination as to whether an individual is an employee or an independent contractor, the factors set forth hereinafter in § 315.3 (c) (2) shall be considered by the employer.*

Subdivision (c) of section 315.3 is amended to read as follows:

(c) Employees to be reported.

(1) Only persons who are active members of the New York State and Local Employees' Retirement System or the New York and Local Police and Fire Retirement System and who have been assigned a registration number shall be included in the above reporting requirements. In the case of employees who are in the process of being registered to membership, all service, salary and deductions data and mandatory contributions shall be accumulated by each employer and such accumulation shall be included with the first monthly report which is due after the employee's registration number has been assigned. Members of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System must be reported on separate reports.

(2) *Determination by Employer. An individual serving the employer as an independent contractor or consultant is not an employee and should not be reported to the retirement system. The employer has the primary responsibility for determining whether an individual is rendering services as an employee or as an independent contractor. When making such a determination, the employer must consider the following:*

(i) *Factors supporting the conclusion that an individual is an employee rather than an independent contractor:*

(A) *the employer controls, supervises or directs the individual performing the services, not only as to result but as to how assigned tasks are to be performed;*

(B) *the individual reports to a certain person or department at the beginning or during each work day;*

(C) *the individual receives instructions as to what work to perform each day;*

(D) *the individual's decisions are subject to review by the employer;*

(E) *the employer sets hours to be worked;*

(F) *the individual works at established and fixed hours;*

(G) *the employer maintains time records for the individual;*

(H) *the employer has established a formal job description;*

(I) *the employer's governing board formally created the position with the approval of the local civil service commission where necessary;*

(J) *the employer prepares performance evaluations;*

(K) *the employer requires that the individual attend training;*

(L) *the employer provides permanent workspace and facilities (including, but not limited to, office, furniture and/or utilities);*

(M) *the employer provides the individual with equipment and support services (including, but not limited to, computer, telephone, supplies and/or clerical assistance);*

(N) *the individual is covered by a contract negotiated between a union and the employer;*

(O) *the individual is paid salary or wages through the employer's payroll system;*

(P) *tax withholding and employee benefit deductions are made from the individual's paycheck; and*

(Q) *the individual is entitled to fringe benefits (including, but not limited to, vacation, sick leave, personal leave, health insurance and/or grievance procedures).*

(ii) *Factors supporting the conclusion that an individual is an independent contractor rather than an employee:*

(A) *the individual has a personal employment contract with the employer;*

(B) *the employer pays the individual for the performance of services through the submission of a voucher;*

(C) the individual is authorized to hire others, at the expense of the individual or a third party, to assist the individual in performing work for the employer;

(D) the individual provides similar services to the public;

(E) the individual is concurrently performing substantially the same services for other public employers; and

(F) the individual is also employed or associated with another entity that provides services to the employer by contract, retainer or other agreement

(iii) *Presumption:*

Except as prohibited by Section 2051 of Part 3 of Article 41 of the Education Law, which provides that a lawyer shall not simultaneously be an independent contractor and an employee of a school district or BOCES for the purpose of providing legal services, in the case of an individual whose service has been engaged by an employer in the capacity of attorney, physician, engineer, architect, accountant or auditor and who is also a partner, associate, including an attorney in an "of counsel" relationship, or employee of another organization or entity that has a contract, retainer or other agreement to provide professional services to the participating employer, it shall be presumed that the individual is an independent contractor and not an employee of the participating employer;

(iv) *Examples:*

(A) An attorney who, in providing services to a participating employer, sets his own hours, is not supervised in the manner in which the work is performed, uses his or her own office and staff and has no deductions from salary is considered to be an independent contractor.

(B) A physician who in performing examinations and providing medical services for a school district, is provided with office space in the school, has set hours, is provided with supplies and receives a fixed salary with regular payroll deductions is considered to be an employee;

(3) *Written explanation by participating employers; certain professions.* In the case of an individual whose service has been engaged by a participating employer in the capacity of attorney, physician, engineer, architect, accountant or auditor and the participating employer has determined that the individual is rendering service as an employee and, therefore, may be eligible for credit with a retirement system, such employer shall submit to the retirement system, in a form prescribed by the Comptroller and certified by the chief fiscal officer of the employer, an explanation of the factors that led to the conclusion that the individual is an employee and not an independent contractor or consultant. Such certification shall be submitted to the retirement system at the time the individual is registered to membership or, in the case of an individual who is already a member of the retirement system, at the time the individual is first reported by the participating employer to the system. In addition, such employer shall submit copies of documentation pertaining to the appointment of the individual as an employee and the decision to report the individual to the retirement system as well as the acceptance of the appointment by the local civil service commission where necessary. In the event appointments are made by a governing board of the participating employer, such documentation shall include a copy of the minutes of the meeting of such employer's governing board.

(4) *Explanation at the request of the retirement system.* In the case of any individual who is currently a member or a retiree of a retirement system, the retirement system may require that an employer submit to the retirement system an explanation of the factors that led to the conclusion that an individual engaged by the employer was an employee. An employer receiving such a request shall submit a response within thirty days of the date of the request or provide an explanation as to why it is unable to do so.

(5) *Adjustment reports.* In the event the retirement system or an employer determines that an individual has been incorrectly reported to a retirement system, the employer, upon notification from the retirement system, or upon its own initiative, shall promptly file salary and service adjustment reports with the retirement system to correct the error.

**Final rule as compared with last published rule:** Nonsubstantial changes were made in section 315.3(c)(2)(iii).

**Text of rule and any required statements and analyses may be obtained from:** Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany NY 12236, (518) 474-9024, email: JElacqua@osc.state.ny.us

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

Please be advised that the amendment made to section 315.3 (c)(2)(iii) is made for the purpose of conforming the text of the regulation to the provisions of chapter 640 of the laws of 2008 and therefore does not necessitate a revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact statement.

**Assessment of Public Comment**

The agency received no public comment.

## New York State Canal Corporation

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

#### Posting of Speed Limit Signage on the Canal System

I.D. No. NCC-46-08-00001-P

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

**Proposed Action:** Amendment of section 151.15 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, sections 354(5), 382(7)(d) and (k); and Canal Law, sections 10(9), (26) and 85

**Subject:** Posting of speed limit signage on the Canal System.

**Purpose:** To clarify that float speed shall not exceed any posted speed on canalized river sections of the Canal System.

**Text of proposed rule:** § 151.15 Speed on canals.

Every operator of a float is responsible for the wake of that float. In dug sections of the canal system, float speed shall not exceed 10 miles per hour, except within 100 feet of a dock, pier, raft, float, anchored or moored, float speed shall not exceed five miles per hour. In canalized rivers of the canal system, float speed shall not exceed the posted speed or, if there is no posted speed, shall depend on the conditions of traffic but shall not exceed 45 miles per hour, except within 100 feet of a dock, pier, raft, anchored or moored float, speed shall not exceed five miles per hour, unless such float is being operated near such dock, pier, raft, anchored or moored float for the purpose of enabling a person engaged in water skiing to take off or land. In lakes of the canal system, float speed shall depend on the conditions of traffic, except within 100 feet of the shoreline, a dock, pier, raft, anchored or moored float, speed shall not exceed five miles per hour, unless such float is being operated near such dock, pier, raft, anchored or moored float for the purpose of enabling a person engaged in water skiing to take off or land. So far as may be practicable, the rates of speed will be indicated for the various sections at each lock and in no event shall such rates of speed be exceeded. Any operator of a float violating this section shall be subject to a penalty not exceeding \$100 for each offense and the lock or bridge at which the float first appears following such violation, may refuse such float passage for a period of not more than six hours.

**Text of proposed rule and any required statements and analyses may be obtained from:** Marcy Pavone, Legal Assistant, New York State Thruway Authority, 200 Southern Blvd., Albany, New York 12209, (518) 436-2860, email: marcy\_pavone@thruway.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:**

Public Authorities Law (PAL) section 354, subdivision 5, authorizes the Thruway Authority to make "rules and regulations governing the use of the thruways and all other properties and facilities under its jurisdiction." Further, section 382, subdivision 7(d) authorizes the Canal Corporation to "make and alter by-laws for its organization and internal management and make rules and regulations governing the use of its property and facilities." Subdivision 7(k) of the same section authorizes the Canal Corporation to "exercise those powers and duties of the authority pursuant to the canal law." Canal Law section 85 states that, "[T]he corporation shall prescribe and enforce rules and regulations, not inconsistent with the law, governing navigation on the canals and for the use of the terminals connected with the canals and for the use of all other property of the corporation under the corporation's control and maintained as a part of the canal system." Canal Law section 10, subdivision 9 authorizes the Canal Corporation to "prescribe rules and regulations not inconsistent with law relating to the navigation, protection and maintenance of the canal system..." and subdivision 26 authorizes the Canal Corporation to "[P]erform such other acts as in its judgment constitute a duty required to efficiently administer the canal system."

2. **Legislative Objectives:**

The amendment to 21 NYCRR 151.15 would add to the existing language prescribing maximum speed limits on canalized river sections of the Canal System, clarifying language that references that float speed shall not exceed the posted speed. This additional language clarifies the Canal Corporation's authority to post lower limits, where appropriate, in the interest of public safety and shoreline protection.

3. Needs and Benefits:

The proposed language that specifies that speed shall not exceed posted speed limits makes it clear that, where appropriate in the interest of public safety and shoreline protection, there may be posted speed limits that are lower than the existing maximum speed limit of 45 miles per hour on canalized river sections of the Canal System. This change has been requested by Troop T of the New York State Police to assist in marine law enforcement operations and is preferable to the establishment by regulation of speed limits for each reach, or section, of the Canal System. Concurrent with this clarification, speed limit signage will be erected at certain locations where safety or operational concerns dictate speeds lower than forty-five miles per hour.

4. Costs:

There is no cost to regulated parties for the implementation of and continuing compliance with the regulation. There are no additional administrative costs for implementation of the revised regulation.

5. Local Government Mandates:

This rule imposes no additional program, service, duty, or responsibility on local government beyond any law enforcement program already in place.

6. Paperwork:

None.

7. Duplication:

There is no duplication of State or Federal Law.

8. Alternatives:

The Canal Corporation considered a no action alternative but chose to pursue this rule as an effort to protect the safety and welfare of users of the New York State Canal system. The New York State Police advocated for the need for different speed limits on certain sections of the canal for law enforcement purposes. In addition to the New York State Police, the Canal Corporation regularly consulted with State Council on Waterways (SCOW) President Tom Ryan on this issue. In 2005 a boater forum sponsored by SCOW was held in Little Falls to get feedback on boating speed along the canal. Furthermore, the Canal Corporation also held a joint press conference in Baldwinsville in 2006 with SCOW President Tom Ryan on the matter. Though they favored reducing the river speed limit from 45 MPH to a universal 10 MPH, they were open to a compromise, which is area-appropriate speed limits consistent with Canal regulations. The proposed language that specifies that speed shall not exceed posted speed limits makes it clear that, where appropriate in the interest of public safety, to reduce shoreline erosion or to minimize impacts to property along the canal, there may be posted speed limits that are lower than the existing maximum speed limit of 45 miles per hour on canalized river sections of the Canal System.

9. Federal Standards:

There is no specific federal requirement.

10. Compliance Schedule:

Ongoing.

**Regulatory Flexibility Analysis**

This regulation will not impose any adverse economic impact on reporting, record keeping or other compliance requirements on small businesses or local governments. As such, a Regulatory Flexibility Analysis is not required.

**Rural Area Flexibility Analysis**

This regulation does not impose any adverse impact on rural areas whether through reporting, record keeping or other compliance requirements on public or private entities in rural areas; as such, a Rural Area Flexibility Analysis is not required.

**Job Impact Statement**

Based on the nature and purpose of the proposed rule, it will not have a substantial adverse impact on jobs and employment opportunities. As such, a Job Impact Statement is not required.

## Department of Correctional Services

### NOTICE OF ADOPTION

**Coxsackie Correctional Facility**

**I.D. No.** COR-36-08-00004-A

**Filing No.** 1059

**Filing Date:** 2008-10-27

**Effective Date:** 2008-11-12

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

**Action taken:** Amendment of section 100.45(c) of Title 7 NYCRR.

**Statutory authority:** Correction Law, section 70

**Subject:** Coxsackie Correctional Facility.

**Purpose:** To remove as designated function as listed in the regulation, since the facility no longer provides that function.

**Text or summary was published** in the September 3, 2008 issue of the Register, I.D. No. COR-36-08-00004-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

## Education Department

### EMERGENCY RULE MAKING

**Special Education Programs and Services**

**I.D. No.** EDU-31-08-00014-E

**Filing No.** 1064

**Filing Date:** 2008-10-27

**Effective Date:** 2008-10-28

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

**Action taken:** Amendment of sections 200.4 and 200.5 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided), 4402(1)-(7), 4403(3) and 4410(13)

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

**Specific reasons underlying the finding of necessity:** The proposed amendment is necessary to ensure consistency in procedural safeguards by extending the date by which school districts would be required to use the forms prescribed by the Commissioner for individualized education programs (IEPs), Committee on Special Education (CSE) and Committee on Preschool Special Education (CPSE) meeting notices and for prior written notices (notice of recommendation).

The regulations that require, commencing on January 1, 2009, the use of the State's forms for IEPs, CSE and CPSE meeting notices, and prior written notice (notice of recommendation) were adopted in September 2007. Since that date, the Department sought extensive comment from the field on the development of the forms from stakeholders across the State. In response to the comments, the proposed amendment would extend the effective date for required use of the forms from January 1, 2009 to September 1, 2009. Extending the date for the required use of these forms will allow additional time for the Department to work with stakeholders to field check proposed forms and to provide professional development on the new forms and guidance. In addition, the proposed amendment will

require school districts to use the new forms at the beginning of the 2009-2010 school year, and thereby avoid any risk of potential disruptions to a district's policies, procedures and practices that might result if this requirement were to be made effective in the middle of the 2008-2009 school year.

It was anticipated that the proposed amendment would be presented for adoption at the October 20-21, 2008 Regents meeting, with an effective date of November 13, 2008. However, the proposed amendment is being revised in response to public comment, which, under the State Administrative Procedure Act, will require publication of a Notice of Revised Rule Making in the State Register and delay the rule's adoption until after the expiration of a 30-day public comment period on the revised rule making. The revised rule was published in the State Register on October 22, 2008. The next available meeting of the Board of Regents, after expiration of the 30-day public comment period on November 21, 2008, will be on December 15-16, 2008. Pursuant to the State Administrative Procedure Act, the earliest the adopted rule can become effective is upon its publication in the State Register on January 7, 2009. However, the provisions in 200.4(d)(2), 200.5(a)(1) and 200.5(c)(1) requiring the use of State forms become effective on January 1, 2009. Therefore, emergency action is necessary now in order to extend such effective date until September 1, 2009 and thereby avoid any risk of potential disruptions to a district's policies, procedures and practices that might result if this requirement were to be made effective on January 1, 2009.

**Subject:** Special education programs and services.

**Purpose:** To extend the date for required use of State forms for IEPs, prior written notice (notice of recommendation) and meeting notice.

**Text of emergency rule:** 1. Paragraph (2) of subdivision (d) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective October 28, 2008, as follows:

(2) Individualized education program (IEP). If the student has been determined to be eligible for special education services, the committee shall develop an IEP. IEPs developed on or after [January 1, 2009] *September 1, 2009*, shall be on a form prescribed by the commissioner. In developing the recommendations for the IEP, the committee must consider the results of the initial or most recent evaluation; the student's strengths; the concerns of the parents for enhancing the education of their child; the academic, developmental and functional needs of the student, including, as appropriate, the results of the student's performance on any general State or districtwide assessment programs; and any special considerations in paragraph (3) of this subdivision. The IEP recommendation shall include the following:

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .
- (vi) . . .
- (vii) . . .
- (viii) . . .
- (ix) . . .
- (x) . . .
- (xi) . . .
- (xii) . . .
- (xiii) . . .

2. Paragraph (1) of subdivision (a) of Section 200.5 of the Regulations of the Commissioner of Education is amended, effective October 28, 2008, as follows:

(1) Prior written notice (notice of recommendation) that meets the requirements of section 200.1(oo) of this Part must be given to the parents of a student with a disability a reasonable time before the school district proposes to or refuses to initiate or change the identification, evaluation, educational placement of the student or the provision of a free appropriate public education to the student. Effective [January 1, 2009] *September 1, 2009*, the prior written notice shall be on [the] *a* form prescribed by the commissioner.

3. Paragraph (1) of subdivision (c) of Section 200.5 of the Regulations of the Commissioner of Education is amended, effective October 28, 2008, as follows:

(1) Whenever the committee on special education proposes to conduct a meeting related to the development or review of a student's IEP, or the provision of a free appropriate public education to the student, the parent must receive notification in writing at least five days prior to the meeting. The meeting notice may be provided to the parent less than five days prior to the meeting to meet the timelines in accordance with Part 201 of this Title and in situations in which the parent and the school district agree to a meeting that will occur within five days. The parent may elect to receive the notice of meetings by an electronic mail (e-mail) communication if the school district makes such option available. Effective

[January 1, 2009] *September 1, 2009*, the meeting notice shall be on a form prescribed by the commissioner.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-31-08-00014-P, Issue of July 30, 2008. The emergency rule will expire January 24, 2009.

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

#### Regulatory Impact Statement

##### STATUTORY AUTHORITY:

Education Law section 207 authorizes the Regents and Commissioner to adopt rules and regulations to carry out State laws regarding education.

Education Law section 4402 establishes district's duties regarding education of students with disabilities.

Education Law section 4403 outlines Department's and district's responsibilities regarding special education programs/services to students with disabilities. Section 4403(3) authorizes Department to adopt regulations as Commissioner deems in their best interests.

Education Law section 4410 outlines special education services and programs for preschool children with disabilities. Section 4410(13) authorizes Commissioner to adopt regulations.

##### LEGISLATIVE OBJECTIVES:

The proposed amendment is necessary to ensure consistency in procedural safeguards and carry out the legislative objectives in the aforementioned statutes.

##### NEEDS AND BENEFITS:

The proposed amendment is necessary to ensure consistency in procedural safeguards by extending the date by which school districts would be required to use the forms prescribed by the Commissioner for individualized education programs (IEPs), Committee on Special Education (CSE) and Committee on Preschool Special Education (CPSE) meeting notices and for prior written notices (notice of recommendation). The regulations that require the use of the State's forms for IEPs, CSE and CPSE meeting notices, and prior written notice (notice of recommendation) as of January 1, 2009 were adopted in September 2007. Since that date, the Department sought extensive comment from the field on the development of the forms from stakeholders across the State. In response to their comments, the Department proposes to extend the effective date for required use of the forms from January 1, 2009 to September 1, 2009. Extending the date for the required use of these forms will allow additional time for VESID to work with stakeholders to field check proposed forms and to provide professional development on the new forms and guidance. In addition, the proposed amendment will require school districts to use the new forms at the beginning of the 2009-2010 school year, and thereby avoid any risk of potential disruptions to a district's policies, procedures and practices that might result if this requirement were to be made effective in the middle of the 2008-2009 school year.

##### COSTS:

- a. Costs to State government: None
- b. Costs to local governments: None
- c. Costs to regulated parties: None
- d. Costs to the State Education Department of implementation and continuing compliance: None.

##### LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments beyond those imposed by federal and State statutes and regulations. The proposed amendment will extend the date for requiring the State's forms for IEPs, prior written notice (notice of recommendation) and meeting notice.

Section 200.4 revises the date by which all school districts must use the form prescribed by the Commissioner to develop IEPs from January 1, 2009 to September 1, 2009.

Section 200.5 revises the date by which all school districts must use the prior written notice (notice of recommendation) and meeting notices prescribed by the Commissioner from January 1, 2009 to September 1, 2009.

##### PAPERWORK:

The proposed amendment will extend the date for requiring the State's forms for IEPs, prior written notice (notice of recommendation) and meeting notice, and does not impose any additional paperwork requirements.

##### DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with any other State or federal statute or regulation.

##### ALTERNATIVES:

Since the September 2007 adoption of regulations requiring, as of January 1, 2009, the use of the State's forms for IEPs, prior written notice (no-

tice of recommendation) and meeting notice, the Department has obtained extensive public comment on the development of the forms from stakeholders across the State. Various alternative effective dates for mandatory forms were considered. However, in response to public comment, the Department proposes to extend the effective date for required use of the forms from January 1, 2009 to September 1, 2009 to allow the Department additional time to work with stakeholders to field check proposed forms and to provide professional development of the new forms and guidance. In addition, the proposed amendment will require school districts to use the new forms at the beginning of the 2009-2010 school year, and thereby avoid any risk of potential disruptions to a district's policies, procedures and practices that might result if this requirement were to be made effective in the middle of the 2008-2009 school year.

#### FEDERAL STANDARDS:

The proposed amendment is not required by federal law or regulations, but is necessary to ensure consistency in procedural safeguards.

#### COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date. The proposed amendment will require school districts to use the new forms for IEPs, prior written notice (notice of recommendation) and meeting notice at the beginning of the 2009-2010 school year, and thereby avoid any risk of potential disruptions to a district's policies, procedures and practices that might result if this requirement were to be made effective in the middle of the 2008-2009 school year.

#### *Regulatory Flexibility Analysis*

##### Small Businesses:

The proposed amendment relates to the provision of special education programs and services to students with disabilities, and is necessary to ensure consistency in procedural safeguards by extending the date for required use of the State's forms for individualized education programs (IEPs), prior written notice (notice of recommendation) and meeting notice and providing that the completion of such forms be consistent with guidelines prescribed by the Commissioner. Because it is evident from the nature of the rule that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

##### Local Governments:

##### EFFECT OF RULE:

The proposed amendment applies to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools in the State.

##### COMPLIANCE REQUIREMENTS:

The proposed amendment will extend the date for required use of the State's forms for IEPs, prior written notice (notice of recommendation) and meeting notice, and does not impose any additional compliance requirements upon local governments beyond those imposed by federal statutes and regulations.

Section 200.4 revises the date by which all school districts must use the form prescribed by the Commissioner to develop IEPs from January 1, 2009 to September 1, 2009.

Section 200.5 revises the date by which all school districts must use the prior written notice (notice of recommendation) and meeting notices prescribed by the Commissioner from January 1, 2009 to September 1, 2009.

##### PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on local governments.

##### COMPLIANCE COSTS:

The proposed amendment is necessary to ensure consistency in procedural safeguards by extending the date for requiring the State's forms for individualized education programs (IEPs), prior written notice (notice of recommendation) and meeting notice, and does not impose any additional costs beyond those imposed by federal statutes and regulations and State statutes.

##### ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed does not impose any new technological requirements. Economic feasibility is addressed above under Compliance Costs.

##### MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to ensure consistency in procedural safeguards by extending the date for requiring the State's forms for individualized education programs (IEPs), prior written notice (notice of recommendation) and meeting notice, and does not impose any additional costs or compliance requirements on these entities beyond those imposed by federal law and regulations and State statutes.

The regulations that require the use of the State's forms for IEPs, CSE and CPSE meeting notices, and prior written notice (notice of recommendation) as of January 1, 2009 were adopted in September 2007. Since that date, the Department sought extensive comment from the field on the

development of the forms from stakeholders across the State. In response to their comments, the Department proposes to extend the effective date for required use of the forms from January 1, 2009 to September 1, 2009. Extending the date for the required use of these forms will allow additional time for VESID to work with stakeholders to field check proposed forms and to provide professional development on the new forms and guidance. In addition, the proposed amendment will require school districts to use the new forms at the beginning of the 2009-2010 school year, and thereby avoid any risk of potential disruptions to a district's policies, procedures and practices that might result if this requirement were to be made effective in the middle of the 2008-2009 school year.

##### LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment.

#### *Rural Area Flexibility Analysis*

##### TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment will apply to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools 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 population density of 150 per square miles or less.

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

The proposed amendment will extend the date for required use of the State's forms for IEPs, prior written notice (notice of recommendation) and meeting notice, and does not impose any additional compliance requirements upon rural areas beyond those imposed by federal statutes and regulations.

Section 200.4 revises the date by which all school districts must use the form prescribed by the Commissioner to develop IEPs from January 1, 2009 to September 1, 2009.

Section 200.5 revises the date by which all school districts must use the prior written notice (notice of recommendation) and meeting notices prescribed by the Commissioner from January 1, 2009 to September 1, 2009.

The amendment does not impose any additional professional service requirements on rural areas, beyond those imposed by federal statutes and regulations and State statutes.

##### COSTS:

The proposed amendment is necessary to ensure consistency in procedural safeguards by extending the date for required use of the State's forms for individualized education programs (IEPs), prior written notice (notice of recommendation) and meeting notice, and does not impose any additional costs beyond those imposed by such federal statutes and regulations and State statutes.

##### MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to ensure consistency in procedural safeguards by extending the date for required use of the State's forms for individualized education programs (IEPs), prior written notice (notice of recommendation) and meeting notice, and does not impose any additional costs or compliance requirements on these entities beyond those imposed by federal law and regulations and State statutes. Since these requirements apply to all school districts in the State, it is not possible to adopt different standards for school districts in rural areas.

The regulations that require the use of the State's forms for IEPs, CSE and CPSE meeting notices, and prior written notice (notice of recommendation) as of January 1, 2009 were adopted in September 2007. Since that date, the Department sought extensive comment from the field on the development of the forms from stakeholders across the State. In response to their comments, the Department proposes to extend the effective date for required use of the forms from January 1, 2009 to September 1, 2009. Extending the date for the required use of these forms will allow additional time for VESID to work with stakeholders to field check proposed forms and to provide professional development on the new forms and guidance. In addition, the proposed amendment will require school districts to use the new forms at the beginning of the 2009-2010 school year, and thereby avoid any risk of potential disruptions to a district's policies, procedures and practices that might result if this requirement were to be made effective in the middle of the 2008-2009 school year.

##### RURAL AREA PARTICIPATION:

The proposed amendment was submitted for discussion and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

#### *Job Impact Statement*

The proposed amendment relates to the provision of special education programs and services to students with disabilities, and is necessary to ensure consistency in procedural safeguards by extending the date for

required use of the State's forms for individualized education programs (IEPs), prior written notice (notice of recommendation) and meeting notice. 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.

### NOTICE OF ADOPTION

#### Special Education Programs and Services

**I.D. No.** EDU-19-08-00006-A

**Filing No.** 1063

**Filing Date:** 2008-10-27

**Effective Date:** 2008-11-13

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

**Action taken:** Addition of section 177.2 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided) and 3602-c(7); and section 4 of chapter 378 of the Laws of 2007

**Subject:** Special education programs and services.

**Purpose:** To establish dispute resolution procedures for costs for a non-resident student who is parentally placed in a nonpublic school.

**Text or summary was published** in the May 7, 2008 issue of the Register, I.D. No. EDU-19-08-00006-P.

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

**Revised rule making(s) were previously published in the State Register** on August 27, 2008.

**Text of rule and any required statements and analyses may be obtained from:** Lisa Struffolino, State Education Department, Office of Counsel, State Education Building Rm 148, 89 Washington Ave., Albany, NY 12234, (518) 473-4921, email: legal@mail.nysed.gov

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Employment of Retired Persons in Public School Districts, BOCES and County Vocational Education and Extension Boards

**I.D. No.** EDU-29-08-00004-A

**Filing No.** 1066

**Filing Date:** 2008-10-27

**Effective Date:** 2008-11-12

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

**Action taken:** Repeal of section 80-5.5 and addition of new section 80-5.5 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 3003(1), 3004(1); and Retirement and Social Security Law, section 210 (not subdivided) and 211(2) and (8)

**Subject:** Employment of retired persons in public school districts, BOCES and county vocational education and extension boards.

**Purpose:** To strengthen the standards for approval by the Commissioner of Education for the employment of retired persons.

**Text or summary was published** in the July 16, 2008 issue of the Register, I.D. No. EDU-29-08-00004-EP.

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

**Revised rule making(s) were previously published in the State Register** on August 20, 2008.

**Text of rule and any required statements and analyses may be obtained from:** Lisa Struffolino, Office of Counsel, New York State Education Department, 89 Washington Avenue, Room 148, Albany, New York 12234, (518) 273-4921, email: lstruffo@mail.nysed.gov

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### State Aid Awards for High Need Nursing Programs at Certain Independent Colleges and Universities

**I.D. No.** EDU-32-08-00003-A

**Filing No.** 1065

**Filing Date:** 2008-10-27

**Effective Date:** 2008-11-12

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

**Action taken:** Amendment of section 150.4 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207, 215 and 6401-a; and chapter 57 of the Laws of 2008

**Subject:** State aid awards for high need nursing programs at certain independent colleges and universities.

**Purpose:** To permit online nursing programs to be eligible for state aid, in accordance with chapter 57 of the Laws of 2008.

**Text or summary was published** in the August 6, 2008 issue of the Register, I.D. No. EDU-32-08-00003-P.

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

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

#### Assessment of Public Comment

The agency received no public comment.

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

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

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

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

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

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

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

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

**Text of proposed rule:** 1. Subdivision (c) of section 3.47 of the Rules of the Board of Regents is amended, effective February 5, 2009, as follows:

(c) Undergraduate degrees. Undergraduate degrees shall be distinguished, as follows, by the minimum amount of liberal arts content required for each degree. The required liberal arts core shall not be directed toward [specialized study or] specific occupational or professional objectives.

- (1) . . . .
- (2) . . . .
- (3) . . . .
- (4) . . . .
- (5) . . . .

2. Paragraph (2) of subdivision (d) of section 3.47 of the Rules of the Board of Regents is amended, effective February 5, 2009, as follows:

(2) Professional degrees. Graduate professional degree programs must be comprised of advanced studies in professional or vocational fields. While they may have strong theoretical underpinnings, they must have as their primary purpose knowledge for application in professional practice. Master's degree programs of this type are primarily terminal in nature. They may serve as preparation for advanced studies at the doctoral level, but they shall not be designed primarily for this purpose. The doctorate in such studies is likewise practical, insofar as it prepares the student to train or supervise others in the field, to discover new knowledge that has practical application in the field, or to prepare the student for a life of practice in the student's particular profession. Only the following degrees may be conferred upon the completion of a professionally oriented graduate program:

- Bachelor of Divinity (B.D.)
- Bachelor of Laws (LL.B.)
- Engineer (-- -- E.)
- Master of Architecture (M.Arch.)
- Master of Arts in Teaching (M.A.T.)
- Master of Business Administration (M.B.A.)
- Master of Comparative Jurisprudence (M.C.J.)
- Master of Comparative Law (M.C.L.)
- Master of Divinity (M.Div.)
- Master of Education (Ed.M. or M.Ed.)
- Master of Engineering (M.E.)
- Master of Fine Arts (M.F.A.)
- Master of Food Science (M.F.S.)
- Master of Forestry (M.F.)
- Master of Health Administration (M.H.A.)
- Master of Hebrew Literature (M.H.L.)
- Master of Industrial and Labor Relations (M.I.L.R.)
- Master of Industrial Design (M.I.D.)
- Master of International Affairs (M.I.A.)
- Master of Landscape Architecture (M.L.A.)
- Master of Laws (LL.M.)
- Master of Library Science (M.L.S.)
- Master of Management in Hospitality (M.M.H.)
- Master of Music (Mus.M.)
- Master of Nutritional Science (M.N.S.)
- Master of Physical Therapy (M.P.T.)
- Master of Professional Studies (M.P.S.)
- Master of Public Administration (M.P.A.)
- Master of Public Health (M.P.H.)
- Master of Regional Planning (M.R.P.)
- Master of Religious Education (M.R.E.)
- Master of Sacred Music (S.M.M.)
- Master of Sacred Theology (S.T.M.)
- Master of Science for Teachers (M.S.T.)
- Master of Science in Education (M.S. in Ed.)
- Master of Science in Pharmacy (M.S. in Pharm.)
- Master of Social Science (M.S.Sc.)
- Master of Social Work (M.S.W.)
- Master of Studies in Law (M.S.L.)
- Master of Theology (Th.M.)
- Master of Urban Planning (M.U.P.)
- Doctor of Arts (D.A.)
- Doctor of Audiology (Au.D.)
- Doctor of Chiropractic (D.C.)
- Doctor of Dental Surgery (D.D.S.)
- Doctor of Education (Ed.D.)
- Doctor of Engineering (D.Eng.)
- Doctor of Engineering Science (Eng.Sc.D.)
- Doctor of Hebrew Literature (D.H.L.)
- Doctor of Juridical Science (S.J.D.)
- Doctor of Law (J.D.)
- Doctor of Library Science (L.S.D.)
- Doctor of Medical Science (Med.Sc.D.)
- Doctor of Medicine (M.D.)
- Doctor of Ministry (D.Min.)
- Doctor of Musical Arts (D.M.A.)
- Doctor of Nursing Practice (D.N.P.)
- Doctor of Nursing Science (D.N.S.)
- Doctor of Optometry (O.D.)
- Doctor of Osteopathic Medicine (D.O.)
- Doctor of Pharmacy (Pharm.D.)
- Doctor of Podiatric Medicine (D.P.M.)
- Doctor of Physical Therapy (D.P.T.)
- Doctor of Professional Studies (D.P.S.)
- Doctor of Psychology (Psy.D.)
- Doctor of Public Administration (D.P.A.)
- Doctor of Public Health (D.P.H.)
- Doctor of Religious Education (D.R.E.)
- Doctor of Sacred Music (S.M.D.)
- Doctor of Science in Veterinary Medicine (D.Sc. in V.M.)
- Doctor of Social Science (D.S.Sc.)
- Doctor of Social Welfare (D.S.W.)
- Doctor of the Science of Law (J.S.D.)
- Doctor of Theology (Th.D.)
- Doctor of Veterinary Medicine (D.V.M.)

3. Subdivision (c) of section 3.48 of the Rules of the Board of Regents is added, effective February 5, 2009, as follows:

(c) *The board of trustees of any community college may confer any registered honorary associate degree.*

4. Paragraph (12) of subdivision (b) of section 3.50 of the Rules of the Board of Regents is amended as follows:

- (12) Law:
- Bachelor of Laws (LL.B.)
- Master of Comparative Jurisprudence (M.C.J.)
- Master of Comparative Law (M.C.L.)
- Master of Laws (LL.M.)
- Master of Studies in Law (M.S.L.)
- Doctor of Juridical Science (S.J.D.)
- Doctor of Law (J.D.)
- Doctor of the Science of Law (J.S.D.)

Note: The degree of Doctor of Law (J.D.) shall be granted to persons who, before commencing the study of law, have successfully completed at least three years of acceptable college work in an accredited institution, or its equivalent as defined in rule III-3 [22 NYCRR 522.3] of the rules of the Court of Appeals for the admission of attorneys and counsellors-at-law.

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

**Data, views or arguments may be submitted to:** Johanna Duncan-Poitier, Senior Deputy Commissioner of P16, New York State Education Department, 2M West Wing, Education Building, 89 Washington Avenue, Albany, New York 12234, (518) 474-3862, email: p16education@mail.nysed.gov

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

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

**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 214 of the Education Law provides that higher educational institutions that are incorporated in New York State shall be members of The University of the State of New York.

Section 215 of the Education Law authorizes the Commissioner of Education to visit, examine, and inspect schools or institutions under the educational supervision of the State and require reports from such schools.

Subdivision (1) of section 218 of the Education Law prohibits an institution shall from conferring any degree not specifically authorized by its charter.

Subdivision (4) of section 224 of the Education Law provides that no diploma or degree shall be conferred in this State except by a regularly organized institution of learning meeting all requirements of the law and of The University of the State of New York, and prohibits an individual from appending to his or her name any letters in the same form registered by the Regents as signifying a degree unless that person has received such degree.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to enforce all laws relating to the educational system of the State and execute all educational policies determined by the Board of Regents.

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

Subdivision (5-b) of 6306 of the Education Law authorizes the board of trustees of community colleges to award honorary associate degrees subject to the approval of the Board of Regents.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative intent of the aforementioned statutes by establishing a new degree title that may be conferred by colleges and universities in New York State that are authorized by the Board of Regents, clarifying the Liberal Arts and Sciences content requirements for undergraduate degrees and authorizing community colleges to award honorary associate degrees.

3. NEEDS AND BENEFITS:

Pursuant to Section 6306(5-b) of the Education Law, the proposed amendment authorizes the board of trustees of any community college to award registered honorary associate degrees. Without this amendment, associate honorary degree titles would exist, but community colleges would not be authorized to award them.

The proposed amendment also clarifies the content requirements for Liberal Arts and Sciences in undergraduate degrees, and adds a new graduate degree title: Master of Studies in Law (M.S.L.). This degree title has been requested by New York University. The M.S.L. title (or the similar

title of Master of Legal Studies) is currently offered in seven states, in the District of Columbia, and in Canada. It is offered by some of the most prestigious law schools in the country, including Stanford Law School, Yale Law School and Georgetown University Law School. The purpose of the M.S.L. degree is to make a non-licensure legal education available to non-lawyers. For this reason, admission to an M.S.L. degree program does not require a Juris Doctor (J.D.) degree, while admission to an L.L.M. degree program does. The existence of the M.S.L. degree title would allow law schools to design and propose new degrees in law and legal studies, and efficiently maintain administrative and substantive control over such degree programs.

By permitting law schools in New York State to confer this new degree, even more leading scholars would be attracted to the state's academic institutions, which would further solidify New York's leadership role in legal scholarship.

#### 4. COSTS:

(a) Costs to State government. These amendments will not impose any additional costs on State government.

(b) Costs to local government. None.

(c) Costs to private regulated parties. The proposed amendments will not impose any additional costs on private regulated parties.

(d) Costs to the regulatory agency. The proposed amendments will not impose additional costs on the State Education Department.

#### 5. LOCAL GOVERNMENT MANDATES:

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

#### 6. PAPERWORK:

There are no new forms, reporting requirements, or additional record-keeping associated with the proposed amendment.

#### 7. DUPLICATION:

The proposed amendments do not duplicate any existing State or federal requirements.

#### 8. ALTERNATIVES:

The amendment arose from the request of a New York college to confer the Master of Studies in Law degree. The amendment is permissive in nature and only applies to colleges and universities that want to confer the degree, are authorized to do so by the Board of Regents, and whose programs are registered by the State Education Department. Because of the nature of the proposed amendment, there are no viable alternatives to consider.

#### 9. FEDERAL STANDARDS:

No Federal standards apply to the subject matter of this rule making. The Federal government does not regulate the titles of degrees which may be conferred by postsecondary institutions in New York State.

#### 10. COMPLIANCE SCHEDULE:

The proposed amendment provides an option to postsecondary institutions to confer the M.S.L. degree and it authorizes the board of trustees of any community college to confer any registered honorary associate degree. Such institutions would be able to confer the new degree, if they are authorized by the Board of Regents to do so and have a program that is registered by the State Education Department. Because of the permissive nature of the proposed amendment, it is unnecessary to delay the effective date of the regulation to enable regulated parties to comply.

#### *Regulatory Flexibility Analysis*

The proposed amendment clarifies the minimum requirements for liberal arts core content in registered undergraduate degree programs. The proposed amendment also authorizes community colleges to confer honorary associate degrees pursuant to section 6306(5-b) of the Education Law and authorizes the conferral of a new degree, Masters of Studies in Law (M.S.L.). None of the institutions in New York State that offer such programs or that confer such degrees are small businesses.

The amendment will not affect small businesses or local governments in New York State. The measure will not impose any adverse economic impact, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one was not prepared.

#### *Rural Area Flexibility Analysis*

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

The proposed amendment will apply to colleges and universities authorized to award degrees in New York State, including such institutions located in the State's 44 rural counties with fewer than 200,000 inhabitants and 71 towns in urban counties with a population density of 150 per square mile or less. There are 271 degree-granting institutions in the State, including 64 campuses and community colleges in the State University of New York, 19 senior and community colleges of The City University of New York (CUNY), 148 independent colleges and universities, and 39 propri-

etary colleges. Excluding CUNY's 19 campuses leaves 252 degree-granting institutions, of which 62 (24.6 percent) are located in rural areas.

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

The purpose of the proposed amendment is to clarify the requirements for liberal arts core content in registered undergraduate degree programs, and expand the list of registered degree titles that degree-granting institutions may confer. The proposed amendment adds a new graduate degree title in Masters of Studies in Law and authorizes community colleges to confer honorary associate degrees. These amendments will not impose any reporting, recordkeeping, or other compliance requirements on degree-granting institutions. No professional services will be needed to comply with the proposed amendments.

#### 3. COSTS:

The proposed amendment will not impose any costs on degree-granting institutions, including those located in rural areas. The proposed amendments merely clarifies the content requirements for liberal arts core content in registered undergraduate degree programs and expands the list of registered degree titles which degree-granting institutions may confer, and authorizes community colleges to confer honorary associate degrees.

#### 4. MINIMIZING ADVERSE IMPACT:

The proposed amendment clarifies the content requirements for liberal arts core content in registered undergraduate degree programs, expands the list of registered honorary degree titles which degree-granting institutions may confer, and authorizes community colleges to confer honorary associate degrees. The proposed amendment does not impose any reporting, recordkeeping, or other compliance requirements, or costs, on degree-granting institutions. The proposed amendments make no exception for degree-granting institutions that are located in rural areas. The State Education Department believes that the requirements for the listed degrees also must apply uniformly State-wide to all such institutions, including those located in rural areas and that it would be inappropriate to establish different standards for eligible institutions located in rural areas.

#### 5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Rural Education Advisory Committee, whose membership includes, among others, representatives of colleges located in rural areas.

#### *Job Impact Statement*

The proposed amendment clarifies the minimum requirements for liberal arts core content in registered undergraduate degree programs. The proposed amendment also authorizes community colleges to confer honorary associate degrees pursuant to section 6306(5-b) of the Education Law and authorizes the conferral of a new degree, Masters of Studies in Law (M.S.L.). Because it is evident from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, no further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement was not required and one was not prepared.

## REVISED RULE MAKING NO HEARING(S) SCHEDULED

### Curricular Content for Registered Programs Leading to Licensure in Public Accountancy and Examination Requirements for Licensure

I.D. No. EDU-41-08-00003-RP

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

**Proposed Action:** Amendment of sections 52.13 and 70.3 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 6501 (not subdivided), 6504 (not subdivided), 6506(1)-(2), 6507(2)(a), (3) and (4)(a), and 7404(1)(2) and (4)

**Subject:** Curricular content for registered programs leading to licensure in public accountancy and examination requirements for licensure.

**Purpose:** Update and expand curricular content for registered programs and the admission requirements for the licensing examination.

#### **Text of revised rule:**

1. Paragraph (1) of subdivision (b) of section 52.13 of the Regulations of the Commissioner of Education is amended, effective February 5, 2009, as follows:

(1) Definitions. As used in this subdivision:

(i) Professional accountancy content area shall mean curricular content in *professional accountancy* that includes but is not limited to each of the [following] subjects *identified in clauses (a) through (d) of this*

subparagraph and may also include but need not be limited to the subjects identified in clauses (e) through (i) of this subparagraph:

- (a) financial accounting [theory and principles] and reporting;
- (b) cost or managerial accounting;
- (c) [tax accounting] taxation; and
- (d) auditing and [computer auditing] attestation services[.];
- (e) fraud examination;
- (f) internal controls and risk assessment; and
- (g) accounting information systems.

(ii) General business content area shall mean curricular content relating to the development of knowledge in traditional business principles and technical skills. Curricular content in general business [that includes] may include but is not limited to each of the following subjects:

- (a) business statistics;
- (b) [commercial] business law;
- (c) computer science;
- (d) economics; [and]
- (e) finance[.];
- (f) management;
- (g) marketing;
- (h) operations management;
- (i) organizational behavior;
- (j) business strategy;
- (k) quantitative methods; and
- (l) information technology and systems.

2. Subdivision (d) of section 70.3 of the Regulations of the Commissioner of Education is amended, effective February 5, 2009, as follows:

70.3 Licensing examinations

(d) The department shall accept passing scores on the uniform certified public accountant examination, or on an examination determined to be comparable in content, as meeting the requirement of the licensing examination, except where the department determines that the administration, scoring, content or other comparable factors concerning such examination have affected the validity and/or integrity of such examination so as to render acceptance of such scores inappropriate. Candidates shall complete [their professional study] a minimum of 120 semester hours of study in a regionally accredited college or university, or its equivalent as determined by the department, [prior] for admission to the licensing examination as a New York candidate.

**Revised rule compared with proposed rule:** Substantial revisions were made in section 52.13(b)(1).

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

**Data, views or arguments may be submitted to:** Frank Munoz, Office of the Professions, New York State Education Department, 89 Washington Avenue, Room 148, Albany, New York 12234, (518) 474-3921, email: oopr@mail.nysed.gov

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

**Revised Regulatory Impact Statement**

Since publication of a Notice of Proposed Rule Making in the State Register on October 8, 2008, the following substantial revisions were made to the proposed rule:

Section 52.13(b)(1)(i) and (ii) was revised to eliminate redundant references to curricular content in accounting ethics and professional responsibilities, accounting research and analysis, business ethics, and business communications within the definitions of “professional accountancy content area” and “general business content area”, in order to avoid confusion as to what curricular content is required in a registered program in accountancy. Section 52.13(b)(2) currently requires that registered programs in accountancy include curriculum in the study of business and accounting communications, ethics and professional responsibility, and accounting research, either by integration into the coursework of other courses or in separate courses.

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

**Revised Regulatory Flexibility Analysis**

Since publication of a Notice of Proposed Rule Making in the State Register on October 8, 2008, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

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

**Revised Rural Area Flexibility Analysis**

Since publication of a Notice of Proposed Rule Making in the State Register on October 8, 2008, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

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

**Revised Job Impact Statement**

Since publication of the Notice of Proposed Rule Making in the State Register on October 8, 2008, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The proposed rule, as so revised, relates to the education and examination requirements for applicants seeking licensure as a certified public accountant. The revised rule will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

---



---

## Department of Health

---



---

### EMERGENCY RULE MAKING

**Controlled Substances Data Submissions**

**I.D. No.** HLT-46-08-00003-E

**Filing No.** 1061

**Filing Date:** 2008-10-27

**Effective Date:** 2008-10-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby 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:** Govern and control-possession prescribing manufacturing dispensing administering and distribution of controlled substances within NYS.

**Text of emergency rule:** Section 80.2, subdivision (a), 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 from 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), subparagraph (1), 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) 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), subparagraph (1), 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:

- (1) dispenser [practitioner] identifier;
- (2) patient name;
- (3) patient address, including street, city, state, ZIP code;
- (4) patient date of birth;
- (5) patient's sex;
- (6) date controlled substance dispensed;
- (7) metric quantity;
- (8) national drug code number of the drug;
- (9) number of days supply; [and]
- (10) prescriber's Drug Enforcement Administration (DEA) number[.]; and
- (11) 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.

(l) A pharmacist may partially fill an official New York State prescription for a schedule II controlled substance or those schedule III or schedule IV controlled substances listed in section 80.67(a) of this Part provided that:

(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 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 from the [original] filling of such prescription shall be filed with the department in accordance with section 80.73(f) of this 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 (i) sodium pentobarbital to registered and certified personnel to euthanize animals, and (ii) ketamine hydrochloride to registered and certified personnel to anesthetize animals prior to euthanasia;

Section 80.134, subdivision (a), paragraphs (3) and (4) 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 of 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 for the purpose of anesthetizing 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 (i) ketamine hydrochloride only to anesthetize animals for euthanasia, and (ii) sodium pentobarbital to euthanize animals.

**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 January 24, 2009.

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

**Regulatory Impact Statement**

**Statutory Authority:**  
Section 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 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 current 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 proposes 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. The 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.

Current 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 both a schedule II and a schedule III 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 record-keeping 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 record-keeping 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 diver-

sion 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.

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

**Initial Purchase of Magnetic Resonance Imagers (MRIs)**

**I.D. No.** HLT-46-08-00002-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 710.1(c)(2) and (3) of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2802

**Subject:** Initial Purchase of Magnetic Resonance Imagers (MRIs).

**Purpose:** To substitute administrative CON review for full CON review of initial purchases of MRIs.

**Text of proposed rule:** Clause (b) of subparagraph (i) of Paragraph 2 of Subdivision (c) of Section 710.1 is amended to read as follows:

(2) Proposals requiring a full review, including a recommendation of the State Hospital Review and Planning Council.

\* \* \*

(b) any proposal for the addition, modification or change in the method of delivery of the following services, including the initial acquisition or addition of any equipment relating thereto, regardless of cost; provided, however, that the addition of equipment utilized in the provision of the following services, except cardiac catheterization services, by a medical facility already licensed to provide such service shall be eligible for administrative review pursuant to paragraph (3) of this subdivision;

(1) therapeutic radiology other than the replacement of a cobalt unit with a linear accelerator by a facility which has been deemed appropriate to provide therapeutic radiology or radiation oncology pursuant to Section 708.5 of this Title which may be eligible for administrative review under paragraph (3) of this subdivision;

(2) open heart surgery;

(3) cardiac catheterization;

(4) kidney, heart, liver and bone marrow transplantation;

(5) burns care;

(6) [after December 31, 1986.] acquired immune deficiency syndrome (AIDS) centers except as provided in paragraph (3) of this subdivision; and

[(7) magnetic resonance imagers (MRI); and]

[(8)] (7) epilepsy service.

\* \* \*

Subparagraph (i) of Paragraph (3) of Subdivision (c) of Section 710.1 is amended to read as follows:

(3) Proposals eligible for administrative review.

\* \* \*

(b) [reserved;] *the acquisition of magnetic resonance imagers (MRIs);*

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

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

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

**Regulatory Impact Statement**

**Statutory Authority**

The authority for the proposed revision to 10 NYCRR Part 710 is Section 2803(2)(a) of the Public Health Law (PHL), which authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health, to effectuate the provisions and purposes of Article 28 of the PHL with respect to hospitals, including but not limited to, requirements for construction projects subject to Certificate of Need (CON) review.

**Legislative Objectives**

Article 28 of the PHL seeks to ensure that hospitals and related services are of the highest quality, efficiently provided and properly utilized at a

reasonable cost. Consistent with this legislative intent, the Department seeks to streamline the CON process wherever possible, in the interest of ensuring that needed services are made available in a timely manner and without undue levels of review.

#### Current Requirements

Construction projects undertaken by hospitals, nursing homes, clinics and other health care facilities are subject to approval under Article 28 of the Public Health Law. Construction is defined under Article 28 to include the purchase of equipment, such as magnetic resonance imagers (MRIs) and other major medical devices.

Purchases of major medical equipment that fall within the statutory definition of construction must be approved by the Commissioner of Health. The CON approval process governed by this section takes two forms: administrative review and full review. Both entail a determination of public need for the proposed service, as well as a review of the project's financial feasibility. Projects subject to administrative review may be approved by the Commissioner alone, while those subject to full review require prior examination by the SHRPC.

#### Needs and Benefits

To guard against the overuse of MRIs and the associated costs to the health care system, the Department and the SHRPC in the 1980s approved a new provision of Section 710.1 that subjected the initial purchase of MRIs to full CON review.

In the years since the issuance of this rule, MRIs have become commonplace. Fully 141 hospitals in New York State now operate at least one MRI, as do 14 freestanding diagnosis and treatment (D & T) centers. A large but indeterminate number of MRIs are also operated by private physician practices where these devices are not subject to CON approval or Article 28 oversight.

The growth in the number of MRIs and their employment as a mainstay of diagnostic imaging suggest that the degree of prudent caution which prompted the Department and the SHRPC to require a provider's initial purchase of an MRI to be subject to full CON review is no longer needed. Accordingly, the Department proposes that this full review requirement be repealed and that the initial purchase of an MRI be made eligible for administrative CON review.

The proposed change will enable hospitals and freestanding D & T centers that wish to initiate MRI services to do so more quickly. This will help them respond more readily to the needs of patients for whom MRI services are warranted, as well as to adapt more rapidly to changes in the demand for imaging services in their individual service areas.

The need methodology governing MRIs set forth in section 709.12 will continue to be applied to all initial purchase of MRIs and to subsequent purchases of MRIs that increase a facility's MRI capacity. Therefore, the greater flexibility in CON review afforded by the proposed amendment will not lead to an excess of MRI devices, nor to the associated costs and potential for overuse.

#### COSTS

##### Costs to the Department of Health

The proposed amendments would impose no new costs on the Department and would actually result in savings by eliminating the additional staff time required to process full review CON applications compared to applications that are subject only to administrative review.

##### Costs to Other State Agencies

There are no costs to other State agencies or offices of State government.

##### Costs to Local Government

There are no costs to local government.

##### Costs to Private Regulated Parties

Because the proposed amendments impose no new burdensome requirements, duties or responsibilities on any entity subject to Article 28 of the PHL, there are no costs to private regulated parties. The amendments will, in fact, result in savings to regulated parties by eliminating for MRIs the CON fee of 0.045% of total project costs required of full review CON projects.

##### Local Government Mandates

The proposed amendments do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

##### Paperwork

The proposed amendments impose no new reporting requirements, forms or other paperwork. The amendment will actually reduce paperwork by replacing full review applications with the simpler administrative review application and by eliminating the need for the additional paperwork associated with the review of an application by the State Hospital Review and Planning Council.

##### Duplication

There are no relevant State or Federal rules which duplicate, overlap or conflict with the proposed amendments.

##### Alternatives

The Department considered removing altogether the requirement for

CON review of MRIs and subjecting them only to prior limited review, whether for initial or subsequent purchases. However, this lower level of review would eliminate the assessment of public need set forth in the MRI need methodology in section 709.12, with the potential for approval of an excess number of MRI devices in individual service areas and throughout the State. Accordingly, the Department elected to retain administrative CON review for initial purchases of MRIs, with the accompanying needs assessment prescribed in section 709.12.

#### Federal Standards

The proposed amendments do not exceed any minimum standards of the Federal government. There are no Federal rules currently addressing the CON process for approval of MRI devices.

#### Compliance Schedule

It is anticipated that the proposed amendments will be announced within one month of the effective date through the posting of an announcement on the Department of Health's Internet site.

The proposed amendments will be effective upon publication of a Notice of Adoption in the New York State Register. There is no schedule of compliance, since the proposed amendment only indicates how applications will be processed within the Department of Health.

#### Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendments do not impose an adverse economic impact on small businesses or local governments, and they do not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

#### Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendments do not impose an adverse impact on facilities in rural areas, and they do not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

#### Job Impact Statement

No Job Impact Statement is required pursuant to section 201 a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendments, that they will not have a substantial adverse impact on jobs and employment opportunities.

---



---

## Long Island Power Authority

---



---

### NOTICE OF ADOPTION

#### Net Metering

**I.D. No.** LPA-30-08-00011-A

**Filing Date:** 2008-10-27

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

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

**Action taken:** The Authority amended and added to LIPA's Tariff for Electric Service with regard to net metering.

**Statutory authority:** Public Authorities Law, section 1020-f(z) and (u)

**Subject:** Net metering.

**Purpose:** To revise LIPA's Tariff for Electric Service with regard to net metering.

**Text or summary was published** in the July 23, 2008 issue of the Register, I.D. No. LPA-30-08-00011-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

#### 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.

## Public Service Commission

### NOTICE OF ADOPTION

#### Direct Utilities to Continue the Programs and Structures That Ensure Markets Will Remain Open and Mature

**I.D. No.** PSC-19-07-00009-A

**Filing Date:** 2008-10-27

**Effective Date:** 2008-10-27

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

**Action taken:** On October 15, 2008, the PSC adopted an order approving the continuation of some retail access programs, allowing utilities to continue furnishing information on competitive market operations with ESCOs bearing the cost, & authorizing recovery of revenue.

**Statutory authority:** Public Service Law, sections 5(1)(b), 64, 65(1), 66(1), (5), (9), (10) and (12)

**Subject:** Direct utilities to continue the programs and structures that ensure markets will remain open and mature.

**Purpose:** To direct utilities to continue the programs and structures that ensure markets will remain open and mature.

**Substance of final rule:** The Commission, on October 15, 2008, adopted an order approving the continuation of some retail access programs, allowing utilities to continue furnishing information on competitive market operations with energy service companies (ESCOs) bearing the cost, and authorizing recovery of revenues lost due to retail access, subject to the terms and conditions set forth in the order.

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

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

#### Assessment of Public Comment

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

(07-M-0458SA1)

### NOTICE OF ADOPTION

#### Denying the Petition for Rehearing Regarding Audits and Record Inspections

**I.D. No.** PSC-08-08-00021-A

**Filing Date:** 2008-10-23

**Effective Date:** 2008-10-23

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

**Action taken:** On October 15, 2008, the PSC adopted an order denying the petition for rehearing filed by Verizon New York Inc. and granting the request for clarification and amendment to the limitation on audits in the franchise agreement.

**Statutory authority:** Public Service Law, section 222(1) and (4)

**Subject:** Denying the petition for rehearing regarding audits and record inspections.

**Purpose:** To deny the petition for rehearing by Verizon New York Inc., and grant the request for clarification.

**Substance of final rule:** The Commission, on October 15, 2008, adopted an order denying the petition for rehearing filed by Verizon New York Inc. of the Commission's Order Approving Renewal of Verizon's cable television franchise agreement with the Town of Ossining, Westchester County and granting the request for clarification and amendment to the limitation on audits in the franchise agreement, subject to the terms and conditions set forth in the order.

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

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

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

#### Assessment of Public Comment

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

(07-V-1523SA1)

### NOTICE OF ADOPTION

#### Denying the Petition for Rehearing Regarding Audits and Record Inspections

**I.D. No.** PSC-08-08-00022-A

**Filing Date:** 2008-10-23

**Effective Date:** 2008-10-23

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

**Action taken:** On October 15, 2008, the PSC adopted an order denying the petition for rehearing filed by Verizon New York Inc. and granting the request for clarification and amendment to the limitation on audits in the franchise agreement.

**Statutory authority:** Public Service Law, section 222(1) and (4).

**Subject:** Denying the petition for rehearing regarding audits and record inspections.

**Purpose:** To deny the petition for rehearing by Verizon New York Inc., and grant the request for clarification.

**Substance of final rule:** The Commission, on October 15, 2008, adopted an order denying the petition for rehearing filed by Verizon New York Inc. of the Commission's Order Approving Renewal of Verizon's cable television franchise agreement with the Village of Briarcliff Manor, Westchester County and granting the request for clarification and amendment to the limitation on audits in the franchise agreement, subject to the terms and conditions set forth in the order.

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

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

#### Assessment of Public Comment

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

(07-V-1524SA1)

### NOTICE OF ADOPTION

#### Denying the Petition for Rehearing Regarding Audits and Record Inspections

**I.D. No.** PSC-08-08-00023-A

**Filing Date:** 2008-10-23

**Effective Date:** 2008-10-23

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

**Action taken:** On October 15, 2008, the PSC adopted an order denying the petition for rehearing filed by Verizon New York Inc. and granting the request for clarification and amendment to the limitation on audits in the franchise agreement.

**Statutory authority:** Public Service Law, section 222(1) and (4)

**Subject:** Denying the petition for rehearing regarding audits and record inspections.

**Purpose:** To deny the petition for rehearing by Verizon New York Inc., and grant the request for clarification.

**Substance of final rule:** The Commission, on October 15, 2008, adopted an order denying the petition for rehearing filed by Verizon New York Inc. of the Commission's Order Approving Renewal of Verizon's cable

television franchise agreement with the Village of Sleepy Hollow, Westchester County and granting the request for clarification and amendment to the limitation on audits in the franchise agreement, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-V-1525SA1)

## NOTICE OF ADOPTION

### Denying the Petition for Rehearing Regarding Audits and Record Inspections

**I.D. No.** PSC-08-08-00024-A

**Filing Date:** 2008-10-23

**Effective Date:** 2008-10-23

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

**Action taken:** On October 15, 2008, the PSC adopted an order denying the petition for rehearing filed by Verizon New York Inc. and granting the request for clarification and amendment to the limitation on audits in the franchise agreement.

**Statutory authority:** Public Service Law, section 222(1) and (4)

**Subject:** Denying the petition for rehearing regarding audits and record inspections.

**Purpose:** To deny the petition for rehearing by Verizon New York Inc., and grant the request for clarification.

**Substance of final rule:** The Commission, on October 15, 2008, adopted an order denying the petition for rehearing filed by Verizon New York Inc. of the Commission's Order Approving Renewal of Verizon's cable television franchise agreement with the Village of Ossining, Westchester County and granting the request for clarification and amendment to the limitation on audits in the franchise agreement, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(08-V-0005SA1)

## NOTICE OF ADOPTION

### Standards Governing Door-to-Door Sales Practices by ESCOs

**I.D. No.** PSC-09-08-00006-A

**Filing Date:** 2008-10-27

**Effective Date:** 2008-10-27

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

**Action taken:** On October 15, 2008, the PSC denied National Fuel Gas Distribution Corporation's tariff filing to establish its own ESCO marketing standards and enforcement mechanisms in its Schedule for Gas Service PSC 8, effective April 25, 2008.

**Statutory authority:** Public Service Law, sections 2(11), 5, 64 and 66(12)

**Subject:** Standards governing door-to-door sales practices by ESCOs.

**Purpose:** To deny National Fuel Gas Distribution Corporation reference standards for door-to-door marketing practices by ESCOs.

**Substance of final rule:** The Commission, on October 15, 2008, denied National Fuel Gas Distribution Corporation's tariff filing to establish its own Energy Service Company (ESCO) marketing standards and enforcement mechanisms in its Schedule for Gas Service PSC 8, effective April 25, 2008, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(08-G-0078SA1)

## NOTICE OF ADOPTION

### Modification to the Uniform Business Practices

**I.D. No.** PSC-13-08-00014-A

**Filing Date:** 2008-10-27

**Effective Date:** 2008-10-27

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

**Action taken:** On October 15, 2008, the PSC approved amendments to the Uniform Business Practices and granting in part the petition of the New York State Consumer Protection Board and the New York City Department of Consumer Affairs regarding customer complaints.

**Statutory authority:** Public Service Law, sections 2, 4, 5, 6, 65 and 66

**Subject:** Modification to the Uniform Business Practices.

**Purpose:** To approve the amendments to the Uniform Business Practices.

**Substance of final rule:** The Commission, on October 15, 2008, adopted an order approving amendments to the Uniform Business Practices, including the addition of Section 10, which establishes mandatory Energy Service Company (ESCOs) marketing standards and provides expanded remedies in case of ESCO noncompliance, and granting in part the petition of the New York State Consumer Protection Board and the New York City Department of Consumer Affairs in response to customer complaints that ESCOs have used unfair marketing practices in obtaining new customers, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-M-1514SA2)

## NOTICE OF ADOPTION

### Denying the Petition for Rehearing Regarding Auditing of Cablevision's Books

**I.D. No.** PSC-19-08-00016-A

**Filing Date:** 2008-10-23

**Effective Date:** 2008-10-23

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

**Action taken:** On Oct. 15, 2008, the PSC adopted an order denying the petition for rehearing filed by Cablevision of Southern Westchester, Inc. of the franchise agreement with the City of Rye & granting the request for clarification & amendment to limitation on audits.

**Statutory authority:** Public Service Law, sections 215(2), 216(1) and (5)

**Subject:** Denying the petition for rehearing regarding auditing of Cablevision's books.

**Purpose:** To deny the petition for rehearing by Cablevision, and grant the request for clarification.

**Substance of final rule:** The Commission, on October 15, 2008, adopted an order denying the petition for rehearing filed by Cablevision of Southern Westchester, Inc. (Cablevision) of the Commission's Order Approving Renewal of Cablevision's cable television franchise agreement with the City of Rye and granting the request for clarification and amendment to the limitation on audits in the franchise agreement, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(05-V-1430SA1)

**NOTICE OF ADOPTION**

**Approval of New Types of Electricity Meters, Transformers and Auxiliary Devices**

**I.D. No.** PSC-24-08-00007-A

**Filing Date:** 2008-10-22

**Effective Date:** 2008-10-22

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

**Action taken:** On 10/15/08, the PSC adopted an order approving the petition of Kuhlman Electric Corporation allowing the use of the KA and KXM series of transformer.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Approval of new types of electricity meters, transformers and auxiliary devices.

**Purpose:** To approve the Kuhlman Electric instrument transformer types KA-72 through KA-245, and types KXM-350 through KXM-1050.

**Substance of final rule:** The Commission, on October 15, 2008, adopted an order approving the petition of Kuhlman Electric Corporation allowing the use of the Kuhlman Electric KA-72 through KA-245 transformer product line and the KXM-350 through KXM-1050 transformer product line for 69kV through 230kV substation applications in New York State.

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

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

**Assessment of Public Comment**

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

(08-E-0594SA1)

**NOTICE OF ADOPTION**

**Reallocation of Funds to the Anaerobic Digester Electricity and Solar PV Programs in the Customer-Sited Tier**

**I.D. No.** PSC-31-08-00023-A

**Filing Date:** 2008-10-28

**Effective Date:** 2008-10-28

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

**Action taken:** On October 15, 2008, the PSC adopted an order concerning modification of funding for the Customer-Sited Tier.

**Statutory authority:** Public Service Law, sections 4(1), 5(2), 66(1) and (2)

**Subject:** Reallocation of funds to the Anaerobic Digester Electricity and Solar PV Programs in the Customer-Sited Tier.

**Purpose:** To respond to demonstrated demand and changing market need for solar PV and anaerobic digester technologies.

**Substance of final rule:** The Commission, on October 15, 2008, adopted an order authorizing the use of the approximately \$47 million current cash balance in the Renewable Portfolio Standard Program for Customer-Sited Tier purposes and shall be allocated initially as described herein (\$20.6 million for the solar photovoltaic category, \$7.6 million for the anaerobic digester biogas systems category, \$15.1 million for discretionary use, and \$3.7 million for evaluation, measurement, and verification), subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(03-E-0188SA17)

**NOTICE OF ADOPTION**

**Transfer of Real Property**

**I.D. No.** PSC-35-08-00013-A

**Filing Date:** 2008-10-28

**Effective Date:** 2008-10-28

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

**Action taken:** On October 15, 2008, the PSC approved the joint petition of Consolidated Edison Company of New York, Inc. and Village Academies Network, Inc. for the transfer of real property located at 32-42 West 125th Street and 35-39 West 124th Street, New York, NY.

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

**Subject:** Transfer of real property.

**Purpose:** To approve the transfer of real property located at 32-42 West 125th Street and 35-39 West 124th Street, New York, NY.

**Substance of final rule:** The Commission, on October 15, 2008, adopted an order approving the joint petition of Consolidated Edison Company of New York, Inc. and Village Academies Network, Inc. for the transfer of real property located at 32-42 West 125th Street and 35-39 West 124th Street, New York, NY, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(08-M-0930SA1)

**NOTICE OF ADOPTION**

**Ownership and Status of Water Company Assets**

**I.D. No.** PSC-36-08-00011-A

**Filing Date:** 2008-10-28

**Effective Date:** 2008-10-28

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

**Action taken:** On October 28, 2008, the PSC adopted an order recognizing Ridge Associates, LP as a water works corporation.

**Statutory authority:** Public Service Law, sections 2(26), (27), 89(b) and (c)

**Subject:** Ownership and status of water company assets.

**Purpose:** To recognize Ridge Associates, LP as a water works corporation.

**Substance of final rule:** The Public Service Commission (PSC) adopted an order establishing Ridge Associates, LP as a water-works corporation by virtue of its ownership of the real property comprising the Minisink Valley Utility Corporation. The PSC further directed Ridge Associates, LP to make the necessary arrangements with Pheasant Hill Water Corporation to facilitate financing for the necessary improvements to the system, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(99-W-1572SA2)

**PROPOSED RULE MAKING  
HEARING(S) SCHEDULED**

**Major Electric Rate Filing**

**I.D. No.** PSC-46-08-00005-P

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

**Proposed Action:** The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service - P.S.C. No. 15.

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

**Subject:** Major electric rate filing.

**Purpose:** To consider a proposal to increase annual electric revenues by approximately \$35.4 million or 16.3%.

**Public hearing(s) will be held at:** 10:30 a.m., Jan. 12, 2009\* at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

\*On occasion there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS Web Site ([www.dps.state.ny.us](http://www.dps.state.ny.us)) under Case 08-E-0887.

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

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

**Substance of proposed rule:** The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson) to increase its annual electric delivery revenues by approximately \$35.4 million or 16.3%. The statutory suspension period for the proposed filing runs through June 27, 2009. The Commission may adopt in whole or in part or reject terms set forth in Central Hudson's proposal.

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

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

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

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

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

(08-E-0887SA1)

**PROPOSED RULE MAKING  
HEARING(S) SCHEDULED**

**Major Gas Rate Filing**

**I.D. No.** PSC-46-08-00011-P

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

**Proposed Action:** The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Gas Service - P.S.C. No. 12.

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

**Subject:** Major gas rate filing.

**Purpose:** To consider a proposal to increase annual gas revenues by approximately \$14.7 million or 28.2%.

**Public hearing(s) will be held at:** 10:30 a.m., Jan. 12, 2009\* at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

\*On occasion there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS Web Site ([www.dps.state.ny.us](http://www.dps.state.ny.us)) under Case 08-G-0888.

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

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

**Substance of proposed rule:** The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson) to increase its annual gas delivery revenues by approximately \$14.7 million or 28.2%.

The statutory suspension period for the proposed filing runs through June 27, 2009. The Commission may adopt in whole or in part or reject terms set forth in Central Hudson's proposal.

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

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

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

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

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

(08-G-0888SA1)

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

**Recommendations of Collaborative Regarding KeySpan's Unbundled Services**

**I.D. No.** PSC-46-08-00006-P

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

**Proposed Action:** The Commission is considering whether to approve, deny, or modify, in whole or in part, the recommendations contained in the report of the collaborative formed to examine KeySpan's unbundled services, including firm and non-firm transportation services.

**Statutory authority:** Public Service Law, sections 5(1)(b), 65(1), 66(1)

**Subject:** Recommendations of collaborative regarding KeySpan's unbundled services.

**Purpose:** Whether and to what extent the Commission should approve recommendations regarding KeySpan's unbundled services.

**Substance of proposed rule:** The Commission is considering whether to approve, deny, or modify, in whole or in part, the recommendations contained in the report of the collaborative formed to examine KeySpan's unbundled services, including firm and non-firm transportation services. In making its determination, the Commission may take into consideration the Report of KEDNY and KEDLI Concerning Transportation and Balancing Collaborative, submitted on September 30, 2008 in accordance with the Commission's December 21, 2007 Order in Case 06-G-1185, amendments made to the report, comments made by other parties, the record in the proceeding and such other information as the Commission may deem appropriate. The Commission may consider recommendations that may be developed from the report and may consider related matters.

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

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

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

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

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

(06-G-1185SA8)

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

**The Commission is Considering a Proposal by NYSERDA to Allocate \$5.25 Million Annually**

**I.D. No.** PSC-46-08-00007-P

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

**Proposed Action:** The establishment of a surcharge to fund efforts of NYSERDA toward enhancement of energy efficiency savings from energy codes and appliance standards supported in Case 07-M-0548 in an effort to decrease energy consumption by 15 percent by the year 2015.

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

**Subject:** The Commission is considering a proposal by NYSERDA to allocate \$5.25 million annually.

**Purpose:** The proposed program would enhance energy savings from energy codes and appliance standards.

**Substance of proposed rule:** The Commission has instituted a proceeding in Case 07-M-0548 to explore and develop the means by which the State's electric energy consumption can be decreased by 15% from expected levels by the year 2015. The Commission is considering a proposal by the New York State Energy Research and Development Authority (NYSERDA) to allocate \$5.25 million annually to fund efforts toward enhancement of energy efficiency savings from energy codes and appliance standards.

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

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

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

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

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

(07-M-0548SA13)

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

**Property Transfer in the Village of Avon, New York**

**I.D. No.** PSC-46-08-00008-P

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

**Proposed Action:** The Commission is considering whether to approve or reject a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid to approve the transfer of property to the Village of Avon.

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

**Subject:** Property transfer in the Village of Avon, New York.

**Purpose:** To consider a petition for the transfer of street lighting and attached equipment to the Village of Avon, New York.

**Substance of proposed rule:** The Commission is considering whether to approve or reject a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) for the transfer of property, pursuant to Public Service Law § 70 from National Grid to the Village of Avon, New York. The property in question includes 15 street lights, their lamps and connecting electric cable currently located in the Village of Avon. National Grid proposes to transfer the property to the Village of Avon for \$4,342.49. The Village of Avon will pay National Grid no other compensation.

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

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

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

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

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

(08-E-1207SA1)

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

**An Acquisition of Common Stock in the Indirect Owner of Nuclear Generation Facilities**

**I.D. No.** PSC-46-08-00009-P

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

**Proposed Action:** The Commission is considering a petition dated October 17, 2008 from MidAmerican Energy Holdings Company, Constellation Energy Group, Inc., and others, requesting approval of a proposed acquisition of common stock.

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

**Subject:** An acquisition of common stock in the indirect owner of nuclear generation facilities.

**Purpose:** Consideration of approval of an acquisition of common stock in the indirect owner of nuclear generation facilities.

**Substance of proposed rule:** In a petition dated October 17, 2008, MidAmerican Energy Holdings Company (MidAmerican), Constellation Energy Group, Inc. (Constellation), R.E. Ginna Nuclear Power Plant LLC, and Nine Mile Point Nuclear Station LLC request approval of MidAmerican's proposed acquisition of common stock in Constellation, the indirect owner of the R.E. Ginna Nuclear Power Plant and the Nine Mile Point Nuclear Station electric generation facilities. The acquisition would be accomplished through the conversion of preferred stock into common stock. 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:* Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

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

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

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

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

(08-E-1249SA1)

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

**A Transfer of Indirect Ownership Interests in Nuclear Generation Facilities**

**I.D. No.** PSC-46-08-00010-P

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

*Proposed Action:* The Commission is considering a petition dated October 17, 2008 from MidAmerican Energy Holdings Company, Constellation Energy Group, Inc., and others, requesting approval of the transfer of indirect ownership interest in nuclear generation facilities.

*Statutory authority:* Public Service Law, section 70

*Subject:* A transfer of indirect ownership interests in nuclear generation facilities.

*Purpose:* Consideration of approval of a transfer of indirect ownership interests in nuclear generation facilities.

*Substance of proposed rule:* In a petition dated October 17, 2008, MidAmerican Energy Holdings Company (MidAmerican), Constellation Energy Group, Inc. (Constellation), R.E. Ginna Nuclear Power Plant LLC, and Nine Mile Point Nuclear Station LLC request approval of the transfer of indirect ownership interests in the R.E. Ginna Nuclear Power Plant and the Nine Mile Point Nuclear Station electric generation facilities. Through the proposed transfer transaction, MidAmerican plans to acquire, indirectly, all of the ownership interests in Constellation, the current indirect owner of the generation facilities. 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:* Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

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

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

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

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

(08-E-1250SA1)

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

**The Attachment of Wireless Facilities to Electric Transmission Facilities**

**I.D. No.** PSC-46-08-00012-P

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

*Proposed Action:* The Commission is considering whether to approve, reject or modify, in whole or in part, the petition of Consolidated Edison Company of New York, Inc and AT & T Mobility, LLC, regarding wireless attachments to electric transmission facilities.

*Statutory authority:* Public Service Law, section 70

*Subject:* The attachment of wireless facilities to electric transmission facilities.

*Purpose:* To approve reject or modify the petition to allow the attachment of wireless antennas to electric transmission towers.

*Substance of proposed rule:* In connection with the petition of Consolidated Edison Company of New York, Inc. (Con Edison) and AT & T Mobility (AT & T) for the approval of the attachment of AT & T wireless antennas to Con Edison electric transmission facilities, the Commission is considering a waiver from the reporting requirements for the leasing of property by a utility for wireless attachments on transmission facilities. The Commission will consider how these issues apply to the attachment now sought and to future petitions for approval for such attachments to Con Edison property.

Con Edison and AT & T are seeking permission to attach three cellular telephone antennas to a Con Edison electric transmission tower (designated K-250) located in the Town of Carmel, Putnam County, pursuant to Public Service Law section 70 and Case 07-M-0744, Consolidated Edison Company of New York, Inc et al. – Wireless Attachments, Order Granting Petition (issued November 8, 2007).

The waiver being sought concerns 16 NYCRR sections 31.1(f), (g), (h), (i), (j), (k) and (l), which relate to the information that must be provided when a utility seeks to transfer or lease its property. These sections involve the inventory, original cost, depreciation and revenues derived from the property involved.

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

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

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

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

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

(08-M-0520SA1)

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

**Adopt Accrual Method of Revenue Recognition for Accounting and Regulatory Purposes**

**I.D. No.** PSC-46-08-00013-P

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

*Proposed Action:* The Commission is considering a petition filed by Consolidated Edison Company of New York, Inc. for authority to adopt the accrual method of revenue recognition for accounting and regulatory purposes.

*Statutory authority:* Public Service Law, sections 66(4) and 66(9)

*Subject:* Adopt accrual method of revenue recognition for accounting and regulatory purposes.

*Purpose:* To adopt accrual method of revenue recognition for unbilled revenues for accounting and regulatory purposes.

*Substance of proposed rule:* The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition by Consolidated Edison Company of New York, Inc. for authority to adopt the accrual method of revenue recognition for accounting and regulatory purposes. The proposed change will require the establishment of a balance sheet accrual of approximately \$399 million as of December 31, 2008 for unbilled revenue and elated liability accounts relating to transmission and distribution revenue of approximately \$132 million, \$45 million and \$11 million for electric, gas and steam respectively, representing the unbilled revenues.

*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, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: [leann\\_ayer@dps.state.ny.us](mailto:leann_ayer@dps.state.ny.us)*

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

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

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

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

(08-M-1150SA1)

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

**The Attachment of Cellular Antennae to an Electric Transmission Tower**

**I.D. No.** PSC-46-08-00014-P

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

*Proposed Action:* The Commission is considering whether to approve, reject, or modify, in whole or in part, the petition of Consolidated Edison Company of New York, Inc. and AT&T Mobility for the approval of wireless attachments to transmission facilities.

*Statutory authority:* Public Service Law, section 70

*Subject:* The attachment of cellular antennae to an electric transmission tower.

*Purpose:* To approve, reject or modify the request for permission to attach cellular antennae to an electric transmission tower.

*Substance of proposed rule:* In connection with the petition of Consolidated Edison Company of New York, Inc. (Con Edison) and AT & T Mobility (AT & T) for the approval of the attachment of AT & T wireless antennas to Con Edison electric transmission facilities, the Commission is considering a waiver from the reporting requirements for the leasing of property by a utility for wireless attachments on transmission facilities. The Commission will consider how these issues apply to the attachment now sought and to future petitions for approval for such attachments to Con Edison property.

Con Edison and AT & T are seeking permission to attach three cellular telephone antennas to a Con Edison electric transmission tower (designated E-10) located in the Town of Yonkers, Westchester County, pursuant to Public Service Law section 70 and Case 07-M-0744, Consolidated Edison Company of New York, Inc et al. – Wireless Attachments, Order Granting Petition (issued November 8, 2007).

The waiver being sought concerns 16 NYCRR sections 31.1(f), (g), (h), (i), (j), (k) and (l), which relate to the information that must be provided when a utility seeks to transfer or lease its property. These sections involve the inventory, original cost, depreciation and revenues derived from the property involved.

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

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

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

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

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

(08-M-0773SA1)

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

**Water Rates and Charges**

**I.D. No.** PSC-46-08-00015-P

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

*Proposed Action:* The Commission is considering the filing of Bristol Water Works Corporation (Bristol) filed on October 27, 2008, requesting authority to increase its annual revenues by approximately \$38,542 or 42.53% and going from a flat rate to a metered rate.

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

*Subject:* Water rates and charges.

*Purpose:* For approval to increase Bristol Water Works Corporation's annual revenues by about \$38,542 or 42.53%.

*Substance of proposed rule:* On October 27, 2008, Bristol Water Works Corporation (Bristol or the company) filed, to become effective on March 1, 2009, tariff amendments (Leaf No. 10, Revision 1, Leaf No. 12, Revision 1, Leaf 13, Revision 1, and Leaf 14 Revision 1) to its electronic tariff schedule P.S.C. No. 3 – Water containing new rates designed to produce additional annual revenues of about \$38,542 or 42.53%. The company also requests to be allowed to change its current residential rate structure and billing period from a monthly, flat rate billed in advance to a quarterly metered rate structure. The proposed metered rates will consist of an \$85 quarterly minimum charge billed in advance, which includes a usage allowance of 7,500 gallons, and a usage rate of \$4.50 per 1,000 gallons for all water use above the minimum allowance. Bristol expects to have all the meters installed by the end of 2008. The company also requests permission to increase its restoration of service charges from a flat rate of \$10 at all times to \$50 during normal business hours, \$75 outside of normal business hours and \$100 during weekends and public holidays. Bristol provides flat rate water service to 316 residential customers and metered water service to 4 commercial customers in the Town of South Bristol, Ontario County. Fire protection service is not provided. The company's tariff, along with its proposed changes, will be available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us)) located under Access to Commission Documents – Tariffs. The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

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

(08-W-1272SA1)

## Department of State

### AMENDED NOTICE OF ADOPTION

#### Continuing Education in Infection Control and Applicable Law for Registered Hearing Aid Dispensers

**I.D. No.** DOS-49-07-00003-AA

**Filing No.** 1067

**Filing Date:** 2008-10-27

**Effective Date:** 2009-07-01

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

**Action taken:** Amendment of section 192.7 of Title 19 NYCRR.

**Amended action:** This action amends the rule that was filed with the Secretary of State on July 14, 2008, to be effective January 1, 2009, File No. 714. The notice of adoption, I.D. No. DOS-49-07-00003-A, was published in the July 30, 2008 issue of the *State Register*.

**Statutory authority:** General Business Law, section 803

**Subject:** Continuing education in infection control and applicable law for registered hearing aid dispensers.

**Purpose:** To require registered hearing aid dispensers to complete continuing education in infection control, State and Federal Law.

**Text of amended rule:** Section 192.7 is amended to read as follows:

(a) General requirements. No offering of a course of study shall be acceptable for credit unless such course of study shall have been approved by the department.

(b) Proof of compliance. A registrant shall maintain and, upon request, provide to the department proof of satisfactory completion of the continuing education requirements for the registrant's current and immediately preceding term of registration.

(c) Approved entity. Dispenser continuing education courses and offerings may be presented by: any college or university accredited by the Commissioner of Education of the State of New York; public and private vocational schools; audiology, hearing and/or hearing aid professional societies and organizations; medical facilities; or hearing instrument manufacturers.

(d) Application for approval of a continuing education course of study.

(1) An application for approval to conduct a course of study by an educational provider shall be submitted 60 days before the proposed course is to begin.

(2) The application shall include the following:

(i) name and business address of the proposed school;

(ii) if applicant is a partnership, the names and addresses of all the partners of the entity;

(iii) if applicant is a corporation, the names and addresses of persons who own five percent or more of the stock of the entity;

(iv) the name, home and business address and telephone number of the education coordinator who will be responsible for administering the regulations contained in this Part;

(v) locations where classes will be conducted;

(vi) title of each course or program to be conducted; (vii) a detailed outline of the subject matter, together with time sequence of each segment; and

(viii) a description of materials that will be distributed.

(e) Basic course or program requirements. Approval for continuing education courses may be granted for courses which cover hearing aid dispenser-related topics. No credit will be granted for sales or sales-related courses or components thereof.

(f) Length of programs. A program must contain a minimum of one contact hour and may contain a maximum of 20 contact hours of instruction.

(g) Program approval. A sponsor of a course which is conducted on one day may file an application for approval within 30 days of the completion of the course. The sponsor must advise registrants that approval has not been granted.

(h) Facilities. Each course shall be conducted in such premises and facilities as necessary to properly present the course.

(i) Change of approved course of study. There shall be no change or alteration in any approved course of study of any subject without prior written notice to and approval by the department.

(j) Attendance. In order to obtain a certificate of completion for continu-

ing education, a dispenser must complete at least 90 percent of the outlined course of instruction. A student may complete hours that are missed at the discretion of the approved entity. Within 30 days of the completion of the course, the approved entity must submit to the department a list of the names and registration numbers of all individuals who successfully complete the approved course.

(k) Certificate of completion. An educational provider shall issue a certificate of successful completion of a course approved by the Department of State to a person who has attended the required aggregate number of hours of such a course.

(l) Availability. An approved course shall be open to any registrant.

(m) Retention of records. An approved entity shall retain the records of all students for a period of five years after the completion of a course, and such papers shall be available for inspection by duly authorized representatives of the department at all times during such period.

(n) Auditing. A duly authorized representative of the department may audit any course, verify attendance and inspect the records of attendance of a course, at any time during its presentation or for a period of five years after completion thereof, without prior notice to the sponsor.

(o) Suspensions and denials of course approval.

(1) Within 60 days after the receipt of the application for approval of an offering, the department shall inform the sponsor as to whether the course has been approved, denied, or whether additional information is needed to determine the acceptability of the offering.

(2) The department may deny, suspend or revoke the approval of a dispenser course, instructor or location, if it is determined not to be in compliance with law and regulations, or if the offering does not adequately reflect and present current hearing aid dispenser knowledge. If disciplinary action is taken, a written order of suspension, revocation or denial of approval shall be issued. Anyone who objects to such denial, suspension or revocation shall have the opportunity to appeal to the Secretary of State or designee within 30 days.

(p) Faculty approval and qualifications.

(1) Each instructor who is a registered hearing aid dispenser with three years of full-time experience in the dispensing of hearing aids and each instructor of an approved educational provider who has three years of experience in the field directly related to hearing aid dispensing must submit a one-time application to the Division of Licensing Services, Bureau of Educational Standards, on an application form as promulgated by the division, along with a resume.

(2) An instructor in technical subjects, closely related to hearing aid dispensing, but not classified as specific subject matter pertaining to hearing aid dispensing theory, who does not satisfy the three-year experience qualification under paragraph (1) of this subdivision must submit a technical instructor application certifying to the claimed expertise along with a resume.

(q) Policy on course cancellation and tuition refund. An educational provider must submit to the department its written policy relating to course cancellation and tuition refunds. Such policy must be provided in writing to prospective students prior to the acceptance of any fees.

(r) Registration period. Each registration or renewal period for approved courses shall be for 12 months or a part thereof. The period shall commence on each January 1st or a date thereafter and continue until December 31st of each year.

(s) Equivalency credit.

(1) A registrant who completes a course of study offered outside of the State of New York, which course has not been approved by the department, may file a request to the department for review and evaluation of such course. An application for such consideration may be submitted along with official documentation of satisfactory completion, and the official description of the course.

(2) An instructor of an approved qualifying or continuing education course may be awarded one hour of continuing education credit for each direct hour of instruction during the registration cycle. Credit shall not be awarded for teaching the same course more than once in a registration cycle. Instructors must submit evidence of such experience with an equivalency application.

(3) An application for and evidence of equivalency credit must be submitted to the department for consideration at least 30 days prior to the expiration of the registration.

(t) Individual credit for continuing education. Any course approved under this section cannot be taken more than once during the same registration cycle.

(u) Continuing education extension. A registrant who is unable to complete continuing education requirements due to an extreme ongoing illness or other catastrophe may request an extension from the department. Medical documentation or other evidence of the claimed problem must be submitted along with the request for the extension.

(v) *Infection Control and New York State and Federal Law, Regulation and Professional Conduct for Hearing Aid Dispensers. As a condition of*

renewing a hearing aid dispenser registration, each hearing aid dispenser shall successfully complete a total of 20 continuing education credits per registration period as set forth in section 794 of the General Business Law. At least two of these required credit hours shall be devoted to the subject of infection control as prescribed by the Secretary of State and at least one of the required credit hours shall be devoted to the subject of New York State and Federal law, regulations and professional conduct as prescribed by the Secretary of State.

(w) *Infection Control and New York State and Federal Law, Regulation and Professional Conduct for Audiologists.* As a condition of renewing a hearing aid dispenser registration, each audiologist who is registered as a hearing aid dispenser under General Business Law section 790, subdivision one, paragraph (b) shall successfully complete four continuing education credits relating to the dispensing of hearing aids as set forth in section 794 of the General Business Law. At least two of these required credit hours shall be devoted to the subject of infection control and at least one of the required credit hours shall be devoted to the subject of New York State and Federal law, regulations and professional conduct.

**Amended rule as compared with adopted rule:** Amend effective date from 1/1/09 to 7/1/09.

**Text of amended rule and any required statements and analyses may be obtained from:** Whitney A. Clark, NYS Department of State, Division of Licensing Services, 80 South Swan Street, P.O. Box 12201, Albany NY 12201, (518) 473-2728, email: whitney.clark@dos.state.ny.us

**Revised Regulatory Impact Statement**

No changes were made to the previously published Regulatory Impact Statement.

**Revised Regulatory Flexibility Analysis**

No changes were made to the previously published Regulatory Flexibility Analysis for Small Business and Local Governments.

**Revised Rural Area Flexibility Analysis**

No changes were made to the previously published Rural Area Flexibility Analysis.

**Revised Job Impact Statement**

No changes were made to the previously published Job Impact Statement.