

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.

Education Department

NOTICE OF ADOPTION

Annual Professional Performance Reviews for Classroom Teachers and Building Principals

I.D. No. EDU-23-11-00006-A

Filing No. 486

Filing Date: 2012-05-29

Effective Date: 2012-06-13

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

Action taken: Amendment of section 100.2(o); and addition of Subpart 30-2 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), and 3012-c(1)-(9), as added by L. 2010, ch. 103 and amended by L. 2012, ch. 21

Subject: Annual professional performance reviews for classroom teachers and building principals.

Purpose: Establish standards and criteria for conducting annual professional performance reviews of classroom teachers and building principal.

Substance of final rule: The Commissioner of Education proposes to amend section 100.2(o) of the Commissioner's Regulations and add a new Subpart 30-2 to the Rules of the Board of Regents, to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and as amended by Chapter 21 of the Laws of 2012 (S.6732/ A.9554), by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services.

The following is a summary of the substance of the revised proposed rule.

Section 100.2(o) is amended to clarify that classroom teachers who are not subject to the provisions of Education Law section 3012-c in the 2011-2012 school year must still comply with the existing annual professional performance review set forth in section 100.2(o). A new provision was also added to section 100.2(o) to require that beginning July 1, 2011, all building principals that are not required to be evaluated under Education Law § 3012-c must be evaluated on an annual basis based on a plan agreed to by the building principal and the governing body of the school district or BOCES.

A new Subpart 30-2 is added to the Rules of the Board of Regents to establish requirements for the new annual professional performance review (APPR) system established by Education Law section 3012-c.

Section 30-2.1 sets forth applicability provisions. For the 2011-2012 school year, school districts shall ensure that the APPR of all classroom teachers of common branch subjects or English language arts or mathematics in grades four to eight, and of all building principals of schools in which such teachers are employed, are conducted in accordance with the requirements of section 3012-c and Subpart 30-2; and that reviews of classroom teachers and building principals (other than classroom teachers in the common branch subjects or English language arts (ELA) or mathematics in grades four to eight) are conducted in accordance with section 100.2(o) of the Commissioner's regulations.

For an APPR conducted in the 2012-2013 school year and thereafter, the school district or BOCES shall ensure that the reviews of all classroom teachers and building principals are conducted in accordance with the requirements of section 3012-c and Subpart 30-2. However, nothing shall be construed to preclude a school district or BOCES from adopting an APPR for the 2011-2012 school year that applies to all classroom teachers and building principals in accordance with this Subpart or for BOES, for classroom teachers of common branch subjects or English language arts or mathematics in grades four to eight and all building principals in which such teachers are employed.

The section also provides that nothing in Subpart 30-2 shall abrogate any conflicting provisions of any collective bargaining agreement in effect on July 1, 2010 during the term of such agreement and until the entry into a successor collective bargaining agreement, at which time the provisions in Subpart 30-2 will apply.

This section further provides that nothing shall be construed to affect the statutory rights of a school district or BOCES to terminate a probationary teacher or principal for statutorily and constitutionally permissible reasons other than the performance of the teacher or principal in the classroom or school, including but not limited to misconduct.

Section 30-2.2 provides definitions for certain terms used in the Subpart.

Section 30-2.3 sets forth the content requirements for APPR plans submitted under Subpart 30-2. By September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers of common branch subjects, ELA or mathematics in grades four to eight and building principals of schools in which such teachers are employed. By July 1, 2012, each school district/BOCES shall adopt and submit an APPR plan to the Commissioner for approval, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for the APPR of all of its classroom teachers and building principals. The Commissioner shall be required to approve or reject the plan by September 1, 2012. To the extent that by July 1, 2012 or by July 1 of any subsequent year, any of the items required to be included in the plan are not finalized by such date, as a result of unresolved collective bargaining negotiations, the entire plan shall be submitted to the Commissioner upon resolution of its terms.

Section 30-2.4 sets forth requirements for evaluating classroom teachers of common branch subjects, ELA or mathematics in grades four to eight for the 2011-2012 school year. 20 points of the evaluation will be based on student growth on State assessments or other comparable measures and 20 points will be based on locally selected measures as described in the section. 60 points of the evaluation will be based on multiple measures of teacher and principal effectiveness as described in

this section. A teacher's performance must be assessed based on a teacher practice rubric(s) approved by the Department. A principal's performance must be assessed based on an approved principal practice rubric. Provision is made for granting a variance for use of existing rubrics. At least 31 of the 60 points for teachers shall be based on multiple classroom observations. At least 31 of the 60 points for principals shall be based on a broad assessment of the principal's leadership and management actions by the principal's supervisor or a trained independent evaluator. This section also prescribes options for any remaining points of the 60 points.

Section 30-2.5 sets forth requirements for evaluating all classroom teachers and building principals for the 2012-2013 school year and thereafter. The section explains how the requirements for the State assessment and locally selected measures subcomponents will differ, including the points assigned for each subcomponent, depending on whether the Board of Regents has approved a value-added growth model for particular grades, courses. This section also describes the options that may be used for the State assessment subcomponent for non-tested subjects, the options for locally selected measures and the other measures of teacher and principal effectiveness.

Section 30-2.6 describes the procedures for scoring and rating the evaluations, including a requirement that the rating category ("Highly Effective", "Effective", "Developing", or "Ineffective") assigned to teacher and building principal is determined by a single composite effectiveness score that is calculated based on the scores received by the teacher or principal in each of the subcomponents. This section prescribes specific scoring ranges for each rating category for the State assessment subcomponent and the locally selected measures subcomponent and the overall rating categories.

Section 30-2.7 describes the criteria and approval process for teacher and principal practice rubrics to be used in the evaluation of teachers and building principals.

Section 30-2.8 describes the criteria and approval process for student assessments to be used in the evaluation of teachers and building principals.

Section 30-2.9 describes requirements for the training of evaluators and the training and certification of lead evaluators.

Section 30-2.10 describes requirements for teacher and principal improvement plans.

Section 30-2.11 describes requirements for appeals procedures through which an evaluated teacher or principal may challenge their APPR and provides that appeals must be timely and expeditious.

Section 30-2.12 provides that the Department will annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests that a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school, district or BOCES identified by the Department may be highlighted in public reports and/or the Commissioner may order a corrective action plan, which may include, but not be limited to, a requirement that the school district or BOCES arrange for additional professional development, provide in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system, where appropriate.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 30-2.5(d)(1).

Revised rule making(s) were previously published in the State Register on April 11, 2012.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, NYS Education Department, Office of Counsel, 89 Washington Avenue, Albany, NY 12234, (518) 483-2183, email: mgammon@mail.nysed.gov

Revised Regulatory Impact Statement

Since publication of the Notice of Proposed Rule Making in the State Register on April 11, 2012, the following nonsubstantial revisions were made to the proposed rule:

Section 30-2.5(d)(1)(iv)(a) of the Rules of the Board of Regents was amended to add "and/or" after this clause to clarify that it is one of four options.

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

Revised Regulatory Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the State Register on April 11, 2012, nonsubstantial revisions were made to the proposed rule, as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revisions do not require any further changes to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Government.

Revised Rural Area Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the State Register on April 11, 2012, nonsubstantial revisions were made to the

proposed rule, as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revisions do not require any further changes to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on April 11, 2012, nonsubstantial revisions have been made to the proposed rule as described in the Revised Regulatory Impact Statement published herewith. The proposed amendment establishes the requirements for annual professional performance reviews of classroom teachers and building principals to implement section 3012-c of the Education Law, as amended by Chapter 21 of the Laws of 2012. The proposed revised rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Revised Rule Making in the State Register on April 11, 2012, the State Education Department received the following comments.

1. COMMENT:

Section 30-2.5(d)(1)(iv) of the Commissioner's regulations lists four options for the any remaining points of the 60 points for classroom teachers for 2012-2013. As a matter of clarity, the commenter requested that "and/or" be inserted after 30-2.5(d)(1)(iv)(a).

DEPARTMENT RESPONSE:

The Department has revised the regulation to insert "and/or" for clarity.

2. COMMENT:

Education Law section 3012-c(2)(h)(5) details the remaining points applicable to other measures of principal performance for the 2012-2013 school year after meeting the requirement that a majority of the 60 points be based upon a broad assessment of the principal's leadership and management. Phrasing of that provision as the option for the "remaining portion of the 60 points" in the legislation includes "in addition to the requirements of subparagraph 3 of this paragraph" at least two other sources of evidence from a list of options. Subparagraph 3, however, pertains to the points applicable to teachers and, therefore, it is unclear as how this is to be utilized when making a determination as to the allocation of the remaining 60 points. The commenter notes that the regulations do not contain that phrasing and ask that if this phrasing was inserted inadvertently, clarification should be issued.

DEPARTMENT RESPONSE:

As the commenter notes, subparagraph 3 refers to requirements for classroom teachers and not building principals. Therefore, the regulation does not contain this language because the Department believes that the legislation inadvertently references to subparagraph 3 instead of subparagraph 4.

3. COMMENT: Education Law section 3012-c(2)(j)(3) and section 30-2.6(d)(5) obligate the superintendent, district superintendent or chancellor and the president of the collective bargaining representative (where one exists) to jointly certify in its APPR plan that the process will use the narrative descriptions for the standards for the scoring ranges provided in the Commissioner's regulations to effectively differentiate a teacher or principal's performance. The commenter requests clarification that the joint certification is explicitly limited to the use of the narrative descriptions and is not a certification as to any other aspects of the APPR plan.

DEPARTMENT RESPONSE:

The superintendent, district superintendent or chancellor and the president of the collective bargaining representative (where one exists) must sign off on the entire APPR plan, including any certifications in the APPR plan, which include a certification that the school district or BOCES will use the narrative descriptions provided in the statute and regulation.

NOTICE OF ADOPTION

Institutional Accreditation for Title IV Purposes

I.D. No. EDU-12-12-00005-A

Filing No. 485

Filing Date: 2012-05-29

Effective Date: 2012-06-13

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

Action taken: Amendment of Subpart 4-1 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided) and 305(1) and (2)

Subject: Institutional accreditation for Title IV purposes.

Purpose: To conform the Regents Rules to federal regulations relating to voluntary institutional accreditation for Title IV purposes.

Text of final rule: Subpart 4-1 of the Rules of the Board of Regents is amended, effective June 13, 2012, as follows:

SUBPART 4-1

VOLUNTARY INSTITUTIONAL ACCREDITATION FOR TITLE IV PURPOSES

4-1.1. . .

4-1.2 Definitions. As used in this Subpart:

- (a) . . .
- (b) . . .
- (c) . . .
- (d) . . .
- (e) . . .
- (f) . . .
- (g) . . .
- (h) . . .

(i) *Correspondence education shall mean education provided through one or more courses by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and the student is limited, is not regular and substantive, and is primarily initiated by the student and is typically self-paced.*

(j) Course means an organized series of instructional and learning activities dealing with a subject.

[(j)] (k) Curriculum or program or program of study means the formal educational requirements necessary to qualify for certificates or degrees.

[(k)] (l) Credit means a unit of academic award applicable towards a degree offered by the institution.

[(l)] (m) Degree means an academic award listed in section 3.50 of this Title.

[(m)] (n) Department means the Education Department of the State of New York.

[(n)] (o) Deputy commissioner means the Deputy Commissioner for Higher Education of the State of New York.

(p) *Distance education means education that uses one or more of the following technologies to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously:*

- (1) *the internet;*
- (2) *one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;*
- (3) *audioconferencing; or*
- (4) *video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3).*

[(o)] (q) Higher Education Act or HEA or HEA means the Higher Education Act of 1965, as amended

[(p)] (r) Institution of higher education or institution means an institution authorized by the Regents to confer degrees.

[(q)] (s) Probationary accreditation means accreditation for a set period of time, not to exceed two years, during which the institution shall come into compliance with standards for accreditation through corrective action.

[(r)] (t) Principal center means the location of the principal administrative offices and instructional facilities of an institution of higher education.

[(s)] (u) Secretary means the United States Secretary of Education.

[(t)] (v) Semester hour means a credit, point, or other unit granted for the satisfactory completion of a course which requires at least 15 hours (of 50 minutes each) of instruction and at least 30 hours of supplementary assignments, or the equivalent as approved by the commissioner.

[(u)] (w) State means New York State.

[(v)] (x) Teach-out agreement means a written agreement between or among institutions that are accredited or pre-accredited by a nationally recognized accrediting agency that provides for the equitable treatment of students if one of those institutions stops offering an educational program before all students enrolled in that program have completed the program.

(y) *Teach-out plan shall mean a written plan that provides for the equitable treatment of students if an institution or an institutional location that provides one hundred percent of at least one program ceases to operate prior to all students completing their program of study. A teach-out plan may include a teach-out agreement between institutions.*

4-1.3. . .

4-1.4 Standards of quality for institutional accreditation.

(a) . . .

(b) . . .

(c) Programs of study.

(1) Integrity of credit.

(i) . . .

(ii) . . .

(iii) *The institution, in offering coursework through distance education or correspondence education, must have processes in place to verify that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the course and receives the academic credit for the course, using methods that may include but are not limited to a secure login and pass code; proctored examinations; and other technologies and practices that are effective in verifying student identity. Institutions must also use processes that protect student privacy and notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.*

(iv) Learning objectives for each course shall be of a level and rigor that warrant acceptance in transfer by other institutions of higher education.

[(iv)] (v) the institution shall assure that credit is granted only to students who have achieved the stated objectives of each credit-bearing learning activity.

(2) . . .

(3) . . .

(4) . . .

(d) . . .

(e) . . .

(f) . . .

(g) . . .

(h) . . .

(i) Consumer information.

(1) The following information shall be included in all catalogs of the institution:

(i) . . .

(ii) . . .

(iii) . . .

(iv) The instructional programs of the institution shall be described accurately.

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) . . .

- (f) . . .
- (g) *Transfer of credit. The process and criteria for accepting transfer of credit from other institutions shall be published.*
- [(g)] (h) . . .
- [(h)] (i) . . .
- [(i)] (j) . . .
- [(j)] (k) . . .
- (v) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (j) . . .
- (k) . . .
- (l) *Teach-out plans and agreements.*

(1) *Institutions are required to submit for approval to the accrediting agency a teach-out plan upon the occurrence of any of the following events:*

- (i) *the Board of Regents receives notification by the Secretary of Education that the Secretary has initiated an emergency action against an institution, or an action to limit, suspend, or terminate an institution participating in any Title IV program of the Higher Education Act, and that a teach-out plan is required;*
- (ii) *the Board of Regents acts to withdraw, terminate, or suspend the accreditation of the institution;*
- (iii) *the institution notifies the Board of Regents that it intends to cease operations or close a location that provides one hundred percent of at least one program; or*
- (iv) *another state's licensing or authorizing agency notifies the Board of Regents that an institution's license or legal authorization to provide an educational program has been or will be revoked.*

(2) *As part of its teach-out plan, the institution must submit [Any] any teach-out agreement that an institution has entered into with another institution or institutions [shall be submitted to the department] for approval. To be approved, such agreement shall:*

- [(1)] (i) *be between or among institutions that are accredited or pre-accredited by a nationally recognized accrediting agency;*
- [(2)] (ii) *ensure that the teach-out institution(s) has the necessary experience, resources, and support services to provide an educational program that is of acceptable quality and reasonable similar in content, structure and scheduling to that provided by the closed institution;*
- (iii) *ensure that the institution will remain stable, carry out its mission, and meet all obligations to existing students; and*
- [(3)] (iv) *ensure that the teach-out institution(s) can provide student access to the program and services without requiring them to move or travel substantial distances.*

(m) . . .
4-1.5 Procedures for accreditation.

- (a) . . .
- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .
- (6) . . .
- (7) . . .
- (8) . . .
- (9) *Appeal of advisory council recommendation.*
- (i) . . .
- (ii) . . .
- (iii) . . .

(iv) *The commissioner shall review any appeal papers, written responses filed, the record before the advisory council, the record of its deliberations, and its findings and recommendations. The commis-*

sioner shall also consider any new financial information submitted by the institution as part of its appeal if the information was unavailable to the institution until after the decision subject to the appeal was made, the information is significant as determined by the commissioner, and bears materially on the financial deficiencies identified by the agency and the only remaining deficiency cited by the agency is the institution's failure to meet any agency standard pertaining to finances. Upon such record, the commissioner may affirm, reverse, remand or modify the findings and recommendations of the advisory council. Such determination shall constitute a recommendation regarding accreditation action to the Board of Regents.

- (10) . . .
- (11) . . .
- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .
- (vi) *The subcommittee shall review any appeal papers, written responses filed, and the entire record upon which the Regents determination was based, which may include but not be limited to: the record before the advisory council, the record for the advisory council's deliberations and its findings and recommendations, any appeal papers and written responses foiled for an appeal of the findings and recommendations of the advisory council, the commissioner's recommendation to the Board of Regents regarding accreditation action, and the Regents determination. The subcommittee shall also consider any new financial information submitted by the institution as part of its appeal if the information was unavailable to the institution until after the decision subject to the appeal was made, the information is significant as determined by the commissioner, and bears materially on the financial deficiencies identified by the agency and the only remaining deficiency cited by the agency is the institution's failure to meet any agency standard pertaining to finances. Upon such record, the subcommittee may recommend to the Board of Regents that it affirm, reverse, remand or modify its determination of adverse accreditation action or granting probationary accreditation.*

- (vii) . . .
- (viii) . . .
- (b) . . .
- (c) . . .
- (d) *Procedures for a change in scope of accreditation.*

(1) *For purposes of this subdivision, substantive change shall mean:*

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .
- (vi) *a substantial increase in the number of clock hours or credit hours awarded for successful completion of a program; [or]*
- (vii) *the establishment of an additional location or branch campus, as such terms are defined in section 4-1.2 of this subpart[.];*
- (viii) *the entrance into a contractual agreement with an entity not certified to participate in Title IV, HEA programs, that offers more than 25% of one or more of the institution's program of study;*
- (ix) *the establishment of an additional location at which the institution offers at least fifty percent of an educational program;*
- (x) *the acquisition of any other institution or any program or location of another institution; or*
- (xi) *the addition of a permanent location at a site at which the institution is conducting a teach-out for students of another institution that has ceased operating before all students have completed their program of study.*

- (2) . . .
- (3) . . .

- (4) . . .
- (5) . . .
- (6) . . .
- (7) . . .
- (8) . . .

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 4-1.2(p) and 4-1.4(c)(1).

Text of rule and any required statements and analyses may be obtained from: Peg Rivers, NYS Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 486-3633, email: privers@mail.nysed.gov

Revised Regulatory Impact Statement

Since publication of the Notice of Proposed Rule Making in the State Register on March 21, 2012, the following nonsubstantial revisions were made to the proposed rule:

Section 4-1.2(p) was revised to insert “or more” after “one” in the definition of distance education so that more than one technology could be included in the definition of distance education.

Section 4-1.4(c)(1)(ii) was revised to replace “such as” with “that may include but are not limited to” for listing the methods of verification of a student in distance or correspondence education.

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

Revised Regulatory Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the State Register on March 21, 2012, nonsubstantial revisions were made to the proposed rule, as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revisions do not require any further changes to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Government.

Revised Rural Area Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the State Register on March 21, 2012, nonsubstantial revisions were made to the proposed rule, as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revisions do not require any further changes to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on March 21, 2012, nonsubstantial revisions have been made to the proposed rule as described in the Revised Regulatory Impact Statement published herewith. The proposed amendment clarifies existing standards and procedures that must be met by institutions of higher education seeking voluntary accreditation by the Board of Regents and the Commissioner of Education. The proposed revised rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Commercial and Recreational Harvest Regulations for Tautog (Blackfish)

I.D. No. ENV-24-12-00004-E

Filing No. 483

Filing Date: 2012-05-25

Effective Date: 2012-05-25

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

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

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105 and 13-0340-d

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

Specific reasons underlying the finding of necessity: These regulations are necessary for New York to remain in compliance with the Atlantic States Marine Fisheries Commission (ASMFC) fishery management plan (FMP) for tautog. Tautog is a popular food fish and is an eagerly sought target species for both recreational anglers and commercial fishermen. ASMFC, in an effort to reduce fishing mortality and allow the tautog stock to rebuild, adopted Addendum VI to the FMP for tautog. This addendum required states to implement management measures to achieve a 56 percent reduction in exploitation of tautog.

In compliance with Addendum VI, DEC submitted a Notice of Emergency Adoption and Proposed Rulemaking to the Department of State on December 30, 2011 and more restrictive tautog harvest measures became effective in New York that day. After the 45 day public comment period, DEC staff anticipated adopting the rule as it was proposed. However, ASMFC refined the findings of the most recent stock assessment and states are now required to achieve a 39 percent reduction in exploitation of tautog. DEC must revise the original proposed rule by slightly relaxing the management measures specified in the original amendment.

In the meantime, a second emergency adoption of the original rule was filed on March 27, 2012 and will expire on May 25, 2012. Should that rule expire and DEC does not promulgate another emergency rule by that date, the tautog harvest regulations will revert to the 2011 rules. Those rules do not provide adequate protection to the tautog stock; New York State recreational anglers and commercial fishermen will be able to harvest more than the addendum to the FMP allows. This emergency rule making is necessary to maintain the restrictive harvest regulations for tautog until the revised rule is adopted.

Each member state of ASMFC is required to promulgate regulations that comply with FMPs adopted by ASMFC. Failure by a state to adopt, in a timely manner, regulations implementing the provisions of the FMP may result in a determination of non-compliance by ASMFC and the imposition of federal sanctions on the particular fishery in that state.

The promulgation of this regulation as an emergency rule making is necessary because the current emergency rule will expire before the revised proposed rule is adopted. This emergency rule making will ensure that the appropriate harvest regulations remain in effect and New York remains in compliance with the FMP until the final rule is adopted.

Subject: Commercial and recreational harvest regulations for tautog (blackfish).

Purpose: To reduce harvest of tautog to remain in compliance with ASMFC and allow for the overfished stock to recover.

Text of emergency rule: Existing subdivision 40.1(f) of 6 NYCRR is amended to read as follows:

Species Striped bass through Red drum remain the same. Species Tautog is amended to read as follows:

40.1(f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Tautog	[Jan. 17 - April 30 and] Oct. [1]5 - Dec. [20]14	[14]16" TL	4

Species American eel through Oyster toadfish remain the same.
 Existing subdivisions 40.1(g) through 40.1(h) remain the same.
 Existing subdivision 40.1(i) is amended to read as follows:
 Species Striped bass remains the same. Species Tautog is amended to read as follows:
 40.1(i) Table B - Commercial Fishing.

Species	Open Season	Minimum Length	Possession Limit
Tautog	April 8 to last day of Feb.	[14]/5" TL	25 per vessel (except, 10 per vessel when fishing lobster pot gear and more than six lobsters are in possession)

Species American eel through Oyster toadfish remain the same.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 22, 2012.

Text of rule and any required statements and analyses may be obtained from: Stephen W. Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0435, email: swheins@gw.dec.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority:

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

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies, and interstate fishery management plans.

3. Needs and benefits:

These regulations are necessary for New York to maintain compliance with the Interstate Fishery Management Plan (FMP) for tautog as adopted by the Atlantic States Marine Fisheries Commission (ASMFC). New York, as a member state of ASMFC, must comply with the provisions of the Interstate Fishery Management Plans adopted by ASMFC. These FMPs are designed to promote the long-term sustainability of coast-wide marine species, preserve the states' marine resources, and protect the interests of both commercial and recreational fishermen. All member states remain in compliance with the FMPs by promulgating any necessary regulations that implement the provisions of the FMPs. If ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state comes into compliance with the FMP.

Under the FMP for tautog, ASMFC requires New York State to reduce its commercial and recreational harvest of tautog in 2012. According to the original tautog stock assessment, New York had to reduce its harvest by 48 percent and this resulted in the regulations proposed in the original Notice of Emergency Adoption and Proposed Rule Making, submitted to the Department of State on December 30, 2011. Before that emergency rule expired on March 28, 2012, a second Notice of Emergency Adoption was filed on March 27, 2012 and is set to expire on May 25, 2012. An error was discovered in the ASMFC's tautog stock assessment, and once corrected, the mandated reduction decreased to 39 percent. Continued fishing under the current emergency rules would be too restrictive, but 2011 regulations will likely lead to New York fishermen exceeding the now reduced harvest level for tautog in 2012. This new emergency rule making achieves the 39 percent harvest reduction mandated by the ASMFC but is less restrictive than the original emergency rule. The promulgation of this rule making as an emergency is necessary for New York State to remain in compliance with the FMP for tautog.

The regulations set forth in this emergency rule making decrease the duration of the 2012 recreational tautog season and increase the recreational minimum size limit. The commercial minimum size limit will also increase, but this is the only change made to the commercial regulations. These changes are necessary to prevent New York State recreational

anglers and commercial fishermen from overharvesting tautog. According to a report released by National Oceanic and Atmospheric Administration Fisheries, recreational fishing in New York generated \$424 million in total sales in 2006. Tautog is a popular fish taken by recreational harvesters in New York during a time of year when there are few other species to fish for. It is also commercially valuable, specifically when sold live in certain markets.

The emergency rule will prevent New York State fishermen from over-exploiting tautog while allowing limited harvest. New York State will remain in compliance with the FMP.

Specific amendments to the previous regulations regarding tautog include the following:

1. Recreational: Implement an open season for the tautog fishery from October 5 through December 14, a 16-inch minimum size limit, and a 4-fish possession limit. This represents a loss of 115 days from the 2011 fishing season, a 2-inch increase in minimum size, and no change to the bag limit.

2. Commercial: Implement an open season for the tautog fishery from April 8 to the last day of February, a 15-inch minimum size limit, and 25 fish per vessel trip limit (except, 10 fish per vessel when fishing lobster pot gear and more than six lobsters are in possession). This represents a 1.0 inch increase in minimum size and no additional changes to season and trip limit for the commercial fishery.

4. Costs:

(a) Cost to State government:

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

(b) Cost to local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

There are no new costs to regulated parties resulting from this action. However, these more restrictive management measures will decrease the number of days in the recreational season for tautog and will reduce angler participation in the recreational fishery. This is likely to decrease revenues for party/charter boat operators and sales at bait and tackle shops. The emergency rule may reduce the number of tautog taken by commercial fishermen and may reduce their income earned from fishing.

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

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

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

The amendment does not duplicate any state or federal requirement.

8. Alternatives:

The "no action" alternative would allow the current emergency rule to expire before a revised rule, concurrent with this emergency rule making, is adopted. The previous tautog regulations would become effective again. Commercial and recreational fishing effort under those regulations would likely exceed the fishing mortality rate deemed acceptable by the ASMFC's Amendment VI. If New York doesn't take steps to reduce harvest and maintain that reduction, the state could be found out of compliance with the Fishery Management Plan by the Atlantic States Marine Fisheries Commission and subject to federally imposed sanctions. Furthermore, the tautog population is severely depressed and cannot rebuild if the previous fishing pressure were to be reinstated. A healthy, rebuilt tautog stock could result in increased financial and recreational opportunities for New York State's fishermen.

This alternative was rejected.

The new emergency rule is more lenient towards New York's anglers than the emergency rule currently in place and will provide recreational fishermen and related industries increased opportunities to fish and generate revenue.

A suite of options that divided the burden of the fishery reduction differently between recreational and commercial components, using a variety of different seasons, minimum size limits, and possession limits that met the requirements of the ASMFC amendment were proposed to a public meeting of the New York State Marine Resource Advisory Council (MRAC). The option presented in this rule making had the most support from MRAC members and the public.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and the Regional Fishery Management Council FMPs.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news

releases and via DEC's website of the changes to the regulations. The emergency regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of rule:

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

ASMFC requires New York State to reduce its tautog exploitation by 39 percent and this will impact the State's recreational and commercial fishing industries. This emergency rule reduces the recreational season by 115 days. Those most affected by the rule are commercial fishermen, recreational anglers, licensed party and charter boat businesses, and retail and wholesale marine bait and tackle shops operating in New York State. In 2010, the State issued 990 food fish licenses to resident commercial fishermen and these individuals may be affected by an increase in their minimum size limit. There may be additional economic effects experienced by the 423 holders of food fish and crustacean dealer/shipper licenses. There were 501 licensed party and charter boats in 2010, and an unknown number of bait and tackle shops. Approximately 230,000 recreational marine fishing licenses were sold in 2010. Local party and charter boat businesses and bait and tackle shops will lose customers who target tautog during the late fall, winter, and early spring or that are discouraged by more restrictive regulations. Party and charter boat businesses and bait and tackle shops may rely on the patronage of recreational anglers who target tautog for the income it provides and may see a reduction in their earnings once the regulations are in place.

There are no local governments involved in the recreational fish harvesting business, nor do any participate in the sale of marine bait fish or tackle. Therefore, no local governments are affected by these regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

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

5. Economic and technological feasibility:

The emergency regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The changes required by the new regulations may reduce the income of party and charter businesses and marine bait and tackle shops because of the reduction in the number of days available for recreational fishers to take tautog. Commercial fishermen may experience smaller catches because they will then be required to throw back fish smaller than 15 inches.

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

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to maintain compliance with the FMPs for tautog and to avoid a punitive closure of the fisheries and the economic hardship that would ensue with such a closure. Since these regulatory amendments are consistent with federal and Interstate FMPs, DEC anticipates that New York State will remain in compliance with the FMPs.

The department consulted with the Marine Resources Advisory Council (MRAC) and other individuals who chose to share their views on tautog recreational and commercial management measures. There was no consensus or quorum, but a majority was in favor of the regulations set forth in this emergency rule making.

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

7. Small business and local government participation:

The department received recommendations from MRAC, which is comprised of representatives from recreational and commercial fishing interests. The regulations are also based upon comments received from

recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners, recreational anglers and state law enforcement personnel. There was no special effort to contact local governments because the proposed rule does not affect them.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The tautog fishery is located entirely within the marine and coastal district, and is not located adjacent to any rural areas of the State. Further, the proposed rule does not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

The promulgation of this regulation is necessary for the Department of Environmental Conservation (DEC) to maintain compliance with the Fishery Management Plan for tautog, to avoid potential federal sanctions for lack of compliance with such plan, and to optimize recreational and commercial fishing opportunities available to New Yorkers. The emergency rule will reduce the recreational season for tautog by 115 days and decrease the opportunities commercial and recreational fishermen will have to take fish home because of changes to minimum size limits.

Many currently licensed party and charter boat owners and operators, commercial fishermen, as well as bait and tackle businesses, will be affected by these regulations. Due to the reduction in the number and appeal of fishing days for tautog, there may be a corresponding reduction of the number of fishing trips and bait and tackle sales during the upcoming fishing season. The emergency rule in place since December 30, 2011 was more restrictive and reduced the recreational season by 128 days.

2. Categories and numbers affected:

In 2011, there were 978 people licensed to harvest finfish commercially, another 53 person issued finfish landing licenses, 451 licensed shipper/dealers and 503 licensed party and charter businesses in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York; however, DEC does not have a record of the actual number. The number of recreational fishers in New York has been estimated by the National Marine Fisheries Service to be just under 740,000 in 2010 (an estimate for 2011 is not yet available). However, this Job Impact Statement does not include them in this analysis, since fishing is recreational for them and not related to employment.

3. Regions of adverse impact:

The regions most likely to receive any adverse impact are within the marine and coastal district of the State of New York. This area includes all the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the State, including Long Island Sound and the Hudson River up to the Tappan Zee Bridge.

4. Minimizing adverse impact:

In the development of the emergency rule making, DEC consulted with the Marine Resources Advisory Council and many individuals who chose to share their views on tautog fishery management measures to DEC. In the long-term, the maintenance of sustainable fisheries will have a positive affect on employment for the fisheries in question, including commercial participants, party and charter boat owners and operators, wholesale and retail bait and tackle outlets and other support industries for recreational fisheries. Any short-term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. Protection of the tautog resource is essential to the survival of the party and charter boat businesses and bait and tackle shops that are sustained by these fisheries. In addition, sale of tautog may be a significant portion of some commercial fishermen's income. These regulations are designed to protect stocks while allowing appropriate harvest, to prevent over-harvest and to continue to rebuild stocks and maintain them for future utilization.

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

Commercial and Recreational Fishing Regulations for Tautog (Blackfish)

I.D. No. ENV-03-12-00008-RP

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

Proposed Action: Amendment of section 40.1 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105 and 13-0340-d

Subject: Commercial and recreational fishing regulations for tautog (blackfish).

Purpose: To reduce fishing mortality on tautog, remain in compliance with ASMFC fishery management plan and allow the stock to rebuild.

Text of revised rule: Existing subdivision 40.1(f) of 6 NYCRR is amended to read as follows:

Species Striped bass through Red drum remain the same. Species Tautog is amended to read as follows:
40.1(f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Tautog	[Jan. 17 - April 30 and] Oct. [1]5 - Dec. [20]14	[14]16'' TL	4

Species American eel through Oyster toadfish remain the same. Existing subdivisions 40.1(g) through 40.1(h) remain the same. Existing subdivision 40.1(i) is amended to read as follows:
Species Striped bass remains the same. Species Tautog is amended to read as follows:
40.1(i) Table B - Commercial Fishing.

Species	Open Season	Minimum Length	Possession Limit
Tautog	April 8 to last day of Feb.	[14]15'' TL	25 per vessel (except, 10 per vessel when fishing lobster pot gear and more than six lobsters are in possession)

Species American eel through Oyster toadfish remain the same.
Revised rule compared with proposed rule: Substantial revisions were made in section 40.1(f).
Text of revised proposed rule and any required statements and analyses may be obtained from Stephen Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-0435, email: swheins@gw.dec.state.ny.us

Data, views or arguments may be submitted to: Same as above.
Public comment will be received until: 30 days after publication of this notice.

Additional matter required by statute: Pursuant to the State Administrative Procedures Act, a negative declaration is on file at the Department of Environmental Conservation.

Revised Regulatory Impact Statement

- Statutory authority:**
Environmental Conservation Law (ECL) sections 13-0105 and 13-0340-d authorize the Department of Environmental Conservation (DEC or the department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for tautog.
- Legislative objectives:**
It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies, and interstate fishery management plans.
- Needs and benefits:**
These regulations are necessary for New York to maintain compliance with the Interstate Fishery Management Plan (FMP) for Tautog as adopted

by the Atlantic States Marine Fisheries Commission (ASMFC). New York, as a member state of ASMFC, must comply with the provisions of the Interstate Fishery Management Plans adopted by ASMFC. These FMPs are designed to promote the long-term sustainability of coast-wide marine species, preserve the states' marine resources, and protect the interests of both commercial and recreational fishermen. All member states remain in compliance with the FMPs by promulgating any necessary regulations that implement the provisions of the FMPs. If ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state comes into compliance with the FMP.

Under Addendum VI to the FMP, ASMFC requires New York State to reduce its commercial and recreational harvest of tautog in 2012 by 48 percent. In compliance with the FMP, DEC submitted a Notice of Emergency Adoption and Proposed Rule Making to the Department of State on December 30, 2011 and more restrictive tautog harvest measures became effective in New York that day. After the 45 day public comment period, DEC staff anticipated adopting the rule as it was proposed. However, ASMFC refined the findings of the most recent stock assessment and New York State is now required to achieve a 39% reduction in exploitation of tautog. DEC must revise the original proposed rule by slightly relaxing the management measures specified in the original amendment. This rule making package will revise the originally proposed rule.

For the recreational tautog fishery, the revised proposed rule will still require a 16-inch minimum size limit, as originally proposed. However, the revised recreational season for tautog is longer than what was originally proposed, from October 5 through December 14, instead of October 8 through December 4. There was no change to the 2011 possession limit of 4 fish.

For the commercial fishery, there is no change to the original proposed rule. The size limit remains at 16 inches, an increase from 15 inches in 2011.

With this revised proposed rule, New York State will satisfy the ASMFC requirement to reduce fishing mortality on tautog and remain in compliance with the FMP.

- Costs:**
 - Cost to State government:**
There are no new costs to state government resulting from this action.
 - Cost to local government:**
There will be no costs to local governments.
 - Cost to private regulated parties:**
There are no new costs to regulated parties resulting from this action. However, these proposed management measures will decrease the number of days in the recreational season for tautog and will reduce angler participation in the recreational fishery. This is likely to decrease revenues for party and charter boat businesses and bait and tackle shops that cater to anglers who target tautog. The proposed rule may reduce the number of tautog taken by commercial fishermen and consequently may reduce their income earned from fishing.

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

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

- Local government mandates:**
The proposed rule does not impose any mandates on local government.
- Paperwork:**
None.
- Duplication:**
The proposed amendment does not duplicate any state or federal requirement.
- Alternatives:**

No "action alternative" - Failure to promulgate this rule would result in the resumption of the 2011 tautog regulations. Under those regulations New York State anglers and fishermen would harvest tautog at a rate that would exceed the fishing mortality recommended to allow the stock to rebuild. Furthermore, New York State would no longer be in compliance with the FMP for tautog.

A suite of options, using a variety of different seasons, minimum size limits, and possession limits that met the requirements of the ASMFC, were developed and presented to the Marine Resources Advisory Council (MRAC). Each of these various options shifted the burden of the reduction in fishing effort between recreational and commercial participants differently. The option proposed in this revised rule making had the most support from MRAC members and members of the public.

- Federal standards:**
The amendments to Part 40 are in compliance with the ASMFC and the Regional Fishery Management Council FMPs.

10. Compliance schedule:

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

Revised Regulatory Flexibility Analysis

1. Effect of rule:

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

Addendum VI of the Interstate FMP for Tautog requires New York State to reduce its tautog exploitation by 47.8% percent in order to reduce the fishing mortality of tautog. New York State promulgated an emergency rule on December 30, 2011 that significantly reduced the recreational fishing season. More recently, ASMFC refined the findings of the most recent stock assessment and New York is now required to achieve a 39% reduction in exploitation of tautog. The original proposed rule would have reduced the 2011 tautog recreational season by 128 days; the revised proposed rule by only 115 days.

Those most affected by the proposed rule are commercial fishermen, recreational anglers, licensed party and charter boat businesses, and retail and wholesale marine bait and tackle shops operating in New York State. In 2010, the State issued 990 food fish licenses to resident commercial fishermen and these individuals may be affected by an increase in their minimum size limit. There may be additional economic effects experienced by the 423 holders of food fish and crustacean dealer/shipper licenses. There were 501 licensed party and charter boats in 2010, and an unknown number of bait and tackle shops. Approximately 230,000 recreational marine fishing licenses were sold in 2010. Local party and charter boat businesses and bait and tackle shops will lose customers who target tautog during the late fall, winter, and early spring or that are discouraged by more restrictive regulations. Party and charter boat businesses and bait and tackle shops may rely on the patronage of recreational anglers who target tautog for the income it provides and may see a reduction in their earnings once the regulations are in place.

There are no local governments involved in the recreational fish harvesting business, nor do any participate in the sale of marine bait fish or tackle. Therefore, no local governments are affected by these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

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

5. Economic and technological feasibility:

The revised proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The changes required by the revised proposed regulations may reduce the income of party and charter businesses and marine bait and tackle shops because of the reduction in the number of days available for recreational fishers to take tautog, as did the measures proposed in the original rule. Commercial fishermen may experience smaller catches because they will then be required to throw back fish smaller than 15 inches.

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

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to maintain compliance with the FMPs for tautog and to avoid a punitive closure of the fisheries and the economic hardship that would ensue with such a closure. Since these regulatory amendments are consistent with federal and Interstate FMPs, DEC anticipates that New York State will remain in compliance with the FMPs.

The department consulted with the Marine Resources Advisory Council (MRAC) and other individuals who chose to share their views on tautog recreational and commercial management measures. There was no consensus or quorum, but a majority was in favor of the proposed regulation.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail bait and tackle shops, commercial fishing operations and other fishery support industries. Failure to comply with FMPs and take required actions to

protect our natural resources could cause the collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. These regulations are being proposed in order to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

7. Small business and local government participation:

The department received recommendations from MRAC, which is comprised of representatives from recreational and commercial fishing interests. The proposed regulations are also based upon comments received from recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners, recreational anglers and state law enforcement personnel. There was no special effort to contact local governments because the proposed rule does not affect them.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected.

Revised Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The tautog fishery is located entirely within the marine and coastal district, and is not located adjacent to any rural areas of the State. Further, the proposed rule does not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Revised Job Impact Statement

1. Nature of impact:

The promulgation of this regulation is necessary for the Department of Environmental Conservation (DEC) to maintain compliance with the Fishery Management Plan for tautog, to avoid potential federal sanctions for lack of compliance with such plan, and to optimize recreational and commercial fishing opportunities available to New Yorkers. The original proposed rule was more restrictive and reduced the 2011 recreational tautog season by 128 days. This revised rule will reduce the 2011 recreational season by 115 days.

Many licensed party and charter boat owners and operators, commercial fishermen, and bait and tackle shop businesses will be affected by these regulations. The increased minimum sizes in both the revised and original rule will decrease the number of tautog available for harvest for both commercial fishermen and recreational anglers. The reduction in the number of days in the recreational tautog season will reduce the opportunities for recreational anglers to target tautog and reduce the number of party and charter boat trips targeting tautog. Bait and tackle sales may also decrease because of the shorter fishing season. However, the recreational season proposed in the revised rule will be a longer fishing season than was originally proposed.

2. Categories and numbers affected:

In 2011, there were 978 people licensed to harvest finfish commercially, another 53 persons issued finfish landing licenses, 451 licensed shipper/dealers and 503 licensed party and charter businesses in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York; however, DEC does not have a record of the actual number. The number of recreational fishers in New York has been estimated by the National Marine Fisheries Service to be just under 740,000 in 2010 (an estimate for 2011 is not yet available). However, this Job Impact Statement does not include them in this analysis, since fishing is recreational for them and not related to employment.

3. Regions of adverse impact:

The regions most likely to receive any adverse impact are within the marine and coastal district of the State of New York. This area includes all the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the State, including Long Island Sound and the Hudson River up to the Tappan Zee Bridge.

4. Minimizing adverse impact:

In the development of the proposed rule making, DEC consulted with the Marine Resources Advisory Council and many individuals who chose to share their views on tautog fishery management measures to DEC. In the long-term, the maintenance of sustainable fisheries will have a positive affect on employment for the fisheries in question, including commercial participants, party and charter boat owners and operators, wholesale and retail bait and tackle outlets and other support industries for recreational fisheries. Any short-term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from

well-managed resources. Protection of the tautog resource is essential to the survival of the party and charter boat businesses and bait and tackle shops that are sustained by these fisheries. In addition, sale of tautog may be a significant portion of some commercial fishermen's income. These regulations are designed to protect stocks while allowing appropriate harvest, to prevent over-harvest and to continue to rebuild stocks and maintain them for future utilization.

Assessment of Public Comment

1. Comment: DEC received comment dated January 19, 2012. The email claims that the emergency regulations put in place severely restrict recreational anglers and will not be effective in curbing the live market, which is the cause for the tautog decline. It suggests harsher penalties for anyone involved in illegal harvest, including permit revocation. The email also recommends a single minimum size limit for all and the closure of commercial fishing for tautog while they are spawning, which is already in effect for the recreational sector.

DEC Response: The reported commercial harvest of tautog has been increasing in recent history but recreational anglers still harvest many more fish. Therefore, an important part of the stock's recovery is dependent upon restricting recreational harvest.

DEC is considering how to best control the live sale of many fish species, tautog included. Live sale of fish can maximize the revenue a fisherman can generate from an often limited allowable catch so it is important not to restrict this unnecessarily. The live market sale of tautog does have a large degree of illegal and unreported harvest and has been the subject of numerous hours of discussion at Marine Resource Advisory Council (MRAC) meetings and sub-committee meetings. DEC is waiting for a conclusion to be drawn by these deliberations before taking further regulatory action.

A suite of options that divided the burden of the fishery reduction differently between recreational and commercial components, using a variety of different seasons, minimum size limits, and possession limits that met the requirements of the ASMFC amendment were proposed during a public meeting of the New York State Marine Resource Advisory Council (MRAC). MRAC council members include representatives from the recreational fishing industry, commercial fishing, private angling community and the scientific community. The regulations proposed in the rule making were supported by a majority of MRAC members that were in attendance. Other options included a shared minimum size limit and commercial season closures that may have encompassed the spawning season. The recreational sector was unwilling to forgo additional loss of season in order to harvest 15 inch fish and the commercial sector didn't accept options that increased their minimum size to 16 inches or resulted in loss of season.

The judicial system is often unwilling to deal harshly with fishery violators when faced with other more typical crimes. Penalties and fines for these violations are set by law and not regulation.

2. Comment: DEC received comment dated January 26, 2012. The email claims that increasing the recreational size limit to 16 inches will result in very few harvestable animals and increased numbers of dead bycatch. It places the blame for the tautog decline on commercial fishing vessels equipped with trawls and roller gear and suggests greater commercial seasonal and trip limit restrictions.

DEC Response: The 39 percent reduction in New York's tautog harvest is an ASMFC mandated cut. The regulations are designed to restrict access to the fishery and make it harder to catch a "keeper" so that exploitation of the fish is reduced. It is regrettable that this interferes with the pastime of so many New Yorkers but it is necessary to ensure that the stock rebounds and provides sustainable fishing opportunities in the future.

Increasing recreational fishery bycatch as a result of larger minimum size limits is an issue that is garnering greater attention as of late. In this instance, industry (both commercial and recreational) preferred to accept larger minimum sizes rather than to lose further season or decrease possession limits. Some fishery management plans (FMP) are beginning to build this bycatch mortality into the way they set quotas but tautog is not managed that way.

Roller gear used on trawls to catch tautog is currently limited to a maximum diameter of 18 inches. This is consistent with the FMP for black sea bass and scup. Commercial harvest is a significant portion of tautog harvest but not the only source of fishing mortality. MRAC voted to support a commercial fishery reduction option that included only a 1 inch increase in minimum size.

3. Comment: The DEC received comment, dated Feb 13, 2012, in the shape of 2 form letters. The letters comment on the loss of the spring season, the increased recreational size limit limiting access to bay fishermen, and the shortened fall season. It also places the blame for the tautog decline on the commercial sale of live blackfish (tautog) in Asian markets and suggests that the problem would be solved by banning the possession of live fish.

DEC Response: Please see above.

4. Comment: The DEC received comment dated February 17, 2012, the letter comments on the loss of the spring season, and the shortened fall season. The author accepts the size increase in order to ensure the tautog stock's improvement but objects to the lack of controls in place to moderate commercial harvest, specifically for the lucrative live Asian market.

DEC Response: Please see above.

5. Comment: The DEC received comment dated February 19, 2012. The email objects to the fact that neither the commercial season, nor the commercial trip limits were restricted by the new regulations. It also cites the black market sale of blackfish (tautog) as a major problem for the tautog fishery and points out that the new regulations do nothing to address it.

DEC Response: Please see above.

6. Comment: The DEC received comment dated March 16, 2012. The email suggests that because of the error in the ASMFC stock assessment, the commercial sector should be allowed to keep 14 inch fish and the recreational sector should be able to fish 2 weeks longer into December.

DEC Response: Please see above.

Long Island Power Authority

NOTICE OF ADOPTION

Authority's Tariff for Electric Service Regarding On-Bill Efficiency Loan Recovery

I.D. No. LPA-12-12-00022-A

Filing Date: 2012-05-29

Effective Date: 2012-05-29

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

Action taken: The Long Island Power Authority ("Authority") adopted a proposal to modify its Tariff for Electric Service to effectuate On-Bill Efficiency Loan Recovery.

Statutory authority: Public Authorities Law, sections 1020-f(z), (u) and 1020-hh

Subject: Authority's Tariff for Electric Service regarding On-Bill Efficiency Loan Recovery.

Purpose: To effectuate On-Bill Efficiency Loan Recovery.

Text or summary was published in the March 21, 2012 issue of the Register, I.D. No. LPA-12-12-00022-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

Revised Regulatory Impact Statement

A revised regulatory impact statement 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.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis 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.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis 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.

Revised Job Impact Statement

A revised job impact statement 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.

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.

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION

Parks, Historic Preservation and Heritage Area Grants Under the Environmental Protection Act

I.D. No. PKR-14-12-00004-A

Filing No. 484

Filing Date: 2012-05-25

Effective Date: 2012-06-13

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

Action taken: Amendment of sections 439.2(h), (q), 440.2(a), (b), 440.7(c), (d) and (e) of Title 9 NYCRR.

Statutory authority: Environmental Conservation Law, section 54-0911; Parks, Recreation and Historic Preservation Law, section 3.09(8)

Subject: Parks, historic preservation and heritage area grants under the Environmental Protection Act.

Purpose: To update and streamline the application requirements for parks, historic preservation and heritage area grants.

Text or summary was published in the April 4, 2012 issue of the Register, I.D. No. PKR-14-12-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen Martens, NYS Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, NY 12238, (518) 486-2921, email: rulemaking@parks.ny.gov

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Amendments to PSC No. 1 - Water, Effective June 1, 2012, to Increase Its Annual Revenues by of \$33,056, or 59.7%

I.D. No. PSC-27-11-00006-A

Filing Date: 2012-05-29

Effective Date: 2012-05-29

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

Action taken: On 5/17/12, the PSC adopted an order approving Woodbury Heights Estates Water Co., Inc.'s amendments to PSC No. 1 - Water, effective June 1, 2012, to increase its annual revenues by of \$33,056, or 59.7%.

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

Subject: Amendments to PSC No. 1 - Water, effective June 1, 2012, to increase its annual revenues by of \$33,056, or 59.7%.

Purpose: To approve amendments to PSC No. 1 - Water, effective June 1, 2012, to increase its annual revenues by of \$33,056, or 59.7%.

Substance of final rule: The Commission, on May 17, 2012 adopted an order approving Woodbury Heights Estates Water Co., Inc.'s amendments to PSC No. 1 - Water, effective June 1, 2012, to increase its annual revenues by of \$33,056, or 59.7%, 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, 3 Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann.ayer@dps.ny.gov 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.

(11-W-0333SA1)

NOTICE OF ADOPTION

Clarify Previous Order and Deny Rehearing

I.D. No. PSC-47-11-00008-A

Filing Date: 2012-05-23

Effective Date: 2012-05-23

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

Action taken: On 5/17/12, the PSC adopted an order clarifying its previous Order of 9/21/11 granting E.Tetz and Sons, Inc. a waiver of backup fuel requirements that applies only to the portion of the winter season when the business has closed and denying the rehearing.

Statutory authority: Public Service Law, sections 4(1), 65 and 66(1)

Subject: Clarify previous order and deny rehearing.

Purpose: To approve the clarification of a previous order and deny rehearing.

Substance of final rule: The Commission, on May 17, 2012 adopted an order clarifying its previous Order of September 21, 2011 granting E.Tetz and Sons, Inc. a waiver of backup fuel requirements that applies only to the portion of the winter season when E.Tetz and Sons, Inc. business has shut down operations, and denying the petition for rehearing, 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, 3 Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann.ayer@dps.ny.gov 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.

(10-G-0482SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Revenue Decoupling Mechanism

I.D. No. PSC-24-12-00005-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 filing by Central Hudson Gas & Electric Corporation to propose revisions to the Company's rules and regulations contained in P.S.C. No. 15 — Electricity to become effective September 1, 2012.

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

Subject: Revenue Decoupling Mechanism.

Purpose: To modify the Revenue Decoupling Mechanism Reconciliation.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, Central Hudson Gas & Electric Corporation's proposal to modify the Revenue Decoupling Mechanism reconciliations currently included in its electric tariff to allow Central Hudson to reconcile revenues on a more real-time basis and moderate the accumulation of carrying charges related to past periods. The proposed filing has an effective date of September 1, 2012. The Commission may resolve 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.ny.gov

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: Secretary@dps.ny.gov

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.

(12-E-0246SP1)

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

Tennessee Gas Pipeline Company Cost Refund

I.D. No. PSC-24-12-00006-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 a petition by New York State Electric & Gas Corporation requesting permission for temporary waiver of tariff provisions regarding gas cost refunds.

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

Subject: Tennessee Gas Pipeline Company Cost Refund.

Purpose: For approval for temporary waiver of tariff provisions regarding its Tennessee Gas Pipeline Company cost refund.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by New York State Electric & Gas Corporation (NYSEG) for a temporary waiver of tariff provisions regarding a gas cost refund by the Tennessee Gas Pipeline Company (Tennessee). NYSEG's tariff schedule, P.S.C. No. 90 – Gas, currently states that supplier refunds are passed back to retail sales customers only, through the Gas Supply Charge. NYSEG proposes that the Tennessee refund be returned to non-daily metered (aggregation) gas customers as well as retail sales customers in Gas Supply Areas 1 and 3. The Commission may resolve 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.ny.gov

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: Secretary@dps.ny.gov

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.

(12-G-0245SP1)

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

Revenue Decoupling Mechanism

I.D. No. PSC-24-12-00007-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 filing by Central Hudson Gas & Electric Corporation to propose revisions to the Company's rules and regulations contained in P.S.C. No. 12 — Gas to become effective September 1, 2012.

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

Subject: Revenue Decoupling Mechanism.

Purpose: To modify the Revenue Decoupling Mechanism Reconciliation.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, Central Hudson Gas & Electric Corporation's proposal to modify the Revenue Decoupling Mechanism reconciliations currently included in its gas tariff to allow Central Hudson to reconcile revenues on a more real-time basis and moderate the accumulation of carrying charges related to past periods. The proposed fil-

ing has an effective date of September 1, 2012. The Commission may resolve 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.ny.gov

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: Secretary@dps.ny.gov

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.

(12-G-0247SP1)

Racing and Wagering Board

**EMERGENCY
RULE MAKING**

Reimbursement of Costs to the State of New York for Associate Judges and Starters at Harness Races

I.D. No. RWB-24-12-00003-E

Filing No. 482

Filing Date: 2012-05-24

Effective Date: 2012-05-24

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

Action taken: Addition of section 4101.41 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 301 and 308

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

Specific reasons underlying the finding of necessity: The Board has determined that immediate adoption of this rule is necessary for the preservation of general welfare and that compliance with the requirements of subdivision 1 of Section 202 of the State Administrative Procedure Act would be contrary to the public interest.

This rule is proposed to conform with Part Y of Chapter 58 of the Laws of 2012, which was part of the 2012 budget for the State of New York. The budget was painstakingly crafted and negotiated to ensure that the economy of New York once again becomes robust and grows to its fullest potential. Over 40,000 jobs exists in the horse racing industry annually in the State of New York. In the face of budget cuts and the potential loss of racing officials that are essential to ensuring the integrity of harness racing, the 2012 state budget calls for the preservation of those critical regulatory jobs by requiring the reimbursement of compensation costs by the operators of harness race tracks.

This rule is necessary to ensure that harness racing officials are hired and compensated, thereby further ensuring the integrity of harness racing, the continuity of harness racing and jobs that are created therewith, and the millions of dollars in revenue that are generated in support of government derived from pari-mutuel wagering on harness racing.

Subject: Reimbursement of costs to the State of New York for associate judges and starters at harness races.

Purpose: To implement reimbursement for the costs of hiring certain harness racing officials.

Text of emergency rule: Section 4101.41 of 9 NYCRR is hereby added to read:

4101.41. *Reimbursement for racing officials.*

(a) *All licensed racing corporations shall reimburse the racing and wagering board for the per diem cost to the board to employ one associate judge and the starter at and in relation to racing meetings conducted by the licensed racing corporation. Reimbursement shall include the per diem rate accorded to the title as well as fringe benefits and any indirect costs attributable to the position.*

(b) The board shall notify each licensed racing corporation of the costs to be reimbursed prior to the beginning of each month.

(c) Payment of the reimbursement shall be made to the board no later than the last business day of each month and shall be accompanied by a report, under oath, on a form prescribed by the board. The report shall contain such information as the board may require.

(d) A penalty of five percent of the payment due with interest at the rate of one percent per month calculated from the last business date of the month when payment is due to the date of payment shall be payable in the event that any reimbursement or part thereof is not paid when due.

(e) The board or its duly authorized representatives shall have the power to examine or cause to be examined the books and records of the corporations required to provide the reimbursement for the purpose of examining and checking the same and ascertaining whether the proper amounts are being paid.

(f) If the board determines that any reimbursement received by it was paid in error or exceeded the actual amount required, the board may cause the same to be refunded without interest out of the monies collected or credited to the racing corporation, provided an application therefore is filed with the board within one year from the date the incorrect payment was made.

(g) If the board determines that any reimbursement received by it was insufficient due to an increase in racing days or other circumstance, the board shall direct the racing corporation to provide for such reimbursement by notifying the racing corporation of the obligation and requiring payment by issuance of an assessment fixing the correct amount. Such assessment may be issued within three years from the filing of any report. Any such assessment shall be final and conclusive unless an application for a hearing is filed by the racing corporation within thirty days of the date of the assessment. The action of the board in making such final assessment shall be reviewable in the supreme court in the manner provided by and subject to the provisions of Article 78 of the Civil Practice Law and Rules.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 21, 2012.

Text of rule and any required statements and analyses may be obtained from: John J. Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305, (518) 395-5400, email: info@racing.ny.gov

Regulatory Impact Statement

1. Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law Sections 101(1), 301(1) and 308(2). Section 101 subdivision (1) vests the Board with general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State. Section 301 subdivision (1) grants the Board the power to supervise generally all harness race meetings in this state at which pari-mutuel betting is conducted, and adopt rules and regulations consistent with provisions of the Racing Law. Section 308 subdivision 2 requires the Board to promulgate rules and regulations to ensure the proper reimbursement of costs related to the employment of one associate judge and one starter at each harness horse race meeting.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This harness racing rule is necessary to comply with the provisions of Chapter 58 of the Laws of 2012 (Part Y), which amended section 308 of the Racing, Pari-Mutuel Wagering and Breeding Law. Under Chapter 58, licensed racing corporations shall reimburse the Racing and Wagering Board for the per diem cost to the Board to employ one associate judge and a starter at each harness race meeting.

The rule is also needed to specify costs that comprise the employment compensation for associate judges and starters at harness race meets. Currently, these costs are borne through the budget of the New York State Racing and Wagering Board. Under Chapter 58 of the Laws of 2012, the costs for associate judges and starters will be reimbursed by each licensed racing corporation where the associate judge or starter is employed.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule. There are seven harness tracks located in New York State that are subject to the proposed rule and the requirement of Section 308(2) of the Racing Law: Buffalo Raceway, Batavia Downs, Monticello Raceway, Saratoga Harness Raceway, Vernon Downs, Tioga Downs, Yonkers Raceway. Costs will vary among the various tracks due to inconvenience pay, location pay, fringe benefits and indirect costs. The approximate monthly total rate for all tracks combined will be \$100,139, although it should be noted that not all harness tracks are open at the same time and most meets overlap. The monthly cost and daily average rates for

each respective track starter and associate judge will be as follows: Buffalo Raceway with 18 days of racing per month for 6.5 months (99 total racing days): starter \$7,982 per month/\$443 per day, associate judge \$7,785 per month/\$432 per day. Monticello with 16 days of racing per month for 12 months (207 total racing days): starter \$7,056 per month/\$441 per day, associate \$6,880 per month/\$430 per day. Saratoga, with 22 days of racing per month for 8.5 months (169 total racing days): starter \$9,759 per month/\$443 per day, associate \$9,518 per month/\$432 per day. Vernon Downs, with 13 days of racing per month for 7.5 months (90 total racing days): starter \$5,774.20 per month/\$444 per day, associate \$5,632 per month/\$433 per day. Yonkers with 20 days of racing per month for 12 months (238 total racing days): starter \$8,864 per month/\$443 per day, associate \$9,069 per month/\$453 per day. Tioga Downs with 14 days of racing for 4.5 months (61 total racing days): starter \$8,206 per month/\$443 per day, associate \$6,052 per month/\$432 per day. Batavia Downs with 17 days of racing per month for 4.5 months (72 total racing days): starter \$7,550 per month/\$444 per day, associate \$7,364 per month/\$433 per day.

It should be noted that these figures are estimates. The figures are subject to adjustments due to factors that arise from collective bargaining agreements, fringe benefits, holiday pay, and increased number of draws and qualifying races.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. Local governments would bear no costs because the regulation of thoroughbred racing is exclusively regulated by the New York State Racing and Wagering Board. As is apparent from the intent of the statutory amendment, this rule would impose no costs upon the Racing and Wagering Board.

c. The information related to costs was obtained by the Personnel Office New York State Racing and Wagering Board based upon historical payroll information, projected race dates, current compensation scales for the respective tracks. The total costs include per diem rates, inconvenience pay, location pay, fringe benefits and indirect costs for the various tracks.

5. Paperwork: This rule will require harness track operators to maintain books and records for the purpose of allowing Racing and Wagering Board auditors to examine and check whether proper reimbursement amounts have been made. In order give force and effect to the rule, the Board will use Form RRO-1, which is a "Report of Reimbursement for Racing Officials. Form RRO-1 will be submitted to the harness racetrack operator by the Racing and Wagering Board. The Board will also require the use of Form AC-909 to withdraw funds from the reimbursement fund in instances where the Board determines that a reimbursement was made in error and a refund to the track is due.

6. Local government mandates: Since the New York State Racing & Wagering Board is solely responsible for the regulations of pari-mutuel wagering activities in the State of New York, there is no program, service, duty or responsibility imposed by the rule upon any county, city, town, village, school district, fire district or other special district.

7. Duplication: There are no relevant rules or legal requirements of the state and federal governments that duplicate, overlap or conflict with the rule.

8. Alternatives: This Board did not consider an alternative because this rule is based upon the directives of Chapter 58 of the Laws of 2012.

9. Federal standards. There are no federal standards for harness racing.

10. Compliance schedule. This rule will go into effect on the day that it is submitted to the Department of State, which was May 24, 2012.

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

As is evident by the nature of this rulemaking, this proposal affects operations at thoroughbred and harness racetracks and will not adversely impact rural areas, jobs, small businesses or local governments and does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement because it will not impose an adverse impact on rural areas, nor will it affect jobs. This rule is intended to conform with a statutory amendment to Section 308 of the Racing, Pari-Mutuel Wagering and Breeding Law that requires harness track operators to reimburse the New York State Racing and Wagering Board for the salaries and costs of associate judges and starters. A Regulatory Flexibility Statement and a Rural Area Flexibility Statement are not required because the rule does not adversely affect small business, local governments, public entities, private entities, or jobs in rural areas. The rule will have a positive impact on the harness industry by ensuring that proper officiating of pari-mutuel wagering events occurs, thereby ensuring the uninterrupted conduct of harness racing and thousands of jobs that are affiliated with the harness racing industry. A Job Impact Statement is not required because this rule amendment will not adversely impact jobs. This rulemaking does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8) nor does it negatively affect

employment. The proposal will not impose adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either.

State University of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Proposed Amendments to Traffic and Parking Regulations at the State University of New York College of Technology at Farmingdale

I.D. No. SUN-24-12-00008-P

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

Proposed Action: Amendment of Part 569 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Proposed amendments to traffic and parking regulations at the State University of New York College of Technology at Farmingdale.

Purpose: Amend existing regulations to update location of parking lots, amend fines, and attach current map of campus.

Substance of proposed rule (Full text is posted at the following State website: www.suny.edu/sunypp/documents.cfm?do): The operation of motor vehicles on the property of the State University of New York College of Technology at Farmingdale is covered under Section 360 of the Education Law which authorizes the State University to adopt and make applicable to its campuses any and all provisions of the Vehicle and Traffic Law. The regulations have been developed and are enforced to provide for the safety and convenience of students, faculty, employees and visitors upon the State University of New York College of Technology at Farmingdale campus. The proposed rule making makes certain technical changes, amends existing regulations in regard to locations of parking lots, fines, and provides a current map of the campus.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, System Administration, State University Plaza, S-325, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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

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

Regulatory Impact Statement

1. Statutory authority: Education Law § 360(1) authorizes the State University Trustees to make rules and regulations relating to parking, vehicular and pedestrian traffic and safety on the State-operated campuses of the State University of New York.

2. Legislative objectives: The present measure makes technical amendments to the parking and traffic regulations applicable to the State University of New York College of Technology at Farmingdale.

3. Needs and benefits: The amendments are necessary to update existing regulations as a result of changes in location for parking, to amend penalties and fines, to update and modify the method of and place for paying fines, and to attach a current map of the campus.

4. Costs: None.

5. Local government mandates: None.

6. Paperwork: None.

7. Duplication: None.

8. Alternatives: There are no viable alternatives.

9. Federal standards: There are no related Federal standards.

10. Compliance schedule: Farmingdale State College will notify those affected as soon as the rule is effective. Compliance should be immediate.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College of Technology at Farmingdale.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College of Technology at Farmingdale.

Job Impact Statement

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College of Technology at Farmingdale.

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-12-12-00002-A

Filing No. 481

Filing Date: 2012-05-24

Effective Date: 2012-05-24

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2012 through June 30, 2012.

Text or summary was published in the March 21, 2012 issue of the Register, I.D. No. TAF-12-12-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-24-12-00002-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 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period July 1, 2012 through September 30, 2012.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxvii) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxvi) April - June 2012					
16.0	24.0	41.8	16.0	24.0	40.05
(lxvii) July - September 2012					
16.0	24.0	41.8	16.0	24.0	40.05

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

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

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

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.

New York State Thruway Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Advertising Device Permit Fees for Applications, Permits and Renewals

I.D. No. THR-24-12-00001-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 105.5 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 354(5), (8) and (15); Public Authorities Law, section 361(1)(a); and Vehicle and Traffic Law, section 1630

Subject: Advertising device permit fees for applications, permits and renewals.

Purpose: To provide that Thruway Authority advertising device permit fees are consistent with DOT advertising device permit fees.

Text of proposed rule: 21 NYCRR Part 105.5 is amended as follows:

Section 105.5 Permits: Application for a permit or renewal thereof for each separate advertising device shall be on forms adopted by the Thruway Authority and shall contain such information as the Thruway Authority may require. *Fees for a permit application, annual permit or permit renewal shall be as prescribed in 17 NYCRR 150.15; provided, however, that no other provisions of 17 NYCRR 150.15 shall be applicable to the Thruway Authority and the applicability of 17 NYCRR 150.15 shall be limited solely to the advertising device related fees contained therein.*

Text of proposed rule and any required statements and analyses may be obtained from: Kathy Clark, New York State Thruway Authority, 200 Southern Blvd., Albany NY 12209, (518) 436-2876, email: kathy.clark@thruway.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority:

Subdivision 5 of section 354 of the Public Authorities Law authorizes the Thruway Authority to make “rules and regulations governing the use of the thruways and all other properties and facilities under its jurisdiction.” Subdivision 8 of that section, in pertinent part, authorizes the Thruway Authority “to fix and collect such fees, rentals and charges for the use of the thruway system or any part thereof necessary...to produce sufficient revenue to meet the expense of maintenance and operation...” Subdivision 15 of the same section authorizes the Thruway Authority to “do all things necessary or convenient to carry out its

purposes and exercise the powers expressly given.” In addition, subdivision 1(a) of section 361 of the Public Authorities Law authorizes the Authority “to promulgate such rules and regulations for the use and occupancy of the thruway as may be necessary and proper for the public safety and convenience, for the preservation of its property and for the collection of tolls...” Furthermore, section 1630 of the Vehicle and Traffic Law authorizes the Authority to regulate traffic on and charge tolls for the use of its facilities.

2. Legislative Objectives:

Chapter 617 of the Laws of 2005 amended Public Authorities Law (PAL) Section 361-a(5) to provide that the Authority may by regulation impose advertising device fees that do not exceed the fees established by the Department of Transportation (hereinafter “DOT”) in 17 NYCRR Section 150.15. Prior to 2005, the law provided that the Authority could charge 10 dollars for an advertising device permit fee and 5 dollars for a renewal. As a result of the statutory change, the Thruway Authority was authorized to charge fees that do not exceed the fees established by DOT through regulation and the Thruway Authority implemented the new fee schedule in 2008. DOT’s fees range from 20 dollars to 100 dollars, depending on the size of the sign face and pursuant to its statutory authorization under PAL Section 361-a(5) the Thruway Authority implemented this range of permit fees to better reflect the actual cost of issuing these permits.

3. Needs and Benefits:

This amendment of section 105.5 of NYCRR Title 21 makes the regulatory provision consistent with the statutory authorization that the Thruway Authority may impose advertising device fees that do not exceed the fees established in regulation by the DOT. Pursuant to PAL Section 361-a(5), in 2008 the Thruway Authority implemented advertising device permit fee changes and the existing regulatory language does not reflect the statutory change and current practice. This rule making updates the regulatory language for such advertising device permit applications, permits and renewal fees to reflect that they are the same as the fees in 17 NYCRR Section 150.15, the related DOT regulations for advertising devices. The DOT fees, found in subsections (b) and (c) of 17 NYCRR Section 150.15, are the only part of 17 NYCRR Section 150.15 that are being incorporated into 21 NYCRR Section 105.5 and made applicable to the Authority. The Thruway Authority is statutorily prohibited from establishing fees that exceed the fees in DOT’s regulations for advertising devices and has been charging the same fees as DOT since 2008.

4. Costs:

The previous rate for advertising device fees was 10 dollars for an advertising device permit fee and 5 dollars for a renewal. Pursuant to PAL Section 361-a(5), in 2008, the Thruway Authority revised the advertising permit fees and implemented the same fee schedule as DOT. This regulation will be revised to reflect the current practice consistent with the Thruway Authority’s statutory authorization that it may charge fees for permit applications, permits and renewals not to exceed the fees in DOT’s regulations. The fees in DOT’s regulations range from 20 to 100 dollars and the Thruway Authority has been charging the same fees as DOT since 2008. There are no additional administrative costs for implementation of the revised regulation.

5. Local Government Mandates:

This rule imposes no program, service, duty or responsibility on local government.

6. Paperwork:

None.

7. Duplication:

None.

8. Alternatives:

The Thruway Authority’s fee structure for these permits was established by statute in the 1950’s. Chapter 617 of the Laws of 2005 authorized a change to allow Thruway Authority advertising permit fees to be consistent with DOT permit fees and to give the Authority the discretion to set the time periods for the advertising device permits and renewals. The Authority had the option to set fees less than DOT permit fees but given the administrative costs associated with this program, the Authority chose to mirror the DOT fees and in 2008 implemented the fee increases without incident.

9. Federal Standards:

None.

10. Compliance Schedule:

The advertising device permit fees have been in place since 2008 pursuant to the statutory change. The rule will be effective upon publication of adoption in the State Register, but will not result in any change to the fees currently being charged to the regulated community.

Regulatory Flexibility Analysis

This regulation will not impose any adverse economic impact on reporting, recordkeeping 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, recordkeeping 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 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.