

# RULE MAKING ACTIVITIES

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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.

*subdivision four of section one thousand three hundred fifteen of the Abandoned Property Law.* [Upon payment to the treasury, the custodian of any] *The proper disbursing officers or agents of such funds [will] shall* notify the banks on which such checks were drawn to stop payment thereon (*State Finance Law, § 102*) and shall follow all proper procedures in accordance with the *New York State Accounting System User Procedures Manual, volume XI, section 7.0500.* [The initial cash book entry for each such check shall bear notation of cancellation, the date thereof, and reference to the page on which such cancellation was effected.]

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 14.4.

**Text of rule and any required statements and analyses may be obtained from:** Wendy H. Reeder, Office of the State Comptroller, 110 State St., Albany, NY 12236, (518) 474-5714, e-mail: wreeder@osc.state.ny.us

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

A revised RIS, RFA, and RAFA are not attached because changes made to the last published rule do not necessitate revision. Such changes were grammatical in nature, specifically capitalizing the names “Abandoned Property Fund” and “Abandoned Property Law.”

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Audit and Control

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### NOTICE OF ADOPTION

#### Disposition of Unpaid State Checks Outstanding for More Than One Year

**I.D. No.** AAC-27-06-00003-A  
**Filing No.** 1444  
**Filing date:** Dec. 1, 2006  
**Effective date:** Dec. 20, 2006

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

**Action taken:** Amendment of section 14.4 of Title 2 NYCRR.

**Statutory authority:** State Finance Law, sections 8(14) and 102

**Subject:** Disposition of unpaid State checks outstanding for more than one year.

**Purpose:** To provide methods for State agencies to report State checks issued, but remaining outstanding to the Abandoned Property Fund.

**Text of final rule:** Section 14.4 of Title 2 of NYCRR is amended to read as follows:

§ 14.4 Unpaid checks outstanding more than [three] *one* [years] *year*  
The amounts of all checks on bank accounts of any [fund] *funds* of the State which have been outstanding for more than [three years] *one year* from the respective dates thereof shall be paid into the [State Treasury to the credit of the general fund] *Abandoned Property Fund pursuant to*

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## Office of Children and Family Services

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### NOTICE OF ADOPTION

#### Permanency, Safety and Well-Being of Children in Foster Care

**I.D. No.** CFS-37-06-00009-A  
**Filing No.** 1447  
**Filing date:** Dec. 5, 2006  
**Effective date:** Dec. 20, 2006

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

**Action taken:** Addition of section 426.10, amendment of sections 421.4, 421.6, 421.17, 423.2, 426.4, 428.1-428.10, 430.8, 430.9, 430.11, 430.12, 431.9, 432.2, 441.22, 443.2, 476.2, 507.2 and repeal of sections 430.1-430.7, 430.13 and 441.20 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 383-c, 384 and 409-e; and Family Court Act, art. 10-A and section 1017

**Subject:** Amendment of regulations governing procedures related to permanency outcomes for children in foster care, as required by L. 2005, ch. 3.

**Purpose:** To implement the enhanced procedures set forth in L. 2005, ch. 3 intended to produce more timely and effective judicial and administrative reviews, thus improving permanency outcomes for children in foster care and those placed directly in the custody of a relative or other suitable person.

**Substance of final rule:** Section 421 (Adoption Services)

The amendments conform the requirements for periodic court reviews, permanent neglect proceedings and conditional surrenders with amendments enacted by Chapter 3 of the Laws of 2005 (Permanency Bill).

## Section 426.10 (Title IV-E Foster Care and Adoption Assistance)

Adds a new section to meet Title IV-E State Plan requirements regarding the specific goal for the maximum number of children who remain in foster care for more than 24 months.

Sections 423.2 (Definitions), 430.9 (Appropriate Provision of Mandated Preventive Services), 430.11 (Appropriateness of Placement), 431.9 (Termination of Parental Rights by Local Social Services Agency), 432.2 (Child Protective Service: Responsibilities and Organization), 441.22 (Health and Medical Services), 443.2 (Authorized Agency Operating Requirements), 476.2 (Terms and Conditions) and 507.2 (Special Assessments, Examinations and Tests Required for Children in Foster Care)

These sections are amended to reflect the change of the permanency goal from "independent living" to "another planned living arrangement with a permanency resource", as enacted by Chapter 3 of the Laws of 2005.

## Part 428 (Standards for Uniform Case Records)

The amendments conform the requirements for periodic family assessments and service plans, plan amendments, service plan reviews and permanency hearing reports with Chapter 3 of the Laws of 2005. It adds such requirements for children placed by a court in the direct custody of a relative or other suitable person. It adds a case consultation requirement with certain required parties in order to meet the review requirements prior to the development of the permanency hearing report and the permanency hearing required by Chapter 3 of the Laws of 2005. It also conforms the requirements for seeking and obtaining information about absent and non-respondent parents and other relatives in accordance with the new Chapter Law.

## Part 430 (Additional Limitations on Reimbursement Utilization Review for Foster Care and Preventive Services)

18 NYCRR 430.1 through 430.7 and 430.13 are repealed to reflect the repeal of sections 153-d and 398-b of the Social Services Law by Chapter 83 of the Laws of 2002. 18 NYCRR 430.8 is amended to reflect the uniform case recording standards set forth in 18 NYCRR Part 428. 18 NYCRR 430.12 is amended to add further definition to the service plan review process, including making the administrative service plan review unnecessary when a permanency hearing meets the federal requirements for an administrative or judicial review. In addition the permanency planning goal of "independent living" is changed to "another planned living arrangement with a permanency resource" in accordance with Chapter 3 of the Laws of 2005.

## Section 431.9 (Termination of Parental Rights by a Local Social Services Agency)

The amendment makes minor conforming changes to reflect Chapter 3 of the Laws of 2005, so that considerations related to a determination to terminate parental rights are made in relation to the permanency hearing schedule.

## Section 441.20 (Family Court Review of the Status of Children in Foster Care)

This section is repealed as it has been made obsolete by Chapter 3 of the Laws of 2005.

Technical amendments are made to sections 423.2 and 426.4 to make corrections to cross-references necessitated by the repeal of other sections.

**Text of final rule:** Public Information Office, NYS Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 428.6(a)(6)(ii), 430.12(c)(2)(i)(a) and 441.21(b)(2).

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

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

Although non-substantive changes were made to the proposed regulations concerning procedures related to permanency outcomes for children in foster care, those changes do not require changes to the Regulatory Impact Statement or Summary, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, Job Impact Statements as originally published.

**Assessment of Public Comment**

The Office of Children and Family Services (OCFS) received formal comments from one member of the OCFS Advisory Board, the Deputy

Director of the Center for Family Representation in New York City and a representative of Lawyers for Children in New York City.

1) One comment related to the service plan review meeting and those for whom efforts must be made to involve. The commenter requested inclusion of other potential permanency resources.

Response: OCFS revised the regulations to clarify that efforts must also be made to involve the following in service plan review meetings: any identified permanency resource to whom the child may be discharged, and, if it is not planned to discharge the child to a particular person, to involve the adult person who has been identified to act as a resource for the child after discharge from foster care.

This is a technical, non-substantive change to the regulations to clarify that the intent of the regulations is for efforts to be made to involve whoever is the potential discharge resource for the child as evidenced by the other provisions in the regulations relating to case consultations prior to permanency hearings.

2) One comment related to the goal of another planned living arrangement with a permanency resource. The commenter thought that that goal might apply to "scatter site, small shelter based or non-residential Transitional Living Programs under the Runaway and Homeless Youth Act".

Response: This is a misinterpretation of the regulations. The goal in question applies only to the person who is identified as a caring committed adult who can provide emotional support, advice and guidance to the youth and assist the youth with the transition from foster care to responsible adulthood. There is no relationship with the type of facility in which the youth may reside after discharge from foster care.

Accordingly, the proposed regulations were not revised.

3) One comment related to the service plan review meeting and those for whom efforts must be made to involve. The commenter requested inclusion of the parent's attorney.

Response: The regulations already specify that service plan review meetings are to include "any other person the child's parent(s) identifies." That most certainly could include the parent's attorney.

Accordingly, the proposed regulations were not revised.

4) Two of those who commented objected to allowing the Permanency Hearing to serve as the service plan review meeting when certain conditions are met.

Response: Section 475(5)(B) of the Social Security Act allows either a judicial or an administrative review to satisfy federal requirements for periodic case reviews of children in foster care. The regulations provide the same option. Especially given the case consultation requirements instituted in 18 NYCRR 428.9(b) to provide a forum for the development of a timely permanency hearing report, it was felt that under appropriate circumstances another meeting of all the stakeholders might unnecessarily be a burden to some or all of those involved.

Accordingly, the proposed regulations were not revised.

5) One commenter suggested that requirements regarding service plan review meetings and case consultations be consolidated in one place in the regulations.

Response: OCFS has received no comments from any local social services district or voluntary authorized agency on this (or any other) matter regarding these regulations for which they have implementation responsibility. They have been trained in the meaning and implications of the new requirements. Therefore, OCFS believes it is unnecessary to consolidate, and/or relocate any of these regulations.

Accordingly, the proposed regulations were not revised.

Additional technical amendments have been made as follows:

Subparagraph (ii) of paragraph (6) of subdivision (a) of section 428.6 has been amended to conform with amendments currently in effect on an emergency basis regarding home studies for adoptive and foster placements.

The amendment to paragraph (2) of subdivision (b) of section 441.21 is deleted to conform with casework contact regulations currently in effect on an emergency basis.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Standards for Reimbursement for Foster Care Maintenance and/or Adoption Assistance

I.D. No. CFS-51-06-00013-P

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

**Proposed action:** This is a consensus rule making to amend Parts 426, 427, 428 and 431 of Title 18 NYCRR.

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

**Subject:** Standards for reimbursement for foster care maintenance and/or adoption assistance.

**Purpose:** To bring OCFS regulations current with Federal regulations concerning the conditions for eligibility for receiving Federal reimbursement for certain foster care and adoption expenses, and to clarify the definition of special needs child.

**Text of proposed rule:** Part 426 of Title 18 of the New York Code Rules and Regulations relating to Title IV-E Foster Care and Adoption Assistance is hereby amended as follows:

Section 426.1 is repealed and replaced with the following:

*426.1 Eligibility. As a condition for the receipt of federal financial participation for Title IV-E foster care maintenance and adoption assistance, the applicable requirements set forth in Title 45 Code of Federal Regulations, section 1356.21 (foster care maintenance) and/or sections 1356.40 and 1356.41 (adoption assistance) must be met. The above-cited sections of the Code of Federal Regulations are available for viewing at: New York State Department of State, 41 State Street, Albany NY 12231.*

Sections 426.2 – 426.7 are repealed and reserved.

Section 426.9 is amended to add a new subdivision (c) to read as follows:

*(c) A child with special needs is a child as defined in section 673(c) of Title 42 of the United States Code Annotated. The above-cited section of the United States Code Annotated is available for viewing at: New York State Department of State, 41 State Street, Albany NY 12231.*

Subdivision (d) of section 427.2 is amended to read as follows:

(d) Foster family boarding home means a residence owned, leased, or otherwise under the control of a single person or family who has been certified or approved by an authorized agency or is used by a local probation department, the State Department of Mental Hygiene or the Office of Children and Family Services to care for children, and such person or family receives payment from the agency for the care of such children. Such home may care for not more than six children, including all children under the age of 13 residing in the home, whether or not they are received for board. However, up to two additional children may be cared for if such children are siblings, or are siblings of a child living in the home, or are parent of a minor parent/child unit as defined in section [426.2(f)] 427.2(s) of this Part [Title], or are children freed for adoption and placed for adoption with the person(s) who have been certified or approved as foster parents. Such home may exceed these limits only to receive or board a child or children returning to that foster family boarding home pursuant to section 443.6 of this Title.

Subdivision (s) of section 427.2 is added to read as follows:

*(s) Minor parent/child unit means a family consisting of a foster child or an adopted child who is a minor parent and the child or children of such minor parent residing together in the same foster family home, residential facility or adoptive home.*

Subdivision (e) of section 428.2 is amended to read as follows:

(e) Family, for the purpose of this Part, means:

(1) the child who is at risk of or in foster care, or named in an indicated child protective services report, his or her parents, legal guardians, or other caretakers and his or her siblings;

(2) a woman who is pregnant as specified in sections 430.9(c)(6) and 430.10(c)(6) of this Title;

(3) a minor parent/child unit as defined in section [426.2] 427.2(s) of this Title;

(4) a child who does not live with his or her parents and needs services to prevent return to foster care, a foster child whose parent(s)' rights have been terminated or whose parent(s) have surrendered the child for adoption, a child who needs services and whose parents or legal guardians are unavailable, or a child who is an unaccompanied refugee minor with or without his or her parents or legal guardian.

Section 431.4 is amended to read as follows:

431.4 Retention of earnings of children in foster care.

A child or minor in foster care as a public charge is permitted to retain the maximum amount of his or her earned monthly income as savings for future identifiable needs in accordance with the standards relating to eligibility for Title IV-E foster care set forth in section [426.4] 426.1 of this Title. A social services district must make efforts to preserve the child's eligibility for federally reimbursable foster care maintenance payments and to provide the child with a means to accumulate resources to assist in meeting his or her permanency planning goal.

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

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

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

**Consensus Rule Making Determination**

The Office of Children and Family Services (OCFS) believes that the attached rule making proposal can and should be published as a consensus rule. OCFS has considered the subject matter of the rule and its potential effect on regulated parties, and has concluded that the activities described and regulated by the rule are already taking place and are not likely to be materially affected by the rule. As a result, OCFS reasonably believes that no party is likely to object to this rule making proposal.

The proposal would amend Title 18 NYCRR Part 426 relating to eligibility for foster care and adoption assistance under Title IV-E of the federal Social Security Act to eliminate outdated references to the federal Title IV-E eligibility standards, which standards have been amended over time, and to link the current OCFS standards to the existing federal statutory and regulatory requirements. The regulations also move the current definition of "minor parent/child unit" from section 426.2(f) to section 427.2(s) and make conforming changes with regard to the reference to "minor parent/child unit" in sections 427.2(d) and 428.2(d). Finally, the regulations make a necessary conforming reference change in section 431.4 that involves the standards for retention of earnings by foster children by changing section 426.4 to section 426.1.

**Job Impact Statement**

The proposed regulations will amend the regulations of the Office of Children and Family Services to make them consistent with federal statutory requirements. The rule will not affect the number of staff that social services districts or authorized agencies must maintain to facilitate operations. The rule does not create a new service or program. Based on the foregoing, the proposed regulations would have no impact on jobs or employment opportunities in New York State.

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## Department of Civil Service

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

**Jurisdictional Classification**

**I.D. No.** CVS-51-06-00002-P

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

**Proposed action:** Amendment of the Rules for the Classified Service in Appendix 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 Labor.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor under the subheading "Workers' Compensation Board," by adding thereto the position of Principal Clerk (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:** Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@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-51-06-00003-P

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

**Proposed action:** Amendment of the Rules for the Classified Service in Appendix 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 Public Service.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Public Service, by increasing the number of positions of Utility Security Specialist 2 from 1 to 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:** Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@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-51-06-00004-P

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

**Proposed action:** Amendment of the Rules for the Classified Service in Appendix 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 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Thruway Authority, by increasing the number of positions of Assistant Counsel from 4 to 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:** Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@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-51-06-00005-P

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

**Proposed action:** Amendment of the Rules for the Classified Service in Appendix 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 Agriculture and Markets.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Agriculture and Markets, by adding thereto the position of Animal Health Inspector 2 (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:** Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@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-51-06-00006-P

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

**Proposed action:** Amendment of the Rules for the Classified Service in Appendix 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 Transportation.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Transportation, by adding thereto the position of Highway Maintenance Supervisor 1, Franklin County (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:** Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@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-51-06-00007-P

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

**Proposed action:** Amendment of the Rules for the Classified Service in Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

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

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by increasing the number of positions of Assistant Park Recreation Supervisor from 4 to 32, Park Recreation Activities Specialist from 7 to 28, Park Recreation Supervisor from 3 to 39 and Water Safety and Instruction Supervisor 1 from 3 to 8.

**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:** Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@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-51-06-00008-P

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

**Proposed action:** Amendment of the Rules for the Classified Service in Appendix 2 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 non-competitive class in the Executive Department.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Alcoholic Beverage Control," by deleting therefrom the position of  $\phi$ Keyboard Specialist 3 (1) and by increasing the number of positions of  $\phi$ Secretary 2 from 1 to 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:** Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@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-51-06-00009-P

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

**Proposed action:** Amendment of the Rules for the Classified Service in Appendix 2 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 non-competitive class in the Executive Department.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office for the Prevention of Domestic Violence," by decreasing the number of positions of Domestic Violence Program Administrator 1 from 15 to 14 and by increasing the number of positions of Domestic Violence Program Specialist from 9 to 10.

**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:** Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@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-51-06-00010-P

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

**Proposed action:** Amendment of the Rules for the Classified Service in Appendix 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 Environmental Conservation and the Executive Department.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by deleting therefrom the positions of Ski Center Maintenance Supervisor 2 and by adding thereto the positions of Maintenance Supervisor 2 Ski Center; and, in the Executive Department under the subheading "Office of General Services," by deleting therefrom the positions of Assistant Curator (2) and by adding thereto the positions of General Services Curatorial Program Supervisor (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:** Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@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-51-06-00011-P

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

**Proposed action:** Amendment of the Rules for the Classified Service in Appendix 1 and Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete positions from the exempt and the non-competitive classes in the Office of the Lieutenant Governor and the Executive Department.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Office of the Lieutenant Governor, by decreasing the number of positions of Confidential Steenographer 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 "Office of General Services," by deleting therefrom the position of Director, Division of Construction Supervision (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:** Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 473-2624, e-mail: brian.reichenbach@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.

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## Department of Health

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### EMERGENCY RULE MAKING

#### Opoid Overdose Prevention Programs

**I.D. No.** HLT-44-06-00005-E

**Filing No.** Dec. 5, 2006

**Filing date:** Dec. 5, 2006

**Effective date:** 1452

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

**Action taken:** Amendment of section 80.138 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 3309(1)

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** The immediate adoption of this regulation is necessary for the preservation of the public health, safety and general welfare because any delay with the implementation of opoid overdose prevention programs could result in additional deaths that could have been prevented through proper training to be offered through these programs. The legislation recognized the immediacy of the need for opoid overdose prevention programs by making the effective date April 1, 2006. Since compliance with standard rule making procedures would make implementation by the effective date of this law impossible, compliance with those requirements is contrary to the public interest.

**Subject:** Opoid Overdose Prevention Program.

**Purpose:** To implement L. 2005, ch. 413 which calls for the establishment of standards for opoid overdose prevention programs to prevent fatalities due to overdose.

**Text of emergency rule:** Pursuant to the authority vested in the Commissioner by Public Health Law Section 3309(1), Part 80 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new section 80.138 to be effective upon filing with the Secretary of State, to read as follows:

The Table of Contents for Part 80 of Title 10 NYCRR is amended to read as follows:

PART 80

RULES AND REGULATIONS ON CONTROLLED SUBSTANCES  
(Statutory authority: Public Health Law, Sections 338, 3300, 3305, 3307, 3308, 3309, 3381, 3701(1), (6), art. 33)

Sec.

GENERAL PROVISIONS

\* \* \*

80.138. *Opoid Overdose Prevention Programs*

A new Section 80.138 is added as follows:

*Section 80.138. Opoid Overdose Prevention Programs.*

(a) *Definitions.*

(1) "Clinical Director" means a physician, physician assistant or nurse practitioner who provides oversight of the clinical aspects of the Opoid Overdose Prevention Program. This oversight includes serving as a clinical advisor and liaison concerning medical issues related to the Opoid Overdose Prevention Program, providing consultation on training and reviewing reports of all administrations of an opoid antagonist.

(2) "Opoid" means an opiate as defined in section 3302 of the public health law.

(3) "Opoid antagonist" means an FDA-approved drug that, when administered, negates or neutralizes in whole or in part the pharmacological effects of an opoid in the body. The opoid antagonist is limited to naloxone or other medications approved by the Department for this purpose.

(4) "Opoid Overdose Prevention Program" means a program the purpose of which is to train individuals to prevent a fatal opoid overdose in accordance with these regulations.

(5) "Opoid Overdose Prevention Training Program" means a training program offered by an authorized Opoid Overdose Prevention Program which instructs a person to prevent opoid overdoses, including by providing resuscitation, contacting emergency medical services and administering an opoid antagonist.

(6) "Person" means an individual other than a licensed health care professional, law enforcement personnel, and first responders otherwise permitted by law to administer an opoid antagonist.

(7) "Program Director" means an individual who is identified to manage and have overall responsibility for the Opoid Overdose Prevention Program.

(8) "Registered provider" for the purposes of this section shall mean any of the following that have registered with the Department pursuant to subsection (b):

(i) a health care facility licensed under the public health law;

(ii) a physician, physician assistant, or nurse practitioner who is authorized to prescribe the use of an opoid antagonist;

(iii) a drug treatment program licensed under the mental hygiene law;

(iv) a not-for-profit community-based organization incorporated under the not-for-profit corporation law and having the services of a Clinical Director;

(v) a local health department.

(9) "Trained Overdose Responder" means a person who has successfully completed an authorized Opoid Overdose Prevention Training Program offered by an authorized Opoid Overdose Prevention Program within the past two years and has been authorized by a Registered Provider to possess the opoid antagonist.

(b) *Registration.*

(1) Registered providers may operate an Opoid Overdose Prevention Program if they obtain a certificate of approval from the Department authorizing them to operate an Opoid Overdose Prevention Program and otherwise comply with the provisions of this section.

(2) Providers eligible to register to operate an Opoid Overdose Prevention Program that are in good standing may apply to the Department to operate an Opoid Overdose Prevention Program on forms prescribed by the Department which must include, at a minimum, the following information:

(i) the provider name, address, operating certificate or license number where appropriate, telephone number, fax number, e-mail address, Program Director and Clinical Director;

(ii) the name, license type and license number of the affiliated prescriber(s);

(iii) the name and location of the site(s) at which the Opoid Overdose Prevention Program will be conducted;

(iv) a description of the targeted population to be served and recruitment strategies to be employed by the Opoid Overdose Prevention Program; and

(v) the addresses, telephone numbers, fax numbers, e-mail addresses and signatures of the Program Director and Clinical Director.

(c) Program Operation.

(1) Each Opioid Overdose Prevention Program shall have a Program Director who is responsible for managing the Opioid Overdose Prevention Program and shall, at a minimum:

(i) identify a Clinical Director to oversee the clinical aspects of the Opioid Overdose Prevention Program;

(ii) establish the content of the training program, which meets the approval of the Department;

(iii) identify and train other program staff;

(iv) select and identify persons as Trained Overdose Responders;

(v) issue certificates of completion to Trained Overdose Responders who have completed the prescribed program;

(vi) maintain Opioid Overdose Prevention Program records including Trained Overdose Responder training records, Opioid Overdose Prevention Program usage records and inventories of Opioid Overdose Prevention Program supplies and materials;

(vii) ensure that all Trained Overdose Responders successfully complete all components of Opioid Overdose Prevention Training Program;

(viii) provide liaison with local emergency medical services and emergency dispatch agencies, where appropriate;

(ix) assist the Clinical Director with review of reports of all overdose responses, particularly those including opioid antagonist administration; and

(x) report all administrations of an opioid antagonist on forms prescribed by the Department.

(2) Each Opioid Overdose Prevention Program shall have a Clinical Director who is responsible for clinical oversight and liaison concerning medical issues related to the Opioid Overdose Prevention Program and, at a minimum, shall:

(i) provide clinical consultation, expertise, and oversight;

(ii) serve as a clinical advisor and liaison concerning medical issues related to the Opioid Overdose Prevention Program;

(iii) provide consultation to ensure that all Trained Overdose Responders are properly trained;

(iv) adapt and approve training program content and protocols; and

(v) review reports of all administrations of an opioid antagonist.

(3) The Trained Overdose Responders shall:

(i) complete an initial Opioid Overdose Prevention Training Program;

(ii) complete a refresher Opioid Overdose Prevention Training program at least every two (2) years;

(iii) contact the emergency medical system during any response to a victim of suspected drug overdose and advise if an opioid antagonist is being used;

(iv) comply with protocols for response to victims of suspected drug overdose; and

(v) report all responses to victims of suspected drug overdose to the Opioid Overdose Prevention Program Director.

(4) The opioid antagonist shall be dispensed to the Trained Overdose Responder in accordance with all applicable laws, rules and regulations.

(5) The Opioid Overdose Prevention Program will maintain and provide response supplies including: latex gloves, mask or other barrier for use during rescue breathing, and agent to prepare skin before injection.

(6) The Opioid Overdose Prevention Program will establish and maintain a recordkeeping system that will include, at a minimum, the following information:

(i) list of Trained Overdose Responders, including dates of completion of training;

(ii) a log of Opioid Overdose Prevention Trainings which have been conducted;

(iii) copies of program policies and procedures;

(iv) copy of the contract/agreement with the Clinical Director, if appropriate;

(v) opioid antagonist administration usage reports and forms; and

(vi) documentation of review of administration of an opioid antagonist.

(7) The Opioid Overdose Prevention Program will establish a procedure by which any administration of Opioid Antagonist to another individual by a Trained Overdose Responder affiliated with an Opioid

Overdose Prevention Program, shall be reported on forms prescribed by the Department.

(8) Approval obtained pursuant to this section shall consist of a certificate of approval provided by the Department that shall remain in effect for two years or until receipt by the authorized provider of a written notice of termination of the program from the Department, whichever shall first occur. The Department may renew a certificate of approval for a subsequent two-year period if the registered provider is in good standing with all applicable state and federal licensing agencies and such provider is found to have complied with the requirements of this section and has submitted a request for renewal.

(9) Pursuant to Public Health Law Section 3309(2) the purchase, acquisition, possession or use of an opioid antagonist by an Opioid Overdose Prevention Program or a Trained Overdose Responder in accordance with this section and the training provided by an authorized Opioid Overdose Prevention Program shall not constitute the unlawful practice of a professional or other violation under title eight of the education law or article 33 of the public health law.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-44-06-00005-P, Issue of November 1, 2006. The emergency rule will expire February 2, 2007.

**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:

Chapter 413 of the Laws of 2005 amended the Public Health Law to add a new Section 3309 to provide for opioid overdose prevention programs in New York State. Section 3309(1) authorizes the Commissioner of Health to establish standards for approval of opioid overdose prevention programs, including, but not limited to, standards for program directors, clinical oversight, training, recordkeeping and reporting. The effective date of Chapter 413 of the Laws of 2005 is April 1, 2006.

Legislative Objectives:

This legislation was enacted to reduce the incidence of fatal opioid overdoses by providing training to individuals to increase the likelihood that timely administration of life-saving medication will be provided on an emergency basis to individuals who experience accidental opioid drug overdoses.

Needs and Benefits:

Approximately half of all injection drug users (IDUs) experience at least one nonfatal overdose during their lifetime. According to the New York State (NYS) Office of Alcoholism and Substance Abuse Services (OASAS) estimates, there are approximately 171,500 IDUs in NYS. Overdose is a preventable cause of death in the majority of cases involving opioids. Opioids include heroin, morphine, codeine, methadone, oxycodone (Oxycontin, Percodan, Percocet), hydrocodone (Vicodin), fentanyl (Duragesic) and hydromorphone (Dilaudid). In an opioid overdose, the user becomes sedated and gradually loses the urge to breathe, leading to death from respiratory depression. Naloxone is an opioid receptor antagonist that can be used to reverse an opioid overdose within 1-2 minutes of administration. An untreated heroin overdose will result in death in 1-3 hours.

Although a comprehensive picture of the extent of opioid overdose in NYS does not yet exist, drug overdose is known to be a major cause of death among heroin users (Garfield and Drucker, 2001). Accidental fatal drug overdose continues to be a substantial cause of death. It has been one of the top ten causes of death in New York City (NYC) from 1993 to present (NYC Department of Health and Mental Hygiene, 2003). According to a study conducted by the New York Academy of Medicine, between 1990 and 1998 there were 5,506 accidental fatal overdoses in NYC involving opiates (Galea *et al.*, 2003). These reflected 74% of all accidental overdose deaths (7,451) in NYC during that period.

NYS Department of Health (NYSDOH) hospital data show that, during 1998-2004, there were 3,408 hospital discharges reflecting admissions for which heroin-overdose was a factor. Of these, 2,183 (64%) were in NYC. Another 25% were in the Syracuse, Rochester, Buffalo, Albany and Nassau-Suffolk regions.

The federal Substance Abuse and Mental Health Services Administration (SAMHSA) determined that the case rate for emergency department heroin admissions in NYC in 2002 was reported to be 123 per 100,000

population, which was more than three times the national rate of 36 per 100,000 (SAMHSA, March 2004). Between 1995 and 2002, heroin-related emergency department visits in Buffalo increased 125 percent (from 41 to 93 visits per 100,000 population with a 29 percent increase from 2001 to 2002 (from 72 visits) (SAMHSA, April 2004).

Most overdoses are not instantaneous and the majority of them are witnessed by others. Therefore, many overdose fatalities are preventable, especially if witnesses have had appropriate training and are prepared to respond in a safe and effective manner. Prevention measures include education on risk factors (such as polydrug use and recent abstinence), recognition of the overdose and an appropriate response. Response includes contacting emergency medical services (EMS) and providing resuscitation while awaiting the arrival of EMS. Resuscitation consists of rescue breathing, or if available, injectable naloxone which immediately reverses the effects of heroin overdose. Naloxone is an opioid antagonist with no abuse potential and no effect on a recipient who has not taken opioids. Provision of naloxone has been suggested for many years and is being offered in a variety of settings in jurisdictions outside of NYS. Complications of naloxone in the medical setting are rare. Naloxone is inexpensive (\$1.00-\$1.50) and there have been no cases in which it has developed a street value.

Opioid overdose prevention programs have proven effective in preventing unnecessary deaths abroad and elsewhere in the United States (US). In the US, opioid overdose prevention programs exist in New Mexico; Chicago, Illinois; Baltimore, Maryland; and San Francisco, California, for example, and programs are being planned elsewhere. A recently published evaluation of an opioid overdose prevention program in San Francisco showed that of the 20 heroin overdoses witnessed by trained program participants there were no deaths. (Seal *et al.*, 2005). As of August 2005, the New Mexico Department of Health had trained and provided naloxone to a total of 1,168 individuals. There were over 191 reports of lives saved, of which 185 involved administration of naloxone. Almost all administrations of naloxone were accompanied by rescue breathing and 5 lives were saved with rescue breathing alone. (Fiuty, P., personal communication, November 3, 2005). The Chicago Recovery Alliance has reported training over 4,500 individuals, with 374 reported reversals using naloxone, as of November 3, 2005. There has been a 30% overall decline in overdose related deaths reported in Cook County, Illinois (Carlberg, S. Personal communication, November 3, 2005). The Baltimore City Health Department has reported 888 persons trained, 101 reported reversals and over 20 persons placed into drug treatment. A 17% decrease in overdose deaths was observed from 2001 to 2002 (Rucker, M., personal communication, November 3, 2005).

The potential exists to achieve similar outcomes in NYS through the establishment of opioid overdose prevention programs. Potential providers that may register voluntarily with NYSDOH to offer such programs include health and human service providers serving IDUs (such as NYSDOH-approved syringe exchange programs and other community-based organizations, health care practitioners (specifically physicians, physician assistants and nurse practitioners), local health departments, health care facilities licensed by NYSDOH under Article 28 of the NYS Public Health Law and drug treatment programs licensed by the NYS Office of Alcoholism and Substance Abuse Services (OASAS) pursuant to the NYS Mental Hygiene Law).

The proposed rule, which is entirely within the legislative mandate of Section 3309 of the Public Health Law, is consistent with established models for opioid overdose prevention programs elsewhere. Common features of opioid overdose prevention programs operating elsewhere that have been incorporated into the proposed rule include: a Program Director who is responsible for managing the program and assuring that program participants receive adequate training; a Clinical Director who oversees clinical aspects; use of a curriculum that provides program participants with the necessary knowledge, skills and abilities to prevent fatal overdoses through administration of naloxone, use of rescue breathing and contacting emergency medical services; maintaining program records, such as those surrounding trainings offered, including issuance of certificates of completion to those who successfully complete the training; and collection of basic information about impact of the program in terms of incidents and lives saved.

The anticipated benefits under the proposed rule are: reduced incidence of fatal opioid overdoses, increased contact of IDUs with medical personnel, greater awareness of risk factors for overdose, increased knowledge of safer injection practices and an increased number of persons trained in rescue breathing. The creation of opioid overdose prevention programs

will not lead to increased drug use. Naloxone is not addictive and does not cause a "high." It has no potential for abuse or street value.

#### Costs:

Since this regulation allows providers to establish opioid overdose prevention programs, but does not require a provider to establish such a program, no provider will be required to incur costs as a result of the adoption of this regulation. Existing staff can serve as the Program Director and provide clinical oversight. No registration fee will be collected and the reporting requirements will be minimal. A one-time, registration process to receive a certificate of approval is required with review and renewal every two years. An internal operational policy and procedure and training of staff regarding program implementation will be required. Since it is expected that registration, recordkeeping and the development of policies, procedures and training materials will be done by existing staff, the costs of complying with this regulation will be minimal. Costs to the Department of Health are also expected to be minimal since the production and review of all documents will be done by existing staff.

#### Local Government Mandates:

This regulation does not impose any program, service, duty, or other responsibility on any county, city, town, village, school, fire district, or other special district except to the extent that such entities choose to provide opioid overdose prevention programs and, consequently, would be subject to the same requirements as all other providers.

#### Paperwork:

The NYSDOH anticipates a simple and streamlined registration process for seeking a certificate of approval to establish an opioid overdose prevention program. Additional recordkeeping requirements and reporting requirements will be minimal. Paperwork will include documentation of staff training, program policies and procedures, logs of training sessions offered and certificates of completion provided, inventories of program supplies and materials, reports of overdoses to which trained program participants have responded and reports to the Department. Only those providers voluntarily participating will be required to provide information to the Department.

#### Duplication:

The proposed regulation does not duplicate any existing state or federal law or regulation regarding opioid overdose prevention.

#### Alternatives:

The proposed regulation does not exceed the specific requirements of the legislation. Because offering an opioid overdose prevention program is voluntary, the regulation was designed to encourage eligible individuals and organizations to provide opioid overdose prevention services allowed under law and regulation. The registration process will be simple and the reporting and financial impact of establishing a voluntary opioid overdose prevention program will be minimal. Any other alternatives would require a more complex and more costly approach for both the NYSDOH and volunteer operators of opioid overdose prevention programs.

#### Federal Standards:

The rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

#### Compliance Schedule:

Each individual or organization that chooses to establish an opioid overdose prevention program must submit a registration form to the Department. Information will be distributed to eligible parties to allow implementation on April 1, 2006. Registration information will be used to develop a listing of opioid overdose prevention programs holding certificates of approval issued by the Department. Registration forms from those seeking to establish opioid overdose prevention programs will be accepted on a continuous basis, with review and renewal of certificates of approval taking place at two-year intervals.

#### Regulatory Flexibility Analysis

##### Effect of Rule:

The proposed rule will have no impact on small businesses unless such businesses voluntarily decide to operate an Opioid Overdose Prevention Program. The types of businesses that could be affected include hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local governments (health departments). In New York State there are 7 hospitals, 245 clinics, 1,164 drug treatment programs, an unknown number of community-based organizations and 36 county health departments that are considered small businesses.

##### Compliance Requirements:

Under the proposed rule, hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments that elect to establish opioid overdose prevention programs will report aggregate data on forms prescribed by the NYSDOH. Providers

must have a Program Director who is responsible for managing the program and assuring that program participants receive adequate training; a Clinical Director who oversees clinical aspects; use of a curriculum that provides program participants with the necessary knowledge, skills and abilities to prevent fatal overdoses through administration of naloxone, use of rescue breathing and contacting emergency medical services; maintaining program records, such as those surrounding trainings offered, including issuance of certificates of completion to those who successfully complete the training; and collection of basic information about impact of the program in terms of incidents and lives saved.

Programs must also keep records including but not limited to documentation of staff training, program policies and procedures, logs of training sessions offered and certificates of completion provided, inventories of program supplies and materials, reports of overdoses to which trained program participants have responded and reports to the Department. Aside from simple reporting of certain easy-to-collect data, no new requirements are mandated.

#### Professional Services:

No additional professional services will be required since providers and others will be able to utilize existing staff.

#### Compliance Costs:

Since this regulation allows providers to establish opioid overdose prevention programs, but does not require a provider to establish such a program, no provider will be required to incur costs as a result of the adoption of this regulation. Existing staff can serve as the Program Director and provide clinical oversight. No registration fee will be collected and the reporting requirements will be minimal. A one-time, registration process to receive a certificate of approval is required with review and renewal every two years. An internal operational policy and procedure and training of staff regarding program implementation will be required. Since it is expected that registration, recordkeeping and the development of policies, procedures and training materials will be done by existing staff, the costs of complying with this regulation will be minimal. Costs to the Department of Health are also expected to be minimal since the production and review of all documents will be done by existing staff.

#### Economic and Technological Feasibility:

Most health care facilities, health care practitioners, drug treatment programs, community-based organizations and local health departments that are eligible to offer opioid overdose prevention programs have the capacity and expertise to carry out the necessary activities. Small businesses that opt to voluntarily offer opioid overdose prevention programs will be provided with necessary forms and instructions to register and comply with reporting requirements. In large part, these forms and instructions are being/will be developed with specific input from regulated parties and NYSDOH staff are being made available to provide instructions and technical assistance.

#### Minimizing Adverse Impact:

There are no alternatives to the proposed recordkeeping and reporting requirements due to the need for the NYSDOH to assure that registered providers holding certificates of approval to operate opioid overdose prevention programs conduct activities in a safe and effective manner. Reporting requirements are those minimally necessary for the Department to coordinate oversight and provide information to the Governor and the Legislature as required by Section 3309(4) of the Public Health Law.

#### Small Business and Local Government Participation:

The regulations are minimal and consultation on program implementation will take place prior to the April 1, 2006 effective date of the law, and beyond. Small businesses (hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments) will have opportunities to review and comment on the proposed regulations. The NYSDOH has already begun to have conversations with providers interested in offering this service that are small businesses and local health departments and has consulted with representatives of opioid overdose prevention programs already operating in other states that are offered by small businesses and local health departments.

NYSDOH staff will consult with statewide organizations representing hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments. Examples include the Hospital Association of NYS, Greater New York Hospital Association, Community Health Center Association of NYS (CHCANYS), Medical Society of the State of New York, New York Academy of Medicine, Harm Reduction Coalition, NYSDOH-approved syringe exchange programs, New York AIDS Coalition, and the NYS Association of County Health Officials (NYSACHO). The proposed regulation will be discussed at meetings of the NYS AIDS Advisory Council and the NYS

HIV Prevention Planning Group (PPG), both of which include representatives from a variety of types of organizations.

The NYSDOH has considered all comments received in this process in development of the proposed rule. Additional comments are being sought and will be considered.

#### Rural Area Flexibility Analysis

##### Types and Estimated Number of Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. There are 44 counties in NYS with a population less than 200,000. Nine counties have certain townships with population densities of 150 persons or less per square mile. The proposed rule will have no impact on hospitals, clinics, health care practitioners, drug treatment programs and local governments in these rural areas, unless such providers voluntarily decide to operate opioid overdose prevention programs.

Hospital, clinic, health care practitioner, drug treatment program, community-based organization and local health department participation in making opioid overdose prevention programs available will be on a voluntary basis and potential providers will make individual decisions regarding participation. Potential providers are most likely to be located in urban or suburban, not rural, areas. For example, NYSDOH SPARCS data show 3,408 hospital discharges for admissions related to opioid overdose during 1998-2002. Of these, 2,183 (64%) were in NYC. Another 25% were in the Syracuse, Rochester, Buffalo, Albany and Nassau-Suffolk regions. Similarly, OASAS county-level estimates of treatment need show that the greatest need for opioid overdose prevention programs is in urban or suburban areas (OASAS, 2004 County Resource Book, Volume 1. Service Need and Utilization Data, Table 2).

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

The NYSDOH anticipates a simple and streamlined registration process for seeking a certificate of approval to establish an opioid overdose prevention program. Additional recordkeeping requirements and reporting requirements will be minimal. Paperwork will include documentation of staff training, program policies and procedures, logs of training sessions offered and certificates of completion provided, inventories of program supplies and materials, reports of overdoses to which trained program participants have responded and reports to the Department. Only those providers voluntarily participating will be required to provide information to the Department.

##### Costs:

Since this regulation allows providers to establish opioid overdose prevention programs, but does not require a provider to establish such a program, no provider will be required to incur costs as a result of the adoption of this regulation. Existing staff can serve as the Program Director and provide clinical oversight. No registration fee will be collected and the reporting requirements will be minimal. A one-time, registration process to receive a certificate of approval is required with review and renewal every two years. An internal operational policy and procedure and training of staff regarding program implementation will be required. Since it is expected that registration, recordkeeping and the development of policies, procedures and training materials will be done by existing staff, the costs of complying with this regulation will be minimal. Costs to the Department of Health are also expected to be minimal since the production and review of all documents will be done by existing staff.

##### Minimizing Adverse Impact:

The program is designed to minimize impact on those who will participate: participation is voluntary, the registration process will be simple, no fee will be charged, and recordkeeping requirements will be minimal.

The new opioid overdose prevention programs will build upon already-existing programs and services for IDUs - - through hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments. The NYSDOH will maintain and make available a list of registered programs holding certificates of approval.

##### Rural Area Participation:

The regulations are minimal and consultation on program implementation will take place prior to the April 1, 2006 effective date of the law, and beyond. Hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments in rural areas will have opportunities to review and comment on the proposed regulations. The NYSDOH has already consulted with representatives of opioid overdose prevention programs already operating in rural areas of other states.

NYSDOH staff will consult with statewide organizations representing hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments. Examples include the Hospital Association of NYS, Greater New York Hospital Association, Community Health Center Association of NYS (CHCANYS), Medical Society of the State of New York, New York Academy of Medicine, Harm Reduction Coalition, NYSDOH-approved syringe exchange programs, New York AIDS Coalition, and the NYS Association of County Health Officials (NYSACHO). The proposed regulation will be discussed at meetings of the NYS AIDS Advisory Council and the NYS HIV Prevention Planning Group (PPG), both of which include representatives from a variety of types of organizations.

The NYSDOH has considered all comments received in this process in development of the proposed rule. Additional comments are being sought and will be considered.

#### **Job Impact Statement**

A Job Impact Statement is not required. The proposed rule will not have a substantial adverse impact on jobs and employment opportunities based upon its nature and purpose.

## **EMERGENCY RULE MAKING**

### **Criminal History Record Check**

**I.D. No.** 1439

**Filing No.** HLT-51-06-00001-E

**Filing date:** Nov. 29, 2006

**Effective date:** Nov. 29, 2006

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

**Action taken:** Addition of Part 402 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 899-a(4); and Executive Law, section 845-b(12)

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** Emergency agency action is necessary for preservation of the public health, public safety and general welfare.

The regulation is needed on an emergency basis to implement the Department of Health's statutory duty to act on requests for criminal history record checks which are required by law. The law is intended to protect patients, residents, and clients of nursing homes and home health care providers from risk of abuse or being victims of criminal activity. These regulations are necessary to implement the law as of its effective date so that the Department of Health can fulfill its statutory duty of ensuring that the health, safety and welfare of such patients, residents and clients are not unnecessarily at risk.

**Subject:** Criminal history record check.

**Purpose:** To implement chapter 769 of the Laws of 2005 and a chapter of the Laws of 2006 (S. 6630) by requiring nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs to request criminal background checks of certain prospective employees.

**Substance of emergency rule:** This regulation adds a new Part 402 to Title 10 NYCRR.

Chapter 769 of the Laws of 2005, as amended by Chapter 331 of the Laws of 2006, imposed the requirement of criminal history record checks commencing September 1, 2006 for each prospective unlicensed employee of nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs who will provide direct care or supervision to patients, residents or clients of such providers. The purpose of this legislation was to enable such providers to identify appropriate individuals to staff their facilities and programs, through a review of both State and federal criminal history information.

The legislation requires the State Department of Health to promulgate regulations that establish standards and procedures for the criminal history record checks required by the statute. Accordingly, these regulations establish provisions governing the procedures by which fingerprints will be obtained, and describe the requirements and responsibilities of the Department and the aforementioned providers with regard to this process.

The proposed rule also describes the extent to which reimbursement is available to such providers to cover costs associated with criminal history

record checks and obtaining the fingerprints necessary to obtain the criminal history record check.

**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 February 26, 2007.

**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 2899-a(4) of the Public Health Law requires the State Commissioner of Health to promulgate regulations implementing new Article 28-E of the Public Health Law which requires all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs ("the providers") to request, through the Department of Health ("the Department"), a criminal history record check for certain unlicensed prospective employees of such providers.

Subdivision (12) of section 845-b of the Executive Law requires the Department to promulgate rules and regulations necessary to implement criminal history information requests.

Legislative Objectives:

Chapter 769 of the Laws of 2005 and Chapter 331 of the Laws of 2006 establish a requirement for all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs to obtain criminal history record checks of certain unlicensed prospective employees who will provide direct care or supervision to patients, residents or clients of such providers. This is intended to enable such providers to identify and employ appropriate individuals to staff their facilities and programs and to ensure patient safety and security.

Needs and Benefits:

New York State has the responsibility to ensure the safety of its most vulnerable citizens who may be unable to protect and defend themselves from abuse or mistreatment at the hands of the very persons charged with providing care to them. While the majority of unlicensed employees in all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs are dedicated, compassionate workers who provide quality care, there are cases in which criminal activity and patient abuse by such employees has occurred. While this proposal will not eliminate all instances of abuse, it will eliminate many of the opportunities for individuals with a criminal record to provide direct care or supervision to those most at risk. Pursuant to Chapter 769 of the Laws of 2005 and Chapter 331 of the Laws of 2006 ("the Chapter Laws"), this proposal requires the providers to request the Department to obtain criminal history information from the Division of Criminal Justice Services ("the Division") and a national criminal history check from the FBI, concerning each prospective unlicensed employee who will provide direct care or supervision to the provider's patients, residents or clients.

Each provider subject to these requirements must designate one or more "authorized persons" who will be empowered to request, receive, and review this information. Before a prospective unlicensed employee who will provide direct care or supervision to patients, residents or clients can be permanently hired, he or she must consent to having his/her fingerprints taken and a criminal history record check performed. The fingerprints will be taken and sent to the Department, which will then submit them to the Division. The Division will provide criminal history information for each person back to the Department.

The Department will then review the information and will advise the provider whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the Department disapproves the prospective employee's eligibility for employment, (e.g., the person has a felony conviction for a sex offense or a violent felony or for any crime specifically listed in section 845-B of the Executive Law and relevant to the prospective unlicensed employees of such providers). In some cases, a person may have a criminal background that does not rise to the level where the Department will disapprove eligibility for employment. The proposed regulations allow the provider, in such cases, to obtain sufficient information to enable it to make its own determination as to whether or not to employ such person. There will also be instances in which the criminal history information reveals a felony charge without a final disposition. In those cases, the Department will hold the application in abeyance until the charge is resolved. The prospective employee can be

temporarily hired but not to provide direct care or supervision to patients, residents or clients of such providers.

The proposal implements the statutory requirement of affording the individual an opportunity to explain, in writing, why his or her eligibility for employment should not be disapproved before the Department can finally inform a provider that it disapproves eligibility for employment. If the Department maintains its determination to disapprove eligibility for employment, the provider must notify the person that the criminal history information is the basis for the disapproval of employment.

The proposed regulations establish certain responsibilities of providers in implementing the criminal history record review required by the law. For example, a provider must notify the Department when an individual for whom a criminal history has been sought is no longer subject to such check. Providers also must ensure that prospective employees who will be subject to the criminal history record check are notified of the provider's right to request his/her criminal history information, and that he or she has the right to obtain, review, and seek correction of such information in accordance with regulations of the Division, as well as with the FBI with regard to federal criminal history information.

#### Costs:

##### Costs to State Government:

The Department estimates that the new requirements will result in approximately 108,000 submissions for a criminal history record check on an annual basis. This number of submissions for an initial criminal history record check will decrease overtime as the criminal history record check database (CHRC) is populated. The Department will allow providers to access any prior Department determination about a prospective employee at such time as the prospective employee presents himself or herself to such provider for employment. In the event that the prospective employee has a permanent record already on file with the Department, this information will be made available promptly to the provider who intends to hire such prospective employee.

The provider will forward with the request for the criminal history review, \$75 to cover the projected fee established by the Division for processing a State criminal history record check and a \$24 fee for a national criminal history record check. The Department estimates that the provider's administrative costs for obtaining the fingerprints will be \$13.00 per print. The total annual cost to providers is estimated to be approximately \$12 million.

Requests by licensed home care services agencies (LHCSAs) are estimated to constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual cost to LHCSAs is estimated to be approximately \$6 million. Reimbursement shall be made available to LHCSAs in an equitable and direct manner for the above fees and costs subject to funds being appropriated by the State Legislature in any given fiscal year for this purpose. Costs to State government will be determined by the extent of the appropriations.

The Department estimates that nursing homes, certified home health agencies and long term home health care programs will constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual costs to nursing homes, certified home health agencies and long term home health care programs is estimated to be approximately \$6 million. These providers may, subject to federal financial participation, claim the above fees and costs as reimbursable costs under the medical assistance program (Medicaid) and may recover the Medicaid percent of such fees and costs. Reimbursement to such providers will be determined by the percent of Medicaid days of care to total days of care. Therefore, approximately \$6 million of the total costs for these providers will be subject to a 50 percent federal share and approximately \$2.3 million will be borne entirely by the State.

##### Costs to Local Governments:

There will be no costs to local governments for reimbursement of the costs of the criminal history record check paid by LHCSAs. LHCSAs will receive reimbursement from the State subject to an appropriation (See "Costs to State Government").

Costs to local governments for reimbursement of the costs of the criminal history record check paid by nursing homes, certified home health agencies, and long term home health care programs will be the local government share of Medicaid reimbursement to such providers which is estimated to be annual additional cost to local governments of approximately \$700,000 (See "Costs to State Government").

##### Costs to Private Regulated Parties:

Costs to LHCSAs will be determined by the extent of annual appropriations by the State Legislature (See "Costs to State Government").

Costs to nursing homes, certified home health agencies and long term home health care programs will be determined by their Medicaid percentage of total costs (See "Costs to State Government").

##### Costs to the Department of Health:

Estimated start-up costs for the Department of Health which includes the purchase of equipment, activities and systems and staffing costs are approximately \$2.8 million.

##### Local Government Mandates:

The required criminal history record check is a statutory requirement, which does not impose any new or additional duties or responsibilities upon county, city, town, village, school or fire districts. The Chapter Laws state that they supercede any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

##### Paperwork:

Chapter 769 of the Laws of 2005 and Chapter 331 of the Laws of 2006 require that new forms be developed for use in the process of requesting criminal history record information. The forms are, for example, an informed consent form to be completed by the subject party and the request form to be completed by the authorized person designated by the provider. Temporarily approved employees are required to complete an attestation regarding incidents/abuse. Provider supervision of temporary employees must be documented. In addition, other forms will be required by the department such as a form to designate an authorized party or forms to be completed when someone who has had a criminal history record check is no longer subject to the check.

The regulations also contain a requirement to keep a current roster of subject parties.

##### Duplication:

This regulatory amendment does not duplicate existing State or federal requirements. The Chapter Laws state that they supercede and apply in lieu of any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

##### Alternatives:

No significant alternatives are available. The Department is required by the Chapter Laws to promulgate implementing regulations.

##### Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

##### Compliance Schedule:

The Chapter Laws mandate that the providers request criminal history record checks for certain unlicensed prospective employees on and after September 1, 2006. These regulations are proposed to be effective upon filing with the Secretary of State.

#### **Regulatory Flexibility Analysis**

##### Effect of Rule on Small Businesses and Local Governments:

For the purpose of this Regulatory Flexibility Analysis, small businesses are considered any nursing home or home care agency within New York state which is independently owned and operated, and employs 100 individuals or less. Approximately 100 nursing homes and 200 home care services agencies would therefore be considered "small businesses," and would be subject to this regulation.

For purposes of this regulatory flexibility analysis, small businesses were considered to be long term home health care programs with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the long term home health care program cost report 77 out of 110 long term home health care programs were identified as employing fewer than 100 employees. Twenty-eight local governments have been identified as operating long term home health care programs.

##### Compliance Requirements:

Providers must, by statute, on and after September 1, 2006, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform prospective unlicensed employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State and the FBI. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not the prospective employee's eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

##### Professional Services:

No additional professional services will be required by small businesses or local governments to comply with this rule.

**Compliance Costs:**

For programs eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers (See "Regulatory Impact Statement - Costs to State Government").

For LHCSAs which are unable to access reimbursement from state and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to an appropriation by the State Legislature (See "Regulatory Impact Statement - Costs to State Government").

There will be costs to local governments only to the extent such local governments are providers subject to the regulations.

**Economic and Technological Feasibility:**

The proposed regulations do not impose on regulated parties the use of any technological processes. Fingerprints will be taken generally by the traditional "ink and roll" process. Under the "ink and roll" method, a trained individual rolls a person's fingers in ink and then manually places the fingers on a card to leave an ink print. The card would then need to be mailed to the Division by the Department. However, before the Department could submit the card, demographic information would need to be filled in on the card (such as the person's name, address, etc.) into the Department databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint card is difficult to read.

The Department hopes to move in the future to Live Scan. Live Scan is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Department to obtain criminal history information.

**Minimizing Adverse Impact:**

The Department considered the approaches for minimizing adverse economic impact listed in SAPA Section 202-b(1) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

**Small Businesses and Local Government Participation:**

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments were solicited from all affected parties. Informational briefings were held with such associations. There will be informational letters to providers prior to the effective date of the regulations.

**Rural Area Flexibility Analysis**

Effect of Rule: Rural areas are defined as counties with a population less than 200,000 and, for counties with a population of greater than 200,000 includes towns with population densities of 150 persons or less per square mile. The following 42 counties have a population less than 200,000.

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chemung	Livingston	Seneca
Chenango	Madison	Steuben
Clinton	Montgomery	Sullivan
Columbia	Ontario	Tioga
Cortland	Orleans	Tompkins
Delaware	Oswego	Ulster
Essex	Otsego	Warren
Franklin	Putnam	Washington
Fulton	Rensselaer	Wayne
Genesee	St. Lawrence	Wyoming
Greene	Saratoga	Yates

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

**Reporting, Recordkeeping and Other Compliance Requirements:**

Providers, including those in rural areas, must, by statute, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform covered unlicensed prospective employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be necessary to comply with the proposed regulations.

**Professional Services:**

No additional professional services will be necessary to comply with the proposed regulations.

**Compliance Costs:**

For programs located in rural areas eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers. (See "Regulatory Impact Statement - Costs to State Government").

For LHCSAs located in rural areas which are unable to access reimbursement from state/and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to appropriation by the State Legislature. (See "Regulatory Impact Statement - Costs to State Government").

**Minimizing Adverse Impact:**

The Department considered the approaches for minimizing adverse economic impact listed in SAPA section 202-bb (2) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

**Rural Area Participation:**

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments solicited from all affected parties. Such associations include members from rural areas. Informational briefings were held with such associations. There will be informational letters to providers to include rural area providers prior to the effective date of the regulations.

**Job Impact Statement**

A Job Impact statement is not necessary for this filing. Proposed new 10 NYCRR Part 402 will not have any adverse impact on the existing unlicensed employees of providers as they apply only to future prospective unlicensed employees hired or used on or after September 1, 2006. It is anticipated that the number of all future prospective unlicensed employees of providers who provide direct care or supervision to patients, residents or clients will be reduced to the degree that the criminal history record check reveals a criminal record barring such employment.

**NOTICE OF WITHDRAWAL**

**Continuing Day Treatment Utilization Threshold Program**

**I.D. No.** HLT-39-06-00005-W

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

**Action taken:** Notice of proposed rule making, I.D. No. HLT-39-06-00005-P has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on September 27, 2006.

**Subject:** Continuing Day Treatment Utilization Threshold Program inclusion.

**Reason(s) for withdrawal of the proposed rule:** The DOH and the Office of Medicaid Management are pursuing other initiatives and the adoption of these computer system changes would be too lengthy and too costly.

**NOTICE OF ADOPTION**

**Self Attestation of Resources for Medicaid Applicants and Recipients**

**I.D. No.** HLT-41-06-00026-A

**Filing No.** 1453

**Filing date:** Dec. 5, 2006

**Effective date:** Dec. 20, 2006

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

**Action taken:** Amendment of section 360-2.3(c)(3) of Title 10 NYCRR.

**Statutory authority:** Social Services Law, section 366-a(2)

**Subject:** Self attestation of resources for Medicaid applicants and recipients.

**Purpose:** To allow an applicant or recipient to attest to the amount of his or her resources unless the applicant or recipient is seeking Medicaid payment for long-term care services.

**Text or summary was published** in the notice of proposed rule making, I.D. No. HLT-41-06-00026-P, Issue of October 11, 2006.

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

**Text of 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

**Assessment of Public Comment**

The agency received no public comment.

## Office of Homeland Security

### NOTICE OF ADOPTION

**Public Access to Records**

**I.D. No.** HLS-30-06-00002-A

**Filing No.** 1441

**Filing date:** Nov. 30, 2006

**Effective date:** Dec. 20, 2006

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

**Action taken:** Addition of Part 10025 to Title 9 NYCRR.

**Statutory authority:** Public Officers Law, art. 6, section 87(1)(b) and Executive Law, art. 26, section 709(2)(n)

**Subject:** Public access for the records of the Office of Homeland Security.

**Purpose:** To provide a procedure by which the public can access records of the Office of Homeland Security.

**Text or summary was published** in the notice of proposed rule making, I.D. No. HLS-30-06-00002-P, Issue of July 26, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** James R. Clark, Office of Homeland Security, State Campus, 1220 Washington Ave., Bldg. 7A, 6th Fl., Albany, NY 12242, (518) 402-2227, e-mail: jclark@security.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## Industrial Board of Appeals

### NOTICE OF ADOPTION

**Subpoenas**

**I.D. No.** IBA-41-06-00003-A

**Filing No.** 1446

**Filing date:** Dec. 4, 2006

**Effective date:** Dec. 20, 2006

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

**Action taken:** Amendment of section 65.20 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Subpoenas.

**Purpose:** To make the rule more closely reflect the statute, reducing the possibility of a party being taken by surprise if they try to enforce a subpoena.

**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-41-06-00003-P, Issue of October 11, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## Insurance Department

### NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Insurance Department publishes a new notice of proposed rule making in the *NYS Register*.

**Reinsurance Credit From Unauthorized Insurers**

I.D. No.	Proposed	Expiration Date
INS-48-05-00001-P	November 30, 2005	November 30, 2006

## Office of Mental Health

### EMERGENCY RULE MAKING

**Criminal History Record Review of Certain Prospective Employees**

**I.D. No.** OMH-51-06-00015-E

**Filing No.** 1451

**Filing date:** Dec. 5, 2006

**Effective date:** Dec. 5, 2006

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

**Action taken:** Addition of Part 550 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09, 31.35; and Executive Law, section 845-b(h)(12)

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** This regulation is needed to implement OMH's statutory duty to facilitate requests for criminal background record checks, which are required by law as of 4/1/05. This law is intended to protect mental health clients from risk of abuse or being victims of criminal activity. The regulations are necessary to implement the law as of its effective date so that we can fulfill our statutory imposed duty of ensuring the health, safety, and welfare of clients are not unreasonably placed at risk.

**Subject:** Criminal history record review of certain prospective employees and volunteers of providers of mental health services, and natural operators of such providers, licensed or otherwise approved by OMH.

**Purpose:** To require prospective employees and volunteers of providers of mental health services who will have regular and substantial unrestricted or unsupervised physical contact with clients, and natural person operators of providers of services, to undergo criminal history record checks.

**Substance of emergency rule:** Chapter 643 of the Laws of 2003, as amended by Chapter 575 of the Laws of 2004, imposed the requirement of criminal history record checks on each prospective operator, employee, or volunteer of certain mental health treatment providers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such providers. The purpose of this legislation was to enable

providers of services for persons with mental illness to secure appropriate and properly trained individuals to staff their facilities and programs, by verifying criminal history information received from individuals seeking employment or volunteering their services.

The legislation requires the Office of Mental Health to promulgate regulations that establish standards and procedures for the criminal history record checks contemplated in the statute. Accordingly, these regulations would establish provisions governing the procedures by which fingerprints will be obtained, and outlining the requirements and responsibilities on both the part of the Office and providers of services with regard to this process.

**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 March 4, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** Julie Anne Rodak, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 474-1331, e-mail: colejar@omh.state.ny.us

#### **Regulatory Impact Statement**

##### 1. Statutory Authority:

Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 31.35 of the Mental Hygiene Law provides that each provider of mental health services subject to its requirements must request, through the Office of Mental Health, a criminal history background check for each prospective operator, employee, or volunteer of such provider of services.

Subdivision (12) of Section 845-b of the Executive Law requires the Office of Mental Health to promulgate rules and regulations necessary to implement criminal history information requests.

##### 2. Legislative Objectives:

Chapter 643 of the Laws of 2003 established a requirement for certain providers of mental health services to obtain criminal background checks of prospective employees and volunteers who would have regular and substantial unsupervised or unrestricted contact with clients of such provider. Chapter 575 of the Laws of 2004 amended this law and required the Office of Mental Health to promulgate any rules or regulations necessary to implement the provisions of Section 31.35 of the Mental Hygiene Law. These regulations are intended to fulfill this requirement.

##### 3. Needs and Benefits:

New York State has the responsibility to ensure the safety of its most vulnerable citizens who may be unable to protect and defend themselves from abuse or mistreatment at the hands of the very persons charged with providing care to them. While the majority of employees and volunteers in mental health programs are dedicated, compassionate workers who provide quality care, there are cases where criminal activity and patient abuse take place at the very programs that are intended to help persons with mental illness seek recovery. While this proposal will not eliminate all instances of abuse in mental health programs it will eliminate many of the opportunities for individuals with a criminal record to be alone with those most at risk. Pursuant to Chapter 575 of the laws of 2004, this proposal requires providers of mental health services, including those that are licensed, who contract with, or who are otherwise approved by the Office of Mental Health, to request the Office to obtain criminal history information from the Division of Criminal Justice Services concerning each prospective employee or volunteer who will have regular and substantial unsupervised or unrestricted contact with the providers' clients. Prospective licensed operators of mental health services will be required to have a criminal background check through this process as well.

Each provider subject to these requirements must designate one or more "authorized persons" who will be empowered to request, receive, and review this information. Before a prospective employee or volunteer who will have regular, unsupervised client contact can be permanently hired or retained, he or she must consent to having his/her fingerprints taken and a criminal history check performed. The fingerprints will be taken by an Office of Mental Health-designated fingerprinting entity and sent to the Office, who will then submit them to the Division of Criminal Justice Services. The Division will provide criminal history information for each person back to the Office. Prospective licensed operators of mental health services must follow the same process.

The Office of Mental Health will then review the information and will advise the provider whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the person cannot be hired or retained, (e.g., the person has a felony conviction for a sex

offense or a violent felony). In some cases, a person may have a criminal background that does not rise to the level where the Office will require employment of the person to be terminated. The proposed regulations allow the provider to obtain sufficient information to enable it to make its own determination as to whether or not to employ or retain such person. There will also be instances in which the criminal history information reveals an arrest or felony charges without a final disposition. In those cases, the Office will, in accordance with Chapter 575, hold the application in abeyance until the charge is resolved.

Before the Office can advise a provider that it intends to require that the employee or volunteer be terminated or not hired/retained, the proposal carries forth the statutory requirement of affording the individual an opportunity to explain, in writing, why his or her application should not be denied. If the Office nonetheless maintains its determination to advise the provider to terminate the employee or volunteer, the provider must notify the person that this criminal history information is the basis for the denial of employment or service.

The proposed regulation establishes certain responsibilities of providers in implementing the criminal record review required by Chapter 575. For example, a provider must notify the Office when an individual for whom a criminal history has been sought is no longer subject to such check. Providers must also ensure that prospective employees or volunteers who will be subject to the criminal background check are notified of the provider's right to request his/her criminal history information, and that he or she has the right to obtain, review, and seek correction of such information in accordance with regulations of the Division of Criminal Justice Services.

##### 4. Costs:

The proposed regulations implement a system that will require providers of services licensed, funded, or approved by the Office of Mental Health to obtain all information from a prospective employee or volunteer necessary for the purpose of initiating a criminal history record check. While the statute does not require all new employees to be fingerprinted, for purposes of systems design, the Office has estimated that the average annual "turnover" rate for full time employees at 30%. In all catchment areas, the total estimate of annual hires is 10,514 full time equivalent employees, and 2,390 full time equivalent volunteers. The Office has created a Criminal History Information Tracking System (CHITS), which is a web-based system designed to enter applicant information and track the status of the fingerprinting process. Because only a minimum amount of data elements must be input into the system, it intended to reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. There is also a statutory fee of \$75 to obtain a criminal history record check from the Division of Criminal Justice Services; however, this amount will be fully borne by the Office of Mental Health. At an estimated number of 15,000 fingerprint requests per year, annual cost of this fee for the Office is approximately \$1,125,000.00.

Estimated start-up costs to the Office of Mental Health, which include the purchase of LiveScan technology and supporting equipment, activities, and systems, and staffing costs, are approximately \$900,000.

##### 5. Local Government Mandates:

The required criminal history record check is a statutory requirement, which does not impose any new or additional duties or responsibilities upon county, city, town, village, school or fire districts.

##### 6. Paperwork:

In order to assist providers in fulfilling their responsibilities in implementing Chapter 575 of the Laws of 2004, the Office has created a Criminal History Information Tracking System (CHITS), which is a web-based system designed to enter applicant information and track the status of the fingerprinting process. Because only a minimum amount of data elements must be input into the system, and the system is designed to generate the two forms mandated in the statute (an informed consent form and a request form), it intended to reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. Aside from record retention requirements necessary for monitoring compliance, the regulatory amendment will not require providers of service to furnish additional information, reports, records, or data.

##### 7. Duplication:

The regulatory amendment does not duplicate existing State or federal requirements. It should be noted that the Office of Mental Retardation and Developmental Disabilities (OMRDD) has a similar statutory requirement and is promulgating its own regulations on this subject, as required via Chapter 575. In terms of technology, OMH and OMRDD hope to integrate systems at a later date to arrive at a single technology solution. In anticipation of that effort, OMRDD and OMH have selected the same vendor,

which was already under contract to provide a LiveScan solution for a joint project between other state agencies. To facilitate future integration, a common, consistent hardware and software platform was purchased by OMH and OMRDD. Preliminary discussions to identify a partnership strategy with OMRDD have begun.

#### 8. Alternatives:

The only alternative to the regulatory amendments which was considered was inaction, which is not advisable as the Office of Mental Health is required by Chapter 575 of the Laws of 2004 to promulgate implementing regulations.

#### 9. Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

#### 10. Compliance Schedule:

These regulations will be effective immediately. Providers have been required to be in compliance with the substance of these regulations since April of 2005, via previous emergency adoptions.

### **Regulatory Flexibility Analysis**

#### 1. Effect of Rule:

A total of roughly 720 agencies operate mental health programs that are licensed or funded by the Office of Mental Health (OMH) in New York State would be subject to this regulation, some of which would be considered "small businesses." In addition, local governments that operate mental health service providers subject to approval or authorization of OMH will be required to comply with the statute and these regulations. While Chapter 575 of the Laws of 2004 does not require all new employees to be fingerprinted (only those prospective employees or volunteers who will have "regular and substantial unsupervised or unrestricted contact with clients"), for purposes of systems design, the Office has estimated that the average annual "turnover" rate for full time employees at 30%. In all catchment areas, the total estimate of annual hires is 10,514 full time equivalent employees, and 2,390 full time equivalent volunteers, statewide.

#### 2. Compliance Requirements:

Providers of service that are subject to these requirements must, by statute, request criminal history information concerning prospective employees or volunteers who will have regular and substantial unsupervised or unrestricted contact with clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record information must be obtained through the Office of Mental Health, which will pay the \$75 fee to the Division of Criminal Justice Services for each history requested. Providers of service must inform prospective employees and volunteers of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees/volunteers cannot be hired before a determination is received from the Office of Mental Health about whether or not the application must be denied, providers can give temporary approval to prospective employees and permit them to work so long as they do not have unsupervised contact with clients.

#### 3. Professional Services:

No additional professional services will be required by small businesses or local governments to comply with this rule.

#### 4. Compliance Costs:

The direct cost of \$75 per criminal history record check request will be absorbed by the Office of Mental Health.

#### 5. Economic and Technological Feasibility:

The Office has created a Criminal History Information Tracking System (CHITS), which is a web-based system designed to enter applicant information and track the status of the fingerprinting process. Because only a minimum amount of data elements must be input into the system, it intended to reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. This technology will be accessible through existing computer networks. There may be a very small number of providers that do not have any computer from which they can access this technology; OMH will work with those providers either to identify a way to obtain such access or identify another alternative.

#### 6. Minimizing Adverse Impact:

Because most of the requirements in this proposal are statutorily required, compliance with them is mandatory. However, OMH has developed its compliance plan with the goal of minimizing adverse impact of compliance to the greatest extent possible. The Criminal History Information Tracking System is one example of a strategy intended to reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. Furthermore, OMH has endeavored to maximize its capa-

bility to have fingerprints taken electronically, through a system called LIVE SCAN. LIVE SCAN is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Division of Criminal Justice Services to obtain criminal history information. It has many advantages to the traditional "ink and roll" process.

Under the "ink and roll" method, a trained individual rolls a person's fingers in ink and then manually places the fingers on a card to leave an ink print. The card would then need to be mailed to the Division of Criminal Justice Services by OMH. However, before OMH could submit the card, demographic information would need to be filled in on the card (such as the person's name, address, etc.) into OMH databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint card is difficult to read.

With LIVE SCAN, a scanner and laptop computer are used rather than an ink pad and a paper card. Rather than rolling his fingers in ink, a person would lay his hand on top of a scanner screen. A real-time fingerprint preview is provided, so the person taking the print would know the quality of the print is acceptable before it can be sent to the Division of Criminal Justice Services. The information would then be automatically transmitted to the Division, eliminating the need to mail cards anywhere. Thus, the turnaround time for processing criminal history information is significantly less than under the "ink and roll" method.

While OMH's implementation plans will accommodate the ability to accept some fingerprints through the "ink and roll" method, our strategy is designed to utilize the LIVE SCAN technology to the greatest extent possible as of April 1, 2005.

#### 7. Small Business and Local Government Participation:

The Office of Mental Health (OMH) reached out to affected parties by posting information about Chapter 575 of the Laws of 2004 on its website in January and February, coupled with informational letters to the field. The draft regulations were widely shared (via posting on our website) and comments solicited from all affected parties. Informational briefings were provided regionally to trade groups. Per statute, the regulations were reviewed by members of the Mental Health Services Council and were subsequently approved.

### **Rural Area Flexibility Analysis**

#### 1. Effect of Rule:

A total of roughly 720 agencies operate mental health programs that are licensed or funded by the Office of Mental Health (OMH) in New York State would be subject to this regulation, some of which are located in rural areas. While Chapter 575 of the Laws of 2004 does not require all new employees to be fingerprinted (only those prospective employees or volunteers who will have "regular and substantial unsupervised or unrestricted contact with clients"), for purposes of systems design, the Office has estimated that the average annual "turnover" rate for full time employees at 30%. In all catchment areas, the total estimate of annual hires is 10,514 full time equivalent employees, and 2,390 full time equivalent volunteers, statewide.

#### 2. Reporting, Recordkeeping, and Other Compliance Requirements:

Providers of service that are subject to these requirements, including those in rural areas, must, by statute, request criminal history information concerning prospective employees or volunteers who will have regular and substantial unsupervised or unrestricted contact with clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record information must be obtained through the Office of Mental Health, which will pay the \$75 fee to the Division of Criminal Justice Services for each history requested. Providers of service must inform prospective employees and volunteers of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees/volunteers cannot be hired before a determination is received from the Office of Mental Health about whether or not the application must be denied, providers can give temporary approval to prospective employees and permit them to work so long as they do not have unsupervised contact with clients.

#### 3. Costs:

The direct cost of \$75 per criminal history record check request will be absorbed by the Office of Mental Health.

#### 4. Minimizing Adverse Impact:

Because most of the requirements in this proposal are statutorily required, compliance with them is mandatory. However, OMH has developed its compliance plan with the goal of minimizing adverse impact of compliance to the greatest extent possible. The Criminal History Information Tracking System (CHITS) is one example of a strategy intended to

reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. Furthermore, OMH has endeavored to maximize its capability to have fingerprints taken electronically, through a system called LIVE SCAN. LIVE SCAN is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Division of Criminal Justice Services to obtain criminal history information. It has many advantages to the traditional "ink and roll" process.

Under the "ink and roll" method, a trained individual rolls a person's fingers in ink and then manually places the fingers on a card to leave an ink print. The card would then need to be mailed to the Division of Criminal Justice Services by OMH. However, before OMH could submit the card, demographic information would need to be filled in on the card (such as the person's name, address, etc.) into OMH databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint card is difficult to read.

With LIVE SCAN, a scanner and laptop computer are used rather than an ink pad and a paper card. Rather than rolling his fingers in ink, a person would lay his hand on top of a scanner screen. A real-time fingerprint preview is provided, so the person taking the print would know the quality of the print is acceptable before it can be sent to the Division of Criminal Justice Services. The information would then be automatically transmitted to the Division, eliminating the need to mail cards anywhere. Thus, the turnaround time for processing criminal history information is significantly less than under the "ink and roll" method.

While OMH's implementation plans will accommodate the ability to accept some fingerprints through the "ink and roll" method, particularly in rural areas where access to State-operated LIVE SCAN machines may be more difficult, our strategy is designed to utilize the LIVE SCAN technology to the greatest extent possible as of April 1, 2005.

5. Rural Area Participation:

The Office of Mental Health (OMH) reached out to affected parties by posting information about Chapter 575 of the Laws of 2004 on its website in January and February, coupled with informational letters that were mailed to affected parties in the field. The draft regulations were widely shared (via posting on our website) and comments solicited from all affected parties. Informational briefings were provided regionally to trade groups. Per statute, the regulations were reviewed by members of the Mental Health Services Council and were subsequently approved.

**Job Impact Statement**

A Job Impact statement is not necessary for this filing. Proposed 14 NYCRR Part 550 should not have any adverse impact on the existing employees and volunteers of providers of mental health services as it applies only to future prospective employees and volunteers. It is anticipated that the number of all future prospective employees/volunteers of mental health providers of services who have regular and substantial unsupervised or unrestricted physical contact with clients will be reduced to the degree that the criminal history record check reveals a criminal record barring employment.

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## Nassau County Bridge Authority

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### NOTICE OF ADOPTION

**Toll Rates for Single Trips; Reduced Rate Cards and Commutation**

**I.D. No.** NBA-39-06-00027-A  
**Filing No.** 1442  
**Filing date:** Nov. 30, 2006  
**Effective date:** Jan. 1, 2007

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

**Action taken:** Amendment of sections 301.1 and 301.2 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, section 654(13)

**Subject:** Toll rates for single trips and reduced rate cards and commutation.

**Purpose:** To amend the existing toll schedule for the Atlantic Beach Bridge.

**Text of final rule:** Section 301.1 Toll Rates for single trip.

Toll rates established December 13, 1996, effective [January 1, 1997] *January 1, 2007* are as follows:

Classification	One-way rate
1. Vehicles under five tons registered weight, including passenger cars, commercial vehicles, taxicabs, motorcycles (with or without side-cars), trailers and motorized bicycles .....	[\$1.25] \$2.00
2. Vehicles, five tons or over registered weight, including auto trailers .....	[\$1.25] \$2.00 per axle
3. Buses, operating under franchise .....	[\$.25] \$0.50

Section 301.2 Reduced Rate [Books] *Pass Cards* and Commutations

(a) [40 Trip Book] *Nassau County Bridge Authority 20 trip pass card*, for use only by passenger vehicles or motorcycles under five tons registered weight, operated for non-commercial use and by taxicabs (extra [ticket] *pass card trip* valid for auto trailer attached) [Book of 40 single trip tickets] *20 trip pass card* valid for use only during the calendar year for which issued .....

(b) *Vehicles registered to an address within the confines of Nassau County*

Annual commutation decal (sticker) for use only by private passenger vehicle under five tons registered weight, operated for non-commercial use, and registered to an address within in the confines of Nassau County valid during the calendar of issue by the specific car for which issued and to which affixed, and only for passage through toll lanes designated for commutation decal (sticker) passage .....

(c) *Vehicles Registered in all other Areas Outside Confines of Nassau County.*

Annual Commutation Decal (sticker) for use by only Private Passenger Vehicle under five tons registered weight, operated for Non-commercial use and registered to an address in all other areas outside the confines of Nassau County valid during calendar year of issue by the specific car for which issued and to which affixed and only for passage through toll lanes designated for commutation decal (sticker) passage .....

[c] (d) Conditions. [Tickets are valid only when attached in the book in which they are issued.] There will be no refund or credit in the event of loss or theft of [ticket book or] annual commutation decal (sticker) or 20 trip pass card or for unused [or detached tickets] 20 trip pass card or discontinued use of the annual commutation decal (sticker).

[d] (e) The authority may permit toll-free passages for any persons for vehicles required to cross the bridge on official business as it shall determine proper in its discretion.

**Final rule as compared with last published rule:** This is a "rate making" as defined in SAPA § 102(2)(a)(ii). Substantial revisions were made in section 301.2(b) and (c).

**Text of rule and any required statements and analyses may be obtained from:** Morrey Vine, Nassau County Bridge Authority, P.O. Box 341, Lawrence, NY 11559, (516) 239-6900, e-mail: mvncba@optonline.net

**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.

**Assessment of Public Comment:**

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

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## New York State 911 Board

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### INFORMATION NOTICE

#### NOTICE OF ADOPTION OF MINIMUM STANDARDS

The New York State 911 Board is established pursuant to County Law § 326. The Board is charged with assisting local governments, service suppliers, wireless telephone service suppliers and appropriate state agencies by facilitating the most efficient and effective routing of wireless 911 emergency calls; developing minimum standards for public safety answering points; promoting the exchange of information, including emerging

technologies; and encouraging the use of best practice standards among the public safety answering point community. The Board is exempt from the requirements of the New York State Administrative Procedure Act, but is required to publish its proposed and final standards pursuant to the provisions of County Law § 327. This Notice is published pursuant to those provisions.

*Amendment to Minimum Standards Regarding Equipment, Facilities and Security for Public Safety Answering Points.* Summary. At its meeting of August 2, 2006, the Board proposed an amendment to its minimum standards regarding equipment, facilities and security for public safety answering points (PSAPs). The amendment clarifies the wording of the standard for the equipment capability of intelligent workstations (IWS). As originally adopted, the standard may appear to require that the PSAP has the option of being able to process either 10 digits of ANI information or 20 digits of ALI information. The amendment makes it clear that there is, in fact, no option: the PSAP must be capable of processing 10 digits of ANI as well as 20 digits of ALI. The Notice of Proposed Amendment was published in the August 23, 2006, issue of the Register. Following consideration of comment received during the required public comment period, the Board at its meeting of November 14, 2006, adopted the amendment as it appears in this Notice. The amendment as adopted is identical to that which was originally proposed.

For further information, contact Thomas J. Wutz, Chief, Fire Services Bureau, New York State Department of State, Office of Fire Prevention and Control, 41 State Street, 12th Floor, Albany NY 12231, phone: 518-474-6746.

Text of rule: Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Section § 5203.2(a), is amended to read as follows. Material deleted appears within brackets []; material added appears in italics:

§ 5203.2 Equipment.

(a) Intelligent Workstations (IWS).

(1) All PSAPs shall have the ability to integrate multiple systems (CAD, IWS, and Mapping) into one operational system.

(2) All PSAPs shall have the ability to accept and process 10 digits of ANI information [or] *and* 20 digits (10 ANI & 10 pANI) of ALI information.

possibility of water usage without charge. *An availability charge will be applied as set forth in the board schedule of rates to the account on a quarterly basis during the time the property remains vacant and the foregoing provisions are in effect.* A meter so removed will be replaced by the water board upon payment of an account re-establishment fee as set forth in the board schedule of rates, when the property is reoccupied. [No charge shall be made for water during the time that the property remains vacant provided that the foregoing provisions are fully complied with.]

Section 1950.20 is being amended to read as follows:

(a) This schedule sets forth the rates, fees and other charges applicable to the provision of water supply, wastewater and related services by the Niagara Falls Water Board to all property owners, users and other persons during the period January 1, 2007[6] through December 31, 2007[ 6] All property owners, users and other persons who receive services from the water board shall pay to the water board the rates, fees and charges set forth in this schedule.

(b) The following rates shall be charged and collected for the use of water within the city, supplied by the water board as hereby fixed and established:

First 20,000 cu. ft. per quarter, \$[2.52]2.66 per 100 cu. ft.  
 Next succeeding 60,000 cu. ft. per quarter, \$[2.19]2.31 per 100 cu. ft.  
 Next succeeding 120,000 cu. ft. per quarter, \$[1.86]1.96 per 100 cu. ft.  
 Over 200,000 cu. ft. per quarter, \$[1.54]1.62 per 100 cu. ft.

The minimum charge for water consumed in any premises within the city for any quarter or portion thereof shall not be less than \$[32.76]34.58.

(d) Water used for testing fire hoses, filling tanks, swimming pools, testing sprinkler systems, and like use shall be billed at \$[2.52]2.66 per 100 cu. ft. in the city. The amount used may be either estimated in accordance with the size of the pipe through which taken at the pressure furnished, or determined by the use of a temporary meter rented to the user by the water board. The use of the latter method shall be at the discretion of the director and may require a refundable deposit.

(n) The annual availability charge for private fire protection service shall be:

Diameter of Service Connection	Annual Fee	
2" or less	\$[59.00]	63.00
3"	\$[84.00]	89.00
4"	\$[152.00]	160.00
6"	\$[343.00]	362.00
8"	\$[607.00]	640.00
10"	\$[947.00]	1000.00
12"	\$[1366]	1440.00

(q) *There shall be a thirty dollar (\$30.00) availability charge applied on a quarterly basis to all accounts inactivated pursuant to water board 21 N.Y.C.R.R. Part 1950.8 paragraph (m).*

[(q)](r)

SCHEDULE I

Minimum charge per quarter	\$[37.30] 43.50 with a usage allowance of up to 1,300 cubic feet
Additional usage in excess of 1,300 cubic feet	\$[3.37] 3.55 per 100 cubic feet

SCHEDULE II

POLLUTANT PARAMETERS	RATE
Flow	\$[2375.00] 2506.00 per million gallons
Suspended Solids	\$[0.79]0.83 per pound
Soluble Organic Carbon	\$[1.34]1.41 per pound

SCHEDULE III

SUBSTANCES OF CONCERN UNIT CHARGES

PARAMETERS	UNIT RATE
Benzene	\$[269.37] 284.00 per pound
Chloroform	\$[47.92]50.55 per pound
Dichloroethylenes	\$[292.68]309.00 per pound
Toluene	\$[12.96]13.67 per pound
Trichlorethanes	\$[60.86]64.20 per pound
Trichlorethylene	\$[77.70]81.97 per pound
Vinyl Chloride	\$[38.86]41.00 per pound
Monochlorotoluenes	\$[2.60]2.74 per pound
Tetrachloroethylene	\$[36.26]38.25 per pound
Total Phenols	\$[5.90]6.22 per pound

[r] (s)

## Niagara Falls Water Board

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

#### Adoption of a Schedule of Rates, Fees and Charges

**I.D. No.** NFW-51-06-00012-EP

**Filing No.** 1445

**Filing date:** Dec. 1, 2006

**Effective date:** Jan. 1, 2007

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

**Action taken:** Amendment of sections 1950.8 and 1950.20 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, section 1230-j

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** To enable the board to sufficiently fund its operation and in order to preserve public health, safety and welfare for the people in our service area.

**Subject:** Adoption of a schedule of rates, fees and charges.

**Purpose:** To pay for the increased costs necessary to operate, maintain and manage the system, and to achieve covenants with bondholders.

**Text of emergency/proposed rule:** Subdivision (m) of Section 1950.8 is being amended to read as follows:

(m) When property becomes vacant, upon receipt of written notice from the owner of the same, the water board shall, at its option, remove the water meter and/or seal the service in a manner that will prevent any

**This notice is intended** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 28, 2007.

**Text of rule and any required statements and analyses may be obtained from:** William Bolents, Niagara Falls Water Board, 5815 Buffalo Ave., Niagara Falls, NY 14304, (716) 283-9770, ext. 214, e-mail:bbolents@nfwb.org

**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

### NOTICE OF ADOPTION

#### Water Rates and Charges by Rolling Meadows Water Corporation

**I.D. No.** PSC-14-06-00019-A

**Filing date:** Nov. 29, 2006

**Effective date:** Nov. 29, 2006

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

**Action taken:** The commission, on Nov. 8, 2006, adopted an order approving Rolling Meadows Water Corporation's request for an increase in its annual water revenues.

**Statutory authority:** Public Service Law, section 89-c(10)

**Subject:** Water rates and charges.

**Purpose:** To approve an increase to Rolling Meadows Water Corporation's annual revenues by about \$58,008 or 12.4 percent.

**Substance of final rule:** The Commission adopted an order authorizing Rolling Meadows Water Corporation to increase its annual water revenues by \$58,008, or 12.4% and to establish a \$3.23 per customer quarterly surcharge for 12 quarters to fund an Escrow Account for Capital Improvements, and directed the company to file tariff amendments to implement the changes, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(06-W-0302SA1)

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Major Rate Case by Village of Freeport

**I.D. No.** PSC-51-06-00017-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Village of Freeport to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service—P.S.C. No. 8. The statutory suspension period for the filing runs through June 29, 2007.

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

**Subject:** Major rate case.

**Purpose:** To consider whether to increase annual electric revenues by approximately \$4.7 million or 14.1 percent.

**Public hearing(s) will be held at:** 10a.m. to 5p.m., Feb. 14, 15 and 16, 2007\* at Department of Public Service, Third Floor Hearing Rm., Three Empire State Plaza, Albany, NY

\*There may be requests to reschedule or relocate the hearings. Notification of any subsequent scheduling changes will be available on the Department of Public Service website ([www.dps.state.ny.us](http://www.dps.state.ny.us)) under Case No. 06-E-0911.

**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 Commission is considering the Village of Freeport's (Freeport) request to increase annual electric revenues designed to produce an increase of approximately \$14.7 million or 14.1%. The Commission may approve, reject or modify, in whole or in part, Freeport's proposed tariff revisions.

**Text of proposed rule may be obtained from:** Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

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

**Public comment will be received until:** 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 proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(06-E-0911SA1)

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

#### Lightened Regulation as an Electric Corporation by Jordanville Wind, LLC

**I.D. No.** PSC-51-06-00016-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject (in whole or in part) or modify a request by Jordanville Wind, LLC (Jordanville) for an order providing for lightened regulation.

**Statutory authority:** Public Service Law, sections 4(1), 66(1), 69, 70, 110

**Subject:** Request by Jordanville for lightened regulation as an electric corporation.

**Purpose:** To consider Jordanville's request in connection with the construction and operation of an electric generating facility.

**Substance of proposed rule:** By petition filed November 20, 2006, Jordanville Wind, LLC (Jordanville) seeks an Order from the Commission providing for lightened regulation of it as an electric corporation selling electricity exclusively at wholesale. Jordanville's petition also seeks a Certificate of Public Convenience and Necessity authorizing the construction and operation of an electric generating facility in the Towns of Warren and Stark, Herkimer County.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-E-1424SA1)

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

**Submetering of Electricity by Bay City Metering Company, Inc.**

**I.D. No.** PSC-51-06-00018-P

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

**Proposed action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Bay City Metering Company, Inc., on behalf of The Hopkins Condominium, to submeter electricity at 172 W. 79th St., 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 Bay City Metering Company, Inc., on behalf of The Hopkins Condominium, to submeter electricity at 172 W. 79th St., 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 Bay City Metering Company, Inc., on behalf of The Hopkins Condominium, to submeter electricity at 172 West 79th Street, 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-1442SA1)

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

**Transfer of Water Plant Assets and Electronic Tariff Filing by Piney Point Homeowners Water Association**

**I.D. No.** PSC-51-06-00019-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 approve or reject, in whole or in part, or modify, a petition filed by the Piney Point Homeowners Water Association to transfer the water plant assets formerly owned by Piney Point Inc., approval of its electronic tariff schedule, P.S.C. No. 1—Water, and a waiver of the Public Service Commission's rate setting authority.

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

**Subject:** Transfer of water plant assets and electronic tariff filing.

**Purpose:** To consider transfer of the water plant assets formerly owned by Piney Point, Inc., and approve an electronic tariff schedule, P.S.C. No. 1—Water, for the Piney Point Homeowners Water Association.

**Substance of proposed rule:** On November 21, 2006, the Piney Point Homeowners Water Association (PPHWA or the association) filed a petition requesting approval of the transfer of the water plant assets formerly owned by Piney Point Inc. to PPHWA. The association entered into a settlement with Piney Point Inc. to transfer the water system located in the Town of Boiceville, Ulster County, which currently provides water service to approximately 13 customers. PPHWA has also filed an electronic tariff schedule, P.S.C. No. 1—Water, which sets forth the rates, charges, rules

and regulations under which the association will provide water service to become effective March 1, 2007. The tariff defines when a bill will be delinquent and establishes a late payment charge and a returned check charge. The restoration of service charge will be \$20. The association also requests waiver of the Public Service Commission's rate setting authority. The Commission may approve or reject, in whole or in part, or modify the petition.

**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-1443SA1)

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

**Water Rates and Charges by United Water New Rochelle Inc.**

**I.D. No.** PSC-51-06-00020-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 approve or reject, in whole or in part, or modify, a petition filed by United Water New Rochelle Inc. (UWNR) to reconcile revenues for the first rate year ended Aug. 31, 2006, for Revenue and Property Tax, Long Term Main Renewal Program and the Delaware interconnection project.

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

**Subject:** Water rates and charges.

**Purpose:** To reconcile revenues for the first rate year ended Aug. 31, 2006, for UWNR's Revenue and Property Tax, Long Term Main Renewal Program and the Delaware interconnection project.

**Substance of proposed rule:** On November 24, 2006, United Water New Rochelle Inc. (UWNR) filed a petition seeking approval of reconciliations for Revenue and Property Tax, Long Term Main Renewal Program (LTMRP) and the Delaware Interconnection Project (DIP) for the first rate year ended August 31, 2006 in Case 04-W-1221. As a result of its reconciliation for Revenue and Property Tax, the company plans to refund to its customers a net amount of approximately \$68,993 plus accumulated interest. UWNR states the result of the LTMRP reconciliation shows an under-collection of \$2,164 and the DIP results show an under-collection of \$22,438. UWNR plans to recover the total of these net revenue under-collections of \$24,602, with accumulated interest, from its customers in future company filings.

The Commission may approve or reject, in whole or in part, or modify the company's petition.

**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-1444SA1)

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

**Approval of a Loan by Arbor Hills Waterworks, Inc.**

**I.D. No.** PSC-51-06-00021-P

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

**Proposed action:** The commission is considering the request of Arbor Hills Waterworks, Inc. for either a one time surcharge of \$6,697 or if it can obtain financing, a quarterly surcharge of \$670 for a three year period for capital improvements. The commission is also considering Arbor Hills' request to be allowed to enter into a loan agreement with a group of its customers for a loan of up to \$450,000 at an interest rate of 12 percent for a three year period.

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

**Subject:** Approve a loan as well as a surcharge to fund an escrow account for capital improvements.

**Purpose:** To approve either a one time surcharge of \$6,697 per customer or if financing is available a quarterly surcharge of \$670 per customer for a three year period, authorize the company to enter into a loan agreement in the amount of \$450,000 to be used for capital improvements.

**Substance of proposed rule:** On November 30, 2006 Arbor Hills Waterworks, Inc. (Arbor Hills) filed for either a one time surcharge of \$6,697 per customer or, if financing is obtained, a quarterly surcharge of \$670 per customer for a three year period to be used for its capital improvement program. The proposed effective date of the new surcharge is March 1, 2007. The Westchester County Department of Health issued a violation for an instance of low pressure last summer and wants the company to complete its capital improvement program to resolve the service problems as soon as possible. The company is also requesting approval to enter into a loan agreement with a group of its customers in the amount of \$450,000 at an interest rate of 12% for a three year period. The terms of the loan agreement are still being worked out.

Arbor Hills is about to begin a construction program to add additional supply, additional storage, install the required booster pumping capacity and all necessary buildings and controls. It is estimated that this work will cost approximately \$528,000 however, by January 1, 2007, Arbor Hills will have already billed about \$79,000 towards this work through the existing capital improvement surcharge, approved by the Commission in Case 05-W-1143 effective April 1, 2005. This leaves a balance of about \$450,000 to be collected. If additional billings are made under the existing capital improvement surcharge, prior to the effective date of the surcharge being requested herein, the requested surcharges and the amount of the loan will be reduced accordingly. Arbor Hills provides water service to 67 customers in a real estate development known as Arbor Hills in the Town of Lewisboro, Westchester County. Arbor Hills' tariff and proposed tariff amendment is available on the Commission's Home page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us)) - located under Commission Documents - Tariffs. The Commission may approve or reject, in whole or in part, or modify Arbor Hills 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-W-1455SA1)

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

**Water Rates and Charges by Robinn Meadows Development Corporation**

**I.D. No.** PSC-51-06-00022-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 whether to approve or reject, in whole or in part, or modify, tariff revisions filed by Robinn Meadows Development Corporation to make various changes in the rates, charges, rules and regulations in its tariff schedule, P.S.C. No 3—Water, to become effective March 1, 2007.

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

**Subject:** Water rates and charges.

**Purpose:** To increase Robinn Meadows Development Corporation's annual revenues by about \$15,413 or 33.5 percent.

**Substance of proposed rule:** On November 30, 2006, Robinn Meadows Development Company (Robinn Meadows or the company) filed to become effective March 1, 2007, Leaf No. 12, Revision 1, to its electronic tariff schedule, P.S.C. No. 3—Water. Robinn Meadows requests to increase its annual revenues by about \$15,413 or 33.5%. The company provides metered water service to 115 customers in a real estate development known as Robinn Meadows in the Town of Wawayanda, Orange County. The average customer's annual metered bill for 70,000 gallons would increase from \$371 to \$490.40. Robinn Meadows' quarterly minimum rate for the first 12,000 gallons currently is \$63.60 and would increase to \$89.60. For each additional 1,000 gallons the current rate is \$5.30 and would increase to \$6.00. Robinn Meadows' tariff, along with its proposed changes (Leaf No. 12, Revision 1) is available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us)) - located under the Commission Documents - Tariffs. The Commission may approve or reject, in whole or in part, or modify Robinn Meadows' 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-W-1454SA1)

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

**Water Rates and Charges and Electronic Tariff Filing by Windham Ridge Water Corp.**

**I.D. No.** PSC-51-06-00023-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 or reject, in whole or in part, or modify, a request filed by Windham Ridge Water Corp. to file an electronic tariff schedule, P.S.C. No. 1—Water, to become effective April 1, 2007, and increase its annual operating revenues by \$10,111 or 19.6 percent.

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

**Subject:** Water rates and charges and electronic tariff filing.

**Purpose:** To increase annual operating revenues by \$10,111 or 19.6 percent, and approve an electronic tariff schedule, P.S.C. No. 1—Water, for Windham Ridge Water Corp.

**Substance of proposed rule:** On November 30, 2006, Windham Ridge Water Corp. (Windham Ridge or the company) filed an electronic tariff schedule, P.S.C. #1—Water, which sets forth the rates, charges, rules and regulations under which Windham Ridge will operate to become effective April 1, 2007. The company currently provides unmetered water service to approximately 117 customers in a subdivision known as Windham Ridge Club located in the Town of Windham, Greene County. As a part of the filing, Windham Ridge is requesting to increase its annual operating revenues by \$10,011 or 19.6%. The company is also proposing to change its rate structure from a flat rate billed in advance to a metered rate billed in arrears with a service charge billed in advance. Windham Ridge’s tariff will be available on the Commission’s Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us)) - located under Commission Documents. The Commission may approve or reject, in whole or in part, or modify the company’s petition.

**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-1470SA1)

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## Racing and Wagering Board

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### EMERGENCY RULE MAKING

**Milkshaking**

**I.D. No.** RWB-51-06-00014-E

**Filing No.** 1450

**Filing date:** Dec. 5, 2006

**Effective date:** Dec. 5, 2006

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

**Action taken:** Addition of sections 4038.18(f), 4043.8-4043.10, 4109.7(f) and 4120.13-4120.15 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 207, 227, 301, 305 and 902.

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

**Specific reasons underlying the finding of necessity:** In January 2005, Federal prosecutors obtained indictments against 17 people related to the operation of an illegal gambling operation, including charges that a trainer had administered an alkalinizing agent to a horse in order to affect the outcome of a race, and subsequently the wagering on that race. In March 2006, trainer Gregory Martin admitted in Federal court that he administered a “milkshake” to a horse before the opening race at Aqueduct Raceway on December 18, 2003. The horse went on to win by 10 lengths. According to an article in The Thoroughbred Times, Martin told the court that after he administered the milkshake to the horse, he contacted an associate with the understanding that such information would be passed along to other bettors in an alleged gambling ring. According to the Justice Department, this was not an isolated incident and such violations occurred regularly. This case has brought national attention to the issue of milkshaking and the need to adopt testing programs and penalties for such “milkshaking” practices. Clearly, the practice of milkshaking race horses is detrimental to the integrity of the sport of horse racing, erodes public

confidence in pari-mutuel wagering events, and invites criminal abuse and exploitation.

**Subject:** Milkshaking.

**Purpose:** To establish empirical standards and testing procedures for the enforcement of thoroughbred and harness rules.

**Substance of emergency rule:** 4043.8(a) Authorizes pre-race and post-race methods of testing thoroughbred racehorses to detect excess levels of total carbon dioxide (TCO2), establishes the threshold for excess TCO2 at 37 millimoles per liter, and 39 millimoles for horses that have been administered furosemide.

4043.8(b) Establishes procedures in cases where excess TCO2 levels are found and an owner or trainer challenges the findings to assert a claim of naturally occurring excess TCO2 levels in a horse.

4043.8(c) Establishes minimum standards for guarded quarantine of a thoroughbred race horse at a race track operated by a track association.

4043.8(d) Establishes minimum penalties for excess TCO2 violations in a thoroughbred racehorse ranging from a minimum 60-day license suspension and \$1,000 fine for a first offense to a minimum one-year license suspension with a \$5,000 fine with a possible additional suspension term prescribed by the Board. Authorizes an additional two-year suspension for race-day medication violation. Includes provision for purse redistribution in case of a positive excess TCO2 test.

4043.8(e) Directs that horses that are found to have excess TCO2 levels will be disqualified, any monies won will be forfeited/redistributed and pre-race detention shall be imposed.

4043.9(a) Establishes pre-race detention procedures and requirements where a racehorse has been tested and found to have excess TCO2 levels that are not physiologically normal, including a minimum six-month period of detention.

4043.9(b) Establishes pre-race detention where a trainer has had more than one racehorse under his or her care have excess TCO2 levels in a 12-month period, including a minimum eight-month period of detention for all horses under the trainer’s care.

4043.10 Establishes punishment for failure to cooperate in the thoroughbred TCO2 testing program.

4038.18(f) Allows claimants in a claiming race to void a claim on a thoroughbred horse that is subsequently found to have excess TCO2 levels that are not physiologically normal.

4120.13(a) Authorizes pre-race and post-race testing of harness racehorses to detect excess levels of total carbon dioxide (TCO2), establishes the threshold for excess TCO2 at 37 millimoles per liter, and 39 millimoles for horses that have been administered furosemide.

4120.13(b) Establishes procedures in cases where excess TCO2 levels are found and an owner or trainer challenges the findings to assert a claim of naturally occurring excess TCO2 levels in a horse.

4120.13(c) Establishes minimum standards for guarded quarantine of a harness racehorse at a race track operated by a track association.

4120.13(d) Establishes minimum penalties for excess TCO2 violations in a harness racehorse ranging from a minimum 60-day license suspension and \$1,000 fine for a first offense to a minimum one-year license suspension with a \$5,000 fine with a possible additional suspension term prescribed by the Board. Authorizes an additional two-year suspension for race-day medication violations. Includes provision for purse redistribution in case of a positive excess TCO2 test.

4120.13(e) Directs that horses that are found to have excess TCO2 levels will be disqualified, any monies won will be forfeited/redistributed and pre-race detention shall be imposed.

4120.14(a) Establishes pre-race detention procedures and requirements where a racehorse has been tested and found to have excess TCO2 levels that are not physiologically normal, including a minimum six-month period of detention.

4120.14(b) Establishes pre-race detention where a trainer has had more than one racehorse under his or her care have excess TCO2 levels in a 12-month period, including a minimum eight-month period of detention for all horses under the trainer’s care.

4120.15 Establishes punishment for failure to cooperate in the Board’s TCO2 testing.

4109.7(f) Allows claimants in a claiming race to void a claim on a harness racehorse that is subsequently found to have excess TCO2 levels.

**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 March 4, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** Gail Pronti, Secretary to the Board, Racing and Wa-

gery Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: info@racing.state.ny.us

#### **Regulatory Impact Statement**

(a) Statutory authority. Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 207, 227, 301, 305 and 902.

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

(c) Needs and benefits. This rule making is necessary to assure the public's confidence and continue the high degree of integrity in racing at the pari-mutuel betting tracks. Through pre-race and post-race testing, this rule making will detect and deter the administration of alkali agents to thoroughbred racehorses and harness racehorses for the purpose of affecting the performance of such horse during a pari-mutuel wagering race.

The administration of alkali agents into a racehorse is commonly known as "milkshaking," where a person administers a mixture of sodium bicarbonate, sugar and water to a horse prior to a race mitigate the effects of lactic acid on the horse's muscles during the race, thereby gaining an advantage. Lactic acid is a naturally occurring byproduct of intense muscular exercise in mammals, and the accumulation of lactic acid in such muscles causes fatigue. Some people associated with racehorses believe that the administration of an alkaline substance, such as bicarbonate of soda, can neutralize the effect of lactic acid in a horse's muscles. This has resulted in the use of alkalinizing agents, or "milkshakes" which are administered to a racehorse in an attempt to alter the performance of the horse. Based on this belief, people have administered milkshakes to racehorses on the day of a race with the intent to gain a racing advantage.

This rule making is necessary to establish empirical standards and testing procedures for the enforcement of Board Rule 4043.3(d) and Board Rule 4120.3(d), which apply to thoroughbred and harness racehorses respectively and state "No person shall, attempt to, or cause, solicit, request, or conspire with another or others to . . . administer a mixture of bicarbonate of soda and sugar in any of their forms in any manner to a horse within 24 hours of a racing program at which such horse is programmed to race. It shall be the trainer's responsibility to prevent such administration."

Horses that have received an alkalinizing agent will exhibit elevated levels of TCO<sub>2</sub> over and above normal levels. This rule making will establish the ion selective electrode method with a clinical auto analyzer as a standard means of detecting elevated TCO<sub>2</sub> in horses. The rule will establish a TCO<sub>2</sub> threshold of 37 millimoles per liter for horses who have not been administered furosemide (Lasix) prior to a race, and 39 millimoles for horses that have been administered furosemide prior to a race.

In January 2005, the U.S. Justice Department arrested a New York licensed thoroughbred trainer and a prominent New York harness driver and charged the two with milkshaking a thoroughbred at Aqueduct Raceway in December 2003 to increase the odds that the horse, A One Rocket, would win. According to the Justice Department, this was not an isolated incident and such violations occurred regularly. This case has brought national attention to the issue of milkshaking and the need to adopt testing programs and penalties for such "milkshaking" practices. Clearly, the practice of milkshaking race horses is detrimental to the integrity of the sport of horse racing, erodes public confidence in pari-mutuel wagering events, and invites criminal abuse and exploitation.

This rule making will benefit thoroughbred and harness racing by ensuring the betting public that horses that compete in pari-mutuel races have not been tampered with through the administration of alkali agents, thereby ensuring that no extraordinary advantage has been given to the horse through prohibited substances.

(d) Costs.

(i) Thoroughbred horse owners may be subject to the cost of a pre-race guarded quarantine imposed upon any single horse found to have excess TCO<sub>2</sub> levels that has not been determined to be physiologically normal for such horse. The licensed track association sponsoring the race is responsible for making available a pre-race quarantine stall, and for maintaining an access log system in either paper or electronic form. The length of time for such quarantine shall be determined by the stewards or judges, and will have an impact on the cost of guarded quarantine. The cost of a paper log is approximately \$10 retail for a ring binder and 500 pages of paper. The cost of an electronic record, such as a personal computer or laptop computer, starts at \$400 in ordinary retail stores.

(ii) There are no costs imposed upon the Racing and Wagering Board, the state or local government because the TCO<sub>2</sub> testing program will be implemented utilizing the Board's existing medication testing program, personnel and facilities.

(iii) The Board cannot fully provide a statement of costs the trainers for pre-race guarded quarantine because the actual cost of establishing a pre-race guarded quarantine varies greatly from location to location in New York State, and the physical characteristics of the buildings within which a horse of quarantine. All horses that race at a New York State thoroughbred or harness racetrack are currently afforded stable space for free, so the only added cost that can be expected will be the cost of a guard. A pre-race guarded quarantine may require one guard per horse, or one guard for many horses, depending upon the access points that need to be controlled for an effective guarded quarantine. The Board's rule making requires that the subject horse is kept in an area where access to the subject horse is restricted to authorized licensed trainers, owners and veterinarians as submitted by the owner, that guards maintain a record of all licensed persons who have had access to the horse while in guarded quarantine, along with the time and purpose of the visit. In addition to the distinctive limitations that the guarded quarantine barn will have upon the cost, the wages of a guard varies depending upon the racetrack itself. According to track representatives, the hourly cost of guard may range from \$7 per hour up to \$20 per hour, depending on the individual racetrack, experience required for the specific duties (e.g., a stable guard who is responsible for surveillance only compared to a quarantine supervisor who is responsible for also identifying illegal paraphernalia, treatments or procedures) and local pay scale. The minimum time that a horse is to be quarantined is six hours, and the maximum time for quarantine is 72 hours.

(e) Paperwork. Owners of any horse that has been found to have an excess levels of TCO<sub>2</sub> will be required to submit a letter to the steward or judge of the track where the subject horse is to race, stating that the subject horse has a normally elevated level of TCO<sub>2</sub>. Such a letter is necessary for a horse to continue racing while under a guarded quarantine. Track associations will be required to maintain access logs, either paper or electronic, for a period of 90 days after the guarded quarantine period.

(f) Local government mandates. This rule making will not impose any program, service, duty, or responsibility upon any county, city, town, village, school district fire district or other special district.

(g) Duplication. Since the New York State Racing & Wagering Board is exclusively responsible for the regulation of pari-mutuel wagering activities in New York State, there are no other relevant rules or other legal requirements of the state or federal government regarding total carbon dioxide testing of thoroughbred racehorses and harness racehorses in New York State.

(h) Alternative approaches. The Board did not consider any other significant alternatives because no other significant alternatives are available. The rule making is based upon an established TCO<sub>2</sub> testing program already adopted and in use by the New Jersey Racing Commission. The testing procedure included in this rule making is the only TCO<sub>2</sub> test that has been reviewed and declared reliable by a state court, in this case, the New Jersey Supreme Court recognized the reliability of the Beckman test generally and as applied by the New Jersey Racing Commission (*Campbell v. New Jersey Racing Commission*, New Jersey Supreme Court, 169 N.J. 579, 781 A.2d 1035, October 11, 2001.) The TCO<sub>2</sub> threshold levels in this rule are supported by findings of the Canadian Pari-Mutual Agency, which are published "Effects of Sampling and Analysis Times and Furosemide Administration on TCO<sub>2</sub> Concentrations in Standardbred and Thoroughbred Horses." This paper was presented at the 13th International Conference of Racing Analysts and Veterinarians in Cambridge, U.K., in 2000 and published in the Conference Proceedings. The data in this study supports the thresholds of 37 mmol/L (non-furosemide) and 39 mmol/L (furosemide) which has been adopted in both Canada and Australia.

(i) Federal standards. There are no federal standards applicable to the subject area of state-regulated parimutuel wagering activity.

(j) Compliance schedule. The practice known as "milkshaking" of horses in already prohibited by rule under 9E NYCRR 4043.3 for thoroughbred racehorses and 9E NYCRR 4120.3 for harness racehorses. All of the provisions of this rule making shall be effective immediately upon filing with the Department of State.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment would expand the existing medication testing rules to include a test for alkalinizing agents in thoroughbred and harness race horses. This testing will utilize the current framework for post-race testing. The pre-race testing component will merely require that a veterinarian take a few minutes to obtain a blood sample from a horse, which is a routine procedure and imposes no new burden upon regulated parties. These amendments do not

impact upon State Administrative Procedure Act section 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above, because the Board rules has existing rules for post-race testing for the presence of performance altering drugs and other substances.

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## State University of New York

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### EMERGENCY RULE MAKING

#### Basic State Financial Assistance

**I.D. No.** SUN-38-06-00018-E

**Filing No.** 1449

**Filing date:** Dec. 5, 2006

**Effective date:** Dec. 5, 2006

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

**Action taken:** Amendment of section 602.8(c) of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 355(1)(c) and 6304(1)(b); and L. 2006, ch. 53

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

**Specific reasons underlying the finding of necessity:** The State University of New York finds that immediate adoption of amendments to the Code of Standards and Procedures for the Administration and Operation of Community Colleges (the Code) is necessary for the preservation of the general welfare and that compliance with the requirements of subdivision (1), section 202 of the State Administrative Procedure Act would be contrary to the public interest. The 2006-2007 Education, Labor and Social Services Budget Bill (the Budget) requires amendments to the existing funding formula for State financial assistance for operating expenses of community colleges of the State and City Universities of New York. The funding formula is to be developed jointly with the City University of New York, subject to the approval of the Director of the Budget. Although negotiations between the State University, City University and the Division of the Budget were concluded in April 2006, the State University Trustees were unable to take the necessary action to invoke the rule making process until June 27, 2006. Amendments to the Code on an emergency basis for the 2006-2007 college fiscal year are necessary to:

1. provide timely State operating assistance to public community colleges of the State and City Universities of New York;
2. obtain the necessary revenue to maintain essential staffing levels, program quality, and accessibility. Compliance with the provision of subdivision (1) of section 202(6) of the State Administrative Procedure Act would be contrary to the public interest. The requirements of subdivision (1) of section 202(6) of SAPA would not allow implementation of the State financial assistance provided in the Budget Bill in time for the 2006-2007 college fiscal year.

**Subject:** State basis financial assistance for operating expenses of community colleges under the program of the State University of New York and City University of New York.

**Purpose:** To modify existing limitations formula for basic State financial assistance for operating expenses of community colleges of the State University and City University of New York in order to conform to the provisions of the Education Law and the 2006-2007 Budget Bill.

**Text of emergency rule:** (c) Basic State financial assistance.

(1) Full opportunity colleges. The basic State financial assistance for community colleges, implementing approved full opportunity programs, shall be the lowest of the following:

- (i) two-fifths (40%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) two-fifths (40%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the current college fiscal year the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2350] \$2525; and

(b) up to one-half (50%) of rental costs for physical space.

(2) Non-full opportunity colleges. The basic State financial assistance for community colleges not implementing approved full opportunity programs shall be the lowest of the following:

(i) one-third (33%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) one-third (33%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the college fiscal year current, the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$1959] \$2,105; and

(b) up to one-half (50%) of rental cost for physical space.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, a community college or a new campus of a multiple campus community college in the process of formation shall be eligible for basic State financial assistance in the amount of one-third of the net operating budget or one-third of the net operating costs, whichever is the lesser, for those colleges not implementing an approved full opportunity program plan, or two-fifths of the net operating budget or two-fifths of the net operating costs, whichever is the lesser, for those colleges implementing an approved full opportunity program, during the organization year and the first two fiscal years in which students are enrolled.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. SUN-38-06-00018-P, Issue of September 20, 2006. The emergency rule will expire February 2, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** Dona S. Bulluck, State University of New York, Office of University Counsel, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: Dona.Bulluck@suny.edu

#### **Regulatory Impact Statement**

This is a technical amendment to implement the provisions of the 2006-2007 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York.

#### **Regulatory Flexibility Analysis**

This is a technical amendment to implement the provisions of the 2005-2006 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York. It will have no impact on small businesses and local governments.

#### **Rural Area Flexibility Analysis**

This is a technical amendment to implement the provisions of the 2005-2006 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York. This rule making will have no impact on rural areas or the recordkeeping or other compliance requirements on public or private entities in rural areas.

#### **Job Impact Statement**

No job impact statement is submitted with this notice because the adoption of this rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This rule making governs the financing of community colleges operating under the program of the State University and will not have any adverse impact on the number of jobs or employment opportunities in the state.

## NOTICE OF ADOPTION

**Basic State Financial Assistance****I.D. No.** SUN-38-06-00018-A**Filing No.** 1448**Filing date:** Dec. 5, 2006**Effective date:** Dec. 20, 2006

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

**Action taken:** Amendment of section 602.8(c) of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 355(1)(c) and 6304(1)(b); and L. 2006, ch. 53

**Subject:** State basic financial assistance for operating expenses of community colleges under the program of the State University of New York and City University of New York.

**Purpose:** To modify existing limitations formula for basic State financial assistance for operating expenses of community colleges of the State University and City University of New York in order to conform to the provisions of the Education Law and the 2006-2007 Budget Bill.

**Text or summary was published** in the notice of proposed rule making, I.D. No. SUN-38-06-00018-P, Issue of September 20, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Dona S. Bulluck, State University of New York, Office of University Counsel, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: Dona. Bulluck@suny.edu

**Assessment of Public Comment**

The agency received no public comment.