

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.

Banking Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Investments by Thrift Institutions in Municipal Deposit Bank Subsidiaries

I.D. No. BNK-31-06-00012-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 section 6.12 to Title 3 NYCRR.

Statutory authority: Banking Law, section 14-h

Subject: Investments by thrift institutions in municipal deposit bank subsidiaries.

Purpose: To authorize a State chartered thrift institution to invest in a municipal deposit banks subsidiary to the same extent as a Federal thrift institution.

Text of proposed rule: Part 6 is amended by adding a new Section 6.12 to read as follows:

§ 6.12 *Investment in a public deposit bank subsidiary by a savings bank or savings and loan association.*

(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 savings banks and savings and loan associations (hereafter "thrift institutions") and federal savings associations with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions.

(b) *The Banking Board hereby finds that title 12, Code of Federal Regulations, sections 559.3 (e) and (g), promulgated pursuant to title 12 United States Code, section 1462 et. seq., permit a federal savings association to invest without limitation as to amount in the shares of a subsidiary which is an insured depository institution, including an insured depository institution which may accept deposits of public moneys.*

(c) *For purposes of this section 6.12, "public deposit bank subsidiary" means a "bank" as that term is defined in title 12 United States Code section 1841(c)(1), (i) more than fifty percent of the voting shares of which are owned, directly or indirectly, by the thrift institution with no other person or entity exercising effective operating control, and (ii) which accepts only deposits of public moneys and the other types of deposits as enumerated in title 12 United States Code section 1841(a)(5)(E)(ii).*

(d) *Subject to receipt of any required regulatory approvals, a thrift institution may invest in a public deposit bank subsidiary without limitation as to amount; provided, however, that if such investment would cause the aggregate amount invested by such thrift institution in such subsidiary to exceed one per centum of the assets of such thrift institution, it may do so upon 30 days prior written notice to the superintendent unless the superintendent notifies the thrift institution within such 30-day period that (i) he or she requires additional time or information in connection with the proposed investment, or (ii) the proposed investment may not be made. The proposed investment must be permitted by the organization certificate of the public deposit bank subsidiary.*

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.

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

Consensus Rule Making Determination Thrift institutions, pursuant to section 237 of the Banking Law and section 10 of the General Municipal Law, cannot accept deposits of public moneys. Commercial banks, however, may accept such deposits, and a number of thrift institutions have chartered commercial bank subsidiaries whose activities are limited to doing so.

Thrift investments in public deposit banks are presently subject to the normal limits on leeway investments. Section 235(31) of the Banking Law presently limits the amount of investments under the leeway authority to one (1) percent of the thrift institution's assets in any one entity and five (5) percent in the aggregate in all such entities.

Apart from the public deposit bank's own retained earnings, the parent thrift is the sole source of capital through which its subsidiary bank can be capitalized. Since the sole business purpose of these subsidiary banks is to accept municipal deposits, they are limited in their ability to generate earnings and therefore add to their capital position.

By contrast, OTS regulations permit a federal thrift to invest in an "operating subsidiary" without limitation as to amount. 12 CFR Section 559.3(g). An operating subsidiary may be a commercial bank. 12 CFR Section 559.3(e). Federal and state chartered thrifts in this state have

formed state-chartered commercial banks for the primary purpose of accepting deposits of public funds, which such thrifts are prevented from accepting pursuant to section 10 of the General Municipal Law. The federal Bank Holding Company Act provides for an exemption from bank holding company status for the thrift owner of a state-chartered bank that is wholly owned by one or more thrift institutions and is limited to accepting deposits of public moneys. 12 USC Section 1841(a)(5)(E).

The proposed wild card regulation would provide parity with federal thrift institutions by permitting a savings bank or savings and loan association to invest in a public deposit bank subsidiary without limitation as to amount. The subsidiary would have to be an insured bank that is more than fifty percent owned and controlled by the thrift institution, and which accepts only public deposits. The regulation would enable thrift institutions to have subsidiaries that are national banks or banks chartered by states other than New York, although in practice the former could not be used if the thrift institution wished to avoid bank holding company status and New York municipal corporations would not be permitted to deposit their funds in the latter. In any event, such subsidiaries would be restricted to taking deposits of public moneys.

No special approval process would be required for permission to invest in a public deposit bank subsidiary unless the aggregate amount of the thrift institution's investments in that subsidiary were to exceed one percent of the thrift's assets – the amount presently permitted for individual investments, including investments in commercial bank subsidiaries that accept public deposits, under the leeway authority. The regulation would require that a thrift institution wishing to make an investment in a public deposit bank which exceeds the amount permitted under the leeway authority give the Department 30 days prior written notice. The thrift institution could then make the proposed investment unless the Department had advised it that additional time or information was required, or had disapproved the proposal.

The Department does not anticipate any person is likely to object to the proposal, since its only effect is to permit state chartered thrift institutions to increase the amount they can invest in their municipal deposit bank subsidiaries from the maximum permitted under the leeway authority to the amount which a federal thrift institution could invest, and since the proposal requires that the Department be given prior notice and thus have an opportunity to review any proposed investment beyond that now permitted under the leeway authority.

Job Impact Statement

The proposed rule would increase the amount which a state chartered thrift institution is authorized to invest in a municipal deposit bank subsidiary from the amount currently permitted under the leeway investment authority to the same amount as a federal thrift institution may invest in such a subsidiary. The additional investments authorized by the proposed rule would enable such municipal deposit bank subsidiaries to grow by enabling them to take additional municipal deposits, thereby increasing, if anything, jobs and employment opportunities.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-19-06-00014-A

Filing No. 871

Filing date: July 12, 2006

Effective date: Aug. 2, 2006

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Audit and Control.

Text was published in the notice of proposed rule making, I.D. No. CVS-19-06-00014-P, Issue of May 10, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-19-06-00015-A

Filing No. 874

Filing date: July 12, 2006

Effective date: Aug. 2, 2006

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of Taxation and Finance.

Text was published in the notice of proposed rule making, I.D. No. CVS-19-06-00015-P, Issue of May 10, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-19-06-00016-A

Filing No. 876

Filing date: July 12, 2006

Effective date: Aug. 2, 2006

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-19-06-00016-P, Issue of May 10, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-19-06-00017-A

Filing No. 873

Filing date: July 12, 2006

Effective date: Aug. 2, 2006

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Health.

Text was published in the notice of proposed rule making, I.D. No. CVS-19-06-00017-P, Issue of May 10, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-19-06-00018-A

Filing No. 870

Filing date: July 12, 2006

Effective date: Aug. 2, 2006

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class in the Department of Mental Hygiene.

Text was published in the notice of proposed rule making, I.D. No. CVS-19-06-00018-P, Issue of May 10, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-19-06-00019-A

Filing No. 872

Filing date: July 12, 2006

Effective date: Aug. 2, 2006

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class in the Department of Family Assistance.

Text was published in the notice of proposed rule making, I.D. No. CVS-19-06-00019-P, Issue of May 10, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-19-06-00020-A

Filing No. 875

Filing date: July 12, 2006

Effective date: Aug. 2, 2006

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Taxation and Finance.

Text was published in the notice of proposed rule making, I.D. No. CVS-19-06-00020-P, Issue of May 10, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

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

Jurisdictional Classification

I.D. No. CVS-31-06-00003-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Racing and Wagering Board, Harness Racing," by adding thereto the positions of Assistant to Supervising Racing Veterinarian (8); and, in the Executive Department under the subheading "Racing and Wagering Board, Thoroughbred Racing," by increasing the number of positions of Assistant to Supervising Racing Veterinarian from 2 to 4.

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

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

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

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

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

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

Jurisdictional Classification

I.D. No. CVS-31-06-00004-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the New York State Bridge Authority.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Bridge Authority, by adding thereto the position of Toll Equipment Specialist (1).

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

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

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

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

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

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

Jurisdictional Classification

I.D. No. CVS-31-06-00005-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Family Assistance.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by adding thereto the position of Information Security Officer (1).

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

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

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

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

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

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

Jurisdictional Classification

I.D. No. CVS-31-06-00006-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Parole," by adding thereto the position of Supervising Parole Officer (Special Services) (1).

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

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

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

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

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

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

Jurisdictional Classification

I.D. No. CVS-31-06-00007-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the New York State Thruway Authority.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Thruway Authority, by adding thereto the position of Director of Administrative Services (1).

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

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

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

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

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

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

Jurisdictional Classification

I.D. No. CVS-31-06-00008-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by adding thereto the positions of Heritage Trails Program Manager (1) and Heritage Trails Program Specialist (2).

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

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

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

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

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

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

Jurisdictional Classification

I.D. No. CVS-31-06-00009-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the non-competitive class in the Department of Economic Development.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Economic Development, by deleting therefrom the positions of Commerce Policy Analyst 1 (9) and Commerce Policy Analyst 2 (5) and by adding thereto the positions of Commerce Policy Analyst 1 (9) and Commerce Policy Analyst 2 (5).

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

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

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

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

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

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

Jurisdictional Classification

I.D. No. CVS-31-06-00010-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "State Emergency Management Office," by deleting therefrom the positions of Communications Technician (4) and by adding thereto the positions of Communications Technician 1 (4).

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

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

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

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

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

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

Jurisdictional Classification

I.D. No. CVS-31-06-00011-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Commission on Quality of Care and Advocacy for Persons with Disabilities," by deleting therefrom the positions of Advocate for the Disabled and Assistant Advocate for the Disabled and by decreasing the number of positions of Executive Secretary from 2 to 1; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Commission on Quality of Care and Advocacy for Persons with Disabilities," by increasing the number of positions of Quality Care Facility Review Specialist 1 from 24 to 27.

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

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

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

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

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

Crime Victims Board

NOTICE OF ADOPTION

Medical Fee Guidelines

I.D. No. CVB-19-06-00004-A

Filing No. 879

Filing date: July 14, 2006

Effective date: Aug. 2, 2006

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

Action taken: Repeal of section 525.29 and Appendix II of Title 9 NYCRR.

Statutory authority: Executive Law, section 623(3)

Subject: Medical fee guidelines.

Purpose: To repeal an invalid rule.

Text or summary was published in the notice of proposed rule making, I.D. No. CVS-19-06-00004-P, Issue of May 10, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Everett A. Mayhew, Crime Victims Board, 845 Central Ave., South 3, Suite 107, Albany, NY 12206, (518) 457-8066, e-mail: everettmayhew@cvb.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Economic Development

EMERGENCY RULE MAKING

Empire State Film Production Tax Credit Program

I.D. No. EDV-31-06-00015-E

Filing No. 880

Filing date: July 17, 2006

Effective date: July 17, 2006

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

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

Statutory authority: L. of 2004, ch. 60

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

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

Subject: Empire State Film Production Tax Credit Program.

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire October 14, 2006.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

COSTS:

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

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

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

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

LOCAL GOVERNMENT MANDATES:

None.

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

No alternatives were considered in regard to creating a new regulation in response to the statutory requirement. The Department of Economic Development, through its Governor's Office for Motion Picture and Television Development, did an extraordinary amount of outreach to various interested parties before submitting this emergency rule. For example, the Department met with seven representatives from episodic television, seven representatives from the independent film industry and seven representatives from large studio films to seek industry input. In addition, the Department met with three film industry accountants, five industry tax attorneys

and approximately seven studio representatives to solicit their comments. Furthermore, the Department was in close contact with representatives from the State Tax and Finance Department and the New York City Office for Motion Pictures to coordinate the details of the emergency rule.

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

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

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Department of Health

ERRATUM

A Notice of Emergency Adoption, I.D. No. HLT-28-06-00021-E pertaining to Payment for FQHC Psychotherapy and Offsite Services, published in the July 12, 2006 issue of the *State Register* contained an incorrect emergency expiration date. This emergency will expire September 24, 2006.

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

EMERGENCY RULE MAKING

HIV Laboratory Test Reporting

I.D. No. HLT-31-06-00014-E

Filing No. 878

Filing date: July 14, 2006

Effective date: July 14, 2006

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

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

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

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

Specific reasons underlying the finding of necessity: Section 63.4(a)(4)(i).

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

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

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

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

Section 63.11

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

Removal of the text of these forms from Section 63.11 and use of web-based forms, which are current, clear and simplified, is necessary and urgent.

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

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

Subject: HIV laboratory test reporting.

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 11, 2006.

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

Regulatory Impact Statement

Statutory Authority:

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

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

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

Legislative Objectives:

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

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

Needs and Benefits:

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

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

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

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

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

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

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

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

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

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

Costs:

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

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

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

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

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

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

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

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

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

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

Local Government Mandates:

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

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

Paperwork:

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

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

Duplication:

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

Alternatives:

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

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

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

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

Federal Standards:

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

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

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect of Rule:

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

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

Compliance Requirements:

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

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

Professional Services:

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

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

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

Compliance Costs:

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

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

Economic and Technological Feasibility:

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

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

Minimizing Adverse Impact:

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

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

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

Small Business and Local Government Participation:

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

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

Rural Area Flexibility Analysis

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

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

Job Impact Statement

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

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

EMERGENCY RULE MAKING

Serialized New York State Prescription Form

I.D. No. HLT-31-06-00017-E

Filing No. 881

Filing date: July 7, 2006

Effective date: July 7, 2006

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

Action taken: Addition of Part 910 and amendment of Parts 80 and 85 of Title 10 NYCRR and amendment of section 505.3 and repeal of sections 528.1 and 528.2 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 21

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

Specific reasons underlying the finding of necessity: We are proposing that these regulations be adopted on an emergency basis because immediate adoption is necessary to protect the public health and safety and to meet statutory requirements. The budget proposal enacting Section 21 contains explicit authority for the Commissioner to promulgate emergency regulations. This was done recognizing the need to provide for the implementation of the use of statewide forged proof prescriptions by the April 19, 2006 date mandated by the law.

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

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

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

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

Substance of emergency rule: Part 910 (10 NYCRR)

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

The emergency regulations consist of a new Part 910 to Title 10 NYCRR. Section 910.1 defines terms used in the Part. Section 910.2 states requirements for practitioner prescribing, including that, until April 19, 2007, hospitals and comprehensive voluntary non-profit community diag-

nostic and treatment centers designated by the Department are exempted from the requirement for their staff practitioners to prescribe non-controlled substances on an official prescription form. The exemption will continue beyond April 19, 2007 if the hospital and the comprehensive voluntary non-profit community diagnostic and treatment center implements and utilizes an electronic prescribing system to transmit prescriptions to pharmacies capable of receiving them. Section 910.3 covers registration with the Department, which practitioners and healthcare facilities are required to do to order official prescriptions. Section 910.4 states the manner in which official prescriptions will be issued by the Department, while section 910.5 lists the practitioner and facility requirements for safeguarding the official prescriptions against theft, loss or unauthorized use. Section 910.6 states pharmacy requirements for dispensing official prescriptions and out-of-state prescriptions, which may be dispensed in lieu of an official prescription. Section 910.6 also states pharmacy requirements for submission of official prescription data to the Department. Section 910.6 also authorizes pharmacies to fill prescriptions for non-controlled substances until October 19, 2006 that are not written on an official prescription provided that the pharmacy notify the Department of the prescribing practitioner so that the practitioner may be contacted and issued official prescriptions for subsequent prescribing.

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

Section 505.3 (18 NYCRR)

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

Language is added to reference prescription drugs filled in compliance with 6810 of the Education Law, Article 33 of the Public Health Law and new 10 NYCRR Part 910.

• A change has been made to the prior version of the emergency filing for 18 NYCRR 505.3(b)(7). The words “or supplies” has been deleted since the enacting legislation (Section 21 of the Public Health Law) only mandated that forged proof prescriptions be utilized for prescription drugs. This change conforms the regulations to the law.

Part 528 (18 NYCRR)

• Section 528.1 is deleted—obsolete listing of non-prescription drugs covered under the MA program. Listing of reimbursable drugs and rate is available on-line at the NYS eMedNY website.

• Section 528.2 is deleted—language regarding “dispensing fees include routine delivery charges” is moved to 18 NYCRR 505.3(f)(6). Compounding fee language in 18 NYCRR 505.3 [6] (3).

Part 85 (10 NYCRR)

• Section 85.21 amended—OTC List—quantities and dosage forms have been deleted to allow greater flexibility in coverage. Remove OTC categories that are no longer marketed.

• Section 85.22 amended—establishment of OTC prices amended to more accurately reflect OTC pricing (Ad Hoc Committee is obsolete) and removal of references to deleted Sections (i.e., 18 NYCRR 528.2 and 10 NYCRR 85.25).

• Section 85.23 deleted—Revisions to list of OTCs and Maximum Reimbursable Prices—in Social Services Law 365-a(4)(a).

• Section 85.25 deleted—Prescription drug list covered under MA—obsolete. Drug list available on line at NYS eMedNY website.

Part 80 (10 NYCRR)

• Part 80 table of contents has been revised to reflect amendments in titles of sections of regulations.

- Sections have been amended throughout Part 80 to revise the previous title of 'Bureau of Narcotic Control' and 'Bureau of Controlled Substances' to the current title of 'Bureau of Narcotic Enforcement'.
- Sections have been amended throughout Part 80 to revise the previous title of 'Bureau of Narcotics and Dangerous Drugs' to the current title of 'Drug Enforcement Administration'.
- Section 80.1—language added to define 'automated dispensing system'.
- Section 80.5—language deleted for 3b Institutional Dispenser license due to registration of facilities to be issued official prescriptions. Language added for retail pharmacy license, installation, and operation of automated dispensing system in Residential Healthcare Facility (RHCF).
- Section 80.11—language added to make requirements for supervising pharmacist of controlled substance manufacturer and distributor consistent with pharmacist licensure requirements in New York State Education Law.
- Section 80.46—language added to require supervising physician countersignature of medical order of physician's assistant if deemed necessary by supervising physician or hospital to bring regulation into consistency with PHL 3703.
- Section 80.47—language revised to except administration of controlled substances in emergency kits to patients in Title 18 adult care facilities.
- Section 80.49—language revised from prescription serial number to pharmacy prescription number.
- Section 80.50—language added to require pharmacies to maintain separate stocks of controlled substances received for use in automated dispensing system in RHCF and to authorize storage of non-controlled substances in such system.
- Section 80.60—language added for female gender reference to practitioner.
- Section 80.63—deleted definition of written prescription and added definition of out-of-state prescription. Language added to authorize printed prescriptions generated by computer or electronic medical record system. Language added regarding practitioner oral prescribing requirement.
- Section 80.67—midazolam and quazepam added to list of benzodiazepine controlled substances, as per PHL 3306. Language added requiring quantity of dosage units to be indicated in both numerical and written word form. Language amended to include chorionic gonadotropin as controlled substance for prescribing up to a 3-month supply. Language added to assign code letters to medical conditions for prescribing more than a 30-day supply.
- Section 80.67(con't)—language deleted regarding Department's issuance of official New York State prescriptions, due to added language in section 80.72. Language deleted for face and back of prescription to facilitate timely pharmacist dispensing. Language added authorizing practitioner faxing of prescription for hospice or RHCF patient and for prescription to be compounded for direct parenteral administration to patient.
- Section 80.68—language added for certain other controlled substances. Language deleted requiring pharmacist to endorse pharmacy DEA number on official NYS prescription to facilitate timely dispensing. Language added requiring electronic transmission of prescription data to Department.
- Section 80.69—language added requiring quantity of dosage units to be indicated in numerical and written word form. Language added to assign letters for condition codes. Deleted reference to PHL sections 3335 and 3336, which were deleted by PHL 21, and added reference PHL sections 3332 and 3333, which are now the relevant sections. Deleted written prescription and added official prescription. Deleted back of the prescription and face of the prescription to facilitate timely dispensing. Language added authorizing practitioner faxing of prescription for hospice or RHCF patient and for prescription to be compounded for direct parenteral administration to patient.
- Section 80.70—language added specifying oral prescriptions for 30-day supply or 100 dosage units does not apply to substance limited to 5-day supply by section 80.68. Deleted serial prescription number and added pharmacy prescription number. Added female gender language in reference to pharmacist. Language added requiring filing of prescription information with Department.
- Section 80.71—deleted section (b) to reflect that practitioners are no longer required by PHL 3331 to complete an official prescription when dispensing controlled substances. Corrected spelling of chorionic gonadotropin. Added reference to condition codes in sections 80.67 and 80.69. Added packaging and labeling requirements for practitioner dispensing of

controlled substances. Added requirement for practitioners to submit dispensing information to Department by electronic transmission.

- Section 80.72—deleted all references to practitioner dispensing and labeling requirements because practitioner dispensing now covered by section 80.71. Language added regarding practitioner registration with Department and Department issuance of official NYS prescription forms.
 - Section 80.73—added language specifying pharmacist dispensing of schedule II and controlled substances listed in section 80.67. Added female gender language in reference to pharmacist. Deleted requirement for pharmacist to endorse pharmacy DEA number on prescription for timely dispensing. Language added requiring pharmacy to verify identity of person picking up dispensed prescription. Language added requiring pharmacy electronic transmission of prescription data to Department.
 - Section 80.73(con't)—language added specifying emergency oral prescriptions for schedule II and controlled substances listed in section 80.67 and filing of emergency oral prescription memorandum. Language added requiring pharmacy electronic transmission of oral prescription data to Department. Language added specifying partial filling of official prescription for schedule II and controlled substances listed in section 80.67. Language added authorizing pharmacist dispensing of faxed prescription and requiring delivery of original within 72 hours.
 - Section 80.74—language added in section title specifying pharmacist dispensing of controlled substances. Language added for prescription labeling requirements. Added female gender reference to pharmacist. Added requirement for filing prescription data with Department. Language added authorizing pharmacist dispensing of faxed prescription and requiring delivery of original within 72 hours.
 - Section 80.74(con't)—language added for pharmacy requirement to verify identification of person picking up prescription. Deleted reference to schedule II controlled substances and those substances listed in section 80.67 because all controlled substances now require official NYS prescription. Deleted labeling requirement reference to section 80.72 and added reference to section 80.71.
 - Section 80.75—deleted language regarding requirement to purchase official prescriptions. Added language regarding registration and issuance of official prescriptions for institutional dispenser.
 - Section 80.78—added a new section regarding pharmacist requirements for dispensing of out-of-state prescriptions for controlled substances, to be dispensed in conformity with provisions set forth for official prescriptions.
 - Section 80.84—deleted language requiring group practice providing treatment of opiate dependence with buprenorphine to be limited to 30 patients at any one time, making New York State regulations consistent with the federal Drug Addiction Treatment Act. Deleted language requiring practitioners and pharmacies to register with Department to prescribe and dispense buprenorphine. Deleted language requiring pharmacy to file prescription data and report loss of controlled substances because redundant. Deleted reference to PHL 3335 and 3336 because deleted by PHL 21 and added reference to PHL 3332 and 3333 because now relevant sections.
 - Section 80.106—added language requiring separate record-keeping for pharmacies installing automated dispensing system in RHCF.
 - Section 80.107—added language authorizing Department to notify practitioner of patient treatment with controlled substances by multiple practitioners, consistent with PHL 3371.
 - Section 80.131—deleted written prescription, added official prescription and out-of-state prescription. Language added increasing oral prescription for hypodermic needles and syringes to quantity of one hundred hypodermic needles and syringes.
- 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 14, 2006.
- Text of emergency rule and any required statements and analyses may be obtained from:** William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us
- Regulatory Impact Statement**
- Statutory Authority:
Section 3308(2) of the Public Health Law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provisions of Article 33 of the Public Health Law in order to effectuate its purpose and intent.
- The state budget for SFY 2004-2005 enacted new Section 21 of the Public Health Law which mandates a statewide official prescription form

for all prescriptions written in New York for the purpose of curtailing prescription fraud and enhancing patient safety. The law, Chapter 58 of the Laws of 2004, permits the Commissioner to promulgate emergency regulations in furtherance of this new section of law.

Legislative Objectives:

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

Needs and Benefits:

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

Regulations are being proposed to implement Section 21 of the Public Health Law (PHL). The purpose of the law is to combat and prevent prescription fraud by requiring an official New York State prescription for every prescription written in New York. Official prescriptions contain security features designed specifically to curtail alterations, counterfeiting, and forgeries, all of which divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

Regulations have been amended to reflect the implementation of the above Public Health Law and to update obsolete or outdated language in the existing regulations. The proposed regulations also include amendments to authorize a practitioner to deliver a controlled substance prescription to a pharmacy by facsimile transmission in specified circumstances and to authorize a pharmacist to dispense such faxed prescription. By facilitating timely prescribing and dispensing, such facsimile transmission will enhance healthcare for patients enrolled in hospice programs or residing in a Residential Healthcare Facility (RHCF) and for patients who require controlled substance prescriptions to be compounded for administration by parenteral infusion.

Regulations have also been amended to authorize the Department to license a retail pharmacy to install and operate an automated dispensing system in a RHCF, which will bring New York regulations into consistency with federal regulations. The installation and operation of such systems will significantly benefit patient care through timely and efficient dispensing of prescriptions for controlled substances. Automated dispensing systems will also lessen the cost of medications remaining from waste due to discontinued drug therapy and will simultaneously decrease the amount of such controlled substances that are susceptible to diversion.

These regulations are found in amendments to 10 NYCRR Part 80 and in the newly promulgated regulations in 10 NYCRR Part 910. Included in the Part 910 regulations is an exemption allowing hospital practitioners or practitioners in a comprehensive voluntary non-profit diagnostic and treatment center designated by the Department to prescribe non-controlled substances on a non-official hospital prescription until April 19, 2007. The exemption will continue beyond April 19, 2007 for hospitals and designated comprehensive voluntary non-profit diagnostic and treatment center that implement and utilize an electronic prescription system to transmit prescriptions to pharmacies capable of receiving them.

Also included in the Part 910 regulations is an exemption allowing pharmacies to dispense prescriptions for non-controlled substances that are not issued on an official prescription until October 19, 2006 in order that optimum care may continue to be provided to patients. The regulation requires pharmacies to notify the Department so that the practitioner may be contacted and issued official prescriptions for all subsequent prescribing.

Costs:

Costs to Regulated Parties:

This program is being funded by an annual assessment on the State Insurance Department of \$16.9 million. The assessment funds the costs of providing 180 million official prescriptions annually as well as administrative and enforcement staffing to operate and enforce the program. The current fee to practitioners and institutions for the official prescription has been eliminated. Private insurers and the Medicaid program will realize, respectively, an estimated \$75 million and \$25 million in annual savings due to the reduction of fraudulent prescription claims.

The \$25 million estimated saving for the Medicaid program represents the 25% New York State share. \$50 million in estimated savings would

accrue to the 50% federal government share of Medicaid, while \$25 million in estimated savings would accrue to the 25% local government share of Medicaid.

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

There will be a slight expenditure to pharmacies for software adjustments, due to minor changes in reporting requirements for controlled substance prescriptions.

Costs to State and Local Government:

There will be no costs to state or local government. Savings to State government are estimated at \$25 million to the 25% New York State share of Medicaid. Savings to local government, from reduction in subsidizing of prescription costs for patients in their Medicaid population, will result in an estimated \$25 million to the 25% local government share of Medicaid.

Costs to the Department of Health:

There will be no additional costs to the Department. The decrease in prescription fraud as a result of use of the official prescription will result in savings for the Department for the Medicaid, EPIC, and Empire programs. An increase in the efficiency of investigations made possible by the official prescription program will result in additional savings for the Department.

Local Government Mandates:

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

Paperwork:

No additional paperwork is required. The use of a single prescription form for controlled substances and non-controlled substances will simplify paperwork and record keeping for practitioners and institutions. Currently, practitioners use their own prescription form as well as the official prescription. The official prescription will replace existing prescriptions that are currently used in addition to the official prescription. Encouragement of electronic prescribing will significantly reduce paperwork requirements for practitioners, institutions and pharmacists.

Duplication:

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

Alternatives:

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

As a result of consultations with the hospital community, hospitals were granted a one-year exemption, until April 19, 2007, from the requirement for their staff practitioners to prescribe non-controlled substance medications on the official prescription. The purpose of the exemption is to serve as an incentive for hospitals to develop electronic prescription systems. The exemption will be extended if the hospital implements and utilizes an electronic prescription system to transmit such prescriptions directly to a pharmacy in lieu of an official prescription.

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect of Rule on Small Business and Local Government:

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

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

Compliance Requirements:

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

(1) Eliminating the fee to practitioners and institutions for official prescriptions;

(2) Eliminating the requirement that pharmacists write the DEA number of the pharmacy on the official prescription;

(3) Bar coding of the serial number on the official prescription to expedite the dispensing process; and

(4) Eliminating multiple prescription forms practitioners currently use to prescribe drugs.

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

Professional Services:

No additional professional services are necessary.

Compliance Costs:

Pharmacies may require minor adjustments in computer software programming due to additional prescription data submission requirements.

Economic and Technological Feasibility:

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

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. These requirements were negotiated with organizations representing the affected groups. The use of bar coding and the encouragement of electronic prescribing minimize any adverse impact.

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

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

Compliance Requirements:

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

Professional Services:

None necessary.

Compliance Costs:

The new law requires all pharmacies in New York State to electronically transmit information from controlled substance prescriptions to the Department on a monthly basis, for monitoring and analysis purposes in combating prescription fraud. Pharmacies may require minor adjustments in computer software programming due to this additional prescription data submission requirement.

Economic and Technological Feasibility:

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

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. This requirement is minimized by permitting pharmacies to scan the bar code of the prescription serial number onto the Medicaid claim form also through the allowance of electronic prescribing. Additionally,

the benefits on regulated entities resulting from these regulations and described herein outweigh any adverse impact.

Rural Area Participation:

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

Job Impact Statement

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

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

HIV Laboratory Test Reporting

I.D. No. HLT-31-06-00016-P

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

Proposed action: Amendment of Part 63 of Title 10 NYCRR.

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

Subject: HIV laboratory test reporting.

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

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

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

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

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

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

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

Legislative Objectives:

PHL Sections 2130 and 2139 were enacted to permit the Department of Health to conduct epidemiologic surveillance for HIV/AIDS: to record, monitor and evaluate the progression of the HIV/AIDS epidemic in the state. Confidential reporting allows the health department to assess the

spread of the disease in various localities and among risk group, thereby enabling focused prevention efforts and the targeting of scarce health resources where they can be most effective.

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

Needs and Benefits:

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

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

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

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

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

With the availability of HAART, it is more important than ever that barriers to HIV diagnostic testing be reduced. The Department is undertaking a broad initiative to make HIV testing routine in medical settings and to streamline the counseling and consent process. With respect to the HIV

test consent form, testing must be further encouraged and made a standard part of medical care in NYS. The current forms contained in Section 63.11 are no longer accurate due to changes and options in test technologies and advances in treatment. Further, the release form does not reflect the requirements of new federal privacy regulations.

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

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

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

Costs:

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

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

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

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

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

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

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

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

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

Local Government Mandates:

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

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

Paperwork:

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

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

Duplication:

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

Alternatives:

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

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

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

The Department of Health is sensitive to the possibility of additional non-HIV infected persons being reported to the department due to the expanded reporting of all CD4 test results. We note that no report is placed on the registry without confirmation (i.e. matching with other HIV related tests or verifying status with a person's provider). These procedures have been in place for over ten years without incident or problem which nega-

tively affect privacy. Nevertheless, the Department of Health considered the possibility of adding a provider check off to laboratory slips to indicate that the laboratory test was unrelated to HIV. After consideration of the unlikelihood of full provider compliance, confidentiality concerns, the necessity for laboratory software reprogramming based on this change and the costs involved as weighed against the problem free procedures long in existence, the Department decided to continue the present system.

Federal Standards:

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

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

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

Compliance Schedule:

The regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule:

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

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

Compliance Requirements:

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

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

Professional Services:

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

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

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

Compliance Costs:

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

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

Economic and Technological Feasibility:

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

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

Minimizing Adverse Impact:

The adverse impact on the laboratories classified as small businesses will be minimized by utilizing ECLRS, which is the existing mode of electronic reporting for the majority of laboratories. For those not choosing to report via ECLRS, an alternative electronic reporting mechanism will be available. Technical assistance will be available from the NYSDOH.

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

Small Business and Local Government Participation:

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

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

Rural Area Flexibility Analysis

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

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

Job Impact Statement

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

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

Section 221.4 provides the requirements for obtaining current credit information.

Section 221.5 provides standards for the disclosure of the use of credit information in the underwriting and rating of personal lines insurance policies.

Section 221.6 provides standards for notification when an insurer takes an adverse action based upon credit information.

Section 221.7 provides for dispute resolution and error correction if it is determined that the credit information used by an insurer to underwrite or rate a current insured was incorrect or incomplete.

Section 221.8 provides standards for the filing of credit scoring models (or other scoring processes) and revisions thereto, to the superintendent.

Section 221.9 provides standards for filings by the insurer.

Section 221.10 provides that an insurer that uses credit information in the underwriting and rating of personal lines insurance is required to complete and submit to the superintendent an Insurer Credit Information Compliance Certification. The Insurer Credit Information Compliance Certification shall be in a form prescribed by the superintendent.

Text of proposed rule and any required statements and analyses may be obtained from: Mike Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

Data, views or arguments may be submitted to: Buffy Cheung, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5587, e-mail: bcheung@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: Sections 201 and 301 of the Insurance Law, and Article 28 of the Insurance Law, as enacted by Chapter 215 of the Laws of 2004. Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations. Article 28, as enacted by Chapter 215 of the Laws of 2004, establishes limitations upon, and requirements for, the permissible use of credit information by insurers doing business in this State to underwrite and rate risks for personal lines insurance business. Further, the Superintendent is directed to provide, by regulation, rules governing the use of credit information.

2. Legislative objectives: The Legislature, in enacting Chapter 215 of the Laws of 2004, wanted to assure that consumers are afforded certain protections with respect to the use of credit information for personal lines insurance. The Superintendent was directed to promulgate a regulation to establish limitations on, and requirements for, the permissible use of credit information by insurers doing business in this State to underwrite and rate risks for personal lines insurance business.

3. Needs and benefits: Most insurers currently use credit information in the underwriting and initial tier placement of consumers for personal lines insurance. The purpose of this regulation is to establish rules to implement the provisions of Article 28. In accordance with Article 28, the regulation establishes and clarifies limitations upon, and requirements for, the permissible use of credit information by insurers doing business in New York State to assure that consumers are afforded certain protections when credit information is used to underwrite and rate risks for personal lines insurance business. The regulation clarifies prohibited and permitted uses of credit information in the underwriting and rating of personal lines insurance. The regulation sets forth whose credit information can be used, the form of the disclosure of the use of credit information and when the disclosure must be provided. The regulation sets forth standards for the notification when an insurer takes an adverse action based upon credit information. The regulation also requires an insurer to take corrective action within thirty days after it receives notice that the insured has obtained a determination pursuant to the process for dispute resolution and error correction under the federal Fair Credit Reporting Act that the credit information used by the insurer was incorrect or incomplete. The regulation also establishes rules for, and provides guidance to, insurers when filing their credit information requirements with the Superintendent.

4. Costs: This rule imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Insurance Department. This rule does not impose additional costs upon insurers. If an insurance producer or other entity has been designated by the insurer to issue disclosure notices and adverse action notices, the insurance producer or other entity will incur additional costs in producing and mailing these documents. However, the designation of an insurance producer or other entity for this purpose is optional, not mandatory, on the part of the insurer and presumably such arrangements will be subject to a contractual agree-

Insurance Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standard for the Use of Credit Information to Underwrite and Rate Personal Lines Insurance

I.D. No. INS-31-06-00013-P

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

Proposed action: Addition of Part 221 (Regulation 182) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301; and art. 28

Subject: Standards for the use of credit information to underwrite and rate personal lines insurance.

Purpose: To establish limitations upon, and requirements for, the permissible use of credit information by insurers to underwrite and rate risks for personal lines insurance business.

Substance of proposed rule (Full text is posted at the following State website: www.ins.state.ny.us): Section 221.0 provides that Chapter 215 of the Laws of 2004 added new Article 28 to the Insurance Law. Article 28 establishes limitations upon, and requirements for, the permissible use of credit information by insurers doing business in this State to underwrite or rate risks for personal lines insurance business.

Section 221.1 provides that this regulation applies to the use of credit information to underwrite and rate personal lines insurance policies applied for, or renewed, on or after April 23, 2005. It also provides that this regulation or Article 28 will not alter the requirements or limitations contained in the Insurance Law, Title 11 of the NYCRR, or the rules of the New York Automobile Insurance Plan or the New York Property Insurance Underwriting Association.

Section 221.2 provides definitions applicable to the regulation.

Section 221.3 provides prohibitions on the use of credit information and permissible use of credit information.

ment between an insurer and its insurance producer(s) or other entities and will be used when it has an overall cost benefit. The notification requirements and submission of filings are required by the statute and the regulation is only implementing the statutory requirement.

5. Local government mandates: None.

6. Paperwork: Paperwork associated with the submission of a filing by an insurer should already be in place. The insurer is required to complete an Insurer Credit Information Compliance Certification for the scoring model (or other scoring processes) filing and any filing of revisions thereto. Also, the insurer is required to maintain records that the disclosures of the use of credit information and adverse action notifications have been provided to the consumer. Where an insurance producer or other entity has been designated by the insurer to issue disclosure notices and adverse action notices, the insurance producers or other entities will incur additional paperwork necessary to insure that the insurer is in compliance with the notice and record retention requirements.

7. Duplication: None.

8. Alternatives: In developing this rule, the Department reviewed the National Conference of Insurance Legislators (NCOIL) model for the use of credit information in personal insurance and various provisions of the Federal and Fair Credit Reporting Act and the Department did outreach with trade associations, consumer groups, and a third party modeler.

There are several provisions of the rule for which alternatives were considered by the Department, as follows:

An insurer who chooses to consider, for any given program of insurance, an absence of credit information or an inability to calculate an insurance score to underwrite or rate risks must choose one of the three options specified in Section 2803(e) of the law to apply to all of the consumers in that program of insurance who have no credit information or whose insurance score cannot be calculated. The three options have been incorporated into the rule. The language used in Section 221.3(a)(5)(iii) of the rule clarifies the parameters of the third option which requires that a filing be made with, and be subject to the prior approval of, the Superintendent, with respect to an individual consumer. An alternative that has been suggested by some insurers is to permit such a filing to be made for a class of insureds. The Department considered this approach but rejected it because the law contemplates that such filing be made as to "the consumer" and not to a class of consumers. To further demonstrate the intention of the law not to treat all insureds who have no credit information or an insurance score as a class, Section 2802(d) prohibits an insurer from taking an adverse action against a consumer solely because he or she does not have a credit card account. Clearly, such insureds would fall into a "class" of insureds that could be defined as having an absence of credit information or an inability to calculate an insurance score but such a class would be violative of Section 2802(d) of the law.

Section 2802(g) of the law gives an insured, where an insurer has chosen to use credit information the right to request, not more often than once every 36 months, that the insurer re-underwrite and re-rate the policy based upon a current credit report or insurance score. Section 221.4(b)(1) of the rule requires that the insurer make any necessary adjustments including moving the insured to the appropriate tier, effective as of the date of the updated report or score. An alternative that has been suggested by the industry is that the insurer be permitted to delay implementation of the re-underwriting and re-rating until the next policy renewal date. The Department considered this approach but rejected it because the law does not provide that re-underwriting and re-rating can be delayed until some future date. It is clear that the Legislative intent was that the remedy be implemented as soon as possible in order to immediately provide the insured with an opportunity to get a lower premium based on current credit information. Some insurers indicated they might have problems with updating credit information mid-term. In order for them to avoid any problems, insurers are not precluded from choosing to automatically re-run credit scores every 36 months or more frequently, without the insured or the insured agent's request, to determine if the insured is eligible for a lower premium, more favorably priced tier, or placement with an affiliate of the insurer at a lower rate. It is noted that the NCOIL model differs from Article 28 of the Insurance Law in that the model requires that the insurer re-underwrite and re-rate the policy based upon a current credit report or insurance score no later than every 36 months and, if requested, on every renewal date.

Sections 221.4 and 221.7 of the rule require that an insurer, when re-underwriting or re-rating an insured based upon corrected, completed or updated credit information, consider not only whether the insured qualifies for placement in a lower-priced tier within the company, but also whether the insured qualifies for placement in an affiliate of the insurer at a lower

rate (i.e., if the affiliate would write the policy). In addition, when determining the amount of the refund due based on the correct credit information, Section 221.7 of the rule requires that the refund be calculated based on the appropriate tier/affiliate the insured would have been written in (assuming that the affiliate is still in the group and is still writing this business) if the insurer had used the correct credit information. This approach recognizes that when an insured applies for insurance from one company within a group of affiliated insurers, it is actually often applying to more than one company in the group. The alternatives the Department considered would have been to require re-underwriting and re-rating based only upon the filed rates and underwriting rules of the current insurer. The Department rejected this because where there is a group of affiliated insurers that includes insurers that do not have tiers the insureds of such insurers would not be able to benefit from a refund. Such a result would render the required statutory remedies for the use of incorrect or outdated credit information meaningless. Even where affiliate insurers each have more than one tier, the insured will not fully benefit by the re-rating and re-underwriting unless the insurer considers its affiliates' tiers as well. The Department believes that this approach is consistent with the law, which makes reference to the relationship between insurers and their affiliates in underwriting and rating. For example, under Section 2802(b) of the law, a placement with an affiliate on the basis of credit information does not constitute a denial of coverage.

Insurers operate in many different organizational structures. A trade association has expressed concern that some of these organizational structures may make it infeasible or inequitable for an insurer to offer a coverage with an affiliate and comply with Sections 221.4 and 221.7 of the proposed rule. Another trade organization commented that the language "substantially equivalent coverage" should be deleted from those sections since a "holding company may designate certain of its companies for designated functional business. For example, consider method of distribution – some companies may be exclusively intended for direct internet business while others are for individuals." These concerns were considered and are specifically addressed in the rule.

For example, an insurer within the group uses agents but it has an affiliate that is a direct writer. The applicant applies for insurance and is placed with the insurer that uses agents. Upon re-underwriting and re-rating the insured, Sections 221.4 and 221.7 of the proposed rule would not require the direct writer affiliate to offer the insured coverage. These sections were intended to address insurer-group underwriting where an applicant that applies for insurance with one insurer is also considered for coverage with other insurers within the group without the need to apply separately to each insurer. Under the example, the insured would not have to be offered coverage with the direct writer since the direct writer is not a part of the group underwriting done with the insurer that uses agents. Further, the direct writer requires the applicant to apply directly with that company. Sections 221.4 and 221.7 reflect clarifications suggested by the industry of the intent of the proposed rule.

The use of "substantially equivalent coverage" in this context contemplates that there may be some differences in the policy forms used by affiliates, but only where the insured is eligible for placement with an affiliate pursuant to Sections 221.4 and 221.7. However, even in such case, if the affiliate does not have a policy form that offers "substantially equivalent coverage", then that affiliate is not required to offer the insured a new policy.

Some insurers use credit information as an underwriting factor for initial tier or company placement. A trade association expressed concern that the use of the tier or company placement as an underwriting factor upon renewal would be considered to be using credit information upon renewal even if the insurer does not look at the insured's credit score upon renewal. The trade association suggested adding language similar to Section 2802(c) of the Insurance Law which states "nothing in this section shall be construed to prohibit an insurer from considering an insured's tier placement pursuant to Section 2349 of this chapter or placement with a company within a group of affiliated companies in conjunction with factors other than credit information as part of its renewal process." The proposed rule effectuates the provisions of Article 28 of the Insurance Law and does not supersede the provisions in the law. The proposed rule is not meant to restate every provision of the law and the Department believes that the proposed rule is clear in the permissible uses of credit information. For example consider the following situation:

- a) an insurer group consisting of two companies at two different rate levels which uses various factors in underwriting applicants,
- b) the two groups of applicants, A and B, both have the same underwriting characteristics except that those in group A have "excellent" credit

scores and are placed in the company with the lower rate level, and those in group B have "poor" credit scores and are placed in the company with the higher rate level, and

c) upon renewal, insureds in groups A and B remain in their respective companies with credit scores no longer being reviewed (except upon request as permitted by statute and regulation).

Under this example:

1. if the insurer group takes no rate action, the fact that insureds in group B pay higher rates than insureds in group A upon renewal does not violate Article 28 or the Regulation.

2. if the insurer group does make rate level adjustments to either of these companies, the Department would not consider such actions to be inconsistent with Article 28 or the Regulation provided such adjustments were based on the loss, expense and investment income experience, as set forth in the standards for rates in Article 23 of the Insurance Law.

Similarly, where one insurer has more than one tier and uses credit as one of the underwriting factors in the initial tier placement within the tiers, the fact that the insureds in one tier pay more than the other would not violate Article 28 or the Regulation. Furthermore, if the insurer makes rate level adjustments to any of its tiers, the Department would not consider such adjustments to be inconsistent with Article 28 or the Regulation provided such adjustments were based on the loss, expense and investment income experience of the tier(s), as set forth in the standards for rates in Article 23 of the Insurance Law.

Section 221.8(f) requires a third party that files scoring models on behalf of many insurers to provide the Department with certain information that would identify which insurer is using which scoring model. The Department also originally required the third party to provide the Superintendent with the name of each insurer's contact person and the person's telephone number. A trade association commented that such requirements would establish procedures that could lead to some confusion. The identification of the insurers and the scoring model they are using would assist the Department in evaluating the insurance company's decision on which version they choose to use. However upon further evaluation, the requirement for providing the contact person and the person's telephone number has been deleted from the rule as the third party may not necessarily have this information and the Department has this information from other sources.

The Department also considered some suggestions made by a consumer group. However, most of the suggestions conflict with the statute. For example, the consumer group wanted to amend the Regulation to require that all filed scoring models include loss experience to justify the use of credit information. The statute clearly does not require such information if scoring models are only used in initial underwriting.

The consumer group commented that when re-underwriting and re-rating the policy based upon new, updated or corrected credit information, the rate adjustment should be the "lowest rate possible" among all affiliates and tiers and not simply a "lower rate." Sections 221.4(b)(2) and 221.7(b)(2) states that the insured is eligible for placement in an affiliate at a lower rate in accordance with the affiliates' current underwriting rules. The insurer will have to follow its underwriting rules to determine which company to place the insured. An insurer cannot arbitrarily place an insured in a higher premium company if the insured is also eligible to be placed in a company with lower premiums if everything else remains the same. The purpose of the underwriting rules is to provide guidelines so that insureds with similar characteristics are placed in the same company.

The consumer group commented about disclosures regarding that not all insurers use credit information and that the insureds may wish to consider other options. The Department considers this to be more appropriately addressed in the Department's Consumer Guide to Automobile Insurance (Guide). The Department will add reference to insurers' use of credit information for the next updated version of the Guide.

The rule requires the submission of an Insurer Credit Information Compliance Certification for the scoring model (or other scoring processes) filing and any filing of revisions thereto. This will facilitate the review of the filings and enhance compliance with the statute and rule. The alternative of not requiring an Insurer Credit Information Compliance Certification was considered and rejected because it would provide the Department less assurance that insurers are complying with the law and

increase the time needed to review scoring model filings and might result in the need for more market conduct reviews.

9. Federal standards: The provisions of the federal Fair Credit Reporting Act referred to in Article 28 of the Insurance Law are also referred to in the regulation.

10. Compliance schedule: The effective date of the enabling legislation, Chapter 215 of the Laws of 2004, is April 23, 2005. Pursuant to the law, insurers are required to file their scoring models (or other scoring processes) with the Superintendent. The Regulation further provides that on or after August 15, 2005 insurers shall file their scoring models (or other scoring processes) at least 45 days prior to use.

Regulatory Flexibility Analysis

The Insurance Department finds that this rule would not impose reporting, recordkeeping or other requirements on small businesses. The basis for this finding is that this rule is directed to property/casualty insurance companies licensed to do business in New York State, none of which fall within the definition of "small business".

The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized property/casualty insurers and believes that none of them would fall within the definition of "small business" contained in section 102(8) of the State Administrative Procedure Act, because there are none which are independently owned and have under 100 employees.

The Insurance Department finds that this rule will not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that this rule is directed at insurance companies, none of which are local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This rule applies to property/casualty insurers licensed to do business in New York State. The insurers do business in every county in this state including rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: There are requirements for the insurer under certain circumstances to provide written disclosure of the use of credit information and adverse action notifications when an adverse action has been taken. Also, the insurer is required to maintain records that the disclosures of the use of credit information and adverse action notifications have been provided to the consumer. Where an insurance producer or other entity has been designated by the insurer to issue disclosure notices and adverse action notices, the insurance producers or other entities will incur additional paperwork necessary to insure that the insurer is in compliance with the notice and record retention requirements.

3. Costs: Regulated persons under these regulations are insurers. Insurance producers or other entities may be designated by the insurer to issue disclosure notices and adverse notices, in which case the producer or other entity will incur costs in producing and mailing these documents. However, the designation of a producer or other entity for this purpose is optional, not mandatory, on the part of the insurer and presumably such arrangements will be subject to a contractual agreement and will be used when it has an overall cost benefit. The submission of filings and notification requirements are required by the statute and the regulation is only implementing the statutory requirement. This regulation has no impact unique to rural areas.

4. Minimizing adverse impact: This rule applies uniformly to regulated parties that do business in both rural and nonrural areas of New York State. This rule does not impose any additional burden on persons located in rural areas, and the Insurance Department does not believe that it will have an adverse impact on rural areas.

5. Rural area participation: This agency action appeared as a proposal in the Insurance Department's January 2005 Regulatory Agenda.

Job Impact Statement

This rule should not have any adverse impact on jobs and employment opportunities in this state since it merely implements the provisions of Article 28 of the Insurance Law. The rule sets forth standards that the insurers must follow when using credit information for underwriting and rating purposes. The rule also sets forth guidelines that insurers must follow when submitting filings to the Superintendent.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Green Choice Program

I.D. No. LPA-31-06-00001-P

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

Proposed action: The authority is considering a proposal to adopt revisions to LIPA's tariff for electric service concerning LIPA's Green Choice Program.

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

Subject: Tariff for electric service.

Purpose: To adopt revisions to LIPA's tariff for electric service concerning eligibility for LIPA's Green Choice Program.

Public hearing(s) will be held at: 10:00 a.m., Sept. 19, 2006 at Huntington Town Hall, 100 Main St., Huntington, NY; and 3:00 p.m., Sept. 19, 2006 at Long Island Power Authority, 333 Earle Ovington Blvd., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority (Authority) is considering a proposal to adopt a revision to LIPA's Tariff for Electric Service to allow customers who participate in LIPA's Long Island Choice ("LI Choice") Program to be eligible to participate in LIPA's Green Choice Program. The Authority may approve, reject, or modify, in whole or in part, the proposal.

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

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

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

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Wind Net Metering

I.D. No. LPA-31-06-00002-P

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

Proposed action: The authority is considering a proposal to adopt revisions to LIPA's tariff for electric service concerning wind net metering, and modify and combine existing tariff language.

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

Subject: Tariff for electric service.

Purpose: To adopt revisions to LIPA's tariff for electric service concerning wind net metering, and to modify and combine existing tariff language concerning solar and wind net metering.

Public hearing(s) will be held at: 10:00 a.m., Sept. 19, 2006 at Huntington Town Hall, 100 Main St., Huntington, NY; and 3:00 p.m., Sept. 19, 2006 at Long Island Power Authority, 333 Earle Ovington Blvd., Uniondale, NY.

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

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable

time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Substance of proposed rule: The Long Island Power Authority (Authority) is considering a proposal to adopt an addition to LIPA's Tariff for Electric Service to allow for the net energy metering of qualifying Residential Farm Service wind electric generating equipment. In addition, the existing language in the tariff on solar net metering is proposed to be modified to combine solar and wind net metering under a new section. The Authority may approve, or modify, in whole or in part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Richard M. Kessel, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, e-mail: rkessel@lipower.org

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

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

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

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

Power Authority of the State of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-31-06-00018-P

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

Proposed action: Revision in rates for Steuben Rural Electric Cooperative.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity. This increase in rates is not the result of a Power Authority rate increase to the Cooperative.

Text of proposed rule:

STEUBEN RURAL ELECTRIC COOPERATIVE
Proposed Rates

	Proposed ¹ Rates
Residential, Schedule 1	
Customer Charge	\$ 10.33
Energy Charge, per kWh.	\$.0841
Commercial Service, Schedule 2	
Customer Charge	\$ 10.33
Energy Charge, per kWh	\$.0841
Industrial Service, Schedule 3	
Demand Charge, per kW	\$ 3.81
Energy Charge, per kWh.	\$.0619
Security Lighting, Schedule 4 (Charge per lamp, per month)	
100 Mercury Vapor	\$ 8.60
Large, Separated, Electric Cold Storage or Processing Plant Service, Schedule 5	
Demand Charge, per kW	\$ 4.84
Energy Charge, per kWh.	\$.0216

¹ Purchased Power Adjustment reflected in proposed rates.

Text of proposed rule and any required statements and analyses may be obtained from: Anne B. Cahill, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 390-8036, e-mail: anne.cahill@nypa.gov

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

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

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

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

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Gumley-Haft Real Estate, on Behalf of Katz Park Avenue Corporation

I.D. No. PSC-31-06-00019-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 grant, deny or modify, in whole or part, the petition filed by Gumley-Haft Real Estate, on behalf of Katz Park Avenue Corporation, to submeter electricity at 530 Park Ave., New York, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Gumley-Haft Real Estate, on behalf of Katz Park Avenue Corporation, to submeter electricity at 530 Park Ave., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Gumley-Haft Real Estate, on behalf of Katz Park Avenue Corporation, to submeter electricity at 530 Park Avenue, New York, New York.

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.

(06-E-0788SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Queens Windsor, LLC

I.D. No. PSC-31-06-00020-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 grant, deny or modify, in whole or part, the petition filed by Queens Windsor, LLC, to submeter electricity at Windsor at Forest Hills Condominium, 107-24 71st Street, Forest Hills, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Queens Windor, LLC, to submeter electricity at Windsor at Forest Hills Condominium, 107-24 71st St., Forest Hills, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Queens Windsor, LLC, to submeter electricity at Windsor at Forest Hills Condominium, 107-24 71st Street, Forest Hills, New York.

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.

(06-E-0789SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Property between Orange and Rockland Utilities, Inc. and Verizon New York Inc.

I.D. No. PSC-31-06-00021-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Orange and Rockland Utilities, Inc. requesting authorization for the transfer of ownership of certain utility poles to Verizon New York Inc.

Statutory authority: Public Service Law, section 70

Subject: Transfer of property.

Purpose: To allow Orange and Rockland Utilities, Inc. to transfer ownership of certain utility poles to Verizon New York Inc.

Substance of proposed rule: The Commission is considering a request by Orange and Rockland Utilities, Inc. for authority under Section 70 of the Public Service Law to transfer the ownership of certain joint use utility poles to Verizon New York Inc. The property is to be transferred pursuant to an agreement governing the use and ownership of utility poles jointly used by Orange and Rockland Utilities, Inc. and Verizon New York Inc. The Commission may approve, reject or modify, in whole or in part, the parties' request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: 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.

(06-E-0791SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Entry into Debt Obligations by Noble Clinton Windpark I LLC, et al.

I.D. No. PSC-31-06-00022-P

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

Proposed action: The Public Service Commission is considering a petition from Noble Clinton Windpark I LLC, Noble Altona Windpark LLC, Noble Ellenburg Windpark LLC, and Noble Bliss Windpark LLC requesting approval of the entry into debt obligations for the financing of the construction and operation of certain wind generation facilities.

Statutory authority: Public Service Law, section 69

Subject: Entry into debt obligations for the financing of the construction and operation of certain wind generation facilities.

Purpose: To approve the entry into debt obligations for the financing of the construction and operation of certain wind generation facilities.

Substance of proposed rule: The Public Service Commission is considering a petition from Noble Clinton Windpark I LLC, Noble Altona Windpark LLC, Noble Ellenburg Windpark LLC, and Noble Bliss Windpark LLC requesting approval of the entry into debt obligations for the financing of the construction and operation of certain wind generation facilities. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: 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.

(06-E-0843SA1)

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

Daily Balancing Program and Monthly Balancing Service by Niagara Mohawk Power Corporation

I.D. No. PSC-31-06-00023-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, reject, or modify in whole or in part, a proposal filed by Niagara Mohawk Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 219 to become effective Oct. 1, 2006.

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

Subject: Service Classification No. 11—load aggregation.

Purpose: To revise the security requirements applicable to direct customers participating in the company's Daily Balancing Program and the minimum storage requirements applicable to marketers participating in monthly balancing service.

Substance of proposed rule: The Commission is considering Niagara Mohawk Power Corporation's request to modify the security requirements applicable to Direct Customers participating in Daily Balancing and to Marketers participating in Monthly Balancing to more closely approximate the company's exposure.

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.

(06-G-0800SA1)

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

Flexible Economic Development Rate Contract for Electric Service by Owners-Brockway Glass Container, Inc.

I.D. No. PSC-31-06-00024-P

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

Proposed action: The Public Service Commission is considering a petition from Owens-Brockway Glass Container, Inc. requesting that New York State Electric & Gas Corporation be ordered to enter into a flexible economic development rate contract for electric service to a glass manufacturing facility located in Auburn, NY.

Statutory authority: Public Service Law, sections 5(b), 65(1), (2), and (3), 66(1), (5), (12) and (12-c)

Subject: Flexible economic development rate contract for electric service.

Purpose: To require entry into a flexible economic development rate contract for electric service.

Substance of proposed rule: The Public Service Commission is considering a petition from Owens-Brockway Glass Container, Inc. requesting that New York State Electric & Gas Corporation be ordered to enter into a flexible economic development rate contract for electric service to a glass manufacturing facility located in Auburn, New York. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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.

(06-M-0787SA1)

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

Transfer of Franchise or Stock and Water Rates and Charges between Macquarie Utilities Inc. and Aquarion Company Inc.

I.D. No. PSC-31-06-00025-P

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

Proposed action: The Commission is considering whether to approve, reject or modify, in whole or in part, the acquisition by Macquarie Utilities Inc. of the stock of the Aquarion Company Inc. whose assets are owned by Kelda Group, Inc. and the resulting transfer of Aquarion Water of New York and Sea Cliff. Additionally, the commission is considering accounting treatment for pension and other post retirement benefits for the aquarion companies. The commission may consider all other related matters.

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

Subject: Transfer of franchises or stock and water rates and charges.

Purpose: To consider authorizing Macquarie Utilities to purchase the stock of Aquarion Company Inc., to account for pensions and OPEB expenses as proposed by Macquarie and other related matters.

Substance of proposed rule: The Commission is considering whether to approve, reject or modify, in whole or in part, the joint petition filed by Macquarie Utilities, Inc. (MUI), Kelda Group, Inc. (Kelda), Aquarion

Water Company (AWC), Aquarion Water Company of Sea Cliff, Inc. (AWC-SC) and Aquarion Water Company of New York, Inc. (AWC-NY) for approval of (1) MUI's acquisition of the stock of AWC, whose assets are currently owned by Kelda, and the resulting transfer of a controlling interest in AWC, AWC-SC and AWC-NY; and 2) a proposed accounting treatment of the pension and other post-retirement employee benefits (OPEBs) expenses of AWC-SC and AWC-NY.

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.
(06-W-0760SA1)