

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; or C for first Continuation.)

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Labeling Requirements and Hazardous Analysis and Critical Control Point (HACCP) Plan for Juices

I.D. No. AAM-47-05-00003-A
Filing No. 45
Filing date: Jan. 17, 2006
Effective date: Feb. 1, 2006

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

Action taken: Addition of Part 280 to Title 1 NYCRR.
Statutory authority: Agriculture and Markets Law, sections 16, 18 and 214-b

Subject: Labeling requirements and Hazard Analysis and Critical Control Point (HACCP) plan for juices.

Purpose: To incorporate by reference the current Federal regulations set forth in section 101.17(g) and part 120 of title 21 of the Code of Federal Regulations.

Text or summary was published in the notice of proposed rule making, I.D. No. AAM-47-05-00003-P, Issue of November 27, 2005.

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

Text of rule and any required statements and analyses may be obtained from: J. Joseph Corby, Director, Division of Food Safety and

Inspection, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-4492

Assessment of Public Comment

The agency received no public comment.

Office of Children and Family Services

NOTICE OF ADOPTION

Exclusion of Certain Veteran's Benefits

I.D. No. CFS-44-05-00012-A
Filing No. 44
Filing date: Jan. 17, 2006
Effective date: Feb. 1, 2006

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

Action taken: Amendment of section 404.5 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 407(4)

Subject: The exclusion of certain veterans' benefits when determining financial eligibility for services.

Purpose: To implement Federal requirements that require states to disregard certain veterans' benefits when determining eligibility for services.

Text of final rule: New subparagraphs numbered (xviii) and (xix) are hereby added to paragraph (6) of subdivision (b) of Section 404.5 of Title 18 NYCRR, and subparagraphs (xvi) and (xvii) of paragraph (6) are amended to read as follows:

Section 404.5(6). Exclusions from monthly gross income. Excluded from computation of monthly gross income are the following:

(xvi) home produce utilized for household consumption; [and]

(xvii) payments made for child care services, or the value of child care services provided under the New York State Child Care Block Grant Program and under title XX of the Social Security Act who is applying for or receiving any other services funded under any Federal or federally assisted program that bases eligibility for such services upon need or the amount of benefits upon need[.] ;

(xviii) *veterans' assistance payments made to or on behalf of certain Vietnam veterans' natural adult or minor children for any disability resulting from spina bifida suffered by such children; and*

(xix) *veterans' assistance payments made for covered birth defects to or on behalf of the adult or minor children of women Vietnam veterans in service in the Republic of Vietnam during the period beginning on February 28, 1961 and ending on May 7, 1975. Covered birth defects means any birth defect identified by the Veterans' Administration as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period beginning on February 28, 1961 and ending on May 7, 1975, and that has resulted or may result in permanent physical or mental disability.*

Final rule as compared with last published rule: Nonsubstantive changes were made in section 404.5(b)(6)(xvii). (Note: Changes made to prefatory text only; no changes to regulatory revisions.)

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

Job Impact Statement

Although non-substantive changes were made to the proposed regulations concerning the exclusion of certain veteran's benefits when determining financial eligibility for services, those changes do not require changes to the Job Impact Statement, as originally published.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Pre-Adoption Residency Requirement

I.D. No. CFS-44-05-00013-A

Filing No. 43

Filing date: Jan. 17, 2006

Effective date: Feb. 1, 2006

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

Action taken: Amendment of section 421.19 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f); and Domestic Relations Law, section 112(6)

Subject: Pre-adoption residency requirements for children under 18 years of age.

Purpose: To make the regulation consistent with the shorter three-month residency requirement of Domestic Relations Law, section 112(6).

Text or summary was published in the notice of proposed rule making, I.D. No. CFS-44-05-00013-P, Issue of November 2, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Federal Poverty Lines

I.D. No. CFS-44-05-00014-A

Filing No. 42

Filing date: Jan. 17, 2006

Effective date: Feb. 1, 2006

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

Action taken: Amendment of section 415.1(k) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f)

Subject: Reference to the correct name of the Federal agency setting Federal poverty lines.

Purpose: To correct the reference to the name of the Federal agency having authority to set poverty lines, that being the United States Department of Health and Human Services.

Text or summary was published in the notice of proposed rule making, I.D. No. CFS-44-05-00014-P, Issue of November 2, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-05-06-00005-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Civil Service.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Civil Service, by adding thereto the position of Information Security Officer (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: sjl@cs.state.ny.us

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

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

Consolidated Regulatory Impact Statement

1. **Statutory Authority:** The New York State Civil Service Commission is authorized to promulgate rules for the jurisdictional classification of offices within the classified service of the State by Section 6 of the Civil Service Law. In so doing, it is guided by the requirements of Sections 41, 42 and 43 of this same law.

2. **Legislative Objectives:** These rule changes are in accord with the statutory authority delegated to the Civil Service Commission to prescribe rules for the jurisdictional classification of the offices and positions in the classified service of the State.

3. **Needs and Benefits:** Article V, Section 6, of the New York State Constitution requires that, wherever practicable, appointments and promotions in the civil service of the State, including all its civil divisions, are to be made according to merit and fitness. It also requires that competitive examinations be used, as far as practicable, as a basis for establishing this eligibility. This requirement is intended to provide protection for those individuals appointed or seeking appointment to civil service positions while, at the same time, protecting the public by securing for it the services of employees with greater merit and ability. However, as the language suggests, the framers of the Constitution realized it would not always be possible, nor indeed feasible, to fill every position through the competitive process. This point was also recognized by the Legislature for, when it enacted the Civil Service Law to implement this constitutional mandate, it provided basic guidelines for determining which positions were to be outside of the competitive class. These guidelines are contained in Section 41, which provides for the exempt class; 42, the non-competitive class and 43, the labor class. Thus, there are four jurisdictional classes within the classified service of the civil service and any movement between them is termed a jurisdictional reclassification.

The Legislature further established a Civil Service Department to administer this Law and a Civil Service Commission to serve primarily as an appellate body. The Commission has also been given rulemaking responsibility in such areas as the jurisdictional classification of offices within the classified service of the State (Civil Service Law Section 6). In exercising this rule-making responsibility, the Commission has chosen to provide appendices to its rules, known as Rules for the Classified Service, to list those positions in the classified service which are in the exempt class (Appendix 1), non-competitive class (Appendix 2), and labor class (Appendix 3).

In effect, all positions, upon creation at least, are, by constitutional mandate, a part of the competitive class and remain so until removed by the Civil Service Commission, through an amendment of its rules upon showing of impracticability in accordance with the guidelines provided by the Legislature. The guidelines are as follows. The exempt class is to include those positions specifically placed there by the Legislature, together with all other subordinate positions for which there is no requirement that the

person appointed pass a civil service examination. Instead, appointments rest in the discretion of the person who, by law, has determined the position's qualifications and whether the persons to be appointed possess those qualifications. The non-competitive class is to be comprised of those positions which are not in the exempt or labor classes and for which the Civil Service Commission has found it impracticable to determine an applicant's merit and fitness through a competitive examination. The qualifications of those candidates selected are to be determined by an examination which is sufficient to insure selection of proper and competent employees. The labor class is to be made up of all unskilled laborers in the service of the State and its civil divisions, except those which can be examined for competitively.

4. Costs: The removal of a position from one jurisdictional class and placement in another is descriptive of the proper placement of the position in question in the classified service, and has no appreciable economic impact for the State or local governments.

5. Local Government Mandates: These amendments have no impact on local governments. They pertain only to the jurisdictional classification of positions in the State service.

6. Paperwork: There are no new reporting requirements imposed on applicants by these rules.

7. Duplication: These rules are not duplicative of State or Federal requirements.

8. Alternatives: Within the statutory constraints of the New York State Civil Service Commission, it is not believed there is a viable alternative to the jurisdictional classification chosen.

9. Federal Standards: There are no parallel Federal standards and, therefore, this is not applicable.

10. Compliance Schedule: No action is required by the subject State agencies and, therefore, no estimated time period is required.

Consolidated Regulatory Flexibility Analysis

The proposal does not affect or impact upon small businesses or local governments, as defined by Section 102(8) of the State Administrative Procedure Act, and, therefore, a regulatory flexibility analysis for small businesses is not required by Section 202-b of such act. In light of the fact that this proposal only affects jurisdictional classifications of State employees, it will not have any adverse impact on small businesses or local governments

Consolidated Rural Area Flexibility Analysis

The proposal does not affect or impact upon rural areas as defined by Section 102(13) of the State Administrative Procedure Act and Section 481(7) of the Executive Law, and, therefore, a rural area flexibility analysis is not required by Section 202-bb of such act. In light of the fact that this proposal only affects jurisdictional classifications of State employees, it will not have any adverse impact on rural areas.

Consolidated Job Impact Statement

The proposal has no impact on jobs and employment opportunities. This proposal only affects the jurisdictional classification of positions in the Classified Civil Service.

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

Jurisdictional Classification

I.D. No. CVS-05-06-00006-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office for Technology," by adding thereto the positions of Assistant Director Computer System Programming (2).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-05-06-00007-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive, in the Executive Department under the subheading "Division of Criminal Justice Services," by adding thereto the position of Homeland Security Associate Director (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-05-06-00008-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Banking Department, by adding thereto the positions of Holocaust Claims Assistant (2), φHolocaust Claims Program Assistant Manager (1), φHolocaust Claims Program Manager (1), Holocaust Claims Specialist 1 (3), Holocaust Claims Specialist 2 (3) and Holocaust Claims Specialist 3 (2).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-05-06-00009-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete positions from the non-competitive class in the Department of State and the State University of New York.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of State, by deleting therefrom the position of ϕ Keyboard Specialist 3 (1); and, in the State University of New York under the subheading "State University Colleges," by deleting therefrom the position of ϕ Keyboard Specialist 3 (1) at SUC at Potsdam.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-05-06-00010-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the exempt and non-competitive classes in the Executive Department.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Cyber Security and Critical Infrastructure Coordination," by deleting therefrom the position of Counsel and, in the Executive Department under the subheading "Office of Homeland Security," by increasing the number of positions of Counsel from 1 to 2; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Cyber Security and Critical Infrastructure Coordination," by deleting therefrom the positions of ϕ Director Cyber Security and Critical Infrastructure Coordination (1) and ϕ Senior Administrative Assistant (1) and, in the Executive Department under the subheading "Office of Homeland Security," by adding thereto the positions of ϕ Director Cyber Security and Critical Infrastructure Coordination (1) and ϕ Senior Administrative Assistant (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-05-06-00011-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the exempt class and classify positions in the non-competitive class in Westchester County.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in Westchester County, be and hereby is amended as follows:

- Department of Public Safety
 - Adding
 - Deputy Commissioner of Public Safety Services (2) (increase from 1 to 2)
- Office of the District Attorney
 - Adding
 - Deputy District Attorney (4) (increase from 3 to 4)
 - Deputy Chief of Bureau – District Attorney (30) (increase from 28 to 30)
- Department of Law
 - Adding
 - Associate County Attorney (8) (increase from 4 to 8)
 - Senior Assistant County Attorney (18) (increase from 12 to 18)
- Department of Laboratories and Research
 - Adding
 - Pathologist Deputy Medical Examiner (2) (increase from 1 to 2)
- Office of the County Executive
 - Adding
 - Confidential Scheduling Secretary – County Executive
 - Deleting
 - Assistant to the County Executive I (1) (from 12 to 11)
 - Adding
 - Senior Assistant to the County Executive I
 - Deleting
 - Assistant to the County Executive IV (1) (from 6 to 5)
 - Adding
 - Senior Assistant to the County Executive II

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in Westchester County, be and hereby is amended as follows:

- Department of Correction
 - Adding
 - ϕ Second Deputy Commissioners of Correction (2)
- Office of the County Executive
 - Adding
 - ϕ Program Administrator (Minority Affairs)
- Department of Public Safety Services
 - Adding
 - ϕ Director of Intelligence, Security and Counter – Terrorism (Until first vacated after November 30, 2006)

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

Department of Correctional Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Release of Inmate Data

I.D. No. COR-05-06-00002-P

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

Proposed action: This is a consensus rule making to amend section 51.14 of Title 7 NYCRR.

Statutory authority: Correction Law, sections 29(2) and 112

Subject: Release of inmate data.

Purpose: To establish guidelines for the release on inmate data.

Text of proposed rule: Section 51.14 of Title 7, NYCRR is hereby amended as follows:

The release of records or information pertaining to individual inmates or former inmates shall be provided to the press only in accordance with section 8.3 [5.21(a)] of this Title. No other information shall be provided to the press except as provided for in the above section. In cases involving inmates and former inmates facing possible prosecution on new charges, details of past criminal history and other information which might impair their rights to a fair trial will not be released to the press.

Text of proposed rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951

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

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

Consensus Rule Making Determination

The Department of Correctional Services has determined that no person is likely to object to the proposed rule as written because it merely corrects a typographic error. The amended text of section 51.14 changes the citation in the first sentence from the non-existing section 5.21(a) to the correct section 8.3.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely corrects a typographic error regarding the release of inmate data by the Department of Correctional Services.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Establishment of Time Allowance Committee

I.D. No. COR-05-06-00003-P

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

Proposed action: This is a consensus rule making to amend section 261.1(b) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112, 137 and 803

Subject: Establishment of time allowance committee.

Purpose: To establish a list of time allowance committee members.

Text of proposed rule: Subdivision (b) of section 261.1 of Title 7, NYCRR is hereby amended as follows:

(b) Such committee shall consist of at least three members designated by the superintendent. The superintendent shall appoint one of the members as chairman. The members shall be selected from a list of at least eight employees preselected by the superintendent and filed with the

deputy commissioner for correctional facilities. The list of names filed by the superintendent shall be deemed approved by the deputy commissioner for correctional facilities unless and until the deputy commissioner for correctional facilities removes an individual from the list in writing.

Text of proposed rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951

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

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

Consensus Rule Making Determination

The Department of Correctional Services has determined that no person is likely to object to the proposed rule as written as it merely allows superintendents to increase the number of preselected employees to be included on the time allowance committee members list and is non-controversial.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely increases the number of employees who can be included on a list of members for the time allowance committee.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Incoming Inmate Correspondence

I.D. No. COR-05-06-00015-P

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

Proposed action: This is a consensus rule making to repeal section 52.7 of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Incoming inmate correspondence.

Purpose: To repeal an invalid rule.

Text of proposed rule: Section 52.7 of Title 7, NYCRR is hereby repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951

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

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

Consensus Rule Making Determination

The Department of Correctional Services has determined that no person is likely to object as it merely repeals an obsolete and outdated regulation the substance of which is already addressed in the Department's comprehensive regulations concerning correspondence to inmates and specifically in Section 720.4(a) of Title 7 NYCRR.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely repeals an obsolete and outdated rule.

Division of Criminal Justice Services

ERRATUM

A Notice of Emergency/Proposed Rule Making, I.D. No. CJS-03-06-00014-EP, pertaining to the State DNA Databank printed in the January 18, 2005 issue of the *State Register* contained the incorrect emergency expiration date. The correct expiration date is April 2, 2006.

The Department of State apologizes for any inconvenience this may have caused.

Department of Economic Development

EMERGENCY RULE MAKING

Empire State Film Production Tax Credit Program

I.D. No. EDV-05-06-00012-E

Filing No. 38

Filing date: Jan. 17, 2006

Effective date: Jan. 17, 2006

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

Action taken: Addition of Part 170 to Title 5 NYCRR.

Statutory authority: L. 2004, ch. 60

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

Specific reasons underlying the finding of necessity: As a matter of public policy, the Legislature has determined that a tax credit to eligible qualified film production companies would provide incentive for films to be produced in New York State and thereby help stimulate the State economy. The rule is necessary because section 7(c) of chapter 60 of the Laws of 2004 mandates the department to promulgate regulations for the program to establish procedures for the allocation of tax credits and describing the application process, the due dates for the applications, the standards used to evaluate the applications and any other provisions deemed necessary and appropriate by October 31, 2004. Such legislation provides that, notwithstanding any other provisions to the contrary in the State Administrative Procedure Act, the rules and regulations may be adopted on an emergency basis.

Subject: Empire State Film Production Tax Credit Program.

Purpose: To establish procedures for the allocation of tax credits and describe the application process, the due dates for the applications, the standards used to evaluate the application and any other provisions deemed necessary and appropriate and clarify necessary and pertinent definitions to the program.

Substance of emergency rule: The empire state film production tax credit program generally provides film production companies with a tax credit equal to ten percent of qualified production costs incurred within New York State. Under the program an applicant may be eligible for a full benefit or partial benefit. If an applicant has 75% or more of their total production costs occur at a qualified New York facility and the production spends at least \$3 million during production, then the production qualifies for the full benefit which is a 10% tax credit on all qualified production expenditures. If 75% or more of total production costs occur at a qualified New York facility but the production spends less than \$3 million at the qualified facility, it must then shoot 75% or more of its location days in New York to qualify for the full 10% tax credit.

If 75% or more of a production total facility expenditures occur at a qualified facility but the production spends less than \$3 million and less than 75% of its total location shooting days are in New York, then the production qualifies for the 10% tax credit for expenditures at the qualified facility only.

This rule implements Chapter 60 of the laws of 2004. Part 170 of Title 5 NYCRR is hereby created and is summarized as follows:

First, the rule makes clear that the Governor's Office for Motion Picture and Television development shall administer the empire state film production tax credit program. This proposed rule does not govern the New York city film production tax credit program – eligibility in either the state or city program does not guarantee eligibility or receipt of a credit in the other.

Second, eligibility in the program is established through the definition of authorized applicant. In order to be eligible to apply for the program, a business must be a qualified film production company or sole proprietor thereof that is scheduled to begin principal photography on a qualified film within 180 days after submitting its initial application to the Office and it must intend to shoot a portion of that photography on a stage at a qualified film production facility on a set or sets.

Third, a two part application process is created. An authorized applicant must complete an initial application, a document created by the Office which asks the applicant to project/estimate various expenditures at qualified film production facilities and shooting days in and outside of New York. The applicant must also meet with the Office to discuss the details of the application. The Office then reviews the initial application based on criteria set out in the proposed rule, including, the completeness of the application, whether or not it is premature (*i.e.*, incapable of photography starting within 180 days of the date of the application), and whether or not it meets the statutory requirements for qualification, including whether its projected qualified productions costs equal or exceed 75% of its total productions costs.

If the initial application is approved, the applicant (now referred to as an approved applicant) receives a certificate of conditional eligibility. This certificate assures the applicant that, pending successful completion of a final application, they are in line (though not guaranteed) to receive a tax credit. The certificate also contains the applicants' priority number, a number used by the Office to place the applicant in line for allocation of the tax credit purposes. Priority number is based on the applicant's effective date. Effective date is defined in the rule to mean the date the certification of conditional eligibility becomes effective. It is derived from the date the initial application is received by the Office. In the event an applicant does not begin principal and ongoing photography within 180 days of the submission of their initial application, effective date may be recalculated to correspond to the date one hundred eighty days prior to the date the approved applicant submits a notification of commencement of principal and ongoing photography to the Office. If the application is disapproved, the applicant receives notice of its rejection from the program and may reapply at a later date.

Fourth, the rule requires the approved applicant notify the Office on the date principal and ongoing photography begins on their production and supply a sign-off budget at this point. This additional budget data helps the Office get a better sense of the production expenses the applicant has and ultimately helps the Office estimate the potential credit the applicant may later be entitled to.

Fifth, within 60 days after the completion of production of their qualified film, the approved applicant must submit a final application to the Office. The final application is similar to the initial application, though it now contains actual expenditure data as opposed to expenditure projections. The Office then considers certain criteria in its review to determine whether the final application should be approved. Much like the criteria used for the initial application, this includes analysis of whether the application is complete, whether applicant actually shot principal photography on stage at a qualified film production facility on a set or sets, whether a qualified film was completed, and whether the actual qualified production costs equal or exceed 75% of the actual production costs on the film, etc. ... The proposed rule allows the Office to request additional documentation, including receipts of qualified productions costs, to help the Office determine if the applicant meets the criteria. At this point, the applicant is either approved and issued a certificate of tax credit (stating the amount of tax credit they will be receiving) or provided a notice of disapproval.

Sixth, the proposed rule addresses the issue of the allocation of the empire state film production tax credits. The allocation is made in the order of priority based on the applicant's effective date. If an approved applicant's tax credit exceeds the amount of credits allowed in a given year, their credit will be allocated on a priority basis in the immediately succeeding calendar year. Also, the proposed rule makes explicit the fact that allocation and receipt of the tax credit are subject to availability of state funds for the program.

Seventh, the proposed rule requires applicants to maintain records of qualified production costs used to calculate their potential or actual benefit under the program for a period of 3 years. Such records may be requested by the Office upon reasonable notice.

Finally, the proposed rule creates an appeal process. Applicants who have had their initial or final applications disapproved, or who have a disagreement over the dollar amount of their tax credit have the right to appeal.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire April 16, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Thomas P. Regan, Department of Economic Development, Counsels Office, 30 S. Pearl St., Albany, NY 12245, (518) 292-5120, e-mail: tregan@empire.state.ny.us

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section (7)(c) of Part P of Chapter 60 of the laws of 2004 requires the Commissioner of Economic Development to promulgate rules and regulations by October 31, 2004 to establish procedures for the allocation of the empire state film production tax credit, including provisions describing the application process, the due dates for such applications, the standards used to evaluate the applications, and the documentation provided to taxpayers to substantiate to the State Department of Taxation and Finance the amount of the tax credit for the program itself. Such legislation provides that, notwithstanding any other provisions to the contrary in the State Administrative Procedure Act, the rules and regulations may be adopted on an emergency basis.

LÉGISLATIVE OBJECTIVES:

The emergency rule is in accord with the public policy objectives the Legislature sought to advance by creating a tax credit program for the film industry. This program is an attempt to create an incentive for film industry to bring productions to New York State as opposed to other competitive markets, such as Toronto. It is the public policy of the State to offer a tax credit that will help provide incentive for the film industry to bring productions to the State. The proposed rule helps to further such objectives by establishing an application process for the program, clarifying portions of the Program through the creation of various definitions and describing the credit allocation process itself.

NEEDS AND BENEFITS:

The emergency rule is required to be promulgated by October 31, 2004 (see section 7(c) of Chapter 60 of the laws of 2004). It is necessary to properly administer the tax credit program. The statute itself does not set out the specifics of the program; rather, it deals primarily with its creation and calculation of the actual tax credit. There are several administrative benefits that would be derived from this emergency rule making. First, the emergency rule establishes a clear and precise application process, complete with due process as there is an opportunity for applicants to appeal from denials of applications or a disagreement regarding the actual amount of the tax credit. Second, the emergency rule describes in detail the standards to be used to evaluate the initial and final applications created under this program. Third, it describes the documentation that will be provided to taxpayers to substantiate to the State Tax and Finance Department the amount of the tax credits allocation. Finally, it clarifies some existing definitions and creates several new definitions in order to help facilitate an effective and efficient administration of the program.

COSTS:

I. Costs to private regulated parties (the Business applicants): None. The proposed regulation will not impose any additional costs to the film industry.

II. Costs to the regulating agency for the implementation and continued administration of the rule: There could be additional costs to the Department of Economic Development associated with the proposed rule making as the Office may need an additional employee to help with the program's new created administrative process. Such costs are estimated to be \$40,000 to \$50,000 in annual salary for an employee's with a background in production accounting.

III. Costs to the State government: The program shall not allocate more than \$25 million in any calendar year. The program sunsets on January 1, 2008 so the overall cost to the State is \$100 million.

IV. Costs to local governments: None. The proposed regulation will not impose any additional costs to local government.

LOCAL GOVERNMENT MANDATES:

None.

PAPERWORK:

The emergency rule creates an application process for eligible applicants, including the creation of an initial and final application, certain tax certificates and forms relating to film expenditures.

DUPLICATION:

The proposed rule will not duplicate or exceed any other existing Federal or State statute or regulation.

ALTERNATIVES:

No alternatives were considered in regard to creating a new regulation in response to the statutory requirement. The Department of Economic

Development, through its Governor's Office for Motion Picture and Television Development, did an extraordinary amount of outreach to various interested parties before submitting this emergency rule. For example, the Department met with seven representatives from episodic television, seven representatives from the independent film industry and seven representatives from large studio films to seek industry input. In addition, the Department met with three film industry accountants, five industry tax attorneys and approximately seven studio representatives to solicit their comments. Furthermore, the Department was in close contact with representatives from the State Tax and Finance Department and the New York City Office for Motion Pictures to coordinate the details of the emergency rule.

FEDERAL STANDARDS:

There are no federal standards in regard to the empire state film production tax credit program; it is purely a state program that offers a state tax credit to eligible applicants. Therefore, the proposed rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The effected State agencies (Economic Development) and the business applicants will be able to achieve compliance with the emergency regulation as soon as it is implemented. In terms of compliance schedule, the statute (Chapter 60 of the laws of 12004) was signed into law on August 20, 2004. All film production expenditures that date back to this date will be eligible for inclusion in the tax credit calculation. The statute gave the Department until October 31, 2004 to promulgate regulations to implement the program. The program applies to taxable years beginning on or after January 1, 2004 and expires on January 1, 2008.

Regulatory Flexibility Analysis

Participation in the empire state film production tax credit program is entirely at the discretion of qualified film production companies. Neither Chapter 60 of the laws of 2004 nor the proposed regulations impose any obligation on any local government or business entity to participate in the program. The proposed regulation does not impose any adverse economic impact or their compliance requirements on small businesses or local governments. In fact, the proposed regulation may have a positive economic impact on small businesses due to the possibility that these businesses may enjoy a film production tax credit if they qualify for the program's tax credit.

Because it is evident from the nature of the proposed rule that it will have either no impact, or a positive impact, on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small business and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

This program is open to participation from all qualified film production companies, which is defined by statute to include a corporation, partnership or sole proprietorship making and controlling a qualified film in New York. The location of the companies is irrelevant, so long as they meet the necessary qualifications of the definition. This program may impose responsibility on statewide businesses that are qualified film production companies, in that they must undertake an application process to receive the empire state film production tax credit. However, the proposed regulation will not have a substantial adverse economic impact on rural areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed regulation creates the application process for the empire state film production tax credit program. As a tax credit program, it is designed to positively impact the film industry doing business in New York State and have a positive impact on job creation. The proposed regulation will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rulemaking that it will have either no impact, or a positive impact, on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Education Department

NOTICE OF ADOPTION

Examination and Residency Program Requirements for Dental Licensure

I.D. No. EDU-09-05-00013-A

Filing No. 46

Filing date: Jan. 17, 2006

Effective date: Feb. 1, 2006

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

Action taken: Amendment of sections 61.2 and 61.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6506(1); 6507(2)(a); 6601 (not subdivided); 6604(3) and (4) and L. 2004, ch. 76, section (3)

Subject: Examination and residency program requirements for dental licensure.

Purpose: To implement the requirements of Education Law, section 6604(3) and (4) by requiring applicants for dental licensure to complete an accredited dental residency program and eliminating the option of their completing a clinical examination in dentistry instead of a residency program, effective January 1, 2007, to establish a definition of an acceptable national accrediting body for dental residency programs, and to add two specialties to the list of specialty residency programs that may be used to fulfill the residency program requirement for dental licensure.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-09-05-00013-P, Issue of March 2, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Local Government Records Management

I.D. No. EDU-41-05-00011-A

Filing No. 47

Filing date: Jan. 17, 2006

Effective date: Feb. 1, 2006

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

Action taken: Amendment of sections 185.5, 185.13 and 185.14 of Title 8 NYCRR.

Statutory authority: Education Law, section 207 (not subdivided) and Arts and Cultural Affairs Law, section 57.25(2)

Subject: Local government records management.

Purpose: To update Records Retention and Disposition Schedule CO-2 and Records Retention and Disposition Schedule MI-1.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-41-05-00011-P, Issue of October 12, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

NOTICE OF ADOPTION

Sanitary Control Over Shellfish

I.D. No. ENV-37-05-00007-A

Filing No. 36

Filing date: Jan. 12, 2006

Effective date: Feb. 1, 2006

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

Action taken: Amendment of Part 42 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0309 and 13-0319

Subject: Sanitary control over shellfish.

Purpose: To provide adequate public health protection over shellfish in wholesale commerce in the State of New York.

Substance of final rule: The text of the proposed rulemaking is over 2,000 words. The following is a summary of the terms of the proposed rule:

The proposed amendments to 6 NYCRR Part 42, "Sanitary Control Over Shellfish," reflect changes recently made to the Environmental Conservation Law (ECL). Chapter 284 of the Laws of 2004 amended Environmental Conservation Law (ECL) Sections 13-0311 and 13-0315 relating to shellfish dealer permits and the activities of permittees. Certain classes of shellfish dealer permits that were formerly identical except for interstate or intrastate shellfish shipping have been consolidated, and references to intrastate and interstate shipping have been eliminated. Consequently, amendments are necessary to conform references to shellfish dealer permit classes in the Department's regulations with state law.

The proposed amendments to Part 42 also incorporate changes that have occurred to the National Shellfish Sanitation Program (NSSP) requirements since these regulations were last amended in 1998. Section 13-0319 of the ECL provides for the adoption of regulations for the shipping and handling of shellfish in a sanitary manner and requires that the state's shellfish program meet the applicable minimum requirements of the federal government. The U.S. Food and Drug Administration (FDA) monitors the implementation of the criteria adopted by the NSSP on a national level by conducting evaluations of the shellfish programs of states and foreign nations.

In addition, the proposed rulemaking includes changes that are intended to better organize Part 42 and make the regulations clearer and easier to understand. For example, shellfish sanitation requirements are reorganized into separate sections covering facilities, water and ice, plumbing, receiving and packing of shellfish, storage of shellfish, the identification and handling of shellfish by harvesters, and shellfish transportation criteria. The proposed amendments more logically and clearly communicate to the regulated industry the particular requirements that must be complied with according to the shellfish activities of the permit holder.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 42.17 and 42.18.

Text of rule and any required statements and analyses may be obtained from: Thomas E. Drumm, Department of Environmental Conservation, 205 N. Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0494, e-mail: tedrumm@gw.dec.state.ny.us

Additional matter required by statute: State Environmental Quality Review Act: determined to be a type II action pursuant to 6 NYCRR section 617.5(c)(20) and (27).

Revised Job Impact Statement

The Department of Environmental Conservation (Department) has determined that this rule will not have a substantial adverse impact on jobs and employment opportunities. Therefore, a job impact statement is not required.

The purpose of this proposed rulemaking is to amend 6 NYCRR Part 42, "Sanitary Control Over Shellfish," to conform to recent changes in the Environmental Conservation Law (Chapter 284, Laws of 2004) and to incorporate existing requirements of the federal U.S. Food and Drug Ad-

ministration (FDA) and the National Shellfish Sanitation Program (NSSP) that were adopted since these regulations were last amended in 1998. The proposed amendments also reorganize Part 42 in an effort to make the regulations clearer and easier to understand for the regulated industry.

This rulemaking does not impose any new substantive requirements. Any new requirements incorporated in this rulemaking are already in effect through existing federal and state requirements. For example, Chapter 284 of the Laws of 2004, which took effect on January 1, 2005, amended Environmental Conservation Law § 13-0315, changing the permit classifications for shellfish dealers. The proposed rulemaking incorporates these new classifications which are already in effect under state law.

Because this rulemaking will not establish or impose any new requirements for the regulated industry, the Department has concluded that there will not be any substantial adverse impacts on jobs or employment opportunities as a consequence of these amendments.

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Serialized Official New York State Prescription Form

I.D. No. HLT-05-06-00004-E

Filing No. 37

Filing date: Jan. 13, 2006

Effective date: Jan. 13, 2006

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

Action taken: Addition of Part 910 and amendment of sections 80.84, 85.21, 85.22, 85.23 and 85.25 of Title 10 NYCRR and amendment of sections 505.3, 528.1 and 528.2 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 21

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: We are proposing that these regulations be adopted on an emergency basis because immediate adoption is necessary to protect the public health and safety and to meet statutory requirements. The budget proposal enacting Section 21 contains explicit authority for the Commissioner to promulgate emergency regulations. This was done recognizing the need to provide for a proper transition period for the use of statewide forge proof prescriptions, which under the regulations will be for a period of 18 months. Without the regulations the program is required to be enacted in 60 days which would be detrimental to both practitioners and the public.

Immediate adoption of these regulations is necessary to allow the gradual implementation of Section 21 of Public Health Law, achieve the health care cost savings and to enhance the quality of health care by preventing drug diversion resulting from forged or stolen prescriptions.

The practitioner groups affected by this proposal, PSSNY, MSSNY and the Health Plan Association of New York were consulted during budget negotiations. Their concerns are addressed in the statutory proposal set forth in the state budget and in these regulations.

Subject: Enactment of a serialized official New York State prescription form.

Purpose: To enact a serialized official New York State prescription form.

Substance of emergency rule: Part 910 (10 NYCRR)

These regulations are being proposed on an emergency basis to implement Section 21 of the Public Health Law. The purpose of the law is to combat and prevent prescription fraud by requiring the use of an official New York State prescription for all prescribing done in this state. Official prescriptions contain security features that will curtail alterations and forgeries that divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

The emergency regulations consist of a new Part 910 to Title 10 NYCRR. Section 910.1 defines terms used in the Part. Section 910.2 states requirements for practitioner prescribing, including that for the 18 month

period stipulated in the law, either an official prescription or a practitioner's personal prescription is valid for prescribing. Section 910.3 covers registration with the Department, which practitioners and healthcare facilities are required to do to order official prescriptions. Section 910.4 states the manner in which official prescriptions will be issued by the Department, while section 910.5 lists the practitioner and facility requirements for safeguarding the official prescriptions against theft, loss or unauthorized use. Section 910.6 states pharmacy requirements for dispensing official prescriptions and out-of-state prescriptions, which may be dispensed in lieu of an official prescription. Section 910.6 also states pharmacy requirements for submission of official prescription data to the Department.

Both 10 NYCRR and 18 NYCRR have been revised to reflect the above regulations, update outdated/obsolete sections and to allow for greater flexibility for changes in law. The following changes have been proposed:

Section 505.3 (18 NYCRR)

- Language included to allow electronically transmitted prescriptions.
- Language included to mandate that all claims for payments of drugs or supplies under the MA program shall contain the serial number of the Official NYS Prescription Form.
- Delete language prohibiting telephone orders for OTCs.
- Language amended—telephone prescriptions for non-controlled substances WILL NOT require a follow-up hard copy prescription (even with refills).
- Delete Estimated Acquisition Cost—defined in Social Services Law 367-a(9)(b)(ii).
- Delete language referencing “triplicate” prescriptions and update to language consistent with Official NYS Prescription Form and Article 33 of the Public Health Law.
- Delete language referencing other Sections that have been deleted (i.e. 10 NYCRR 85.25).
- Delete language referencing dispensing fees—in Social Services Law 367-a(9)(d).
- Language is added to reference prescription drugs filled in compliance with 6810 of the Education Law, Article 33 of the Public Health Law and new 10 NYCRR Part 910.

Part 528 (18 NYCRR)

- Section 528.1 is deleted—obsolete listing of non-prescription drugs covered under the MA program. Listing of reimbursable drugs and rate is available on-line at the NYS eMedNY website.
- Section 528.2 is deleted—language regarding “dispensing fees include routine delivery charges” is moved to 18 NYCRR 505.3(f)(6). Compounding fee language in 18 NYCRR 505.3 [6] (3).

Part 85 (10 NYCRR)

- Section 85.21 amended—OTC List—quantities and dosage forms have been deleted to allow greater flexibility in coverage. Remove OTC categories that are no longer marketed.
- Section 85.22 amended—establishment of OTC prices amended to more accurately reflect OTC pricing (Ad Hoc Committee is obsolete) and removal of references to deleted Sections (i.e., 18 NYCRR 528.2 and 10 NYCRR 85.25)
- Section 85.23 deleted—Revisions to list of OTCs and Maximum Reimbursable Prices—in Social Services Law 365-a(4)(a).
- Section 85.25 deleted—Prescription drug list covered under MA—obsolete. Drug list available on line at NYS eMedNY website.

Part 80 (10 NYCRR)

- Section 80.84(b)(1) is amended to remove the requirement that a group practice of physicians providing treatment of opiate dependence with buprenorphine be limited to 30 patients at any one time. The amendment makes New York State regulations consistent with the federal Drug Addiction Treatment Act, which was amended on August 2, 2005 to remove the 30 patient limit for group practices treating opiate dependence with buprenorphine.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 12, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415,

Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqa@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

Section 3308(2) of the Public Health Law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provisions of Article 33 of the Public Health Law in order to effectuate its purpose and intent.

The state budget for SFY 2004-2005 enacted new Section 21 of the Public Health Law which mandates a statewide official prescription form for all prescriptions written in New York for the purpose of curtailing prescription fraud and enhancing patient safety. The law permits the Commissioner to promulgate emergency regulations in furtherance of this new section of law.

Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administering and distribution of controlled substances within New York. New Section 21 of the Public Health Law mandates a statewide official prescription, supports electronic prescribing and facilitates the dispensing process.

Needs and Benefits:

This regulation will support the enactment of an official New York State prescription form, which will deter fraud by curtailing theft or copying of prescriptions by individuals engaged in drug diversion. These regulations have been drafted after discussions with such provider groups as the State Health Plan Association, Medical Society of the State of New York and the Pharmacist Society of the State of New York. The simplification and provider beneficial provisions include:

- (1) Allowing electronic prescribing in the State Medical Assistance (Medicaid) program;
- (2) Eliminating the fee to practitioners and institutions for official prescriptions;
- (3) Eliminating the requirement that practitioners send written follow-up prescriptions to pharmacies for oral prescriptions in the Medicaid program;
- (4) Allowing oral prescribing of OTC medications in the Medicaid program and eliminating the requirement for hard copy orders for Medicaid OTC drugs;
- (5) Eliminating the requirement that pharmacists write the DEA number of the pharmacy on the official prescription;
- (6) Bar coding of the serial number on the official prescription to expedite the dispensing process; and
- (7) Eliminating multiple prescription forms practitioners currently use to prescribe drugs.

The regulations also define the requirements for using the official prescription and provide for an 18-month period where both existing prescription forms and the official prescription can be used. This will allow for a transition period for practitioners, institutions and pharmacists.

These regulations are found in amendments to 18 NYCRR Sections 505.3; 528.1; 528.2; and in the newly promulgated regulations in 10 NYCRR Part 910.

Technical amendments are also being made to 10 NYCRR Sections 85.21, 85.22, 85.23 and 85.25 to conform with the intent of Section 21 of the Public Health Law.

Costs:

Costs to Regulated Parties:

This program is being funded by an assessment on the State Insurance Department. The current fee to practitioners and institutions for the official prescription has been eliminated. Private insurers and the Medicaid program will realize millions of dollars in savings due to the reduction of fraudulent prescription claims.

The allowance for electronic prescribing in the Medicaid program and the expedition of the dispensing process through the use of bar coding will save valuable professional time for practitioners and pharmacists.

The slight expenditure to pharmacies for software adjustments, due to minor changes in reporting requirements, will be offset by funds through a grant administered by the Department.

Costs to State and Local Government:

There will be no costs to state or local government.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

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

Paperwork:

No additional paperwork is required. The use of a single prescription form for controlled substances and non-controlled substances will simplify paperwork and recordkeeping for practitioners and institutions. Currently, practitioners use their own prescription form as well as the official prescription. The official prescription will replace existing prescriptions that are currently used in addition to the official prescription. Encouragement of electronic prescribing and dispensing as well as the elimination of the requirement for a written follow up prescription on oral prescriptions in the Medicaid Program will significantly reduce paperwork requirements for practitioners, institutions and pharmacists.

Duplication:

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

Alternatives:

There are no alternatives that would support the approach to be taken under the regulations. The limitation on reporting requirements by pharmacies (only for controlled substances and Medicaid prescriptions as opposed to requiring reporting on all prescriptions) was done after consultation with affected provider organizations.

Federal Standards:

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

Compliance Schedule:

These regulations will become effective immediately upon filing a Notice of Emergency Adoption with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule on Small Business and Local Government:

This proposed rule will affect practitioners, pharmacists, retail pharmacies, hospitals and nursing homes.

According to the New York State Department of Education, Office of the Professions, as of April 2003, there were approximately 120,000 licensed and registered practitioners authorized to prescribe and order prescription drugs. According to the New York State Board of Pharmacy, there are a total of approximately 4,500 pharmacies in New York State. According to the New York State Education Department's Office of the Professions as of April 2003 there were approximately 18,000 licensed and registered pharmacists in New York.

Compliance Requirements:

The regulations follow the newly enacted Section 21 of the Public Health Law and require the use of the official New York State Prescription form. In addition to curtailing fraud and diversion, these regulations will expedite the prescribing and dispensing process. Practitioners, institutions and pharmacists will benefit from the following amendments:

- (1) Allowing electronic prescribing in the State Medical Assistance (Medicaid) program;
- (2) Eliminating the fee to practitioners and institutions for official prescriptions;
- (3) Eliminating the requirement that practitioners send written follow-up prescriptions to pharmacies for oral prescriptions in the Medicaid program;
- (4) Allowing oral prescribing of OTC medications in the Medicaid program and eliminating the requirement for hard copy orders for Medicaid OTC drugs;
- (5) Eliminating the requirement that pharmacists write the DEA number of the pharmacy on the official prescription;
- (6) Bar coding of the serial number on the official prescription to expedite the dispensing process; and
- (7) Eliminating multiple prescription forms practitioners currently use to prescribe drugs.

Currently, dispensing data is required from all Schedule II and benzodiazepines prescriptions. The only new requirement is the submission of dispensing data from the original dispensing of all controlled substances.

Professional Services:

No additional professional services are necessary.

Compliance Costs:

Pharmacies may require minor adjustments in computer software programming due to additional prescription data submission requirements; however, this cost will be offset through the distribution of grant funds awarded to the Department for the enhancement of its prescription monitoring program by the federal Bureau of Justice Assistance.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process utilizes existing electronic systems for reporting of dispensing by pharmacies. The regulations encourage the use of electronic prescribing by practitioners. Electronic prescribing is not only more efficient than the current paper process, it is also a secure procedure that will reduce prescription fraud. Electronic prescribing will protect the public health and result in substantial savings to the Medicaid program and private insurance as well as enhancing public safety.

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. These requirements were negotiated with organizations representing the affected groups. The use of bar coding, the elimination of written follow up prescriptions for oral prescriptions for the Medicaid program and the encouragement of electronic prescribing minimize any adverse impact.

Small Business and Local Government Participation:

During the drafting of the statute which is the basis of these regulations, the Department met with the Pharmacist Society of the State of New York (PSSNY), the Medical Society of the State of New York (MSSNY) and the Health Plan Association of New York. The regulations were drafted considering their comments. Local governments are not affected.

Rural Area Flexibility Analysis**Types and Estimated Numbers of Rural Areas:**

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

Compliance Requirements:

The only compliance requirements are the use of the official prescription provided free of charge and additional minimal reporting requirements by pharmacies. The regulations are in furtherance of new Section 21 of the Public Health Law authorizing a statewide official prescription aimed at reducing fraud. Additionally, the regulations assist practitioners and pharmacies by making the prescribing and dispensing process more efficient through the use of electronic prescribing.

Professional Services:

None necessary.

Compliance Costs:

None.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process will utilize existing electronic systems for reporting of dispensing information by pharmacies. The regulations encourage the use of electronic prescribing, which is more efficient and more secure than a paper process. Electronic prescribing will also enhance patient safety through a reduction in medication error due to legibility issues.

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. This requirement is minimized by permitting pharmacies to scan the bar code of the prescription serial number onto the Medicaid claim form also through the allowance of electronic prescribing. Additionally, the benefits on regulated entities resulting from these regulations and described herein outweigh any adverse impact.

Rural Area Participation:

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

Job Impact Statement**Nature of Impact:**

This proposal will not have a negative impact on jobs and employment opportunities. In benefiting the public health by ensuring that drug diversion does not occur through the use of forged or stolen prescriptions, the proposed amendments are not expected to either increase or decrease jobs overall. The fiscal savings to public and private insurers will result in an economic benefit to these groups and could have a positive influence on jobs. Additionally, the anticipated time saved by practitioners and pharmacists will benefit all parties involved as well as patients.

**EMERGENCY
RULE MAKING****HIV Laboratory Test Reporting**

I.D. No. HLT-05-06-00013-E

Filing No. 39

Filing date: Jan. 17, 2006

Effective date: Jan. 17, 2006

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

Action taken: Amendment of Part 63 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2130, 2139 and 2786(1)

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: The specific reasons underlying the finding of necessity to adopt as an emergency rule are as follows:

Section 63.4(a)(4)(i).

On February 11, 2005, the Commissioner of New York City Department of Health and Mental Health (NYCDOHMH) announced that a highly drug resistant strain of human immunodeficiency virus (HIV) had been diagnosed in a NYC resident who had not previously undergone antiviral drug treatment. This patient, believed to be infected within the last 20 months, experienced a very rapid progression to AIDS, raising fears that a new highly drug resistant strain of rapidly progressive HIV is being transmitted in New York State (NYS).

This three drug-class resistant HIV strain may not respond to three of four classes of anti-retroviral medication, greatly limiting treatment options. This level of drug resistance is often seen in patients that have been on treatment for many years but is thought to be rare among patients who are newly diagnosed or who have never received antiretroviral therapy. Currently little information exists on a population basis regarding where and to what extent these drug resistance HIV strains are occurring among treated and untreated patients, and among patients newly diagnosed with HIV.

This event highlights the critical need for the HIV surveillance system of the NYS Department of Health (NYSDOH) to be strengthened in order to provide population-based information about emergent major threats to those with or at risk for HIV/AIDS. Specifically, information is needed on incidence and drug resistance in the population that will establish an early warning system for resistance to particular drugs, especially among newly infected individuals. Information on resistance in the population and sub-populations will also guide public health officials in 1) establishing and/or maintaining prevention efforts for groups at highest risk for acquisition of HIV that may be difficult to treat and 2) in maintaining sufficient resources for care of persons with AIDS that have a viral strain that is highly resistant to antiretroviral treatment. Aggregate information on resistance patterns in NYS is necessary to better inform physicians in clinical practice on how to manage patients in their community particularly when treating newly diagnosed, symptomatic patients and administering post exposure antiretroviral prophylaxis following possible exposure to HIV of unknown source.

To accomplish this, a comprehensive, population-based HIV surveillance system that incorporates surveillance for HIV incidence and HIV drug resistance must be established as soon as possible. The existing NYS HIV Reporting System provides a foundation for this system, but must be expanded to include: 1) the reporting of all nucleic acid (RNA or DNA) detection test results and all CD4 lymphocytes test results for more complete information on the magnitude of the HIV epidemic in NYS and the number and proportion of people with HIV in care for HIV infection; and 2) the results of HIV subtype and drug resistance testing.

Section 63.11

This is a critical time for all barriers to HIV testing and drug resistance testing to be eliminated. HIV testing must be encouraged and facilitated. The current informed consent and HIV release forms contained in Section 63.11 must be revised to accurately reflect changes in test technologies and advances in treatment that have occurred since the writing of the original regulations. Further, federal privacy regulations promulgated under the Health Insurance Portability and Accountability Act ("HIPAA") require changes in the HIV release form for all providers who are covered by the federal law. These forms will be removed from Section 63.11, revised and placed on the department's website, enabling prompt, convenient updating to keep pace with future changes in HIV testing and treatment. Removal of the text of these forms from Section 63.11 and use of web-

based forms, which are current, clear and simplified, is necessary and urgent.

Specifically, a more accurate up-to-date consent form will facilitate HIV antibody testing and resistance testing as well as incidence testing to monitor the HIV epidemic. The new consent form also provides the opportunity for individuals to consent at one point in time to a course of medically recommended HIV testing (*e.g.*, during pregnancy) for which they are being counseled. The language on the consent form has been greatly simplified to make it easier for individuals to understand and easier for providers to use. Its use will streamline counseling and thus reduce barriers to testing. The simplification of the form will be in conjunction with an education campaign aimed at providers to streamline counseling to the extent possible that is consistent with the law.

As noted, the authorization for release of confidential HIV related information must be up-dated to conform to federal privacy regulations. Patients will be confused if they attempt to use the existing form to obtain the release of their records from HIPAA covered providers. All hospitals and the majority of providers are covered by HIPAA and can no longer honor the release form which now appears in Section 63.11.

Subject: HIV laboratory test reporting.

Purpose: To expand laboratory reporting to include Viral Load and CD4 test results and HIV drug resistance testing.

Text of emergency rule: Subparagraph (i) of Section 63.4(a)(4) is amended to read as follows:

(4)(i) Laboratories performing diagnostic tests shall report to the Commissioner cases of initial determinations or diagnoses of HIV infection, HIV-related illness and AIDS on a schedule to be specified by the Commissioner. Laboratories shall report the following: confirmed positive HIV antibody test results, [positive] HIV nucleic acid (RNA or DNA) detection test results, *all* CD4 lymphocyte counts [less than 500 cells per microliter or less than 29 percent of total lymphocytes] unless the test was known to be performed for reasons other than HIV infection or HIV-related illness, *HIV subtype and antiviral drug resistance testing in a format designated by the Commissioner*, and the results of other tests as may be determined by the Commissioner to indicate a diagnosis of HIV infection, HIV-related illness or AIDS.

Section 63.11 is hereby REPEALED and section 63.12 is renumbered section 63.11.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 16, 2006.

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) Section 2139 requires the Commissioner to promulgate rules and regulations as shall be necessary and proper to effectuate the purposes of Article 21, Title III relating to the reporting and tracking of HIV/AIDS.

PHL Section 2130 requires that physicians and laboratories performing diagnostic tests or making a medical diagnosis immediately report determinations or diagnoses of HIV and AIDS. Such reports shall include information concerning the case "as shall be required by the Commissioner."

PHL Section 2786 authorizes the State Commissioner of Health to develop and/or approve forms for informed consent and for the release of confidential HIV-related information.

Legislative Objectives:

PHL Sections 2130 and 2139 were enacted to permit the Department of Health to conduct epidemiologic surveillance for HIV/AIDS: to record, monitor and evaluate the progression of the HIV/AIDS epidemic in the state. Confidential reporting allows the health department to assess the spread of the disease in various localities and among risk group, thereby enabling focused prevention efforts and the targeting of scarce health resources where they can be most effective.

The New York State Legislature mandated the Department's development of model forms and approval of forms in order to standardize and ensure compliance with elements of informed consent, set forth in Section 2781, and disclosure provisions outlined in Section 2782.

Needs and Benefits:

A decade ago, the course of the AIDS epidemic in New York State began to change dramatically due to the increasing use and effectiveness of highly active antiretroviral therapy (HAART), and use of viral load and HIV resistance laboratory tests to monitor the effectiveness of therapy. The decrease in AIDS diagnoses and deaths and the improving immunologic status of many persons living with HIV due to use of HAART has been accompanied by the development of mutations leading to anti-retroviral drug resistance. Although these mutations are commonly seen in persons who have received prior retroviral therapy without complete suppression of HIV viral load, population-based data are not available on the extent of resistance in the treated population. It is also not known to what extent resistant mutations are transmitted from one person to another, leading to decreased treatment options in those newly infected and diagnosed with HIV.

With the recent documentation of a HIV strain with resistance to three drug classes and rapid progression to AIDS in a NYC man newly diagnosed with HIV, the need for a comprehensive surveillance system designed to provide this information on a population basis is pressing. Expanding the existing NYS population based HIV surveillance system to incorporate surveillance of both HIV incident infection and HIV drug resistance will provide data not only on the level of HIV drug resistance among the treated population but also on transmission of HIV strains that are highly drug resistant among the newly diagnosed population. It will allow the examination of geographic differences and trends overtime in resistance patterns. These aggregate data will be extremely valuable to physicians, providing them with information on the resistance patterns that will help guide HIV treatment practices. They will also help public health agencies charged with making the best use of resources to develop effective prevention and care programs.

HIV viral load suppression is necessary to prevent the development of HIV drug resistance. Since June 2000, laboratories have reported detectable viral load test results to the Department. The inclusion of non-detectable viral loads in the surveillance system offers a valuable population-based assessment of the suppression of viral load and therefore the risk for the development of drug resistance. If the goal to avoid drug resistance is not being met at a population level, then viral load information will allow interventions to be designed that target the problems that are allowing resistant strains to proliferate (*i.e.*, direct transmission of resistant strains, lack of entry into medical care, and/or inadequate viral load suppression even with medical care).

One of the original intents of the legislature in passing PHL Article 21 was to provide more case information to better track the HIV epidemic in New York State. The "Memorandum in Support, the New York State Senate", Session Laws of 1998, Chapter 163, p. 1631 states: "This legislation has the potential to save countless lives while assuring that infected and exposed individuals are given a chance to get tested and treated at the earliest possible stage in the progression of disease. In addition, making HIV a reportable disease will enable public health officials to more accurately track the spread of the epidemic into different communities, thus allowing them to direct treatment, prevention and educational funding into those communities most affected by the disease."

The use of HAART has increased the percentage of HIV-infected patients with undetectable viral loads and high CD4 counts. Requiring the reporting of undetectable viral loads and all CD4 lymphocyte counts (the names of persons undergoing CD4 testing for non-HIV related reasons will be deleted from the HIV/AIDS Registry) will provide a more complete picture of the epidemic, including the proportion of infected persons whose HIV is optimally controlled (undetected viral load and high CD4 count) and who are in ongoing medical care in different regions of the state. This information will assist in defining the complete HIV spectrum of disease at the population level in New York State, identifying trends in control of disease across time, and evaluating areas of the state where access to care may be an issue.

With the availability of HAART, it is more important than ever that barriers to HIV diagnostic testing be reduced. The Department is undertaking a broad initiative to make HIV testing routine in medical settings and to streamline the counseling and consent process. With respect to the HIV test consent form, testing must be further encouraged and made a standard part of medical care in NYS. The current forms contained in Section 63.11 are no longer accurate due to changes and options in test technologies and advances in treatment. Further, the release form does not reflect the requirements of new federal privacy regulations.

Specifically, the need to repeal the existing HIV consent form results from the evolution of HIV testing technologies. Rapid HIV antibody tests now available can provide a negative or preliminary positive result during

a single appointment, often in less than an hour. Other testing technologies involving various body fluids are now available. The current consent form is focused on the ELISA and Western Blot tests and needs to be streamlined. Further, with treatment advances, it is timely to update the consent form to emphasize routine testing for disease monitoring that occurs in medical care (e.g., viral load and resistance testing). Various testing protocols, consisting of one or more tests now exist and need to be accommodated by a consolidated informed consent form; for example, testing and follow-up testing during pregnancy as recommended by the NYSDOH and the Center for Disease Control and Prevention (CDC). In 2004, the Department distributed a special version of the consent forms to permit a follow up test later in pregnancy, with a single consent form. Also, viral load and other tests to monitor HIV are now a routine part of HIV health care but are not addressed by the current consent form. The revised consent form will provide a single and comprehensive way to obtain this consent. Finally, CDC recommends that state health departments conduct incidence testing on all persons newly diagnosed. Such testing does not provide accurate information about individual patients, but in aggregate the result allow estimation of HIV incidence in the populations. Consent for this test is also part of the revised consent form.

The current HIV release form must be revised to ensure compliance with the new federal Health Insurance Portability and Accountability Act ("HIPAA") privacy regulations at 45 C.F.R. Part 164. The revised release will permit HIPAA covered providers to disclose information, including HIV information, without violating federal law.

Both forms will be available on the NYSDOH web site. There is no requirement in statute that such forms be promulgated as regulations. Web-based forms can be more conveniently up-dated and made readily available to providers. Removal of the text of these forms from Section 63.11 and use of web-based forms that are current, clearly worded and simplified are urgent needs and provide a service to the regulated parties.

Costs:

Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

There will be no additional costs for the laboratories associated with the reporting of all HIV nucleic acid (RNA or DNA) detection test results and all CD4 lymphocyte test results, as this can easily be incorporated with the existing reporting of positive HIV nucleic acid (RNA and DNA) detection tests. Approximately 25 laboratories conduct HIV drug resistance testing. Laboratories already reporting test results to the NYSDOH via the NYS Electronic Clinical Laboratory Reporting System (ECLRS) may require some one-time programming costs to set up the extraction of data from their testing systems and incorporating it with the ECLRS transfers. Laboratories not reporting through ECLRS will require a minimum commitment of additional staff time to establish an account on the NYS Department of Health's (NYSDOH) Health Provider Network (HPN) for highly secured transfer of data directly to the NYSDOH.

Updated and streamlined informed consent and release forms will be cost saving to regulated parties. They will save staff time in the informed consent process because the new form is a simplified and comprehensive, and is a more accurate reflection of existing testing protocols. The updated release form will facilitate a patient's right to authorize the exchange of HIV-related information. As persons with HIV/AIDS live longer, the authorized exchange of medical information is increasingly beneficial for coordination of medical care and other HIV-related services.

Costs to the Department of Health and Other State and Local Governments:

The amendment to Section 63.4 will expand the current HIV reporting system requiring additional costs to the NYSDOH. Specifically, additional servers at a cost of approximately \$50,000 and 160 hours of contractual programming for a total cost of \$16,000 will be needed for implementation. The ECLRS modifications will require at least 80 hours of programming at \$8,000. Two additional staff persons will be required to 1) process the additional laboratory reports and 2) interpret, analyze and generate aggregate reports of the drug resistance data. These costs are based on the actual experience of the NYSDOH in developing the current ECLRS and the electronic HIV Surveillance systems.

There will be no costs to county health departments. The NYCDOHMH may require additional minor computer hardware and/or software to incorporate electronic drug resistance reporting into the NYC HIV Surveillance Program.

Agencies of state and local government that conduct HIV testing will incur no new costs as a result of these regulations deleting Section 63.11. As is the case with private regulated parties, costs associated with the time expended in obtaining informed consent for HIV testing and with release

of HIV-related information should decrease as a result of these amendments.

Further, as of August 30, 2005, 62 of the 72 laboratories affected by this reporting requirement are reporting CD4 and viral loads as required. The resulting impact on the department's staff has been moderate and efficiencies are in place to minimize workload.

The above assessment of the cost benefits of deleting Section 63.11 is based upon actual experience on the part of the NYSDOH and providers in obtaining informed consent and securing authorization for the release of confidential HIV-related information.

Local Government Mandates:

There are no city or county laboratories conducting drug resistance testing. Therefore, the amendment of Section 63.4(a)(i) mandating the reporting of drug resistance testing does not impact any city or county government.

The proposed regulations concerning the repeal of Section 63.11 impose no new mandates on any county, city, town or village government, school district, fire district or other special district, unless a city, town or village government, school district, fire district or other special district offers HIV testing and is, therefore, subject to these regulations to the same extent as a private regulated party.

Paperwork:

There will be no additional paperwork required of the laboratories or NYCDOHMH. The majority of laboratories conducting HIV drug resistance testing for NYS residents are already reporting other required testing results through the NYSDOH's ECLRS system. These laboratories will be able to electronically report the results of their drug resistance testing through ECLRS as well. Laboratories not currently reporting through ECLRS will be required to report electronically to the NYSDOH via the file transfer utility over the highly secured Health Provider Network (HPN).

No new paperwork is required as a result of the deletion of Section 63.11. The proposed regulation deleting Section 63.11 would actually result in less paperwork since the release form is now inaccurate for use by HIPAA covered providers.

Duplication:

These rules, amendment of Section 63.4(a)(i) and repeal of Section 63.11 do not duplicate any other state law, rule or regulation. These regulations also do not duplicate any federal regulations, but rather the revised release form complies with recently enacted federal privacy regulations.

Alternatives:

The most effective and efficient way to monitor HIV drug resistance in a given population and to operate a system for enabling a clinical alert regarding the prevalence of drug resistance is to establish a comprehensive HIV Surveillance system that incorporates universal laboratory reporting of HIV drug resistance testing. Although research studies can provide valuable clinical information on HIV drug resistance, they are costly and only provide information specific to the study participants. The results of these studies cannot provide comprehensive information on the total NYS population of HIV infected people.

The Department of Health considered direct provider reporting in place of expanded laboratory electronic reporting. However, provider reporting on paper forms has been shown to be less reliable, less efficient and would prove to be more costly. Electronic clinical laboratory reporting for disease surveillance is universally promoted by public health authorities.

The alternative of retaining the existing informed consent form and release form was determined to be unacceptable. The informed consent form does not reflect current HIV testing technology or benefits of testing. The retention of a release form in Section 63.11 that is not compliant with federal regulations is not an acceptable alternative.

The Department of Health is sensitive to the possibility of additional non-HIV infected persons being reported to the department due to the expanded reporting of all CD4 test results. We note that no report is placed on the registry without confirmation (i.e., matching with other HIV related tests or verifying status with a person's provider). These procedures have been in place for over ten years without incident or problem which negatively affect privacy. Nevertheless, the Department of Health considered the possibility of adding a provider check off to laboratory slips to indicate that the laboratory test was unrelated to HIV. After consideration of the unlikelihood of full provider compliance, confidentiality concerns, the necessity for laboratory software reprogramming based on this change and the costs involved as weighed against the problem free procedures long in existence, the Department decided to continue the present system.

Federal Standards:

The National Centers for Disease Control and Prevention (CDC) is currently in the process of updating the HIV Surveillance Guidelines. It is anticipated that the new guidelines will incorporate recommendations from the Council of State and Territorial Epidemiologists (CSTE) that all states require the laboratory reporting of both detectable and non-detectable viral load tests and all CD4 lymphocytes tests to state public health departments.

Monitoring the epidemic through broad reporting is promoted by the Centers for Disease Control and is widely accepted across the country. All but two states require reporting of some level of CD4 lymphocytes and/or viral loads and fourteen states have similarly undertaken to require the reporting of all CD4 lymphocytes and viral load testing (Arizona, Arkansas, Florida, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, New Hampshire, North Dakota, South Carolina, Utah and Wyoming). Comprehensive reporting enables the identification of previously unreported HIV cases. It also enables comparisons across geographic areas and across similar population groupings. Epidemiological prediction is facilitated and appropriate health planning can occur.

There are currently no federal regulations governing informed consent for HIV testing. The federal government has provided recommendations that state review their current requirements to remove unnecessary obstacles and barriers to HIV testing. Recent federal regulations, 45 C.F.R. Part 164, require that certain language appear on all release forms covered by the federal privacy act.

Compliance Schedule:

The emergency regulations be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed changes to the regulations will affect approximately 24 laboratories that conduct HIV drug resistance testing. Of these 24 laboratories, only two are classified as small businesses and both of those laboratories are located out of state. The only local government that will be impacted by these proposed changes is the NYCDOHMH, which is responsible for conducting HIV Surveillance in NYC, under a deputization agreement with the NYSDOH.

The deletion of Section 63.11 has no impact on small businesses.

Compliance Requirements:

Under the proposed changes, the laboratories that are small businesses will be required to electronically report the results and date of HIV drug resistance testing to the NYSDOH, along with the names and addresses of the patients and providers and other demographic data as required by the Commissioner. In addition, laboratories will be required to report all viral load and CD4 lymphocyte test results. The HIV drug resistance records for NYC residents will be transferred by the NYSDOH to the NYCDOHMH where they will be incorporated with the NYC HIV Surveillance System.

With respect to the use of new consent forms and release forms, providers confront no additional compliance requirements. The forms can be mailed on request and also downloaded and substituted for old forms as needed.

Professional Services:

Laboratories may require minimal computer programming to meet the requirements of these proposed laboratory changes. Technical assistance will be available from the NYSDOH.

NYCDOHMH may require an additional research scientist to analyze the HIV drug resistance data if they chose to do so under the authority of the state.

Use of new consent forms and release forms will not involve any additional professional services.

Compliance Costs:

Compliance costs for the laboratories that are classified as small businesses will likely be minimal due to the low volume of case reports expected from these entities. Technical assistance from the NYSDOH will be available.

Providers using release forms and consent forms now copy such forms for their own use. Therefore, no extra cost is anticipated.

Economic and Technological Feasibility:

Laboratories classified as small businesses will receive detailed instructions on how to report. In addition, technical assistance will be available from the NYSDOH.

Having forms available and updated on the internet, suitable for downloading, is both economically and technically feasible.

Minimizing Adverse Impact:

The adverse impact on the laboratories classified as small businesses will be minimized by utilizing ECLRS, which is the existing mode of

electronic reporting for the majority of laboratories. For those not choosing to report via ECLRS, an alternative electronic reporting mechanism will be available. Technical assistance will be available from the NYSDOH.

There is no adverse impact regarding use of the new forms located on the NYSDOH web site.

Small Business and Local Government Participation:

The NYCDOHMH are supportive of the reporting of non-detectable viral loads, all CD4 lymphocyte test results and HIV drug resistance testing. Plans have been made to consult directly with all laboratories.

With respect to the new forms, the NYSDOH has shared the consent form with a few health and human service providers and has received comments from them for consideration. Plans have been made to contact other health and human service providers and stakeholders regarding the new consent form.

Rural Area Flexibility Analysis

None of the laboratories conducting HIV drug resistance testing are located in rural counties.

The repeal of Section 63.11 has no unique impact on rural area providers or patients.

Job Impact Statement

The emergency amendment of Section 63.4(a) will have no impact on jobs and employment opportunities.

The repeal of Section 63.11 does not impact on rural areas in any unique way. In fact, having updated forms available on the intranet will be a convenient service to rural providers and patients.

Power Authority of the State of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rates for Power and Energy

I.D. No. PAS-05-06-00016-P

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

Proposed action: Revised electricity rates for the Otsego Electric Cooperative.

Statutory authority: Public Authorities Law, section 1005

Subject: Rates for power and energy.

Purpose: To protect the integrity of the system.

Text of proposed rule:

OTSEGO ELECTRIC COOPERATIVE
Proposed Monthly Rates

	Proposed ¹ Rates
General Service-Residential SC1	
Custom Charge	\$11.00
Energy Charge, per kWh	\$.0873
Small Commercial-Single Phase SC2	
Customer Charge	\$12.00
Energy Charge, per kWh	\$.0859
General Power-Multi Phase SC3-A	
Demand Charge, per kW	\$6.50
Energy Charge, per kWh	\$.0753
General Power-Single Phase SC3-B	
Demand Charge, per KW	\$6.50
Energy Charge, per kWh	\$.0646
Security Lighting SC4 (Charge per lamp, per month)	
175 Mercury Vapor	\$9.20

¹ Purchase Power Adjustment reflected in proposed rates.
Otsego Electric Cooperative
Expense and Revenue Summary

	Five-Year Average	Proposed (1)
Purchase Power Expense (NYPA hydro, incremental & ISO Charges)	\$1,037,916	\$1,280,668
Distribution Expense (Coop-owned facilities)	1,310,500	1,524,741
Depreciation Expense (On all capital facilities and equipment)	486,774	537,961
General & Administrative (Salaries, Insurance, Mgmt Services & Adm. Expenses)	602,446	655,450
Rate of Return—(Average 3.5%, Proposed 5.5%) (Includes debt service on current & planned debt, Federal Government Regulatory financial ratio level Requirement, Coop Members' Patronage Capital Distribution and cash reserves for contingencies)	526,645	1,009,121
Miscellaneous Revenue Credit (e.g., Sale of used equipment, etc.)	(72,072)	(81,350)
Total Cost of Service	\$3,892,209	\$4,926,591
Revenue at Present Rates		\$4,560,366
Deficiency at Current Rates		\$366,225
Revenue at Proposed Rates		\$4,926,591
Increase % at Proposed Rates		8.0%

(1) Based on 5 years historical & projected data.

Text of proposed rule and any required statements and analyses may be obtained from: Angela D. Graves, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 287-3092, e-mail: anglea.graves@nypa.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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Hitachi Ltd. Current Transformer Type UB-R by HBV AE Power Systems Incorporated

I.D. No. PSC-05-06-00017-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition dated Dec. 23, 2005 by HBV AE Power Systems Incorporated for commission approval of the Hitachi Ltd. current transformer Type UB-R.

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

Subject: Approval of new types of electricity meters, transformers, and auxiliary devices—Case 279.

Purpose: To permit electric utilities in New York State to use the Hitachi Current Transformer Type UB-R.

Substance of proposed rule: The Commission will consider a request from HBV Power Systems Incorporated for approval and use of the Hitachi Ltd., Current Transformer UB-R. Consolidated Edison Company of New York, Inc., has stated its intent to use the Hitachi Current Transformers at the Mott Haven Substation located at 415 Bruckner Blvd., Bronx, New York for use in revenue grade metering applications, if approved.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(05-E-1637SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Market Supply Charge Complaint by Strategic Power Management, Inc. against Orange and Rockland Utilities, Inc.

I.D. No. PSC-05-06-00018-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify a complaint filed on Dec. 28, 2005 by Strategic Power Management, Inc. (SPM) against Orange and Rockland Utilities, Inc. (O&R) regarding its market supply charge.

Statutory authority: Public Service Law, section 66(1)

Subject: SPM complaint against O&R regarding its market supply charge.

Purpose: To consider SPM's complaint against O&R regarding its market supply charge.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject in whole or in part or modify a complaint filed on December 28, 2005 by Strategic Power Management, Inc. (SPM) against Orange and Rockland Utilities, Inc. (O&R) regarding its Market Supply Charge. SPM contends that O&R's Market Supply Charge as currently calculated is unjust and unreasonable in that it does not reflect market electricity prices because of various reconciliation adjustments and the utility's hedging program.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(06-M-0003SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Certain Cable System Properties by Shaner Cable Inc. and Atlantic Broadband (Penn), LLC

I.D. No. PSC-05-06-000019-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a joint petition of Shaner Cable, Inc. and Atlantic Broadband (Penn), LLC for transfer of certain cable

system properties, franchises and certificates of confirmation from Shaner Cable, Inc. to Atlantic Broadband (Penn), LLC.

Statutory authority: Public Service Law, section 222

Subject: Transfer of certain cable system properties, franchises and certificates of confirmation of Shaner Cable, Inc. to Atlantic Broadband (Penn), LLC.

Purpose: To approve the transfer.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a joint petition by Shaner Cable, Inc. and Atlantic Broadband (Penn), LLC for a transfer of certain cable systems, properties, franchises and certificates of confirmation from Shaner Cable, Inc. to Atlantic Broadband (Penn), LLC.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(05-V-1551SA1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Parlay Betting at Harness and Thoroughbred Racetracks

I.D. No. RWB-05-06-00001-E

Filing No. 34

Filing date: Jan. 11, 2006

Effective date: Jan. 11, 2006

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

Action taken: Amendment of sections 4010.6 and 4122.38 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 227 and 909

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

Specific reasons underlying the finding of necessity: Section 909 of the New York State Racing and Pari-Mutuel Wagering and Breeding Law went into effect on February 14, 2005 and authorizes a new type of wager called the "proposition wager" to be offered in pari-mutuel wagering. The statute directs the Board to promulgate rules and regulations that will provide guidelines and make determinations on items such as what classes of races the wager may be offered in. In order to offer the Proposition Wager, certain amendments to the Parlay wager rules are required. This rule is necessary to ensure that proposition wagering is available and the state can receive reasonable revenue in support of government arising from such wagering at all horse tracks throughout New York.

Subject: Parlay betting at harness and thoroughbred racetracks and the number of races and pools in which a series of parlay bets may be made.

Purpose: To increase the number of races on which parlay betting can occur by including proposition wagering pools, thereby offering fans more variety in wagering opportunities.

Text of emergency rule: Subdivision (b) of Section 4010.6 of 9E NYCRR is amended to read as follows:

(b) The parlay is not a pari-mutuel pool, but is a series of bets combining betting entries in win, place, [or] show *or proposition* pools in each of

two or more separate races in chronological order. The initial amount bet constitutes the bet on the first betting entry in the first parlay race (leg); if successful, the payoff from winning the first leg (to the lowest penny) is then bet on the betting entry designated in the second leg; if again successful, and if the parlay continues, the payoff from winning the second leg is then bet (to the lowest penny) in the third leg; etc.

Subdivision (c) of Section 4010.6 of 9E NYCRR is amended to read as follows:

(c) A parlay bet may combine any of the races on the program and must combine at least two and not over [six] *eight* races. Bets are limited to win, place, [or] show *or proposition* pool types for which a corresponding pool is conducted on the race selected. The races in a parlay must be chronological but need not be consecutive nor combine the same type pool. The parlay shall be designated on one pari-mutuel ticket which may also evidence other parlay bets combining the same races. A *parlay bet ticket must contain all win, place or show bets without any proposition bets or all proposition bets without any win, place or show bets*. Subdivision (b) of Section 4122.38 of 9E NYCRR is amended to read as follows:

(b) The parlay is not a pari-mutuel pool, but is a series of bets combining betting entries in win, place, [or] show *or proposition* pools in each of two or more separate races in chronological order. The initial amount bet constitutes the bet on the first betting entry in the first parlay race (leg); if successful, the payoff from winning the first leg (to the lowest penny) is then bet on the betting entry designated in the second leg; if again successful, and if the parlay continues, the payoff from winning the second leg is then bet (to the lowest penny) in the third leg; etc.

Subdivision (c) of Section 4122.38 of 9E NYCRR is amended to read as follows:

(c) A parlay bet may combine any of the races on the program and must combine at least two and not over [six] *eight* races. Bets are limited to win, place, [or] show *or proposition* pool types for which a corresponding pool is conducted on the race selected. The races in a parlay must be chronological but need not be consecutive nor combine the same type pool. The parlay shall be designated on one pari-mutuel ticket which may also evidence other parlay bets combining the same races. A *parlay bet ticket must contain all win, place or show bets without any proposition bets or all proposition bets without any win, place or show bets*.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire April 10, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Watervliet Ave. Ext., Suite 2, Albany, NY 12212, (518) 453-8460 Ext. 3300, e-mail gpronti@racing.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: The New York State Racing and Wagering Board ("Board") is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law ("RPMWBL") Sections 101(1) and 227(1). Under Section 101(1), the Board has general jurisdiction over all horse racing activities and all pari-mutuel thoroughbred racing activities. Under Section 227(1), the Board has been directed to promulgate rules and regulations to administer the conduct of pari-mutuel wagering.

2. Legislative Objectives: This amendment advances the legislative objective of regulating the conduct of pari-mutuel wagering in a manner designed to maintain the integrity of racing while generating a reasonable revenue for the support of government.

3. Needs and Benefits: The amendments are necessary to expand parlay wagering opportunities; thoroughbred section 4010.6 and harness section 4122.38, entitled "Parlay Betting," by maximizing wagering opportunities to the betting public that are now available through state-of-the-art technological capabilities of the totalizator systems whereby wagers are computerized, processed and transacted. A parlay is a single bet that links together two or more individual wagers; where the total winnings from one wager are "rolled into" the wager for next consecutive racing contest. The parlay bet is preserved so long as every wager for the respective racing contest in the series wins. If any single wager loses, the entire parlay bet is lost. Under current rule, the bets are limited to win, place, or show wagers.

Under the proposed rule, a parlay series can be extended up to eight racing contests from the current limit of six races. At the time of the original promulgation of the parlay rule in 1988, the parlay wager was limited to six races because of the totalizator system's capability. At that time, six races was the maximum number of races that could be processed by the totalistic system. Due to technological advancements in the totalizator system's technology, there is now a capacity to include up to eight races

when taking a parlay bet. This provides for another method of wagering, and thereby, increases potential revenue to the state.

The proposed amendments also allow parlay betting on a series of proposition wagers. The object of a proposition wager is to bet which horse will finish a race before the other, no matter what the overall placing of either horse.

Currently, a parlay bet can only combine betting entries within the win, place or show pools. This proposed rule will expand parlay betting to include proposition wagering pools. This is beneficial for New York in that it offers another betting option for the public. It also makes the proposition payout to the public larger when incorporated into a parlay bet, therefore, potentially attracting more wagerers.

For example, consider there are four proposition wager races with official payout prices of \$2.80, \$3.20, \$3.00 and \$2.40. A bettor making a winning proposition wager on each race separately of \$5.00 each would bet a total of \$20.00 and receive \$28.50 back. If that bettor "parlayed," via the parlay bet, the same four proposition wagers, for the same amount of money, he would receive \$60.60 back. The payoff is larger because the parlay bet amounts won in the previous races are rolled over to the lowest penny. Being able to parlay a series of proposition wagers is attractive to the bettor, because the same investment yields a larger pay off, once the "parlaying" starts. Parlay wagering is also convenient because the bettor does not have to wait in line to make another bet, which is particularly advantageous on big race days with large crowds.

4. Costs: (a) Costs to regulated parties for the implementation of and continuing compliance with the rule: It is anticipated that no costs will be incurred by the regulated entities. In particular, extending the type of pool on which a parlay bet may be made is something that the totalizer systems can readily accommodate. For example, the proposed rule requires that parlay bets can now be made on a series of proposition wagers, and can be made on up to eight races in a day. The tracks and OTB's have tote systems' personnel and personnel on staff who can process these changes easily. Thereafter, the changes caused by the amendments are absorbed by current tote equipment and staff.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: See (d) below.

(d) There will be no costs to the agency, as it is a matter of the track operator implementing minor adjustments, via their tote system operator, to an existing system already in place.

5. Local Government Mandates: None. Local governments are not involved in the regulation or administration of pari-mutuel wagering in New York State.

6. Paperwork: None. Parlay wagering can be implemented using existing computer systems recordkeeping.

7. Duplication: None.

8. Alternatives: The other alternative would be to leave the rule the way it is and not promulgate anything. This would leave the current parlay regulation outdated as the totalizer system can now accommodate parlay bets on up to eight races. It would also run contrary to the trends in horse racing, where the betting public is looking for new types of proposition and parlay wagering opportunities. There are no underlying integrity concerns that would prohibit these new betting options.

9. Federal Standards: There are no applicable federal standards for pari-mutuel wagering activities.

10. Compliance Schedule: This rule will be effective upon publication in the New York State Register.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment merely expand the parlay bet to proposition wagers and increase the amount of races upon which a parlay bet may be made from six to eight. These amendments do not impact upon State Administrative Procedure Act § 102(8). Nor do they affect employment. The proposal will not impose an 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 significant technological changes on the industry for the reasons set forth above, because the Board rules have previously allowed parlay bets to be made on other betting pools.

Department of State

NOTICE OF ADOPTION

Presence of Wild Animals: Report Form

I.D. No. DOS-40-05-00018-A

Filing No. 35

Filing date: Jan. 12, 2006

Effective date: Feb. 1, 2006

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

Action taken: Amendment of section 820.3 of Title 19 NYCRR.

Statutory authority: General Municipal Law, section 209-cc

Subject: Required annual reporting of the presence of wild animals: report form.

Purpose: To amend the report form to include several categories of exemptions from the reporting requirements enacted pursuant to recent legislation.

Text or summary was published in the notice of proposed rule making, I.D. No. DOS-40-05-00018-P, Issue of October 5, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Thomas J. Wutz, Department of State, 41 State St., Albany, NY 12231, (518) 474-6746, e-mail: TWutz@dos.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Office of Temporary and Disability Assistance

NOTICE OF WITHDRAWAL

Application for Safety Net Assistance

I.D. No. TDA-42-05-00019-W

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

Action taken: Notice of proposed rule making, I.D. No. TDA-42-05-00019-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on October 19, 2005.

Subject: Application for safety net assistance.

Reason(s) for withdrawal of the proposed rule: OTDA received numerous comments on this proposed regulation both in support and in opposition. After careful consideration of the concerns about possible negative impact on clients and local operations raised by the commenters in response to the regulation, the Commissioner has determined that the proposed regulation as written will be withdrawn.

However, OTDA is considering various options for a new regulation and/or administrative directive consistent with the federal and State goal of emphasizing renewed efforts to help this population achieve self-sufficiency and addressing OTDA's continuing concern that able-bodied recipients must understand that assistance is intended to be temporary. Under TANF reauthorization, almost assuredly set to be finally enacted when Congress returns in late January 2006, New York will have to achieve, at risk of significant fiscal penalties, increased effective work participation rates not only for our TANF family caseload but our long term family caseload on the Safety Net Assistance Program as well. This expected change in law only increases the importance of helping able-bodied long term recipients to leave assistance. While any contemplated new regulation or administrative directive will not contain the 45 day wait requirement, it will focus on a more thorough and earlier process for assessing the employability and service needs of long term family cases prior to their conversion to Safety Net Assistance.

Department of Transportation

NOTICE OF ADOPTION

Divisible Load Overweight Permits Vehicle Requirements

I.D. No. TRN-47-05-00005-A

Filing No. 41

Filing date: Jan. 17, 2006

Effective date: Feb. 1, 2006

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

Action taken: Amendment of sections 154-2.2, 154-2.4 and 154-2.11 of Title 17 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 385.15(f)

Subject: Divisible load overweight permits vehicle requirements.

Purpose: To clarify procedures for 2006 and new model year vehicles.

Text or summary was published in the notice of proposed rule making, I.D. No. TRN-47-05-00005-P, Issue of November 23, 2005.

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

Text of rule and any required statements and analyses may be

obtained from: Barbara O'Neill, Department of Transportation, Office of Legal Services, 50 Wolf Rd., Albany, NY 12232, (518) 457-2411, e-mail: bo'neill@dot.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Workers' Compensation Board

EMERGENCY RULE MAKING

Administrative Review of Waiver Agreements

I.D. No. WCB-05-06-00014-E

Filing No. 40

Filing date: Jan. 17, 2006

Effective date: Jan. 17, 2006

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

Action taken: Amendment of section 300.36 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117, 141 and 32

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

Specific reasons underlying the finding of necessity: WCL § 32, as amended Chapter 635 of the Laws of 1996, permits the parties to a workers' compensation claim to enter into an agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents, subject to approval by the Board. At first, few waiver agreements were submitted to the Board, and a meeting was held before a Board Commissioner in all cases to question the parties about the agreement. However, in the late 1990's, the number of waiver agreement submitted to the Board increased so dramatically that it was not feasible to hold a meeting in every case in which an agreement was filed. Moreover, most agreements submitted to the Board were routine. Beginning in 2000, Board Commissioners began reviewing routine agreements administratively, without holding a meeting to discuss the agreement with the parties. The majority of settlement agreements are reviewed and approved by the Board without the need for a meeting with the parties. On April 22, 2004, the Appellate Division, Third Department rendered a Memorandum and Order in *Matter of Hart v. Pageprint/Dekalb*, 6 A.D.3d 947, 775 N.Y.S.2d 195 (3rd Dept., Slip Op. No. 94339, 2004), finding that the administrative review of waiver agreements was invalid insofar as it conflicted with the terms of 12 NYCRR 300.36. The purpose of this amendment is to amend

12 NYCRR 300.36, consistent with WCL § 32, to permit the Board to review and approve or disapprove routine waiver agreements administratively, without the need for a meeting with the parties, which benefits everyone. Requiring meetings for all waiver agreements would greatly increase the time it takes for such an agreement to be approved as the Board has limited calendar time. Additionally, the Board has numerous agreements which have been processed administratively and are ready for approval, but cannot be approved due to the above referenced decision. If the Board is to continue to efficiently and timely review and issue decisions regarding waiver agreements, it must process the routine agreements administratively.

Subject: Waiver agreements pursuant to section 32.

Purpose: To provide for the administrative review of waiver agreements.

Text of emergency rule: Subdivision (b) of section 300.36 of Title 12 NYCRR is amended to read as follows:

(b) Any agreement submitted to the board for approval shall be on a form prescribed by the chair or, alternatively, contain the information prescribed by the chair. [For the purposes of section 32 of the Workers' Compensation Law and this section, an agreement shall be deemed submitted when it is received by the board at the time a hearing is conducted to question the parties about the agreement. No agreement shall be approved for a period of 10 calendar days after submission to the board.]

Subdivision (c) of section 300.36 of Title 12 NYCRR is amended to read as follows:

(c) The [submission] receipt of an agreement [to] by the board for approval shall act as a stay on all related proceedings before the board.

Subdivision (e) is renumbered (f), a new subdivision (e) is added and renumbered (f) is amended to read as follows:

(e) The agreement shall be reviewed by the chair, a designee of the chair, a member of the board, or a Workers' Compensation Law Judge, who will make a determination whether to approve or disapprove the agreement. The chair, designee of the chair, member of the board, or Workers' Compensation Law Judge reviewing the agreement may approve or disapprove the agreement administratively, based on a review of the record before the board, or may choose to schedule a meeting to question the parties about the agreement. If the agreement is reviewed administratively, the Board shall advise the parties in writing of the date the agreement shall be deemed submitted for the purposes of Section 32 of the Workers' Compensation Law and this section. If a meeting is scheduled to question the parties about the agreement, the agreement will be deemed submitted for the purposes of Section 32 of the Workers' Compensation Law and this section at such meeting. No agreement shall be approved for a period of 10 calendar days after submission to the board.

([e]f) The board will advise the parties of the approval or disapproval of all agreements by duly filing and serving a notice of [decision] approval or disapproval.

Subdivisions (f), (g), (h) and (i) of Section 300.36 of 12 NYCRR are renumbered (g), (h), (i) and (j).

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 16, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Cheryl M. Wood, Workers' Compensation Board, 20 Park St., Rm. 401, Albany, NY 12207, (518) 486-9564, e-mail: office-ofgeneralcounsel@wcb.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is clearly authorized to amend 12 NYCRR 300.36. Workers' Compensation Law Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Workers' Compensation Law Section 117(1) further authorizes the Board to adopt reasonable rules consistent with the provisions of the Workers' Compensation Law and the Labor Law.

Section 141 of the Workers' Compensation Law provides that the Chair shall be the administrative head of the Board and authorizes the Chair, in the name of the Board, to enforce all the provisions of the WCL and to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports. Section 142 of the Workers' Compensation Law confers upon the Board the power to hear and determine all claims for compensation or benefits and to approve agreements.

Section 32 of the Workers' Compensation Law provides that whenever a claim for workers' compensation has been filed, the claimant or the

deceased claimant's dependents and the employer or its insurance carrier may enter into a written agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents. Such agreement shall not be binding unless approved by the Board. Once approved by the Board, the agreement shall be final and conclusive upon the parties. An agreement may be modified at any time by written agreement of all the interested parties provided it is approved by the Board.

2. Legislative objectives:

Section 73 of Chapter 635 of the Laws of 1996 amended Section 32 of the Workers' Compensation Law to permit the parties to a workers' compensation claim to enter into an agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents. This rule would amend the regulations adopted in 1997 implementing Section 73 of Chapter 635 of the Laws of 1996 to provide for the administrative review of waiver agreements.

3. Needs and benefits:

Prior to the enactment of Section 73 of Chapter 635 of the Laws of 1996, a workers' compensation claimant was not permitted to permanently waive his or her right to benefits under the Workers' Compensation Law (hereinafter "WCL"). The 1996 amendment to WCL § 32 permits the parties to a workers' compensation claim to enter into an agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents, subject to approval by the Board. At first, few waiver agreements were submitted to the Board, and a meeting was held before a Board Commissioner in all cases to question the parties about the agreement. However, in the late 1990's, the number of waiver agreement submitted to the Board increased so dramatically that it was not feasible to hold a meeting in every case in which an agreement was filed. Moreover, most agreements submitted to the Board were routine. Beginning in 2000, Board Commissioners began reviewing routine agreements administratively, without holding a meeting to discuss the agreement with the parties. The majority of settlement agreements are reviewed and approved by the Board without the need for a meeting with the parties. On April 22, 2004, the Appellate Division, Third Department rendered a Memorandum and Order in Matter of *Hart v. Pageprint/Dekalb*, 6 A.D.3d 947, 775 N.Y.S.2d 195 (3rd Dept. 2004), finding that the administrative review of waiver agreements was invalid insofar as it conflicted with the terms of 12 NYCRR 300.36. On April 29, 2004, the Board filed an emergency regulation with the Department of State, effective immediately, to amend 300.36 to permit the Board to review waiver agreements submitted pursuant to Workers' Compensation Law § 32 administratively.

The purpose of this amendment is to permanently amend 12 NYCRR 300.36, consistent with WCL § 32, to permit the Board to review and approve or disapprove routine waiver agreements administratively, without the need for a meeting with the parties.

Permitting the Board to review and approve or disapprove routine waiver agreements administratively, without the need for a meeting benefits all participants to the workers' compensation system. The Board receives approximately 1,000 new waiver agreements each month. Requiring meetings for all waiver agreements would greatly increase the length of time it would take to review each agreement, as the Board has limited calendar time and only a small number of Board Commissioners. Additionally, claimants would be required to take time during the work day to appear at a Board district office for the meeting. The waiver agreements that are reviewed administratively are routine and the claimants represented. The Board is working to ensure that the parties who have entered into a routine waiver agreement have that agreement reviewed and a decision issued without delay. By redirecting the simple or routine cases from the meeting calendar and processing them administratively, the complex cases that remain on the meeting calendar will progress more quickly.

In addition, this proposed amendment makes two minor changes to 12 NYCRR 300.36 which reflect the current practice of the Board, and have minimal impact on regulated parties. These changes (1) require the Board to stay all proceedings in a case upon the receipt by the Board of a waiver agreement and (2) reflect that the written approval or disapproval by the Board of a waiver agreement is a "notice of approval" or "notice of disapproval," rather than a "notice of decision."

In essence this rule conforms the regulations to practices and procedures that have been in effect since 2000.

4. Costs:

The proposed amendment will not result in any new or additional costs to private regulated parties, State, local governments or the Workers' Compensation Board. This proposal merely adds a second process for the review and approval or disapproval of waiver agreements, which does not

require personal appearances before the Board by the parties. By eliminating the need for personal appearances before the Board for all waiver agreements, parties will experience savings in travel costs, appearance costs and claimants will not have to take time away from work to attend.

5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants in the workers' compensation system, this proposal merely adds a second process for the review and approval or disapproval of waiver agreements, which does not require personal appearances before the Board by the parties.

6. Paperwork:

The proposed amendment does not add any reporting requirements.

7. Duplication:

This amendment will not duplicate any existing Federal or State requirements.

8. Alternatives:

One alternative discussed was to hold a meeting in every case to question the parties about the agreement submitted. However, in most instances, waiver agreements submitted to the Board are routine, questioning of the parties concerning the agreement is not necessary, and a meeting would result in a delay in the processing of such agreements. Pursuant to the proposed amendment, the Board could schedule a meeting to discuss the agreement with the parties when circumstances so warrant.

Representatives of the Board have been meeting with different constituent groups across the State at which this topic is discussed. At a meeting with representatives of both carriers and claimants, it was suggested, to improve the administrative process and alleviate concerns expressed, that the Board modify its internal processing when reviewing waiver agreements administratively. The Board is currently reviewing this suggestion to determine impact and feasibility of implementation.

9. Federal standards:

There are no federal standards applicable to this proposed amendment.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage.

Small businesses that are self-insured will also be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage.

Small businesses which are self-insured employers and self-insured local governments may voluntarily enter into waiver agreements settling upon and determining claims for compensation. This amendment will speed the processing and approval of such agreements.

2. Compliance requirements:

The amendment will not require any additional reporting or record-keeping by small businesses or local governments.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. This amendment is intended simply to speed the processing and approval of waiver agreements submitted pursuant to Workers' Compensation Law § 32.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed amendment. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed amendment to comply.

6. Minimizing adverse impact:

This proposed amendment is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

7. Small business participation and local government participation:

On April 29, 2004, the Board filed an emergency regulation with the Department of State to amend 300.36 to permit the Board to review routine waiver agreements administratively. After the adoption of the emergency amendment to 300.36, the Board received comments from members of the regulated community, including third-party administrators and insurance carriers who represent and insure small business and local government entities. While some members of the regulated community have indicated a preference that a meeting be held in every case to question the parties about the agreement submitted, the majority of comments received support the amendment allowing the Board to review and approve routine agreements administratively.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule applies to all claimants, insurance carriers and self-insured employers in all rural areas of the state which are subject to the provisions of the Workers' Compensation Law.

2. Reporting, recordkeeping and other compliance requirements:

The amendment will not impose any additional reporting, recordkeeping or compliance requirements on regulated parties in rural areas.

3. Costs:

This proposal will not impose any compliance costs on rural areas. This amendment is intended simply to speed the processing and approval of waiver agreements submitted pursuant to Workers Compensation Law § 32.

4. Minimizing adverse impact:

This proposed amendment is designed to minimize adverse impact for regulated parties in rural areas. This proposed amendment provides only a benefit to regulated parties in rural areas.

5. Rural area participation:

On April 29, 2004, the Board filed an emergency regulation with the Department of State to amend 300.36 to permit the Board to review routine waiver agreements administratively. After the adoption of the emergency amendment to 300.36, the Board received comments from members of the regulated community, including third-party administrators and insurance carriers who represent and insure employers in rural areas. While some members of the regulated community have indicated a preference that a meeting be held in every case to question the parties about the agreement, the majority of comments received supported the amendment allowing the Board to review and approve routine agreements administratively.

Job Impact Statement

The proposed amendment will not have an adverse impact on jobs. This amendment is intended simply to speed the processing and approval of waiver agreements submitted pursuant to WCL § 32 and will therefore ultimately benefit the participants to the workers' compensation system.