

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

Implementation of the Kosher Law Protection Act of 2004

I.D. No. AAM-19-05-00008-A
Filing No. 778
Filing date: July 12, 2005
Effective date: July 27, 2005

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

Action taken: Addition of Part 254 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18(6) and 201-c(1), (2)

Subject: Implementation of the Kosher Law Protection Act of 2004.

Purpose: To implement legislative directive to adopt a rule regarding the filing by persons certifying food as kosher of qualifications to provide kosher certification.

Text or summary was published in the notice of proposed rule making, I.D. No. AAM-19-05-00008-P, Issue of May 11, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Michael McCormick, Counsel's Office, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-2449

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Hazard Analysis and Critical Control Point (HACCP) Plan for Seafood

I.D. No. AAM-30-05-00012-P

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

Proposed action: This is a consensus rule making to add Part 279 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 214-b

Subject: Hazard Analysis and Critical Control Point (HACCP) Plan for Seafood.

Purpose: To incorporate by reference the current Federal regulations set forth in part 123 of title 21 of the Code of Federal Regulations (21 CFR).

Text of proposed rule: A new Part 279 of Title 1 of the Official Compilation of Codes, rules and Regulations of the State of New York is adopted to read as follows:

PART 279

Hazard Analysis and Critical Control Point (HACCP) Plan for Seafood

Section 279.1 Hazard Analysis and Critical Control Point (HACCP) Plan for Seafood.

(a) For purposes of the enforcement of article 17 of the Agriculture and Markets Law, and except where in conflict with the statutes of this State or with the rules and regulations promulgated by the commissioner, the commissioner hereby adopts the current Federal regulation as it appears in title 21 of the Code of Federal Regulations, part 123 (revised as of April 1, 2004; U.S. Government Printing Office, Washington DC 20402), at pages 275-283, entitled Fish and Fishery Products.

(b) Copies of this regulation, as published in title 21 of the Code of Federal Regulations, are maintained in a file at the Department of Agriculture and Markets, Division of Food Safety and Inspection, 10-B Airline Drive, Albany, New York 12235, and are available for public inspection and copying during regular business hours.

Text of proposed 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

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 has considered the proposed addition of Part 279 of 1 NYCRR and has determined that no person is likely to object to the rule as written.

The proposed addition of Part 279 of 1 NYCRR would incorporate by reference, Federal regulations in Part 123 of Title 21 of the Code of Federal Regulations (21 CFR), relating to requirements for a hazard analysis critical control point (HACCP) plan for seafood. Part 123 of 21 CFR provides that a processor of fish and fishery products shall conduct a hazard analysis to determine whether there are food safety hazards which are likely to

occur for each kind of fish and fishery product processed and to identify the preventive measures which the processor can apply to control those hazards. Part 123 also provides that whenever this analysis indicates one or more food safety hazards, a processor shall have and implement a written HACCP plan, which lists the food safety hazards, the point or step in the food process (critical control point) at which a control can be applied by the processor to prevent, eliminate or reduce to acceptable levels, the chance of a food safety hazard and a list of procedures to monitor those critical control points to ensure that the fish and fishery product being produced are safe and wholesome for consumption.

Food-borne illness stemming from the consumption of contaminated seafood has been a recurring food safety concern in New York. According to data from the New York State Department of Health, 14 percent of all outbreaks of food-borne illness in this State between 1990 and 2003 were linked to the consumption of fin fish. The data also shows that during that same time frame, scombrototoxin, a histamine toxin produced in fish, was the second leading known cause of food-borne illness in this State.

There are approximately 426 seafood manufacturers in New York State that would be affected by this rule. However, the rule would not impose any additional regulatory burden on these manufacturers, since they are already required to comply with the Federal regulations which are being incorporated by reference. Seafood manufacturers and consumers alike would benefit by the rule, in that the rule would help prevent the introduction of natural toxins, chemical or biological contamination, pesticides or parasites in their food processing procedure, thereby better ensuring a safer and more wholesome food product.

Accordingly, since regulated parties and consumers would benefit by the rule and since regulated parties are already required to comply with the Federal regulations which are being incorporated by reference, it is unlikely that anyone will object to this rule as written.

Job Impact Statement

The proposed addition of Part 279 of 1 NYCRR would incorporate by reference, Federal regulations in Part 123 of Title 21 of the Code of Federal Regulations (21 CFR), relating to requirements for a hazard analysis critical control point (HACCP) plan for seafood. The rule would not have a substantial adverse impact on jobs and employment opportunities. The rule would not impose any additional regulatory burden on regulated parties, since they are already required to comply with the Federal regulations which are being incorporated by reference. In addition, the rule would help ensure a safer and more wholesome food product, thereby benefitting the State's seafood manufacturing industry as a whole.

Banking Department

NOTICE OF ADOPTION

Streamlined Forms and Procedures for Certain Branch, Public Accommodation Office and Electric Facilities

I.D. No. BNK-17-05-00005-A

Filing No. 775

Filing date: July 8, 2005

Effective date: July 27, 2005

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

Action taken: Amendment of Supervisory Policies G 4 and G 6, and Supervisory Procedures G 104, G 105, G 108, CB 103, SB 101 and SL 101 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 9-d, 14[1], 28, 29 and 195

Subject: Streamlined forms and procedures for certain branch and public accommodation office applications.

Purpose: To provide an expedited branch application process for well-rated institutions; to provide simplified application forms; to eliminate outdated or unnecessary informational requirements; and to establish more consistent applications requirements for different types of banking institutions.

Text or summary was published in the notice of proposed rule making, I.D. No. BNK-17-05-00005-P, Issue of April 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: Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

Assessment of Public Comment

The Department received one comment. It was from a banking organization and supported the Department's efforts to streamline the branch application process.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Authority of Banks and Trust Companies

I.D. No. BNK-30-05-00002-P

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

Proposed action: Addition of section 6.7 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 10, 14 and 14-g

Subject: Additional authority of banks and trust companies to underwrite and deal in certain securities, including municipal bonds.

Purpose: To give New York State chartered banks and trusts companies parity with national banks in underwriting and dealing in municipal revenue bonds and other government securities.

Text of proposed rule: Section 6.7 Additional Authority of Banks and Trust Companies to Underwrite and Deal In Certain Securities, Including Municipal Bonds.

(a) *The Banking Board hereby finds that the promulgation of this section is consistent with the policy of the State of New York as declared in section 10 of the New York Banking Law and thereby protects the public interest, including the interests of depositors, creditors, shareholders, stockholders and consumers and is necessary to achieve or maintain parity between banks and trust companies and national banks with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions.*

(b) *The Banking Board hereby finds that Section 24 (Seventh) of Title 12, United States Code and Part 1 of Title 12, Code of Federal Regulations permit a national bank to (1) deal in, underwrite, purchase and sell Type I securities (including, in the case of a well capitalized national bank, municipal bonds as defined therein) in an amount not limited to a specified percentage of the bank's capital and surplus; and (2) deal in, underwrite, purchase and sell Type II securities, provided the aggregated par value of such securities issued by any one obligor held by the bank does not exceed 10 percent of the bank's capital and surplus.*

(c) Definitions

(1) *The term "Type I" securities shall have the same meaning as in 12 Code of Federal Regulations section 1.2(j), except that it shall include municipal bonds only if a bank or trust company is well capitalized.*

(2) *The term "Type II" securities shall have the same meaning as in 12 Code of Federal Regulations section 1.2(k).*

(3) *The term "Capital stock, surplus fund and undivided profits" shall have the same meaning as in Banking Law Section 103.*

(4) *The term "municipal bonds" shall have the same meaning as in 12 Code of Federal Regulations section 1.2(g).*

(5) *The term "well capitalized" shall have the same meaning as in Part 208, section 208.43(b)(1) of Title 12, Code of Federal Regulations, in the case of a bank or trust company that is a member of the Federal Reserve System, and the same meaning as in Part 325, section 325.103(b)(1) of Title 12 Code of Federal Regulations, in the case of a bank or trust company that is not a member of the Federal Reserve System; provided, however, that in no event will a bank or trust company be considered well capitalized if it is subject to any written agreement, order, capital directive or prompt corrective action directive issued by the Superintendent to meet and maintain a specific capital level for any capital measure.*

(d) (1) *A bank or trust company may deal in, underwrite, purchase and sell Type I securities for its own account. The amount of Type I securities that the bank or trust company may deal in, underwrite, purchase and sell is not limited to a specified percentage of its capital stock, surplus fund and undivided profits; and*

(2) *A bank or trust company may deal in, underwrite, purchase and sell Type II securities for its own account. The aggregate par value of Type II securities issued by any one obligor held by the bank or trust company may not exceed 10 percent of its capital stock, surplus fund and undivided profits.*

(e) The authority provided by subsection (d) shall not limit any other authority contained in the Banking Law or regulations.

(f) Investments made under subsection (d) shall not be taken into account in computing the limitation on loans to one person contained in Section 103 of the Banking Law.

Text of proposed rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 10 of the Banking Law declares it to be the policy of the State of New York that the business of all banking organizations shall be supervised and regulated through the Banking Department in such manner as to, among other things, maintain public confidence in such businesses and protect the public interest and the interests of depositors, creditors, shareholders and stockholders.

Section 14(1) of the Banking Law empowers the Banking Board to make, alter and amend rules and regulations not inconsistent with law. Section 14-g empowers the Banking Board to adopt, in its discretion, such rules and regulations as are appropriate to enable banks or trust companies to exercise any right, power, privilege or benefit, to engage in any activity, or to enter into any loan, investment or transaction which a national bank may lawfully exercise or into which it may lawfully engage or enter.

2. Legislative objective:

The rule promotes the legislative objective, set forth in Banking Law Section 14-g(1), of ensuring parity between New York State chartered banks and trust companies and national banks, in order to preserve and enhance the state banking charter. As specifically stated in Section 14-g, the so-called "wild card" statute, it is the intention of the Legislature that the statute be construed in such a manner as to ensure that banks and trust companies may exercise the same rights and powers and engage in the same activities as national banks, on substantially the same terms and conditions as national banks.

3. Needs and benefits:

The purpose of the new rule is to permit New York State chartered banks and trust companies to underwrite and deal in government securities, including municipal revenue bonds, to the same extent as national banks.

Federal law generally limits the securities underwriting, dealing and investment powers of New York banks to those of national banks. However, present New York law is more restrictive in certain respects than federal law.

National banks have long been permitted to underwrite and deal in general obligations of the United States or any state or political subdivision thereof, as well as various specifically enumerated types of government and agency-backed obligations (so-called "Type I securities"), without limitation as to capital. They have also been permitted to underwrite and deal in certain other quasi-governmental securities – including non-Type I housing, university and dormitory bonds and obligations of international development banks (so-called "Type II securities") – subject to a single obligor limit of 10% of capital.

In the past national banks generally could not underwrite and deal in municipal revenue bonds. However, under the Gramm-Leach-Bliley Act of 1999, national banks that are considered "well capitalized" may also treat "municipal bonds", which term includes municipal revenue bonds, as Type I securities, which can be underwritten and dealt in without limitation as to capital.

The Banking Law permits New York State chartered banks and trust companies to underwrite, deal in, purchase and sell government obligations. However, such transactions are generally considered as extensions of credit to the issuer subject to the lending limits set forth in Banking Law Section 103. For national banks, limitations on securities underwriting, dealing and investment activity based on capital are separate from any capital-based limitations on lending.

Banking Law Section 103 generally prohibits a bank from extending unsecured credit to any person (including a governmental entity) in an amount which will exceed 15% of the bank's capital. Obligations of, or guaranteed by, the United States, the State of New York, or certain of their agencies, departments and municipal subdivisions are exempt from these limitations. Loans to certain other governmental entities, including any state other than New York, any foreign nation, named public authorities

and certain other enumerated classes of entities, are limited to 25% of the bank's capital.

The Banking Department has interpreted the Banking Law to permit New York banks and trust companies to underwrite and deal in municipal revenue bonds, subject to the lending limits in Banking Law Section 103. However, a well capitalized national bank may underwrite municipal revenue bonds without limitation as to capital.

The proposed regulation would remedy the disparity in powers and limitations with respect to underwriting and dealing in municipal revenue bonds, as well as disparities between the powers of New York State banks and trust companies and national banks in underwriting and dealing in other types of government securities, by giving New York banks and trust companies the power to underwrite and deal in government securities to the same extent as a national bank. This would include the power to underwrite Type I securities, including obligations of states other than New York and political subdivisions thereof, without limitation as to capital. In the case of a New York bank or trust company that met the same definition of "well capitalized" that would be applied to a national bank, it would also include the power to underwrite municipal revenue bonds without limitation as to capital. In addition, it would give banks and trust companies parity with national banks by treating any applicable quantitative limitations on their investments in securities as being separate from their loan limits.

In addition to promoting the Legislative objective of ensuring parity between banks and trust companies and national banks, the proposed regulation, by providing banks and trust companies with the ability to compete fully and on equal terms with national banks in the market for government financing, can be expected to increase competition in that market and thereby reduce government financing costs.

4. Costs:

No significant new costs are imposed as a result of this rule. The securities underwriting, dealing and investment activities of New York State banks and trust companies are already subject to regulation and examination by the Banking Department. The proposed regulation would simply alter certain of the quantitative limitations applicable to such activities.

5. Local government mandates:

The regulation imposes no burdens on local governments.

6. Paperwork:

The regulation imposes no new reporting requirements.

7. Duplication:

The proposal reduces duplication, overlap and conflict with legal requirements of the federal government by applying to New York State chartered banks and trust companies the same rules with regard to underwriting, dealing and investing in government securities which federal law applies to national banks.

8. Alternatives:

Consideration was given to retaining without change the existing authority of banks and trust companies to underwrite, deal in and invest in government securities. However, it was concluded that continuing to restrict the powers of such banks and trust companies would perpetuate their existing disadvantage relative to national banks in this area, contrary to the Legislature's objective of preserving and enhancing the state banking charter.

9. Federal standards:

The proposal would give banks and trust companies the same powers to underwrite and deal in government securities as are possessed by national banks. As a matter of federal law, the powers of state chartered banks in this respect may not exceed those of national banks.

10. Compliance schedule:

The additional powers given to banks and trust companies would be available immediately upon the effectiveness of the rule.

11. Outreach:

Since the effect of the rule would be to increase the powers of banks and trust companies, no specific outreach was conducted. However, following the adoption of the federal legislation permitting well-capitalized national banks to underwrite and deal in municipal revenue bonds, the Banking Department did receive inquiries from the banking industry seeking clarification of the authority of state chartered banks and trust companies to do likewise. In January, 2004 the Superintendent of Banks issued an Industry Letter discussing the authority of banks and trust companies to underwrite and deal in municipal revenue bonds under existing law. In that letter, the Superintendent raised the possibility of action under Banking Law Section 14-g authorizing New York banks to engage in such activity to the full extent permitted for national banks. The possibility of such

action was also mentioned in the Department's regulatory agenda. The Department continues to receive inquiries from the industry as to when such action might be forthcoming.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not submitted because the proposed rule will not impose any adverse economic impact, or reporting, record-keeping or other compliance requirements on small businesses or local governments. The rule would permit New York state chartered banks and trust companies to underwrite and deal in government securities, including municipal revenue bonds, to the same extent as national banks. By creating more competition among banks in the municipal finance market, the proposed rule could be expected to have a beneficial economic impact on local governments. However, such an impact would be difficult to quantify.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted because it is apparent from the nature and purpose of the rule that it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Indeed, by providing banks and trust companies with the ability to compete fully and on equal terms with national banks, the rule can be expected to increase competition and reduce costs in the market for government financing, including financing by government entities located in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted because it is apparent from the nature and purpose of the rule that the proposed rule will have no adverse effect on jobs or job creation. The rule would permit New York state chartered banks and trust companies to underwrite and deal in government securities, including municipal revenue bonds, to the same extent as national banks. It is possible that the rule could actually enhance job creation by creating more competition among banks for underwriting the financing of municipal projects, thereby lowering financing costs. Such effects would be difficult to quantify, however.

Education Department

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Special Act School Districts

I.D. No. EDU-25-05-00003-RP

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

Revised action: Addition of Part 105 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 308 (not subdivided) and 309 (not subdivided); and L. 2004, chs. 628 and 629

Subject: Composition of boards of education of Special Act school districts.

Purpose: To establish procedures for the appointment by the Commissioner of Education of public members to the board of education of each Special Act school district.

Text of revised rule: Part 105 of the Regulations of the Commissioner of Education is added, effective September 29, 2005, as follows:

PART 105

APPOINTMENT OF PUBLIC MEMBERS OF BOARDS OF EDUCATION OF SPECIAL ACT SCHOOL DISTRICTS

§ 105.1 Definitions. Except as otherwise provided herein, as used in this Part, the following terms shall have the following meanings:

(a) Board of education means the board of education of a special act school district.

(b) Child care agency means an authorized agency, as defined in subdivision 1 of section 4001 of the Education Law that operates a child care institution affiliated with a special act school district.

(c) Public member means a member of a board of education appointed by the Commissioner pursuant to this Part.

(d) Special act school district means a special act school district as defined in subdivision 8 of section 4001 of the Education Law.

(e) Supervisory district means the supervisory district of a board of cooperative educational services established pursuant to section 2201 of the Education Law.

§ 105.2 Eligibility for appointment as public member. (a) Any person shall be eligible to apply for appointment by the Commissioner as a public member who:

(i) is eligible to vote in a general election;

(ii) is a resident of a component school district of the supervisory district in which the special act school district is located, of a contiguous supervisory district or of a school district that is not a component school district of any supervisory district but is contiguous to a component school district of the supervisory district in which the special act school district is located;

(iii) submits a letter of intent to the department, in the manner and by the date prescribed by the Commissioner, that specifies the boards of education to which he or she is seeking appointment, with a resume and an application in a form and containing such information as the Commissioner may prescribe; and

(iv) is not disqualified from serving as a public member under subdivision (b) of this section.

(b) A person shall be disqualified from serving as a public member of a special act school district if he or she:

(i) is an officer or employee of the child care agency that appoints members to the board of education of the special act school district;

(ii) serves as an officer or employee of the special act school district other than as a public member;

(iii) has a prohibited interest in a contract with the special act school district within the meaning of Article 18 of the General Municipal Law;

(iv) is an officer or employee of a school district, or a board of cooperative educational services, or a public agency as defined in subdivision 6 of section 4001 of the Education Law that contracts with the special act school district; or

(v) is an officer or employee of an employee organization that represents employees of the special act school district pursuant to article 14 of the Civil Service Law or its parent employee organization.

(c) In appointing public members, preference shall be given to eligible persons with one or more of the following characteristics:

(i) a background and experience in corporate or school finance;

(ii) experience as a member of the governing board of an education corporation, another not-for-profit corporation or a school district; and/or

(iii) a background in the education or treatment of troubled youth.

§ 105.3 Appointment of public members. (a) The Commissioner shall appoint two public members to the board of education of each special act school district pursuant to the provisions of this Part. Appointments shall be made from candidates recommended by a regional interview team appointed by the Commissioner. A district superintendent of schools shall coordinate the activities of the team. Such regional interview team may include, but need not be limited to, a duly licensed certified public accountant or public accountant and individuals recommended by organizations representing superintendents of schools, boards of education, teachers, and individuals with disabilities and/or parents of individuals with disabilities.

(b) The full term of office of a public member shall be 4 school years, provided that the public members initially appointed in the 2005-06 school year shall be appointed for the balance of the term commencing on July 1, 2005 and ending on June 30, 2009, and provided further that after such initial appointments, the term of public members may be changed in accordance with subdivision 3 of section 2105 of the Education Law upon at least sixty days advance notice to the Commissioner.

(c) In the event a public member vacates his or her office during its term pursuant to section 2112 of the Education Law, the Commissioner may appoint an eligible person in the manner prescribed in this section for the remaining balance of the term of office or may fill such position by appointment for a full term commencing on July 1 next succeeding the date on which the vacancy occurred.

(d) Upon appointment, the public members shall have all the rights, privileges, powers, duties and responsibilities of members of the board of education of a union free school district under the Education Law and other laws pertaining to such school districts.

Revised rule compared with proposed rule: Substantial revisions were made in section 105.3(a).

Text of revised proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assis-

tant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: James A. Kadamus, Deputy Commissioner, Education Department, Rm. 875, Education Bldg. Annex, Albany, NY 12234, (518) 474-5915, e-mail: jkadamus@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 22, 2005, the proposed rule has been substantially revised as follows:

Subdivision (a) of section 105.3 of the Regulations of the Commissioner of Education has been revised to replace a requirement that each regional interview team be chaired by a district superintendent of schools with a requirement that a district superintendent of schools shall coordinate the activities of the regional interview team. This will afford additional flexibility in forming the regional interview teams, while ensuring sufficient oversight by providing for coordination of the activities of the teams by district superintendents.

The above revision to the proposed rule requires that the Local Government Mandates and Compliance sections of the previously published Regulatory Impact Statement be revised to read as follows:

LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any additional program, service, duty or responsibility on school districts or other local governments. Consistent with Chapters 628 and 629 of the Laws of 2004, the proposed rule establishes requirements for the appointment by the Commissioner of two public members to the board of education of each special act school district. Proposed section 105.1 provides for definitions of terms used in the new Part. Proposed section 105.2 establishes eligibility requirements for appointment as a public member. Proposed section 105.3 establishes appointment procedures, term lengths, procedures to fill vacancies, and provides that public members, upon appointment, shall have all the rights, privileges, powers, duties and responsibilities of members of the board of education of a union free school district. The Commissioner shall appoint two public members to the board of education of each special act school district. Appointment shall be made from candidates recommended by a regional interview team appointed by the Commissioner. A district superintendent of schools shall coordinate the activities of the team.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties can achieve compliance with the proposed rule by its effective date. The proposed rule is necessary to implement Chapters 628 and 629 of the Laws of 2004 and does not impose any additional costs or compliance requirements. Consistent with those statutes, the proposed rule establishes requirements for the appointment by the Commissioner of two public members to the board of education of each special act school district, including eligibility requirements, appointment procedures, term lengths and procedures to fill vacancies. An eligible person, as described in proposed section 105.2, may submit a letter of intent to the State Education Department, in the manner and by a date prescribed by the Commissioner, that specifies the boards of education to which he or she is seeking appointment as a public member, with a resume and an application in a form and containing such information as the Commissioner may prescribe. The Commissioner shall appoint two public members to the board of education of each special act school district. Appointment shall be made from candidates recommended by a regional interview team appointed by the Commissioner. A district superintendent of schools shall coordinate the activities of the team. Public members initially appointed in the 2005-06 school year shall be appointed for the balance of the term commencing on July 1, 2005 and ending on June 30, 2009.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 22, 2005, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The above revision to the proposed rule requires that the Compliance section of the previously published Regulatory Impact Statement be revised to read as follows:

COMPLIANCE REQUIREMENTS:

The proposed rule does not impose any compliance requirements on school districts or other local governments. Consistent with Chapters 628 and 629 of the Laws of 2004, the proposed rule establishes requirements for the appointment by the Commissioner of two public members to the board of education of each special act school district. Proposed section

105.1 provides for definitions of terms used in the new Part. Proposed section 105.2 establishes eligibility requirements for appointment as a public member. Proposed section 105.3 establishes appointment procedures, term lengths, procedures to fill vacancies, and provides that public members, upon appointment, shall have all the rights, privileges, powers, duties and responsibilities of members of the board of education of a union free school district.

An eligible person, as described in proposed section 105.2, may submit a letter of intent to the State Education Department, in the manner and by a date prescribed by the Commissioner, that specifies the boards of education to which he or she is seeking appointment as a public member, with a resume and an application in a form and containing such information as the Commissioner may prescribe. The Commissioner shall appoint two public members to the board of education of each special act school district. Appointment shall be made from candidates recommended by a regional interview team appointed by the Commissioner. A district superintendent of schools shall coordinate the activities of the team.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 22, 2005, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The above revision to the proposed rule requires that the Reporting, Recordkeeping and Other Compliance Requirements and Professional Services section of the previously published Regulatory Impact Statement be revised to read as follows:

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

The proposed rule does not impose any compliance requirements on school districts or other local governments in rural areas. Consistent with Chapters 628 and 629 of the Laws of 2004, the proposed rule establishes requirements for the appointment by the Commissioner of two public members to the board of education of each special act school district. Proposed section 105.1 provides for definitions of terms used in the new Part. Proposed section 105.2 establishes eligibility requirements for appointment as a public member. Proposed section 105.3 establishes appointment procedures, term lengths, procedures to fill vacancies, and provides that public members, upon appointment, shall have all the rights, privileges, powers, duties and responsibilities of members of the board of education of a union free school district. An eligible person, as described in proposed section 105.2, may submit a letter of intent to the State Education Department, in the manner and by a date prescribed by the Commissioner, that specifies the boards of education to which he or she is seeking appointment as a public member, with a resume and an application in a form and containing such information as the Commissioner may prescribe. The Commissioner shall appoint two public members to the board of education of each special act school district. Appointment shall be made from candidates recommended by a regional interview team appointed by the Commissioner. A district superintendent of schools shall coordinate the activities of the team.

The proposed rule does not impose any additional professional services requirements on local governments in rural areas.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 22, 2005, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The proposed rule, as so revised, establishes procedures for the appointment of public members to the boards of education of special act school districts pursuant to Chapters 628 and 629 of the Laws of 2004, and will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the revised rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Superintendents' Conference Days

I.D. No. EDU-26-05-00005-RP

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

Revised action: Amendment of section 175.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided) and 3604(8)

Subject: Superintendents' conference days.

Purpose: To allow a school district to use up to two of its superintendents' conference days for teacher rating of State assessments.

Text of revised rule: Subdivision (f) of section 175.5 of the Regulations of the Commissioner of Education is amended, effective September 29, 2005, as follows:

(f) Use of superintendents' conference days.

(1) . . .

(2) . . .

(3) . . .

(4) *Notwithstanding the provisions of paragraph (1) of this subdivision, during the period commencing on September 29, 2005 and ending on June 30, 2007, a school district may elect to use up to two of its superintendents' conference days in each school year for teacher rating of State assessments, including but not limited to assessments required under the federal No Child Left Behind Act of 2001 (Public Law section 107-110), which rating activities shall constitute staff development relating to implementation of the new high learning standards and assessments as authorized by section 3604(8) of the Education Law.*

Revised rule compared with proposed rule: Substantial revisions were made in section 175.5(f)(4).

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

Data, views or arguments may be submitted to: James A. Kadamus, Deputy Commissioner for Elementary, Middle and Secondary and Continuing Education, Education Department, Rm. 875, Education Bldg. Annex, Albany, NY 12234, (518) 474-5915, e-mail: jkadamus@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 29, 2005, the proposed rule has been substantially revised as follows:

Paragraph (4) of subdivision (f) of section 175.5 has been revised to provide that during the period commencing on September 29, 2005 and ending on June 30, 2007, a school district may elect to use up to two of its superintendents' conference days in each school year for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001 (NCLB).

Since these assessments are new to all schools and teachers, and contain unique test designs and item formats that will be exclusive to the New York State testing program, teachers will require staff development for the training and rating of these tests for the first two years of implementation to ensure that test reliability and validity are achieved on a statewide basis. Use of superintendents' conference days for the rating of the tests for staff development purposes beyond the first two years of implementation of this new program will not be necessary since at that point districts will have an established group of teachers within their schools who will understand and possess the requisite familiarity with the assessments and the scoring process to meet their test scoring requirements.

The above revision to the proposed rule requires that the Needs and Benefits and Compliance Schedule sections of the previously published Regulatory Impact Statement be revised as follows:

NEEDS AND BENEFITS:

The proposed amendment specifies the appropriate use of staff development activities by school districts to advance the implementation of the new high learning standards and assessments and to satisfy deficiencies in the length of public school sessions for the instruction of pupils. The proposed amendment would permit a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001 (NCLB).

The initiation of the new statewide testing program in grades 3-8 in English language arts (ELA) and mathematics in accordance with NCLB will require all teachers in New York State to learn and understand the new test designs, item formats, and scoring rubrics that will be implemented to ensure compliance with these federal accountability mandates. Training to score the State assessments and the rating of students' performance on the assessments is an effective way for teachers to learn the new learning standards and therefore constitutes permissible staff development activi-

ties relating to implementation of the new high learning standards and assessments, as authorized by Education Law section 3604(8). The proposed amendment will provide school districts with additional flexibility and discretion to use this staff development function to fulfill their State test scoring requirements while minimizing impact on student instructional time.

Since the assessments are new to all schools and teachers, and contain unique test designs and item formats that will be exclusive to the New York State testing program, teachers will require staff development for the training and rating of State assessments for the first two years of implementation to ensure that test reliability and validity are achieved on a statewide basis. Use of superintendents' conference days for the rating of assessments for staff development purposes beyond the first two years of implementation of this new program will not be necessary since at that point districts will have an established group of teachers within their schools who will understand and possess the requisite familiarity with the assessments and the scoring process to meet their test scoring requirements.

COMPLIANCE SCHEDULE:

It is anticipated that school districts may comply with the proposed regulation by its effective date. The proposed amendment provides flexibility to school districts regarding the use of superintendents' conference days for teacher rating of State assessments required under State and federal law. The proposed amendment provides that during the period commencing on September 29, 2005 and ending on June 30, 2007, a school district may elect to use up to two of its superintendents' conference days in each school year for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001 (NCLB). Since the proposed amendment does not impose any requirements on school districts, there are no compliance issues or schedules.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 29, 2005, the proposed rule has been substantially revised as set forth in the Statement concerning the Regulatory Impact Statement filed herewith.

The above revision to the proposed rule requires that the Compliance Requirements and Minimizing Adverse Impact sections of the previously published Regulatory Flexibility Analysis be revised as follows:

COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements. The proposed amendment specifies the appropriate use of staff development activities by school districts to advance the implementation of the new high learning standards and assessments and to satisfy deficiencies in the length of public school sessions for the instruction of pupils. The proposed amendment provides that during the period commencing on September 29, 2005 and ending on June 30, 2007, a school district may elect to use up to two of its superintendents' conference days provided for in Education Law section 3604(8), in each school year, for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001 (NCLB).

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any new requirements or costs, and will not have an adverse impact on local governments. The proposed amendment provides flexibility to school districts regarding the use of superintendents' conference days for teacher rating of State assessments required under State and federal law. The proposed amendment provides that during the period commencing on September 29, 2005 and ending on June 30, 2007, a school district may elect to use up to two of its superintendents' conference days provided for in Education Law section 3604(8), in each school year, for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001 (NCLB).

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 29, 2005, the proposed rule has been substantially revised as set forth in the Statement concerning the Regulatory Impact Statement filed herewith.

The above revision to the proposed rule requires that the Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services and Minimizing Adverse Impact sections of the previously published Regulatory Flexibility Analysis be revised as follows:

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements. The proposed amendment specifies the appropriate use of staff development activities by school districts to advance the implementation of the new high learning standards and assessments and to satisfy deficiencies in the length of public school sessions for the instruction of pupils. The proposed amendment provides that during the period commencing on September 29, 2005 and ending on June 30, 2007, a school district may elect to use up to two of its superintendents' conference days provided for in Education Law section 3604(8), in each school year, for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001 (NCLB).

The proposed amendment does not impose any additional professional services requirements on regulated parties.

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any new requirements or costs, and will not have an adverse impact on local governments. The proposed amendment provides flexibility to school districts regarding the use of superintendents' conference days for teacher rating of State assessments required under State and federal law. The proposed amendment provides that during the period commencing on September 29, 2005 and ending on June 30, 2007, a school district may elect to use up to two of its superintendents' conference days provided for in Education Law section 3604(8), in each school year, for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001 (NCLB).

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 29, 2005, the proposed rule has been substantially revised as set forth in the Statement concerning the Regulatory Impact Statement filed herewith.

The proposed rule, as so revised, relates to the use of superintendents' conference days by school districts and boards of cooperative educational services and will not have an adverse impact on jobs or employment activities. Because it is evident from the nature of the proposed revised rule that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

The Department of Environmental Conservation hereby finds that chronic wasting disease, a fatal transmissible neurodegenerative disease which endangers the health and welfare of wildlife populations and captive cervids, [is in imminent danger of being introduced into] *has been confirmed to exist in New York State*. The nature of chronic wasting disease requires prompt and extraordinary actions to address the threat posed by this disease. The purpose of this rule is to prevent [the] *further* introduction of this disease into New York, *to contain the spread of this disease within New York, to prevent exportation of this disease outside of New York*, [to restrict those activities that may increase the risk of the development or spread of chronic wasting disease in New York] and to protect the health of wild white-tailed deer (*Odocoileus virginianus*) in New York.

Section 189.2 is amended as follows: Subdivisions 189.2(a) through (h) remain unchanged.

A new subdivision 189.2(i) is added to read as follows:

(i) *CWD Containment Area means an area identified in Section 189.7 of this Part in which chronic wasting disease has been detected, and which is subject to special conditions in order to effect the purposes of this Part.*

A new subdivision 189.2(j) is added to read as follows:

(j) *Retail sale or Sell at Retail shall mean the sale to any person in the state for any purpose other than for resale.*

Section 189.3 is amended as follows:

Subdivision 189.3(d) is amended to read as follows:

(d) *Importation and possession of certain animal parts. No person shall import into New York or possess the brain, eyes, spinal cord, tonsils, intestinal tract, spleen, or retropharyngeal lymph nodes, or any portion of such parts, of wild, captive, or captive-bred animals of the Genus Cervus or the Genus Odocoileus obtained from or taken outside New York, or any carcass containing such parts, except that:*

A new subdivision 189.3(g) is added to read as follows:

(g) *Transportation of captive animals. No person shall transport within New York any captive animal of the Genus Cervus or the Genus Odocoileus except under permit issued by the New York State Department of Agriculture and Markets pursuant to section 68.2 of Title 1 of NYCRR.*

A new subdivision 189.3(h) is added to read as follows:

(h) *Sale of deer feed.*

(1) *No person shall sell at retail or offer for retail sale in New York feed or feed equipment which is specifically labeled or packaged as a product to be used for feeding or attracting wild white-tailed deer.*

(2) *No person shall offer for retail sale feed for domestic livestock or wildlife unless a sign, provided by the Department, is prominently displayed and visible to the public on the premises where such feed is being offered for sale. Such sign shall read as follows, and may be obtained by download from the Department's website at www.dec.state.ny.us or by calling the nearest regional DEC office:*

NOTICE TO CUSTOMERS

It is illegal to feed wild white-tailed deer in New York State. The Department of Environmental Conservation (DEC) has imposed a prohibition on the feeding of wild white-tailed deer in order to prevent the introduction or spread of Chronic Wasting Disease (6 NYCRR Part 189). Any feed for domestic livestock or wildlife sold on this premises is not intended for use in feeding or attracting wild white-tailed deer. Any person found feeding wild white-tailed deer will be subject to prosecution by the DEC. Information on Chronic Wasting Disease and DEC's regulations may be obtained from the DEC website at www.dec.state.ny.us or by calling your nearest regional DEC office.

A new subdivision 189.3(i) is added to read as follows:

(i) *Possession of wild white-tailed deer.*

(1) *No person who possesses any captive bred animals of the Genus Cervus or the Genus Odocoileus shall capture or possess any live wild white-tailed deer.*

(2) *No person who engages in the art or operation of preparing, stuffing, and mounting the skins or other parts of animals of the Genus Cervus or the Genus Odocoileus shall capture or possess any live wild white-tailed deer.*

Sections 189.4 through 189.6 remain unchanged.

A new section 189.7 is adopted to read as follows:

§ 189.7 *CWD Containment Area.*

(a) *CWD Containment Area. The CWD containment area shall be that area of the state falling within the boundaries of the following cities and towns:*

(i) *Oneida County: Rome, Sherrill, Utica, Annsville, Augusta, Floyd, Kirkland, Lee, Marcy, New Hartford, Trenton, Vernon, Verona, Vienna, Western, Westmoreland, and Whitestown;*

(ii) *Madison County: Lenox, Oneida, and Stockbridge.*

Department of Environmental Conservation

NOTICE OF ADOPTION

Chronic Wasting Disease

I.D. No. ENV-20-05-00019-A

Filing No. 777

Filing date: July 12, 2005

Effective date: July 27, 2005

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

Action taken: Amendment of Part 189 and section 360-1.7 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0325, 11-1905 and 27-0703

Subject: Definition of a chronic wasting disease (CWD) "containment area" and regulations governing the movement of deer parts from that area, and other regulatory measures to control the transmission of CWD to wild deer.

Purpose: To prevent the spread of chronic wasting disease in New York.

Text of final rule: Title 6 of the Codes, Rules and Regulations of the State of New York, Part 189, "Chronic Wasting Disease," is amended as follows:

Section 189.1 is amended to read as follows:

§ 189.1 Findings and purpose.

(b) *Additional CWD containment areas.* The Department may establish additional CWD containment areas in the event that CWD is discovered to exist in captive or wild deer in other areas of New York. Additional CWD containment areas shall be established by the Department through publication of a notice in the Environmental Notice Bulletin. Such notice shall identify the boundaries of the containment area(s). Upon publication of notice of an additional CWD containment area, the provisions of this section shall apply to the identified area. The Department shall also publicize the establishment of an additional CWD containment area through press release and by posting notice on the Department's website.

(c) *Exportation of certain animal parts from the CWD Containment Area.* No person shall remove from the CWD containment area the brain, eyes, spinal cord, tonsils, intestinal tract, spleen, or retropharyngeal lymph nodes, or any portion of such parts, of wild, captive, or captive-bred animals of the Genus *Cervus* or the Genus *Odocoileus* obtained from or taken within the CWD containment area, or any carcass containing such parts, except under permit issued by the Department or as authorized by subdivision h of this Section.

(d) *Mandatory check of deer taken within the CWD containment area.* All statutes, rules and regulations governing the taking of wild white-tailed deer apply within the CWD containment area. In addition, the following restrictions apply:

(1) All wild white-tailed deer taken within the CWD containment area during the open hunting seasons for deer shall be registered at a designated DEC check station, located within the CWD containment area, no later than 5:00 p.m. on the day after it was taken. The Department shall post on the DEC website (www.dec.state.ny.us) and publish in the Environmental Notice Bulletin information regarding deer check station locations within the containment area and times of operation. Hunters may also obtain check station information by contacting DEC's Watertown office at (315) 785-2261 or DEC's Utica office at (315) 793-2555.

(2) Deer shall be kept intact, except for field dressing, prior to registration.

(3) Any person registering a deer at a DEC check station located within the CWD containment area shall allow DEC staff to collect and retain tissue samples from the deer in order to test for the presence of CWD.

(e) *Possession of deer killed by collision.* Notwithstanding the provisions of Environmental Conservation Law Section 11-0915, the owner of a motor vehicle which has been damaged by collision with a deer within the CWD containment area is prohibited from possessing such deer, and no permit for possession of the deer carcass shall be issued to the vehicle owner or to any other party.

(f) *Deer and elk urine.* No person shall collect, possess, transport or sell the urine of any deer or elk located or taken within the CWD containment area.

(g) *Rehabilitation of wild white-tailed deer.*

(1) No person, including any licensed wildlife rehabilitator, shall take, capture, possess, or transport wild white-tailed deer for the purpose of rehabilitation within a CWD Containment Area.

(2) No person shall import into a CWD Containment Area, from outside such CWD Containment Area, any live wild white-tailed deer for any purpose.

(h) *Disposal of carcasses and parts.* All carcasses and parts of animals of the Genus *Cervus* or the Genus *Odocoileus* which are to be discarded in the CWD containment area, except those parts removed in the field during normal field dressing, shall be disposed of in a landfill authorized pursuant to Part 360 of this Title. Transfer or treatment of the waste prior to disposal, at a facility authorized pursuant to Part 360 of this Title, is acceptable.

A new section 189.8 is adopted to read as follows:

§ 189.8 Taxidermy.

(a) No person who engages in the art or operation of preparing, stuffing, and mounting the skins or other parts of animals of the Genus *Cervus* or the Genus *Odocoileus* shall allow live cervids to come in contact with any materials, including taxidermy materials, that may contain the infectious agent that causes CWD.

(b) In addition to the requirements of Environmental Conservation Law Section 11-1733, any person who engages in the art or operation of preparing, stuffing, and mounting the skins or other parts of animals of the Genus *Cervus* or the Genus *Odocoileus* shall maintain and keep in their taxidermy shop or place of business a taxidermy log, on forms provided by the Department, that includes the following information for each specimen of the Genus *Cervus* or the Genus *Odocoileus*:

(1) common name of the species submitted for mounting and description of the specimen;

(2) name, address and telephone number of the person who submitted the animal for mounting;

(3) date the animal was received for mounting;

(4) hunting license number used by the person who took the animal or the carcass tag number used by the taker to tag the animal;

(5) state or province in which the animal was taken;

(6) county and town in which the animal was taken; and

(7) date on which the animal was taken.

Taxidermy log forms may be obtained from the Department's website (www.dec.state.ny.us) or by calling the nearest Department Regional Office.

(c) Taxidermy logs shall be updated within 48 hours of the receipt of each animal or specimen.

(d) A photocopy of the taxidermy log for each calendar year shall be sent to the New York State Department of Environmental Conservation, Special Licenses Unit, 5th Floor, 625 Broadway, Albany, New York 12233-4572 no later than 30 calendar days following the end of each calendar year.

(e) Original taxidermy logs for the current year and for the previous five years shall be maintained at the taxidermy shop or place of business.

(f) Conservation officers and other persons authorized by the department shall have access to the taxidermy logs at all times and photocopies of such documents must be provided upon request.

Title 6 of the Codes, Rules and Regulations of the State of New York, Part 360, entitled "Solid Waste Management Facilities," is amended as follows:

Paragraph 10 of subdivision b of Section 360-1.7 is amended to read as follows:

(10) Disposal areas for road-killed animals on local roads and State and County highways under the jurisdiction of government agencies, except for the disposal of carcasses and parts of animals of the Genus *Cervus* or the Genus *Odocoileus* from a CWD Containment area, as provided under Section 189.7 of this Title. Such disposal areas must, however, be located on property owned by the government agency and within the highway right-of-way. Disposal areas must be a minimum of 50 feet from any residence, surface water or any other disposal area for road-killed animals. No more than 10 road-killed animals may be placed in a single disposal area. Road-killed animals placed in disposal areas must be covered with at least three feet of excavated soil material and in no case shall be placed within groundwater. Mass burial of road-killed animals is not exempt from the provisions of this Part. Acceptable alternatives for the disposal of road-killed animals include disposal at a department-approved solid waste landfill, disposal at a rendering facility or other means as approved by the department.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 189.2, 189.3(h) and 189.8(b).

Text of rule and any required statements and analyses may be obtained from: Randall Stumvoll, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518)-402-8919, e-mail: rxstumvo@gw.dec.state.ny.us

Additional matter required by statute: A negative declaration has been prepared in accordance with art. 8 of the Environmental Conservation Law and is on file with the Department of Environmental Conservation.

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

Non-substantive changes were made to the text of the regulations as proposed as a matter of clarification.

Section 189.2 was amended to add a definition of "retail sale." Subdivision 189.3(h) was amended to clarify that only retail sales of deer feed in New York are prohibited by these regulations. The Department does not intend to regulate wholesalers of these products under these regulations.

Subdivision 189.8(b) was amended to clarify that taxidermists are required to record in the taxidermy log only specimens from animals of the Genus *Cervus* and Genus *Odocoileus*.

These changes do not require any revision or amendment of the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement.

Assessment of Public Comment

The Department received public comments on the proposed rulemaking. The comments submitted to the Department concerning the proposal are summarized below, followed by the Department's response:

Comment: Comments were received opposing the proposed prohibition of rehabilitating wild deer on facilities that also contain domestic

cervids. Those commenting believed that adequate restrictions are already in place through existing Department regulations and Department of Agriculture and Markets regulations that would prevent the exposure or spread of CWD. The commenters contend that the proposed regulations place added burden with no benefit.

Response: Despite current regulations, the initial case of CWD in New York may have resulted from the exposure of wild and/or captive deer which were being held at the same facility to imported infectious material, and the subsequent release of exposed wild deer which could potentially infect wild populations. The proposed regulations will further reduce the risk of infectious materials passing between wild and captive held cervids through either intentional or unintentional means.

Comment: Comments were received opposing the prohibition on the rehabilitation of wild white-tailed deer within the CWD containment area. Those commenting believed that this prohibition serves no useful purpose, is inhumane to deer needing human assistance, and may result in deer being illegally moved outside of the CWD containment area or being cared for by inexperienced handlers wishing to provide assistance.

Response: CWD is extremely resistant to decontamination efforts. Studies have shown that deer held in captive pens that once contained CWD infected deer contracted CWD even after extensive site decontamination. Consequently, a CWD positive deer that was brought to a rehabilitation facility could contaminate that facility. Because the infectious materials would be difficult, if not impossible, to remove from the premises, this facility could infect other deer brought to the facility for rehabilitation purposes.

CWD has an incubation period of up to 18 months. Deer that are being rehabilitated are held for a relatively short period of time. If they become infected at the facility, it is not likely that the infection will be detected prior to release to the wild. Therefore, a contaminated rehabilitation facility would continue to unknowingly serve as a source of infection.

Deer, particularly fawns, that are held in a rehabilitation facility for longer periods of time and then released are more likely to travel greater distances from the release site as they attempt to establish new home ranges. This dispersal behavior increases the potential of spreading CWD both within and outside of the containment area.

Because of these factors, the Department believes that the rehabilitation of wild deer in a known CWD containment area is not an acceptable practice and can thwart management efforts to eliminate or contain the spread of CWD.

Comment: Many comments were received in support of the proposed rulemaking. Those commenting indicated that the proposed regulations responsibly address outstanding issues and the continuing need to effectively monitor, contain and manage CWD.

Response: The Department concurs.

Comment: A comment was received requesting that Part 189.3(g) be modified to require that a transport permit be issued by both the Department and the Department of Agriculture and Markets in order to allow the in-state movement of captive cervids.

Response: The Department of Agriculture and Markets Herd Health regulations concerning the monitoring and managing of captive raised cervids are among the best in the country. Cervids may not be transported without a permit from the Department of Agriculture and Markets allowing such transport. All deer possession licenses issued by the Department contain a condition that requires compliance with the Department of Agriculture and Markets permit requirements and conditions. Pursuant to the Department of Agriculture and Markets regulations Part 68.2(c), the Department of Agriculture and Markets is required to consult with this Department prior to issuance of a permit to import, move, or hold captive cervids. This Department works closely and cooperatively with the Department of Agriculture and Markets and believes that the concern of inter- and intra-state transport of deer is adequately addressed. Issuance of a separate permit by this Department would place an unnecessary burden on the licensee with no added benefit. In addition, the Department would be required to set up a separate licensing and data retention system in order to support this requirement. This would increase the cost of disease management with no added benefit. The Department believes that a separate license is not necessary to address concerns related to the transportation of deer species.

Comment: A comment was received requesting that Part 189.3(h)(1) be modified to add a prohibition on the sale of feed or equipment labeled for use for domestic white-tailed deer.

Response: Prohibiting the sale of feed and equipment labeled for use in domestic white-tailed deer would prohibit licensed deer farmers from feeding and maintaining their herds. Domestic deer farming is a legal and

legitimate agricultural pursuit administered and regulated jointly by the Department of Agriculture and Markets and this Department. The proposed regulations are intended to prevent the feeding of wild deer only and are not intended to impact legitimate agricultural deer farming practices.

Comment: A comment was received requesting that Part 189.7(g) be modified prohibiting wildlife rehabilitators from taking, possessing, transporting, or capturing white-tailed deer statewide.

Response: The rehabilitation of white-tailed deer can not be supported in a known CWD containment area due to potential risks associated with the spread of CWD. The Department believes that rehabilitation license conditions and the additional regulatory provisions as proposed provide reasonable safeguards in areas where CWD is not known to occur.

Comment: A comment was received regarding subdivision 189.3(h)(1) prohibiting the sale of feed or equipment used for feeding or attracting wild white-tailed deer. The commenter was concerned that inclusion of "attractants" would place undo restrictions on lures, calls, and other techniques used to attract deer to specific areas.

Response: The intent of this provision is to restrict of sale of feeds and feed delivering systems that are specifically designed for wild white-tailed deer. It is not intended to regulate calls, scents, lures, or other devices that are not consumed by deer or associated with feeding or placing of feeds that may be used to attract deer to a location.

Comment: A comment was received recommending that the identification of a CWD containment area as proposed in 189.7 be deleted and the proposed regulations governing the possession, transportation, and use of deer and deer parts be expanded statewide.

Response: The regulations proposed for the possession, transportation, and use of deer and deer parts within the proposed CWD containment area are needed to minimize the potential spread of CWD into other non-infected locations within the state. The Department believes that the proposed containment area is of adequate size to enclose all suspected locations where CWD may be found in wild deer. Expansion of the containment area is not needed or appropriate at this time. However, should CWD be found in areas outside of the proposed containment area, the Department would consider designating new containment area(s) to include any new areas where CWD infected deer have been found. Such authority is granted in 189.7(b) of the proposed regulation.

Comment: One comment was received recommending that 189.7(h) be amended to remove the provision exempting parts removed during normal field dressing. The commenter believes that the digestive tract and other internal organs contain higher concentrations of CWD prion. The commenter contends that further long term exposure could be reduced or eliminated if these parts were removed from the field and disposed of at a landfill.

Response: The intent of the proposed regulations is to prevent the spread of CWD into other unaffected areas. Internal organs left in the field by hunters at the site of taking pose no additional threat to deer populations since the deer taken would have already contaminated the immediate area of its home range. However, hunters removing deer parts from the area could potentially spread the disease to other uncontaminated areas if the parts they remove are not properly disposed. The proposed regulations require the proper disposal of unwanted deer parts in a manner which would prevent the spread of CWD.

Comment: A comment was received inquiring if proposed section 189.8 was new or revised since there was no language in the proposal indicating such.

Response: Section 189.8 is a new proposed section of regulation. It appeared in the *State Register* in italics, which indicates that it is a new proposed addition.

Comment: A comment was received indicating that wording in section 189.8 was vague and unclear. The commenter contends that the use of the word "specimen" implies that taxidermists would be required to report on all types of animal work they conducted.

Response: The intent of proposed regulation 189.8 is to allow the Department to track and monitor materials that may be potentially contaminated with CWD prions that have been brought into or handled within the state. The Department agrees with the commenter that the word "specimen" is somewhat ambiguous. The Department intended that only specimens from animals from the Genus *Cervus* and Genus *Odocoileus* be recorded in the taxidermy log. A clarification will be made in the text of the final rule.

Comment: A comment was received regarding subdivision 189.3(h), which prohibits the offering for sale of feed or equipment used for feeding or attracting wild white-tailed deer. The commenter was concerned that by prohibiting the offering for sale of feed and feed equipment products, the

Department was prohibiting wholesale distributors of such products located in New York from selling such products in other states or locations outside New York where the feeding of deer is legal.

Response: It was the Department's intention to restrict the sale of feeds and feed delivering systems that could be used for feeding wild white-tailed deer within New York. It was not the Department's intention to restrict wholesalers in New York from selling feed or feed distribution products to purchasers in other states or locations outside New York where such activities are legal. Accordingly, a revision has been made to subdivision 189.3(h) to clarify this restriction so that the text of the regulation is consistent with the Department's intention.

Division of the Lottery

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lotto Subscription Clarification

I.D. No. LTR-30-05-00005-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 sections 2804.12-2804.19 and add new sections 2804.12-2804.19 to Title 21 NYCRR.

Statutory authority: Tax Law, section 1604(a)

Subject: Lotto subscription clarification.

Purpose: To clarify confusion regarding Lotto subscription purchases.

Text of proposed rule: REPEAL OF SECTIONS 2804.12 THROUGH 2804.19 OF TITLE 21 NYCRR AND ADD NEW SECTIONS 2804.12 THROUGH 2804.19 OF TITLE 21 NYCRR

2804.12 Subscription program.

(a) A subscription program may be established at the discretion of the director for any division game(s). The subscription program may permit a subscriber to play the same number selections for a period of consecutive drawings over a stated period in such games as the director may decide.

(b) Entry into a subscription program will require the completion and submission of either (1) a subscription application form; or (2) a renewal application form. The subscriber will be required to provide his or her social security number on the respective application form so that prizes requiring federal reporting or withholding may be automatically sent to the winning subscriber. An application for a group subscription must contain the names, addresses, and social security numbers of each group member.

(c) By providing the social security number, the subscriber is authorizing the division to retain and use the number for the purpose of tax reporting and any other lawful purpose of the Division. An application for a group subscription must contain the names, addresses, and social security numbers of each group member. No group may exceed ten members.

2804.13 Subscription definitions.

(a) "Application form" or "application" means either the subscription application form or the renewal of such application form.

(b) "Confirmation letter" means the paper or electronic correspondence sent to a subscriber from the division confirming the game(s), game numbers for each game panel played, the type of plan, the effective date, and the expiration date.

(c) "Effective date" means the game's first drawing date for which a subscription is effective.

(d) "Expiration date" means the last drawing date for which a subscription is effective.

(e) "Game numbers" means the numbers selected for each of the game panels played on an application form.

(f) "Game panel" means the electronic panel and/or paper panel which game numbers are chosen.

(g) "Group" means two or more individuals sharing a game subscription whose individual qualifications meet that of an individual subscriber.

(h) "Group representative" means the individual designated on a group application form as the person selected by the group subscribers to

act on behalf of the group in handling any communications and prize payments related to the subscription.

(i) "Plan" means the game(s) played, the number of consecutive games played and the duration of the subscription as determined by the number of weeks selected by the subscriber.

(j) "Quick Pick" means the option for a subscriber to have game numbers randomly selected by a computer. Once selected, the same quick pick numbers remain valid and will be used for each drawing for the duration of the subscription.

(k) "Subscriber" means either the individual or the group identified on an application form as the person(s) entitled to the winning prize.

(l) "Subscriber identifying information" means the name, address, subscription number, social security number or tax payer identification number of the subscriber or each member of a group.

(m) "Subscription Costs" means the cost of the subscription purchased by the subscribers as defined in Part 2804-3 of these rules.

(n) "Subscription file" means a file maintained by the division containing subscription information and used in the prize determination process.

(o) "Subscription number" means the number assigned by the division to a subscription record when the original application is processed.

(p) "Valid Subscription Entry" means to be a valid subscription entry a subscription must include the following: Subscriber identifying information (as defined herein), selected payment option, game numbers entered on the appropriate division computer file which is the official record of subscription entry.

(q) "Valid Group Subscription Entry" means to be a valid group subscription entry a subscription must include the following: Subscriber identifying information (as defined herein) for each member of the group, selected payment option, game numbers entered on the appropriate division computer file which is the official record of group subscription entry.

2804.14 Subscription costs.

(a) Lotto

(1) For each Lotto subscription, a minimum of two game panels must be selected for a minimum plan of 26 weeks.

(2) A Lotto subscriber may play two, four, or six game panels.

(3) The following number of game panels and subscription plans are available for Lotto subscriptions at the costs shown:

Games	Plan	Cost
1,2	26 weeks - 52 drawings	\$ 50
1,2,3,4	26 weeks - 52 drawings	\$100
1,2,3,4,5,6	26 weeks - 52 drawings	\$150
1,2	52 weeks - 104 drawings	\$ 98
1,2,3,4	52 weeks - 104 drawings	\$196
1,2,3,4,5,6	52 weeks - 104 drawings	\$294

(b) The division reserves the right to alter, temporarily or permanently, the costs of subscription plans at the discretion of the director.

(c) Other Games. The subscription costs for game(s) other than Lotto shall be posted on the division's website (www.nylottery.org) from time to time.

2804.15 Subscription application requirements.

(a) To be accepted for entry, an application form must meet the following requirements:

(1) Each game panel for Lotto must contain six unduplicated game numbers selected from the following numbers: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59. Alternatively, a game panel for Lotto may contain fewer than six game numbers, or the Quick Pick option may be selected to receive randomly selected game numbers. No request to change randomly selected Quick Pick numbers or numbers chosen by the player will be accepted after the effective date of the subscription. Such changes can only be made at the time of renewal.

(2) The application must include the required subscriber identifying information, including identifying information for each member of a group subscription. If an application is submitted without complete subscriber identifying information, the division may seek additional information from the applicant, as needed.

(b) An application may be rejected for the following reasons:

(1) The application is illegible in whole or in part.

(2) The application includes a form of payment that is not acceptable to the division.

(3) The subscriber provides an address or is using a computer or other on-line device outside the State of New York that would require the division to send subscription related correspondence or prize payments

outside the State of New York, or if the acceptance of the application would be unlawful or would necessitate or facilitate any unlawful conduct, or for any other reason within the discretion of the director.

(c) A subscription may be terminated by the division after acceptance if, before or after the effective date, the division is notified that the payment for the subscription is invalid. In such event, the subscription shall be deemed invalid and no prizes will be paid to the subscriber.

(d) In the event of a termination of the subscription, any prize won by the subscriber will be retained by the division.

2804.16 Valid subscription entry.

To be a valid entry, a subscription must meet the following requirements:

(a) To be eligible to win a prize, an application form, including the subscriber identification information, lump sum option (if selected), and the game numbers must be entered into the Division's subscription file to create the official record of subscription entry.

(b) A confirmation letter (paper or electronic) shall be issued by the division to subscriber confirming a valid subscription entry has been received.

2804.17 Payment of subscription prizes.

(a) Prizes that exceed \$1.00 and are less than the threshold withholding amount for federal tax reporting will be remitted to an individual subscriber whose name appears on the application.

(b) Prizes that meet or exceed the threshold amount for federal withholding for an individual will be remitted to the individual subscriber whose name appears on the application form minus the required withholding amount.

(c) Prizes that are greater than \$1.00 will be remitted to an individual subscriber whose name appears on the application form. Prizes equal to or less than \$1.00 will be credited to the subscriber's account to reduce the cost of subscription renewal, or in the event the subscriber chooses not to renew his/her subscription, the prize winning(s) in the account will be remitted to the subscriber.

(d) For payment of a prize which does not meet the threshold amount for federal tax reporting to a group subscriber, payment will be made in one payment in the name of the group and the group representative as indicated on the application form, and remitted to the group representative.

(e) For payment of a prize which meets or exceeds the threshold amount for federal withholding to a group subscriber, a payment representing an equal share of the prize will be remitted to each individual member of the group. If the subscription or renewal application does not show the taxpayer identification number (social security number or federal employer identification number) of each group member, the division will withhold appropriate income taxes in accordance with the applicable back-up withholding rules.

(f) A group subscription entry will be treated as a single entry in the prize pool and shall also be treated as a single entry when determining if a prize in the Lotto game is payable in annual installments as provided in Part 2817 of this Title.

2804.18 Subscription disputes.

(a) The division is not responsible for disputes between or among subscription group members.

(b) In any dispute with the division concerning the right to a subscription prize, the division shall have the right to resolve such dispute by paying the prize or refunding the subscription fee. If a refund is paid, the refund shall be based on the remaining unused value of the subscription and shall be the sole and exclusive remedy of the subscriber(s).

(1) If there is a discrepancy between the information set forth on an application form and the information set forth in a confirmation letter, the subscriber may ask the Division to resolve the discrepancy by written or electronic communication. After such a report is received by the division, the division shall resolve the discrepancy as soon as possible and issue a revised confirmation letter. Resolution may include, but is not limited to, cancellation of the subscription. No change in the subscription shall be effective until a revised confirmation letter is issued. No request to resolve a discrepancy shall be accepted after the effective date in the confirmation letter issued.

2804.19 Subscription miscellaneous.

(a) Furthermore, the New York Lottery, pursuant to its statutory authority, may from time to time add games to its subscription program (including but not limited to Mega-Millions).

(b) A subscription renewal must be processed at least twelve (12) business days prior to the expiration date of a current subscription in order to avoid a lapse in the subscription. A renewal application form

containing current subscription number, games, game numbers, plan, effective date and expiration date will be sent to the subscriber either electronically or by mail. The division will make reasonable efforts to process renewal applications to assure no interruptions; however, the division shall not be responsible for an interruption if a renewal application is not processed in sufficient time.

(c) Once a subscription is entered into the subscription file, the funds paid for the subscription are not refundable.

(d) If a promotion offers a subscription, the division reserves the right to limit the number of promotional subscriptions that may be received by a person or group.

(e) The division reserves the right to exclude subscribers from participation in a promotion offering special payments or prizes.

(f) Any subscription commenced prior to the effective date of the subscription regulations set forth in this part shall be subject to the regulations that were in effect at the time such subscription was commenced. Any subscription commenced on or after the effective date of the subscription regulations set forth in this part shall be subject to this part.

Text of proposed rule and any required statements and analyses may be obtained from: Dwight T. Flynn, Associate Counsel, Division of the Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: dflynn@lottery.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.

Consensus Rule Making Determination

The New York State Lottery repeals sections 2804.12 through 2804.19 of Title 21 NYCRR and adds new sections 2804.12 through 2804.19 of Title 21 NYCRR by consensus rule because the changes are clarifications to the existing rules and are unlikely to be objected to. They also make technical changes and are otherwise non-controversial.

Job Impact Statement

The proposal does not require a Job Impact Statement. The Lottery has determined that there will be no adverse impact on jobs.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Commercial Driver's Licenses and Restricted Use Licenses

I.D. No. MTV-30-05-00003-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 Parts 3 and 135 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 501, 501-a, 502, 503 and 530(5)

Subject: Commercial driver's licenses and restricted use licenses.

Purpose: To make conforming amendments in compliance with L. 2005, chs. 60 and 61 regarding driver's licenses.

Text of proposed rule: Subdivisions (a) and (b) of section 3.2 are amended to read as follows:

(a) License classifications. Paragraph (a) of subdivision two of section 501 of the Vehicle and Traffic Law establishes eight classes of driver licenses and sets forth the vehicles which may be operated with each such class subject to any required endorsements and any restrictions which may be made to any such license. The license classes are: A, B, C, D, E, DJ, M and MJ. Class A, class B and class C licenses which contain an H, P, S or X endorsement are commercial driver licenses or CDLs. Any other class license, including a class C license which does not contain an H, P, S or X endorsement is not a CDL. No license may contain more than one class except that any license may contain a motorcycle M class in addition to its other class. A license which has both a motorcycle and a DJ class will be designated as a DMJ license.

(b) Endorsements. Paragraph (b) of subdivision two of section 501 specifically establishes endorsements which may be added to one or more

classes of licenses and further provides that the commissioner may by regulation establish additional endorsements. An endorsement is required on a license in order for the licensee to operate the type of vehicle or combination of vehicles or to transport passengers for the type of cargo specified in the endorsement. A license may contain multiple endorsements.

(1) Statutory endorsements. The endorsements established in statute are T, N, P, X, H, S, farm, and personal use vehicle endorsements. A farm endorsement or a personal use vehicle endorsement shall only be added to a license which is not a CDL. T, N, P, X, S or H endorsement shall only be added to a CDL.

(i) CDL endorsements. A P endorsement which is needed to operate a bus requires passage of both a special knowledge test and a skills test in a representative vehicle. *An S endorsement which is needed to operate a school bus requires passage of both a special knowledge test and a skills test in a representative vehicle. The holder of an S endorsement must also hold a P endorsement.* T, N, H or X endorsements which are needed to operate the following vehicles or combinations require only the passage of a knowledge test for each endorsement by the licensee:

T - double and triple trailers

N - tank vehicles

H - vehicles transporting hazardous materials which are required to be placarded

X - combines H & N endorsements

Subdivision (c) of section 3.3 is amended to read as follows:

(c) Amendments to the license. A valid driver license may be amended by making application on a form provided for such purpose to a motor vehicle office, paying all fees and submitting all documentation required and passing the appropriate knowledge and/or skills test or tests if such tests are required. If passage of a skills test is required, the procedure with respect to original licenses set forth above shall apply except that upon scheduling a skills test required for a class A, B or C license or for a recreational or farm vehicle endorsement, [a \$40] *the fee required by Vehicle and Traffic Law section 503(2)* must be paid at that time and if an interim license is issued after passage of the skills test for an amendment of a driver's license which was not a commercial driver license to a CDL, the interim license shall not be valid for more than 10 days.

Paragraphs (9) and (10) of paragraph (a) of section 3.5 are amended to read as follows:

(9) If a skills test is taken and passed in a bus [of 18,001 lbs.] up to 26,000 lbs. GVWR and the CDL general knowledge and passenger endorsement tests have been passed, a class C license with a passenger (P) endorsement *shall be issued* [with such endorsement being restricted to class C vehicles (N) restriction placed on that endorsement will be issued.] *If the skills test is taken in a vehicle with a designed adult seating capacity of not more than seven passengers, an N2 restriction will be placed on the passenger endorsement. If the skills test is taken in a passenger vehicle with a designed adult seating capacity of from 8 to 14 passengers an N1 restriction will be placed on the passenger endorsement. If the skills test is taken on a passenger vehicle with a designed adult seating capacity of 15 or more passengers an (N) restriction will be placed on the endorsement.*

(10) If a skills test is taken and passed in a motor vehicle not more than 18,000 lbs. GVWR and no CDL general knowledge test has been passed, either a class E, D or DJ license will be issued dependent upon the class for which application has been made and the age of the applicant. A class C license with an H endorsement and a weight (W) restriction to vehicles not over 18,000 lbs. GVWR will be issued if the CDL general knowledge and CDL hazardous material tests have been passed. A class C license with a weight (W) restriction to vehicles not over 18,000 lbs. GVWR and a passenger (P) endorsement will be issued if the CDL general knowledge and passenger endorsement tests have been passed. If the skills test is taken in a vehicle with a designed adult seating capacity of not more than seven passengers, an N2 restriction will be placed on the passenger endorsement. If the skills test is taken in a passenger vehicle with a designed adult seating capacity of from 8 to 14 passengers an N1 restriction will be placed on the passenger endorsement. If the skills test is taken on a passenger vehicle with a designed adult seating capacity of 15 or more passengers [neither an N1 nor N2 restriction will be placed on the passenger] *an (N) restriction will be placed on the endorsement.*

A new paragraph 13 is added to subdivision (a) of section 3.5 to read as follows:

(13) *In addition to the other requirements of this Part, if a skills test is taken and passed in a school bus over 26,000 lbs GVWR or with a designed adult seating capacity of 15 or more passengers and the CDL general knowledge, passenger, and school bus endorsement tests have*

been passed, a school bus (S) endorsement will be placed on the CDL license.

Paragraph (a) of section 3.8 is amended to read as follows:

(a) An applicant for any class of driver's license, except a learner permit is required to submit to a photo imaging process as part of the licensing procedure. Such applicant may not wear dark eye glasses, makeup or any apparel which when photographed would obscure the applicant's face or make identification difficult. In addition to the fee for a driver's license, an additional fee [of \$1.50] *as provided for in Vehicle and Traffic Law section 503(2)(f)* shall be charged for the issuance of any original, duplicate, renewal or amended license which contains a photo image of the licensee.

Subdivisions (a), (b), (d) and (e) of section 3.10 are amended to read as follows:

(a) A fire or police vehicle other than a motorcycle or a fire and police vehicle combination may be driven with any class license other than a DJ, M or MJ license. A police or fire motorcycle may be driven only with a class M license. [A vehicle specially designed and equipped for firefighting purposes which is regularly used for firefighting purposes by a firefighting unit on property used for industrial, institutional or commercial purposes and which vehicle is owned by the owner or lessee of such property shall be a fire vehicle for] *For the purposes of this Part, fire vehicle shall mean a fire vehicle as defined in Vehicle and Traffic Law section 115-a and a police vehicle shall mean a police vehicle as defined in Vehicle and Traffic Law section 132-a. A fire or police vehicle shall not be considered a commercial motor vehicle, as defined in Vehicle and Traffic Law section 501-a(4)(a), only if such fire or police vehicle is engaged in emergency operation, as defined in Vehicle and Traffic Law section 114-b.*

(b) A vehicle or combination of vehicles which is registered pursuant to Schedule F of subdivision 7 of Section 401 of the Vehicle and Traffic Law commonly referred to as a special purpose commercial vehicle and any vehicle which is registered with governmental plates which would qualify for registration under Schedule F may be driven with any class license other than a DJ, M or MJ, except that [on and after April 1, 1992,] any such vehicle or combination of vehicles which has a GVWR or GCWR of more than 26,000 lbs. and which can be operated at normal highway speeds shall be a commercial motor vehicle and may be operated only with a CDL which permits the operation of that type of vehicle or combination.

(d) For the purposes of this Part, any *military* vehicle or combination of *military* vehicles [issued by the United States government to the New York National Guard or New York Air National Guard, operated in ordered military duty under section 6 and/or 46 of the New York Military Law, or in training or other duties under the provisions of title 32 U.S.C. 502-505, by a person duly licensed as a driver by the United States government for the type of vehicle being] operated by a *member of the armed forces*, may be operated with any license other than a DJ, M or MJ. *For the purposes of this subdivision, the term "member of the armed forces" shall include active duty military personnel; members of the reserve components of the armed forces; members of the national guard on active duty, including personnel on full time active guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty United States coast guard personnel. The term shall not include United States reserve technicians.*

(e) For the purposes of this Part, an ambulance is not regarded as a taxicab or livery and may be driven with any class license other than a class DJ, M or MJ license, *if such ambulance is used to provide emergency medical services as defined in section 3003 of the Public Health Law.*

Section 3.11 is repealed.

Subdivision (b) of Part 135.9 is amended to read as follows:

(b) Establishment of conditions. Each restricted license shall contain the condition that such license shall be subject to revocation for operation outside of the limitations appearing on such license. Each restricted license will contain the limitations or use of such license as prescribed by the department, and as accepted by the holder. Such license shall be limited to operation: to and from the holder's place of employment or education; during the course of employment or education, when required; to and from a medical examination or treatment as part of a necessary medical treatment for such participant or member of his household, as evidenced by a written statement to that effect from a licensed medical practitioner; to and from a driver rehabilitation program which the holder is required to attend; to and from offices of the department in conjunction with the driver rehabilitation program or the issuance or amendment of a restricted license or driver's license, or enroute to and from a place including a school, at which the child or children or the holder are cared for on a regular basis

and which is necessary for the holder to maintain such holder's employment or enrollment at an accredited school, college or university or at a State-approved institution of vocational or technical training. Any restricted license issued on or after February 19, 1991, shall be limited to the operation of vehicles which are not commercial motor vehicles as defined in section 501-a of the Vehicle and Traffic Law or which are not for-hire vehicles as set forth in section 530 of such law; provided, however, *except for a commercial motor vehicle as defined in subdivision four of section 501-a of the Vehicle and Traffic Law*, that the restrictions on types of vehicles which may be operated with a restricted license contained in this paragraph shall not be applicable to a restricted license issued to a person whose license has been suspended pursuant to paragraph 3 of subdivision 4-e of section 510 of such law.

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

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

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

Consensus Rule Making Determination

The Motor Carrier Safety Improvement Act (MCSIA) of 1999 was passed by the United States Congress to enhance sanctions against and impose additional requirements for commercial driver's license (CDL) holders. MCSIA required all states to adopt the provisions of the Act by September 30, 2005 or face the loss of federal highway funding. Chapter 60 of the Laws of 2005 incorporates the provisions of MCSIA into the New York State Vehicle and Traffic Law.

This proposed regulation merely incorporates the statutory provisions in Chapter 60 into Part 3 and Part 135 of the Commissioner's Regulations. The key regulatory amendment requires all school bus drivers to obtain an S endorsement, as provided for in VTL section 501(2)(b)(x). The regulation also makes conforming amendments to the definition of "member of the armed forces" and clarifies the meaning of emergency vehicle. In addition, Part 3.3 is amended to reflect the revised photo licensing fee as established in Chapter 61 of the Laws of 2005. Finally, Part 135 is amended, in accordance with VTL section 530(5), to provide that a CDL holder may not obtain a restricted use license even if such holder is suspended for failure to pay child support.

Since this proposal simply reflects statutory changes, a consensus rulemaking is appropriate.

Job Impact Statement

A Job Impact Statement is not submitted with this rulemaking because it will not have an adverse impact on employment opportunities or job creation.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Civil Penalties

I.D. No. MTV-30-05-00013-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 sections 34.11(b) and 35.3(h) and (l) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 318(1) and (1-a)

Subject: Civil penalties.

Purpose: To conform regulations to statutory amendments relating to insurance lapse civil penalties.

Text of proposed rule: Subdivision (b) of section 34.11 is amended to read as follows:

(b) In addition to the above warning, the following information, as set forth in either paragraph below, must also accompany each such notice or acknowledgment of termination. Such information shall be in 12-point type face.

"If you have a lapse in insurance coverage of 90 days or less, the law permits you to avoid a suspension of your registration by the payment of a civil penalty [of \$8] for each day or any portion thereof up to 90 days for which your insurance was not in effect. This [grace period provision] *civil*

penalty option applies only once during any 36-month period. *The civil penalties are:*

- 1 to 30 day lapse - \$8 per each day of lapse
- 31 to 60 day lapse - \$240 plus \$10 per day for days 31 to 60
- 61 to 90 day lapse - \$540 plus \$12 per day for days 61 to 90."

Note: The language required in this subdivision must be exactly replicated on each notice. An insurer may, however, vary the format (such as spacing between lines) in order to fit all of the information on the notice.

[OR

"If you have a lapse in insurance coverage of 90 days or less, the law permits you to avoid a suspension of your registration by the payment of a civil penalty of \$8 for each day or any portion thereof up to 90 days for which your insurance coverage was not in effect. This grace provision applies only once during any 36-month period.]

Subdivisions (h) and (l) of section 35.3 are amended to read as follows:

(h) Waiver of suspension. The commissioner may withhold a suspension based on a lapse of required insurance coverage if the period of time during which the motor vehicle remained both registered and uninsured is not more than [15] 7 days. This provision shall apply only once during a 36-month period and shall not serve to reduce any penalty for a lapse of insurance which was greater than [15] 7 days or prevent the issuance of a revocation for uninsured accident or uninsured operation. This provision shall not apply to a revocation issued in accordance with section 370 of the Vehicle & Traffic Law.

(l) Payment of a civil penalty. [The suspension waiting period and surrender requirements for a defined lapse of coverage shall be waived if the registrant pays to the department a civil penalty in the amount of \$8 for each day up to 90 days for which insurance was not in effect. This provision shall apply only once during any 36-month period.] The civil penalty provided for in *Vehicle and Traffic Law section (1-a) and section 34.11(b) of this Part* shall be paid at either a DMV issuing office or at the Insurance Services Bureau in DMV's central office. Installment payments shall not be accepted. [If payment is made by mail, only a money order or certified check payable to the Commissioner of Motor Vehicles shall be accepted.] Personal checks shall not be accepted. The civil penalty must be paid based upon the time during which insurance was not in effect regardless of any suspension time which may have been served by the registrant. There shall be no refund of any such civil penalty except where there has been a rescission of a suspension. Compliance cannot be made by combining payment of a portion of the civil penalty with a portion of the period of suspension served by surrender of the registration and plate(s) or expiration of the registration. This provision does not apply to vehicles insured as for-hire under section 370 of the Vehicle and Traffic Law.

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

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

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

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

Consensus Rule Making Determination

Chapters 61 and 63 of the Laws of 2005 amended Section 318(1) and (1-a) of the Vehicle and Traffic Law in relation to suspensions for failure to maintain financial security, also known as an insurance lapse. Chapter 63 provides that an insurance lapse suspension need not take effect if the lapse was not more than seven days, as opposed to 15 days in the current law. Chapter 61 provides that the insurance lapse "buyback provision" is changed from eight dollars per day to the following schedule:

- 1 to 30 day lapse - \$8 per each day of lapse
- 31 to 60 day lapse - \$240 plus \$10 per day for days 31 to 60 days
- 61 to 90 day lapse - \$540 plus \$12 per day for days 61 to 90.

This "buyback" option is only permitted if the suspension is 90 days or less.

The Department has eliminated the "option" in Part 34.11, because all insurers will have to revise their notices effective October 1, 2005, rendering the option unnecessary.

Since these regulatory amendments merely reflect statutory changes, a consensus rulemaking is appropriate.

Job Impact Statement

Since this proposed rulemaking has no adverse impact on job creation or development in New York State, a Job Impact Statement is not submitted.

Public Service Commission

NOTICE OF ADOPTION

Unblocking of Caller ID by the Town of North Hempstead

I.D. No. PSC-10-05-00009-A

Filing date: July 11, 2005

Effective date: July 11, 2005

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

Action taken: The commission, on June 15, 2005, adopted an order in Case 04-C-0947 approving a petition by the Town of North Hempstead concerning unblocking caller ID information for calls placed to the 311 municipal call center.

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

Subject: Unblocking caller ID information for 311 calls to the Town of North Hempstead call center.

Purpose: To approve the request.

Substance of final rule: The Commission approved the petition of the Town of North Hempstead (Town) to unblock caller ID information on all 311-dialed calls made to the Town's new municipal call center and directed all telephone corporations that deliver 311 calls to the Town's 311 call center, and provide Caller ID blocking services, to unblock the transmission of customer name and number.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-C-0947SA1)

NOTICE OF ADOPTION

Waiver of Certain Franchising Procedures by the Town of Howard

I.D. No. PSC-14-05-00009-A

Filing date: July 6, 2005

Effective date: July 6, 2005

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

Action taken: The commission, on June 15, 2005 adopted an order in Case 05-V-0314 granting the Town of Howard (Steuben County) a waiver of 9 NYCRR sections 594.1 through 594.4(b)(2) pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of the franchising procedures.

Purpose: To expedite the franchising process.

Substance of final rule: The Commissioner approved the petition of the Town of Howard (Steuben County) for a waiver of 9 NYCRR Part 594.1 through 594.4 to expedite the franchising process.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-V-0314SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inter-Carrier Telephone Service Quality Measures and Standards by the Carrier Working Group

I.D. No. PSC-30-05-00006-P

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

Proposed action: The commission is considering modification to existing inter-carrier telephone service quality measures and standards as proposed by the Carrier Working Group and recommended by staff.

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

Subject: Inter-carrier telephone service quality standards and metrics.

Purpose: To review recommendations from the Carrier Working Group to incorporate appropriate modifications to the existing inter-carrier telephone service quality measures and standards.

Substance of proposed rule: The Commission is considering modifications to the New York State Carrier-to-Carrier Guidelines Performance Standards and Reports (the C2C Guidelines), which were established, and are routinely updated, in Case 97-C-0139. Revisions to the C2C Guidelines are proposed by the Carrier Working Group (CWG), an industry group that meets regularly and whose active participants includes the incumbent and competitive local exchange telecommunications carriers in New York State and the staff of the Department of Public Service. Department staff will be making recommendations to modify the C2C Guidelines applicable to Verizon New York Inc. and Frontier Telephone of Rochester, which may be derived by consensus of the Carrier Working Group or by analysis of the CWG parties' non-consensus positions. The specific modifications to the C2C Guidelines being considered by the Commission in this action include: administrative changes, i.e., non-process changes of a clerical nature or that correct minor errors; other administrative modifications developed by the Joint Subcommittee which incorporate the findings of audits conducted in other state C2C proceedings; modifications to the C2C Guidelines necessitated by the FCC's Triennial Review Order which generally eliminate UNE-P, Line Sharing and Line Splitting products from measurement; and, modifications that eliminate metrics with no volume, changes to certain Maintenance metrics, and modifications to the C2C Guideline Appendices, including consolidation into a single document, administrative updates, and elimination of forecasting appendices. The most recent version of the C2C Guidelines (May 2005) is available at: http://www22.verizon.com/wholesale/attachments/east-perf_meas/East_C2Cguidelines_May2005.doc. A link to the Commission Order approving the May 2005 C2C Guidelines is available at <http://www.dps.state.ny.us/carrier.htm>

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. Brillling, 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. (97-C-0139SA23)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inter-Carrier Telephone Service Quality Measures and Standards by the Carrier Working Group

I.D. No. PSC-30-05-00007-P

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

Proposed action: The commission is considering modification to existing inter-carrier telephone service quality measures and standards as proposed by the Carrier Working Group and recommended by staff.

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

Subject: Inter-carrier telephone service quality standards and metrics.

Purpose: To review recommendations from the Carrier Working Group to incorporate appropriate modifications to the existing inter-carrier telephone service quality measures and standards.

Substance of proposed rule: The Commission is considering modifications to the New York State Carrier-to-Carrier Guidelines Performance Standards and Reports (the C2C Guidelines), which were established, and are routinely updated, in Case 97-C-0139. Revisions to the C2C Guidelines are proposed by the Carrier Working Group (CWG), an industry group that meets regularly and whose active participants includes the incumbent and competitive local exchange telecommunications carriers in New York State and the staff of the Department of Public Service. Department staff will be making recommendations to modify the C2C Guidelines applicable to Verizon New York Inc. and Frontier Telephone of Rochester, which may be derived by consensus of the Carrier Working Group or by analysis of the CWG parties' non-consensus positions. The specific modifications to the C2C Guidelines being considered by the Commission in this action include: administrative changes, i.e., non-process changes of a clerical nature or that correct minor errors; other administrative modifications developed by the Joint Subcommittee which incorporate the findings of audits conducted in other state C2C proceedings; and, modifications to the statistical methodology utilized to determine parity under the Verizon C2C Guidelines, including Appendix K. The most recent version of the C2C Guidelines (May 2005) is available at: http://www22.verizon.com/wholesale/attachments/east-perf_meas/EastC2Cguidelines_May2005.doc. A link to the Commission Order approving the May 2005 C2C Guidelines is available at <http://www.dps.state.ny.us/carrier.htm>

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. Brillling, 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.

(97-C-0139SA24)

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

Interconnection Agreement between ALLTEL New York, Inc. and Verizon Wireless

I.D. No. PSC-30-05-00008-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 proposal filed by ALLTEL New York, Inc. and Verizon Wireless for approval of an interconnection agreement executed on June 6, 2005.

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

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: ALLTEL New York, Inc. and Verizon Wireless have reached a negotiated agreement whereby ALLTEL New York, Inc. and Verizon Wireless will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agree-

ment establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 6, 2007, or as extended.

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. Brillling, 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-C-0811SA1)

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

Interconnection Agreement between Citizens Telecommunications Company of New York, Inc. and Cricket Communications, Inc.

I.D. No. PSC-30-05-00009-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 proposal filed by Citizens Telecommunications Company of New York, Inc. and Cricket Communications, Inc. for approval of an interconnection agreement executed on May 15, 2005.

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

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Citizens Telecommunications Company of New York, Inc. and Cricket Communications, Inc. have reached a negotiated agreement whereby Citizens Telecommunications Company of New York, Inc. and Cricket Communications, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until May 15, 2006, or as extended.

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. Brillling, 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-C-0832SA1)

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

Eligible Customer-Sited Tier Resources by the New York Farm Bureau

I.D. No. PSC-30-05-00010-P

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

Proposed action: The commission is considering the request of the New York Farm Bureau to include the technology of methane digestion systems in the category of renewable portfolio standard (RPS) customer-sited tier resources as defined in its order regarding retail renewable portfolio standard, issued on Sept. 24, 2004, and pursuant to the process established in its order approving implementation plan, adopting clarifications, and modifying environmental disclosure program, issued on April 14, 2005.

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

Subject: Eligible customer-sited tier resources regarding the retail renewable portfolio standard.

Purpose: To include the technology of methane digestion systems in the category of renewable portfolio standard (RPS) customer-sited tier resources.

Substance of proposed rule: The Commission is considering the request of the New York Farm Bureau to include the technology of methane digestion systems in the category of Renewable Portfolio Standard (RPS) Customer-Sited Tier resources as defined in its Order Regarding Retail Renewable Portfolio Standard, issued on September 24, 2004, and pursuant to the process established in its Order Approving Implementation Plan, Adopting Clarifications, and Modifying Environmental Disclosure Program, issued on April 14, 2005. The Farm Bureau asserts that methane digestion systems have positive influences on the environment by protecting water and air quality and would provide financial support to New York farms, encouraging their financial security and therefore the benefits, including working landscapes, that they provide to New York communities. It states that RPS incentives would make installation more feasible on a larger number of farms than currently are participating in the technology. The Commission may reject, approve, or modify the request, in whole or in part.

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. Brillong, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(03-E-0188SA8)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Issuance of Stock, Bonds and Other Forms of Indebtedness by Saratoga Water Services, Inc.

I.D. No. PSC-30-05-00011-P

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

Proposed action: The commission is considering the petition of Saratoga Water Services, Inc. for approval to issue and sell long term debt in an amount not to exceed \$260,000 and surcharge customers for the principal and interest on the debt.

Statutory authority: Public Service Law, section 89-f

Subject: Issuance of stock, bonds and other forms of indebtedness.

Purpose: To allow Saratoga Water Services, Inc. to obtain long term debt.

Substance of proposed rule: The Commission is considering whether to approve, reject or modify the petition of Saratoga Water Services, Inc. for approval to (a) issue and sell long-term debt in an amount not to exceed \$260,000; (b) to permit the assets and the outstanding common stock of the company to be held by, pledged and/or mortgaged to the bank or otherwise encumbered as collateral security; and (c) to authorize the company to establish or retain the existing surcharge mechanism to provide for recovery and amortization of the debt, including principal and interest.

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. Brillong, 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-W-0801SA1)

Racing and Wagering Board

NOTICE OF ADOPTION

Pick Six Wager

I.D. No. RWB-20-05-00021-A

Filing No. 774

Filing date: July 8, 2005

Effective date: July 27, 2005

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

Action taken: Amendment of section 4011.23 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 228 and 229

Subject: Pick six wager and the refund or "no contest" of the pick six wager in certain instances.

Purpose: To refund the pick six wager when there are three or less races contested for the pick six; amend the rule so that if a race is moved from the turf to the dirt, it would be deemed a "no contest"; change the take out amounts so they conform with statutory mandate; and enable the track to share betting information when last leg of the pick six remains.

Text or summary was published in the notice of proposed rule making, I.D. No. RWB-20-05-00021-P, Issue of May 18, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Watervliet Ave. Ext., Albany, NY 12206, (518) 453-8460, e-mail: info@racing.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Taxation and Finance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Offers in Compromise

I.D. No. TAF-30-05-00004-P

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

Proposed action: This rule is proposed pursuant to [SAPA § 207(3)], 5-Year Review of Existing Rules. Amendment of Parts 5000 and 5005 of Title 20 NYCRR.

Statutory authority: Tax Law, section 171, subs. First, Fifteenth, and Eighteenth-a

Subject: Offers in compromise.

Purpose: To reflect existing department policy concerning offers in compromise. The rule also amends the regulations to reflect legislative amendments and technical corrections.

Text of proposed rule: Section 1. The title of Part 5000 of such regulations is amended to read as follows:

COMPROMISES UNDER SUBDIVISION [EIGHTEEN-A] *EIGHT-EENTH-A* OF SECTION 171 OF THE TAX LAW

(Statutory authority: Tax Law, section 171)

Section 2. Subdivision (a) of section 5000.1 of such regulations is amended to read as follows:

(a) The Commissioner of Taxation and Finance, [pursuant to section 171, subdivision eighteenth-a, of the Tax Law,] *or such person as may be designated by the commissioner*, may compromise any civil liability arising under the Tax Law, a law enacted pursuant to the authority of the Tax Law which is administered by the Department of Taxation and Finance, or a law enacted pursuant to the authority of article 2-E of the General City Law, prior to the time the tax or administrative action becomes finally and irrevocably fixed and is no longer subject to administrative review. The Attorney General may compromise any such liability after reference of a case to the Department of Law for prosecution or defense, but prior to the time the tax or the administrative action taken by the Department of Taxation and Finance is no longer subject to judicial review. Any such liability may be compromised only upon one or both of the following two grounds:

- (1) doubt as to liability; or
- (2) doubt as to collectibility.

Section 3. Section 5000.2 of such regulations is amended to read as follows:

A compromise agreement relates to the entire liability of the taxpayer or other person against whom the administrative action was taken by the Department of Taxation and Finance, including taxes, interest, additions to the tax and penalties, with respect to which the offer in compromise is filed, and all questions of such liability are conclusively settled thereby. Neither the taxpayer nor the Department of Taxation and Finance shall, upon acceptance of an offer in compromise, be permitted to reopen the case for any reason, except upon a showing of fraud, malfeasance or misrepresentation of a material fact. Acceptance of an offer in compromise will not be a ground for compromise regarding other years or periods.

Section 4. Subdivision (a) of section 5000.3 of such regulations is amended to read as follows:

(a) "Form of offers." An offer in compromise shall be filed on [a form] *the forms* prescribed by the Commissioner of Taxation and Finance [(Form DTF-4)]. The [form is] *forms are* available from the Commissioner of Taxation and Finance, or from such person as may be designated by [such] *the commissioner*, upon [written] request [briefly explaining the reason seeking compromise]. An offer in compromise should generally be accompanied by a remittance representing the amount of the compromise offer or a deposit if the offer provides for future installment payments. *The compromise offer must be in addition to the total amounts previously paid, or collected, against the tax liability being compromised, if any.* If the final payment on an accepted offer is contingent upon the immediate or simultaneous release of a tax lien in whole or in part, such payment must be in cash, or [in the form of a certified check, cashier's check or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any state, territory or possession of the United States, or by a United States postal, bank, express or telegraph money order] *remitted by means, acceptable to the Department of Taxation and Finance, that assures unconditional and final payment, such as certified check, bank check or postal money order.*

Section 5. Subdivision (c) of section 5000.3 of such regulations is amended to read as follows:

(c) "Acceptance." An offer in compromise shall be considered accepted only when the taxpayer making the offer is so notified in writing. As a condition to accepting an offer in compromise, the taxpayer may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interests of the Department of Taxation and Finance. Further, as a condition for acceptance of an offer in compromise, the taxpayer must agree that the Department of Taxation and Finance may proceed with any appropriate collection procedures set forth in the Tax Law as if the Commissioner of Taxation and Finance had acquired an assessment no longer subject to administrative or judicial review. The commissioner, *or such person as may be designated by the commissioner*, may also impose any other conditions, qualifications

or limitations for acceptance of an offer that he or she may deem appropriate for a particular case.

Section 6. Section 5000.4 of such regulations is amended to read as follows:

Unless the unpaid amount of tax which was the subject of the administrative action, including any interest, [addition] *additions* to the tax or penalty, is less than [\$2,500] *\$25,000*, if an offer in compromise is accepted, there shall be placed on file in the offices of the Commissioner of Taxation and Finance the opinion of the counsel for the Department of Taxation and Finance with respect to such compromise, with the reasons [therefor] *therefore*. The opinion shall include a statement of:

(a) the amount of tax and any other issues which may be subject of such compromise;

(b) the amount of interest, additions to the tax, or penalties imposed on the taxpayer or other person against whom the administrative action was taken by the Department of Taxation and Finance; and

(c) the amount actually paid or required to be paid in accordance with the terms of the compromise.

Section 7. Subdivision (a) of section 5000.5 of such regulations is amended to read as follows:

(a) "Filing." An offer in compromise may only be made after the issuance to the taxpayer of a written notice of the Commissioner of Taxation and Finance advising the taxpayer of a tax deficiency, determination of tax due, assessment, or denial of refund, credit or reimbursement application. [If the offer is made after a request for a conciliation conference is filed with the Bureau of Conciliation and Mediation Services but prior to the execution of a consent or the issuance of a conciliation order (see Part 4000 of this Title), the offer and three conformed copies shall be filed with the conciliation conferee. If the offer is made after a petition for a hearing has been filed in the Division of Tax Appeals but prior to the issuance of a decision by the tax appeals tribunal (see Part 3000 of this Title), the offer and three conformed copies shall be filed with the Law Bureau attorney assigned to the case. At all other times, the offer and three conformed copies shall be filed with the Commissioner of Taxation and Finance, or such person as may be designated by such commissioner, either in person at the offices in Albany or by mail addressed to:

Commissioner of Taxation and Finance
Department of Taxation and Finance
Building 9
W. A. Harriman Campus
Albany, NY 12227]

The taxpayer shall file an offer in compromise as prescribed in the forms.

Section 8. Section 5000.6 of such regulations is hereby repealed.

Section 9. The title to Part 5005 of such regulations is amended to read as follows:

COMPROMISES UNDER SUBDIVISION [FIFTEEN] *FIFTEENTH* OF SECTION 171 OF THE TAX LAW

(Statutory authority: Tax Law, section 171)

Section 10. Subdivision (a) of section 5005.1 of such regulations is amended to read as follows:

(a) "General." Section 171, [(15th)] *subdivision fifteenth*, of the Tax Law allows for offers in compromise for any taxes or any warrant or judgment of taxes [imposed by chapter 60 of the Laws of New York State] *administered by the Commissioner of Taxation and Finance*. Under section 171, [(15th)] *subdivision fifteenth*, an offer in compromise may only be made where the tax liability has been finally fixed and where the taxpayer has exhausted the taxpayer's protest rights.

Section 11. Paragraph (1) of subdivision (c) of section 5005.1 of such regulations is amended to read as follows:

(1) An offer in compromise must be filed on forms prescribed by the [department of] *Commissioner of Taxation and Finance* for such purpose at the address prescribed in the forms. The forms are available from the [department upon written or telephone request or may be obtained in person from any district office of the department. The Tax Compliance Division of the department is responsible for receiving and processing all offers in compromise made under this section.] *Commissioner of Taxation and Finance, or from such person as may be designated by the commissioner, upon request.* An offer in compromise should *generally* be accompanied by a remittance representing the amount of the compromise offer or a [down payment] *deposit* if the offer provides for future installments (see paragraph [(d)(3)] *(d)(2)* of this section). The compromise offer must be in addition to the total amounts previously paid, or collected, against the tax liability being compromised, if any. If the final payment on an accepted offer is contingent upon the immediate or simultaneous release of a tax lien

in whole or in part, such payment must be in cash, or [in the form of a certified check, cashier's check or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any state, territory or possession of the United States, or in the form of a United States postal, bank, express or telegraph money order.] *remitted by means, acceptable to the Department of Taxation and Finance, that assures unconditional and final payment, such as certified check, bank check or postal money order.* (See paragraph (e)(3) of this section for a refund of remittance where an offer in compromise is not accepted.)

Section 12. Paragraphs (1) and (4) of subdivision (d) of section 5005.1 of such regulations are REPEALED and paragraphs (2), (3), and (5) of such subdivision are renumbered to be paragraphs (1), (2), and (3) respectively.

Section 13. Paragraphs (1) and (2) of subdivision (d) of section 5005.1 of such regulations, as renumbered by Section 12 of these amendments, are amended to read as follows:

(1)(i) [Upon receipt of a recommendation of acceptance of an offer, the] *The commissioner, or such person as may be designated by the commissioner, will accept or reject the offer in compromise and the department will promptly notify the taxpayer in writing of such action.*

(ii) Where the *tax amount (exclusive of penalty and interest) to be compromised is more than [\$25,000] \$100,000, the offer accepted by the commissioner, or such person as may be designated by the commissioner, must be referred to a justice of the Supreme Court for approval prior to [the commissioner's] notification of acceptance by the commissioner, or such person as may be designated by the commissioner.* Such an offer is not effective until approved by a justice of the Supreme Court.

(2) Generally, within 60 days of notification of final approval of an offer, full payment of the compromised amounts must be made to the department. However, where a taxpayer can demonstrate the need for periodic payments over a period of time, the department has the authority to grant a reasonable period of time for repayment of an offer not to exceed two years[.]. Where special circumstances are demonstrated, the two-year period may be extended at the [commissioner's] discretion *of the commissioner or such person as may be designated by the commissioner.* In the case of periodic payments, interest will be due at the annual rate established under the Tax Law on any deferred amounts of the offer from the date of notice of acceptance until the offer is paid in full.

Section 14. Paragraph (3) of subdivision (e) of section 5005.1 of such regulations is amended to read as follows:

(3) Receiving acceptance of an offer in compromise is a privilege, not a right, available to financially distressed taxpayers in order to put overwhelming tax liabilities behind them. In the event an offer is rejected, the taxpayer making the offer shall be promptly notified in writing. If an offer in compromise is withdrawn or rejected, the amount tendered with the offer shall be refunded without interest, unless the taxpayer has stated or agreed that the amount tendered may be applied to the [liability] *liability* with respect to which the offer was filed.

Section 15. These amendments shall take effect on the date the Notice of Adoption is published in the *State Register*.

Text of proposed rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Data, views or arguments may be submitted to: Marilyn Kaltenborn, Director, Taxpayer Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153

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

Five-Year Review of Existing Rules

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 7, 2004, *State Register* a list of rules that were adopted by the Commissioner of Taxation and Finance in 1999, and a notice of the Department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. Comments from the public concerning the continuation or modification of these rules were invited until February 23, 2004. No public comments were received by the Department in response to the listing in January 2004, of the addition of Part 5005 of Title 20 NYCRR that was adopted by the Commissioner on June 15, 1999, and published in the *State Register* on June 30, 1999 (I.D.# TAF-17-99-00005-A) concerning offers in compromise of fixed and finally determined tax liabilities. This notwithstanding, the Department has determined as a result of its 2004 review that because of a recent substantive amendment to the underlying provisions of the Tax Law, the 1999 regulations are now dated and cannot be continued without modification;

thus requiring this rule. The underlying statutory change was enacted by Chapter 513 of the Laws of 2002. The chapter law expanded the Commissioner's offers in compromise authority and increased the dollar threshold of which offers in compromise require prior approval by a Supreme Court Justice.

Regulatory Impact Statement

1. Statutory authority: Tax Law section 171, subdivisions First, Fifteenth, and Eighteenth-A. Subdivision First of section 171 authorizes the Commissioner to make reasonable rules and regulations, which are consistent with law, that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. This authority also provides for the adoption of rules and regulations that are appropriate to carry out and administer the provisions of Chapter 60 of the Tax Law. Chapter 577 of the Laws of 1997 and Chapter 513 of the Laws of 2002 amended sections 171, subdivision Eighteenth-A and 171, subdivision Fifteenth of the Tax Law, respectively, with regard to offers in compromise as explained below.

2. Legislative objectives: The rule is being proposed pursuant to such authority and in accordance with the legislative objectives that the Commissioner equitably administer the provisions of the Tax Law and take judicious regulatory action when warranted. Regulatory action is necessary to provide taxpayers with the most up-to-date tax policies and procedures with regard to offers in compromise.

3. Needs and benefits: The primary purpose of the rule is to reflect existing Department policy concerning offers in compromise. It codifies the Commissioner's existing authority to designate an alternate to act on his or her behalf in the compromise approval process.

Updates to the regulations were made to reflect the following statutory amendments:

Chapter 577 of the Laws of 1997 which increased the dollar threshold of when the Department must issue an Opinion of Counsel with regard to an offer in compromise and Chapter 513 of the Laws of 2002 which expanded the Commissioner's offers in compromise authority and increased the dollar threshold of which offers in compromise require prior approval by a Supreme Court Justice. Lastly, technical and editorial corrections of some provisions are included in the amendments.

4. Costs:

(i) Costs to regulated parties: There are no costs imposed on regulated parties associated with the implementation and continued compliance with this rule.

(ii) Costs to the State and its local governments including this agency: It is estimated that the implementation and continued administration of these amendments will have no fiscal impact on the Department of Taxation and Finance. Additionally, there are no costs to NYS and its local governments for the implementation and continued administration of this rule.

(iii) Information and methodology: These conclusions are based on discussions and information received from Office of Tax Policy Analysis, Planning and Management Bureau, and Budget and Accounting Services Bureau.

5. Local government mandates: The rule imposes no mandates upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: These amendments do not impose any new paperwork or reporting requirements. The amendments do, however, update the regulations to reflect the Department's current practice of making the offer forms directly available to taxpayers.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

8. Alternatives: There were no significant alternatives to the rule considered by the Department. There are no viable alternatives because the rule merely codifies existing Department policy, makes legislative amendments and technical corrections. See Section 3, Needs and benefits.

9. Federal standards: This rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

10. Compliance schedule: No measurable time is needed in order for regulated parties to comply with this rule. The amendments will take effect on the date the Notice of Adoption is published in the *State Register*.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because it will not impose any adverse economic impact or any additional reporting, record-keeping, or other compliance requirements on small businesses or local governments. This rule simply amends the Compromises regulations to

reflect existing Department policy. It also amends the regulations to reflect legislative amendments and technical corrections.

The following organizations were notified that the Department was in the process of developing this rule and were given the opportunity to participate in its development: NYS Association of Counties, the Small Business Council of the NYS Business Council, the Division for Small Business of NYS Empire State Development, the National Federation of Independent Businesses, the Retail Council of NYS, the NYS Conference of Mayors and Municipal Officials, the Association of Towns of NYS, and the Office of Local Government and Community Services of the NYS Department of State.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on any rural areas. In addition, this rule simply amends the Compromises regulations to reflect existing Department policy. It also amends the regulations to reflect legislative amendments and technical corrections.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter that the rule will have no impact on jobs and employment opportunities. This rule simply amends the Compromises regulations to reflect existing Department policy. It also amends the regulations to reflect legislative amendments and technical corrections.

Workers' Compensation Board

EMERGENCY RULE MAKING

Independent Medical Examinations (IMEs)

I.D. No. WCB-30-05-00001-E

Filing No. 773

Filing date: July 7, 2005

Effective date: July 7, 2005

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

Action taken: Amendment of section 300.2(d)(11) of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117 and 137

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

Specific reasons underlying the finding of necessity: Recent decisions issued by Board Panels have interpreted the current regulation as requiring reports of independent medical examinations (IMEs) be received by the Board within ten calendar days of the exam. Due to the time it takes to prepare the report and mail it, the fact the board is not open on legal holidays, Saturdays and Sundays, and that U.S. Post Offices are not open on legal holidays and Sundays, it is extremely difficult to timely file said reports. If a report is not timely filed it is precluded and is not considered when a decision is rendered. As the medical professional preparing the report must send the report on the same day and in the same manner to the board, workers' compensation insurance carrier/self-insured employer, claimant's treating provider and representative, and the claimant it is not possible to send the report by facsimile or electronic means. The recent decisions have greatly, negatively impact the professionals who conduct IMEs, the IME entities, insurance carriers and self-insured employers. When untimely reports are precluded, the insurance carriers and self-insured employers are prevented from adequately defending their position. Accordingly, emergency adoption of this rule is necessary.

Subject: Filing written reports of Independent Medical Examinations (IMEs).

Purpose: To amend the time for filing written reports of IMEs with the board and furnished to all others.

Text of emergency rule: Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 business days after the examination, or sooner if directed, except that in cases of

persons examined outside the State, such reports shall be filed and furnished within 20 business days after the examination. A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.

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 October 4, 2005.

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) 473-8626, 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 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

2. Legislative Objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in 2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

3. Needs and Benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some to participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is

filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCL in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

5. Local Government Mandates:

Approximately 2,511 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, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed".

6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all request for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

9. Federal Standards:

There are no federal standards applicable to this proposed rule.

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 2,511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured local governments will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that are self-insured will also be affected by the proposed rule. These small businesses will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

2. Compliance requirements:

Self-insured municipal employers, self-insured non-municipal employers, independent medical examiners, and entities that derive income from independent medical examinations will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

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. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

This proposed rule 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 and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board received input from a number of entities who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.