

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

- AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing; or C for first Continuation.)

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

Affordable Housing Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Affordable Housing Corporation Program Regulations

I.D. No. AHC-01-06-00001-P

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

Proposed action: This is a consensus rule making to amend sections 2160.2, 2162.1, 2163.1 and 2164.5 of Title 21 NYCRR.

Statutory authority: Private Housing Finance Law, section 1113(1)

Subject: Affordable Housing Corporation Program Regulations.

Purpose: To clarify existing language in the regulations and bring the regulations into compliance with updates in the Private Housing Finance Law.

Substance of proposed rule: The New York State Affordable Housing Corporation (the "Corporation"), a public benefit corporation, was established pursuant to Article 19 of the New York State Private Housing Finance Law. The Corporation, a subsidiary of the New York State Housing Finance Agency, was created to administer the Affordable Home Ownership Development Program (Private Housing Law, section 1110 *et seq.*, hereinafter the "Act"). The purpose of the amendments is to clarify

the meaning of various terms in the existing regulations, clarify existing regulatory language, and bring the regulations into compliance with updates to the act.

The following is a brief summary of the amendments to the existing regulations.

1. Addition of a definition of the term "High Cost Area" to Section 2160.2 of the Regulations and subsequent definitions in such section are renumbered accordingly.

2. Amendment of Section 2162.1 of the Regulations to update grant limits to accord with the current statutory provisions found in Section 1112(1) of the Act.

3. Amendment of Sections 2163.1(b) and 2164.5(b) of the Regulations to add a new clause numbered Section 2163.1(b)(6) regarding fair housing law compliance requirements and to add Section 2164.5(b)(6) regarding methods to be employed to ensure fair and equitable access to assistance and participation in the Project.

Text of proposed rule and any required statements and analyses may be obtained from: Jay Ticker, Associate Counsel, Affordable Housing Corporation, 641 Lexington Ave., New York, NY 10022, (212) 688-0400, e-mail: jayt@nyhomes.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.

Consensus Rule Making Determination

Under Chapter 210 of the Laws of 1998, the New York State Affordable Housing Corporation's proposed rule changes to the Affordable Home Ownership Development Program ("AHODP") are consensus rules because no person is likely to object to their adoption. The rule changes are being made to clarify the meaning of various terms in the existing regulations, clarify existing regulatory language, and also to bring the regulations into compliance with updates to the Private Housing Law, section 1110 *et seq.* As required, the Corporation will withdraw the consensus rule if it receives any comment objecting to the consensus rule.

Job Impact Statement

1. Nature of impact

The proposed amendments will not have a substantial impact on jobs or employment opportunities because the amendments will not involve creation of substantial regulatory costs or burdens. They only refine the administration of an existing state housing subsidy program.

2. Categories and numbers affected

No categories of jobs or employment opportunities will be affected by these proposed amendments because they will not involve creation of substantial regulatory costs or burdens.

3. Regions of adverse impact

No specific regions of New York State will experience disproportionate adverse impact on jobs or employment opportunities because the amendments will not involve creation of substantial regulatory costs or burdens.

4. Minimizing adverse impact

Due to the proposed amendments' lack of adverse impact on jobs or employment in the State of New York, the Corporation will not take any measures to minimize adverse impacts.

5. Self-employment opportunities

Not applicable because of the amendments' lack of adverse impact on jobs or employment.

Banking Department

EMERGENCY RULE MAKING

Licensed Check Cashers

I.D. No. BNK-01-06-00017-E

Filing No. 1532

Filing date: Dec. 20, 2005

Effective date: Dec. 22, 2005

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

Action taken: Amendment of section 400.5(a) of Title 3 NYCRR.

Statutory authority: Banking Law, section 371

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

Specific reasons underlying the finding of necessity: In order for licensed check cashers to conduct business, it is necessary that such licensees have and maintain a deposit account with a banking institution. Such an account enables licensees to deposit and clear the checks, drafts and money orders that have been cashed for customers, thus recouping for the licensees the funds paid out to customers. Absent this banking relationship, licensed check cashers would not be able to conduct business. Because of recent decisions by various banking institutions located within this state to end their deposit account relationships with licensed check cashers, it is necessary that the pool of banking institutions that licensees may use for such purposes be expanded.

Subject: Permissible banking institutions with which licensed check cashers may maintain deposit accounts.

Purpose: To permit licensed check cashers to maintain bank accounts with banking institutions or their branches located inside or outside this state.

Text of emergency rule: Section 400.5(a) of the Superintendent's Regulations is hereby amended to read as follows:

§ 400.5 Depositing of checks, etc.

(1) Except as hereinafter stated all checks, drafts and money orders must be deposited in the licensee's bank account in [the banking institution in this State] *a branch or principal office of a bank, savings bank, savings and loan association, trust company, national bank, federal savings bank, or federal savings and loan association or any other duly chartered depository institution that is insured by the Federal Deposit Insurance Corporation, regardless of whether the branch and/or principal office of the foregoing banking institution is located within or without this State (collectively, "banking institution")*, not later than the first business day following the day on which they were cashed. Such items must be deposited during the regular business hours of such [bank] *banking institution* so as to enable it to credit the deposits to the licensee's account on that business day.

(2) *Any account maintained by a licensee for the deposit of checks, drafts or money orders in a banking institution shall be subject to a written account agreement between the licensee and the banking institution that expressly provides for the personal and in rem jurisdiction over the parties and the account, respectively, of state and federal courts located in the State of New York and the agreement shall be governed by the laws of the State of New York, except that this requirement shall not apply (a) with respect to an account maintained in New York or in a State of New York-chartered bank prior to November 1, 2005, unless or until such existing account agreement is amended subsequent to November 1, 2005, or (b) if this requirement is waived in the Superintendent's discretion. Every licensee or applicant for a license shall provide to the Superintendent a copy of any such account agreement within 15 days of establishing any such account or any amendment thereto relating to the items required by this subsection. Every licensee shall maintain a copy of such account agreement as part of its records available for examination by the Superintendent.*

(3) *Prior to depositing any checks, drafts or money orders in an account at a banking institution, the licensee shall cause such banking institution to give the Superintendent written authorization to conduct any such examination of all books, records, documents and materials, including those in electronic form, as they relate to such account and any checks,*

drafts, or money orders placed on deposit in such account, as the Superintendent in his/her discretion deems necessary, except that this written authorization requirement shall not apply (a) with respect to an account maintained in New York or in a State of New York-chartered bank prior to November 1, 2005, unless or until such existing account agreement is amended subsequent to November 1, 2005, or (b) if this requirement is waived in the Superintendent's discretion. The licensee shall pay the cost of any such examination.

(4) [(2)] When the number of payroll checks cashed at a limited station amount to 50 or more, the licensee may present those checks to the drawee bank or the maker of the checks and receive in exchange a single draft, provided full details of the transaction are recorded in a manner satisfactory to the superintendent.

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 19, 2006.

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

Regulatory Impact Statement

1. Regulatory Authority. Section 371 of the Banking Law authorizes the Superintendent of Banks to adopt such rules and regulations as are necessary to ensure the proper conduct of the business of check cashing. Pursuant to section 400.5(a) of Title 3 NYCRR, the Superintendent requires licensed check cashers to deposit checks, drafts and money orders (hereafter "instruments") in a banking institution in this state no later than the first business day after the date on which the instruments were cashed for the customers.

2. Legislative Objectives. The Legislature, when enacting and periodically amending Article 9-A of the Banking Law, which requires regulatory supervision of the business of check cashing, has stated as matter of legislative intent that such businesses provide an important and vital service to New York citizens. The regulatory regime applicable to such industry is intended to ensure the consumer confidence in such business is maintained and the public interest is protected. The regulatory requirements addressed in this rule making are necessary to maintain the financial stability of the licensees, thus maintaining the public confidence in their operations.

3. Needs and Benefits. Section 400.5(a) requires that a check casher licensee maintain a deposit account with a banking institution in this State. Licensees are required to deposit any checks, drafts and money orders received into the deposit account within the next business day. The deposit of such instruments in New York facilitates the timely clearing process of such instruments through the banking system. In addition, if a check casher experiences financial or other difficulty and there is a need for the Superintendent to examine or intervene, having the licensee's deposit account at a banking institution in New York State permits the Superintendent to more readily to examine the account and/or obtain control of the licensee's assets through the judicial process, if this proved necessary. However, due to the decision of various in-state banking institutions not to provide further deposit account services to check cashing businesses, it is necessary to expand the pool of potential banking institutions that may be willing to provide such services. Permitting check cashers to open and maintain deposit accounts with banks or branches located out of state should assist in addressing this problem. While doing business with banks or branches located out of state may present certain logistical problems for check cashers in meeting the one-business day deposit requirement, there are mechanisms available within the banking system which should make such arrangements workable. The ancillary regulatory requirements of the proposed rule in connection with a check casher establishing a deposit account relationship with a bank will ensure the Superintendent's supervisory oversight of and jurisdiction over the casher's banking relationship remains the same, regardless of whether the account is in a banking institution within or outside of New York and whether the federal or a state government has chartered the institution. Such requirements necessitate that (i) the licensee's account agreement provide for the personal and *in rem* jurisdiction by federal and state courts located in New York over the parties and the account and that the agreement be governed by the laws of New York State; and (ii) prior to making any deposit in such account, the licensee obtain the written authorization by the bank enabling the Superintendent to examine any records and related documents and materials, in whatever form, pertaining to the deposits and the account. This is a timely revision of the rule, given the current rule was adopted prior to the advent

of interstate branch banking and the Comptroller of the Currency's recent preemption ruling prohibiting any state bank regulator from exercising visitation authority over national banks.

4. Costs. The proposed rule imposes no additional costs or regulatory burden upon regulated parties, the Banking Department or other state agencies, or any other unit of government.

5. Local Government Mandates. The proposed rule imposes no mandates or costs upon any type of governmental unit. The regulatory provisions apply only to licensed entities, and such entities are private business enterprises.

6. Paperwork. The proposed rule imposes no paperwork requirements upon regulated parties or any unit of state government.

7. Duplication. None.

8. Alternatives. There are few alternatives to address the present situation other than to increase the pool of potential banks with which licensed check cashers may do business. One alternative is the creation of a bank, either under private or public auspices, that specializes in servicing money services businesses. However, this would be a long-term solution, and not an alternative that may be developed in the short-term given that in-state banks are currently terminating their deposit account relationships with these businesses.

9. Federal Standards. There are no federal standards that apply to the daily operational aspects of the business of check cashing. The federal government does not license check cashers nor directly regulate the primary transaction activity of check cashers. When regulated, states are the sole supervisory regulators of the check cashing industry.

10. Compliance Schedule. The new requirements applicable to any licensee's new deposit account, or modification of an existing account agreement, took effect on November 1, 2005.

Regulatory Flexibility Analysis

The emergency rule facilitates the conduct of business by and the financial stability of licensed check cashers, which are private businesses. Though the rule requires the licensee to obtain the agreement of the banking institution, when opening an account, to governance of the account relationship under New York law and courts located in New York, as well as to examination of its account-related records by the Superintendent, these are necessary additional conditions in order for the Superintendent to properly supervise licensed check cashers that may choose to open accounts in banking institutions outside New York and also in national banks regardless of where located. The Department has determined that the emergency rule has no impact upon other private businesses, or any unit of local government.

Rural Area Flexibility Analysis

The Department has determined the emergency rule has virtually no impact upon private businesses or units of local government situated in rural areas. Licensed check cashers are predominantly located in metropolitan and urban areas of this state. To the extent there are licensed check cashers in any rural locations, the emergency rule will facilitate the conduct of business by and the financial stability of such businesses. The emergency rule will have the same effect upon regulated entities, regardless of where located.

Job Impact Statement

The emergency rule is intended to facilitate the conduct of business by and the financial stability of check cashing businesses. Without deposit account relationships with banking institutions, licensed check cashers could not function. Therefore, the Department has determined the emergency rule has no adverse impact upon employment in the check cashing industry.

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

Maximum Fees Charged by Licensed Check Cashers

I.D. No. BNK-01-06-00002-P

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

Proposed action: Amendment of section 400.12 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 371 and 372

Subject: Maximum fees that may be charged by licensed check cashers for cashing checks, drafts or money orders made payable to natural persons.

Purpose: To increase the base maximum percentage fee that may be charged by licensed check cashers against the face amount of a check, draft or money order, in order to account for the licensees increased costs caused

by the department's requirement that such licensees pay an annual general assessment fee to cover the department's cost of the licensees' regulatory supervision.

Text of proposed rule: Amend section 400.12 of Part 400, 3 NYCRR, as follows:

§ 400.12 Fees.

(a) The licensee shall be permitted to charge or collect a fee for cashing a check, draft or money order not to exceed [(a)] (i) 1.5 percentum of the amount of the check, draft or money order; *provided, however, effective January 1, 2006, such percentum of the amount of the check, draft or money order shall be increased by an additional 0.03 percentum in addition to any increase that shall have been heretofore or hereafter made pursuant to subdivision (b) of this section and such additional 0.03 percentum shall not itself be subject to any increase pursuant to subdivision (b) of this section*, or [(b)] (ii) \$1, whichever is greater.

(b) Effective January 1, 2005, and annually thereafter, the maximum percentum fee specified in subdivision (a) of this section, shall be increased by a percentum amount, based upon an increase in the consumer price index for the New York — Northern N.J. — Long Island, NY — NJ — CT — PA area for all urban consumers (CPI-U), as reported by the Bureau of Labor Statistics of the U.S. Department of Labor for the calendar year preceding the year in which such increase is made compared to such annual CPI-U for the year prior to such preceding year. The maximum percentum fee that may be charged or collected for cashing a check, draft or money order pursuant to this section in effect at such time shall be multiplied by such computed percentum amount and the result added to such maximum percentum fee. The resulting sum shall be the revised maximum percentum fee, which shall be posted upon the internet site of the Banking Department (www.banking.state.ny.us) by the superintendent not later than 45 days following the public release of such annual index by the U.S. Department of Labor. Such revised maximum percentum fee shall be calculated and posted to the nearest one-hundredth of a percentum. Such revised maximum percentum fee shall be effective not later than 45 days after the superintendent shall have notified the Majority Leader of the Senate, the Speaker of the Assembly, and the chairperson of the Senate and Assembly Committees on Banks of his/her intention to change the maximum percentum fee pursuant to the provisions of section 372.3 of the Banking Law and shall continue in effect until revised and increased in the next succeeding year based upon an increase in such annual index. If such CPI-U does not increase in any one year, the maximum percentum fee in effect during the year in which the index does not increase shall remain unchanged in the next succeeding year. Nothing herein shall be deemed to prohibit the superintendent from setting, by regulation, a different maximum percentum fee at any time where the superintendent shall find that such a fee is necessary and appropriate to protect the public interest and to promote the stability of the check cashing industry for the purpose of meeting the needs of the communities that are served by check cashers. No maximum fee shall apply to the charging of fees by licensees for the cashing of checks, drafts or money orders for payees of such checks, drafts or money orders that are other than natural persons.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority. Section 372(1) requires that the Superintendent of Banks prescribe the maximum fees that may be charged for cashing a check, draft or money order (hereafter "check"). Pursuant to section 400.12 of Title 3 NYCRR, the Superintendent has established a maximum percentage amount that each check casher may charge against the face amount of the check made payable to a natural person (hereafter "personal" check).

2. Legislative objectives. When imposing certain economic restrictions upon the conduct of business by check cashers pursuant to Chapter 546 of the laws of 1994, the Legislature stated as a matter of legislative intent that "check cashers provide important and vital services to New York citizens; that the business of check cashers shall be supervised and regulated through the banking department in such a manner as to maintain consumer confidence in such business and protect the public interest; that the licensing of check cashers shall be determined in accordance with the needs of

the communities they are to serve; and that it is in the public interest to promote the stability of the check cashing business for the purpose of meeting the needs of the communities that are served by check cashers.”

3. Needs and benefits. The setting of a maximum fee is in keeping with legislative intent in that it provides essentially for a fixed percentage return per personal check, thus promoting the stability of the check cashing industry by providing the industry with a reasonable return on equity. However, by limiting the amount of such fees, it serves to maintain the public confidence by preventing excessive fees particularly where the availability of alternate check cashing facilities may be limited.

The Superintendent has determined that the maximum fee adjustment promulgated pursuant to this rule making is necessary because the annual CPI adjustment of the maximum fee did not and will not account for the significant increase in expenses of check cashers attributable to the imposition of the Department's general assessment upon non-bank licensees, which commenced in 2005.

4. Costs. The proposed rule imposes no additional costs or regulatory burden upon regulated parties, the Banking Department or other state agencies, or any other unit of government. Though the increase in the base maximum percentage amount will increase the fee cost to the consumer, the percentage adjustment is 3 basis points, which is three-hundredths of one percent of the base percentage maximum fee charge or three cents per \$100 of the face amount of a check.

5. Local government mandates. The proposed rule imposes no mandates or costs upon local governments. The regulatory provisions apply only to licensed entities, and such entities are private business enterprises, and not governmental entities, whether local, state or national.

6. Paperwork. The proposed rule imposes no paperwork requirements upon regulated parties or any unit of state government.

7. Duplication. None.

8. Alternatives. There are no alternatives to the proposed rule, given that section 372(1) of the Banking Law requires the Superintendent to set maximum fees that may be charged for the cashing of checks. The general issue presented by the proposed rule is whether the current method prescribed by section 400.12 to adjust annually the percentage fee cap by applying the annual percentage change in the regional CPI-U to such cap accounts for the cost increases of the industry caused by the Department's initial imposition of annual general assessment charges. Section 400.12 also provides that the Superintendent may modify the maximum percentage fee at any time by regulation, if he or she finds that the adjustment is necessary and appropriate to protect the public interest and promote the stability of the industry in order to meet the needs of the communities served by the check cashing industry. The Department has determined by its industry analysis that the annual fee rate adjustment mechanism will not account for such cost increases, thus necessitating the proposed rule making.

The other aspect in considering alternatives to the proposed rule is whether some other percentage adjustment to the maximum fee cap should be used. As described in greater detail in the Regulatory Flexibility Analysis, the Department analyzed the most current data for the industry, which included check volume, dollar amount volume, number of licensed entities, and current and anticipated general assessment charges, and determined that a three basis point adjustment of the maximum cap was justified.

9. Federal standards. There are no federal standards that apply to the setting of fees for the check cashing industry. The federal government does not license check cashers or directly regulate the primary transaction activity of check cashers.

10. Compliance schedule. None. Though licensees are not required to set their fee charges at the maximum percentage fee rate, the check cashing industry presumably will adopt the maximum percentage fee upon the date the increased percentage fee rate becomes effective.

Regulatory Flexibility Analysis

1. Effect of rule: The check cashing industry serves those areas and populations not traditionally served by banking institutions, which generally are immigrant and first-generation communities or communities demonstrating lower socio-economic conditions. Residents in such communities tend not to be accustomed or inclined to maintain customer account relationships with banking institutions. In short, absent the maintenance of an account relationship with a banking institution, members of these communities have virtually no source to cash payroll, government benefit, or other types of personal checks other than check cashers or retail vendors where they make purchases.

Because section 372(1) of the Banking Law requires the Superintendent to regulate the fees that the industry may charge, the industry cannot

unilaterally set fees beyond the maximum rates set by the Superintendent's regulations. Thus, if a licensee incurs additional and unforeseen expenses or desires to increase the business's profit margin, it is impossible to increase the business's revenue derived from cashing checks under the existing regulatory structure, all other factors remaining the same, unless the mix of commercial (*i.e.*, checks made payable to other than natural persons) and personal checks cashed changes, or the dollar volume of the checks cashed, the number of checks cashed, or both increases. Because of this situation, the Superintendent promulgated a rule in 2004 (see *New York State Register* BNK-10-04-00001; effective 6-23-04) which established a mechanism for the annual adjustment of the maximum percentage rate based upon the annual change in the regional CPI-U, thus permitting the rate to adjust for normal inflationary increases. This rule making, however, also expressly stated that the Superintendent could subsequently modify the maximum percentage fee at any time by regulation, if the Superintendent finds that the adjustment is necessary and appropriate to protect the public interest and promote the stability of the industry in order to meet the needs of the communities served by the check cashing industry.

In July 2005, the Financial Services Centers of New York (“FSNY”) requested a three basis point increase of the maximum percentage fee rate from 1.55 to 1.58 to account for the increased costs resulting from the Department's imposition of a general assessment upon the check cashing industry. All non-bank financial services industries, licensed and regulated by the Department were first subjected to an annual general assessment commencing 2005, the purpose of which was to recoup the Department's costs of supervising regulated financial services businesses.

The Superintendent determined, based upon the Department's analysis of industry, that the expenses incurred by the industry as the result of the imposition of the Department's annual general assessment would not be recouped by the 2004 annual CPI-U fee adjustment which increased the maximum percentage fee from 1.5 to 1.55. The Department's Research and Technical Assistance (RATA) Division concluded that such specialized cost increases are not well reflected by a generalized index and as such the magnitude of the cost increase experienced does represent a legitimate rationale to support a rate review.

The initial annual general assessment charged licensed check cashers as the basis to compute the first quarterly billing in February 2005 was determined to be for \$3,487,660. This amount was subsequently increased as the Department refined its general assessment allocations to the non-bank entities it regulates to \$3,982,618. The only assessment paid heretofore by the regulated non-bank entities has been examination expenses when such entities were specifically examined. Thus, the check cashing industry reported assessment increases for individual companies of 300% to 3,500%. Non-bank licensed entities also pay annual licensing fees.

The initial review of the industry data indicated that a four, rather than three, basis point adjustment of the percentage fee cap was necessary for the industry to recover its costs due to the general assessment. However, a subsequent analysis, based upon revised and updated industry data, indicates that a three basis point adjustment is sufficient, with such adjustment commencing January 1, 2006. The revised and updated data included a substitution of reported 2004 industry data for 2003 data which became available following the initial analysis. It is noted that the growth in check cashing dollar volume, even as the number of checks cashed declined, is in part attributable to the ability now of existing licensed check cashers to cash commercial checks. These checks are not subject to the percentage fee cap. Thus, the Department determined that the final dollar volume of checks cashed upon which to base any increase in percentage fee cap should be \$15.2 billion contrasted to a general assessment charge, commencing 2005, of \$3.9 million, or a rounded up increase of the fee cap of three basis points. It is estimated that the three basis point adjustment will generate sufficient incremental income to mitigate the impact of the general assessment.

Finally, pursuant to this rule making, the three basis point adjustment will be annually added to the CPI adjusted percentage fee cap, and it will not itself be subject to any annual CPI adjustment. The Superintendent determined that marginal or incremental increases in the Department's general assessment allocation, due to annual inflationary factors affecting the Department's budget, should be sufficiently accounted for by the annual CPI adjustment. Further, increased check dollar volume, which reflects normal growth in the expansion of wages and income, and also any possible increase in the volume of checks cashed, offsets annual inflationary cost increases experienced by the industry. It is also noted, due the initial regulation of commercial check cashers in 2004, that the number of licensees will increase in the near future, and this will cause a reduction in

the amount of the general assessment expense allocated to the currently licensed check cashers.

In summary, the Superintendent’s determination that such a fee increase is appropriate is based upon: (1) the small amount of the percentum increase; (2) the potential for industry instability resulting from a significant increase in unanticipated expenses (*i.e.*, Department’s general assessment); (3) the estimated range of industry profitability projected for 2005; (4) the limitation that a fee cap imposes on the industry to meet unanticipated increased operating costs (this type of regulatory “price” control generally is not applied to the charges for services and products set by other industry groups regulated by the Department); and (5) the modest increased costs consumers will face given in particular that the three basis point increase will not be inflated by the annual CPI adjustment in the future.

2. Compliance requirements: There are no additional compliance requirements necessitated by this rule making other than the need for licensed check cashers to alter their signage to reflect the new fees, if they decide to adjust their current percentum fee rates.

3. Professional services: No professional services would be required as a result of this rule making.

4. Compliance costs: There are no compliance costs associated with this proposed rule making other than those that may be associated with modification of their signage to reflect any new fee rates.

5. Economic and technological feasibility: There are no economic or technological feasibility problems caused by this rule making.

6. Minimizing adverse economic impact: This rule making has no adverse impact upon affected regulated entities, and, in fact, it will have a positive economic impact in that it will permit licensees to increase operating revenue sufficient to recoup the additional costs caused by the Department’s imposition of an annual general assessment fee.

7. Small business participation and local government participation: There are 217 licensed check cashing businesses and 908 facilities of such businesses that will be affected by this regulatory action. This fee increase and annual adjustment mechanism is supported by the industry and imposes no additional regulatory burden upon the regulated parties. No participation by local government is necessitated by this rule making.

Rural Area Flexibility Analysis

The proposed rule making will impose no additional costs on businesses or units of government located in rural areas of the state. Virtually all licensed check cashing facilities are located in metropolitan areas of the state, particularly the New York City metropolitan area. To the extent any licensed facilities are located in rural areas, they will realize the same benefits attributed to the rule making.

Job Impact Statement

This regulatory amendment will impose no adverse effect upon regulated parties or upon other businesses in this state. It is presumed that the regulatory amendment will benefit the regulated parties.

Office of Children and Family Services

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Health and Safety Standards for Legally-Exempt Informal Child Care Providers

I.D. No. CFS-01-05-00006-RXC

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

Revised action: Amendment of sections 415.1, 415.4 and 415.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(f) and 410-x(3)

Subject: Health and safety standards for legally-exempt informal child care providers.

Purpose: To further enhance the health, safety and welfare of the children that receive subsidized child care from legally-exempt informal child care providers in New York State.

Expiration date: April 5, 2006.

Substance of revised rule: The regulations are needed to increase the basic safeguards for the health and safety of children who are seeking services from legally-exempt informal child care providers.

A new paragraph of section 415.1 is added to define and designate legally-exempt caregiver enrollment agency. These are agencies under contract with the Office to enroll caregivers of legally-exempt child care to provide subsidized services. These agencies in New York State, except New York City will be the applicable child care resource and referral agency under contract with the Office to serve that social services district. For New York City the designated agency will be an entity or entities identified by the Office in consultation with the New York City Human Resources Agency and The New York City Administration for Children’s Services.

Subdivision (f) of section 415.4 is amended and requires that caregivers of informal or legally-exempt group child care be enrolled by a legally-exempt caregiver enrollment agency on either a temporary or final basis in order to make payments for subsidized child care. The social services district is required to provide a child’s caretaker that has applied for, or is receiving child care subsidies under the New York State Child Care Block Grant, and who is interested in using a caregiver of legally-exempt child care with an enrollment package. The caretaker and caregiver must complete and submit the enrollment package to the applicable legally-exempt caregiver enrollment agency before the caregiver is eligible to receive child care subsidy funds for caring for child care subsidy eligible children.

New subparagraphs (ii), (iii) and (iv) were added to paragraph (3) of subdivision (f) of section 415.4. Subsection (ii) allows, within 10 days of receipt of a completed enrollment package, the legally-exempt caregiver enrollment agency to enroll the legally-exempt caregiver on a temporary basis if the legally-exempt caregiver agency completes a full review of the legally-exempt caregiver enrollment package and indicates that the caregiver is exempt from the State’s child day care licensing and registration requirements, and the completed checklist and attestations do not raise any immediate concerns to the legally exempt caregiver enrollment agency.

Subparagraph (iii) requires the legally-exempt caregiver enrollment agency to complete a full review of the enrollment package within 40 days of receiving the completed enrollment package and to notify the applicable social services district of its final determination for enrolling the legally-exempt caregiver. Subparagraph (iv) requires that all legally exempt caregivers enrolled with a social services district on before the effective date of these regulations must document compliance before or as part of the next redetermination of eligibility for child care services for the child in the caregiver’s care.

Paragraph (6) of subdivision (f) of section 415.4 is amended to require that each legally-exempt caregiver enrollment agency maintain an automated roster in the New York State Child Care Facilities System, rather than a list, of current legally-exempt caregivers enrolled with the social services district including the name and address of each such caregiver and information about the caregiver’s compliance with the enrollment requirements.

Clause (y) of subparagraph (v) of paragraph (7) of subdivision (f) of section 415.4 is amended to require that a legally-exempt caregiver must, upon enrollment or annual re-enrollment, attest and certify in writing that all statements made on the enrollment or annual re-enrollment form and any attachment to the enrollment and re-enrollment forms are true and accurate. Any false information may result in termination of the caregiver’s enrollment, cessation of the child care subsidy payments to the caregiver, and the taking of any appropriate legal action by the social services district.

A new paragraph (8) is added to subdivision (f) of section 415.4 to require a legally-exempt caregiver enrollment agency to refer each caregiver of informal child care to the Child and Adult Care Food Program (CACFP). Social services districts may make participation in CACFP mandatory for each caregiver of informal child care who will be providing an average in excess of 30 hours of care per week to one or more subsidized children, provided the social services district sets forth this requirement in the social services district’s Consolidated Services Plan or Integrated County Plan.

Within thirty days of applying for enrollment and as part of the annual re-enrollment process, a legally-exempt caregiver enrollment agency will

request that the social services district check each caregiver of informal child care against the social services district's child welfare data base to determine if the caregiver has ever had his or her parental rights terminated or had a child removed from his or her care by court order under Article 10 of the Family Court Act. The social services district will then provide the specific Office mandated information to the legally-exempt caregiver enrollment agency for the purpose of determining whether to enroll the caregiver. The caregiver must provide the parent/caretaker and the social services district with true and accurate information regarding the reasons underlying the loss of parental or custodial rights. A legally-exempt caregiver enrollment agency must determine whether to enroll a caregiver who has lost parental or custodial rights based on guidelines issued by the Office.

Within thirty days of applying for enrollment, and as part of the annual re-enrollment process, a legally-exempt caregiver enrollment agency must check each caregiver of informal child care against the New York State Office of Children and Family Services' Child Care Facility System to determine whether the caregiver has ever been denied a day care license or registration or had a day care license or registration suspended or revoked. The caregiver must give the parent/caretaker and the legally-exempt caregiver enrollment agency true and accurate information regarding any such denial, revocation or suspension, including a description of the reason for denial, revocation or suspension, the date of the denial, revocation or suspension, and any other relevant information. A legally-exempt caregiver enrollment agency must determine whether to enroll a caregiver who has had such a license or registration denied, suspended or revoked based on guidelines issued by the Office.

Within thirty days of applying for enrollment, and as part of the annual re-enrollment process, legally-exempt caregiver enrollment agency must check each caregiver of informal child care, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care, and for caregivers of legally-exempt family child care, each household member age 18 or older against the New York State Sex Offender Registry maintained by the New York State Division of Criminal Justice Services. This check will be completed by using the Registry's toll free telephone number. When the New York State Sex Offender Registry reveals that a caregiver, employee, volunteer or household member is listed on the Sex Offender Registry, the legally-exempt caregiver enrollment agency may not enroll the caregiver.

Legally-exempt caregiver enrollment agencies are required to annually conduct on-site inspections of at least twenty percent of the currently enrolled caregivers of informal child care in the social services district who do not participate in the CACFP to determine whether such caregivers are in compliance with the health and safety and fiscal standards set forth in the regulations.

A new subdivision (m) is added to section 415.4 to require each social services district to establish comprehensive fraud and abuse control activities for its child care subsidy program that must include but are not limited to:

(a) identification of the criteria the social services district will use to determine which applications should be referred to the social services district's front-end detention system;

(b) a sampling methodology to determine in which cases the social services district will seek verification of an applicant's or recipient's continued need for child care including, as applicable, verification of participation in employment, education or other required activities; and

(c) a sampling methodology to determine which providers of subsidized child care services the social services district will review for the purpose of comparing the providers' attendance forms for children receiving subsidized child care services and any CACFP inspection forms to verify that child care was actually provided on the days listed on the attendance forms.

Subdivision (j) of section 415.9 is amended to establish two market rates for the legally-exempt family child care and in-home child care provider, a standard market rate and an enhanced market rate. The enhanced market rate will apply to those caregivers who receive ten or more hours of training annually in the areas set forth in section 390-a (3)(b) of the Social Services Law. The standard market rate will apply to all other caregivers of legally-exempt family child care and in-home child care.

Revised rule compared with proposed rule: Substantial revisions were made in sections 415.1, 415.4 and 415.9.

Text of revised 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: 30 days after publication of this notice.

Revised Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 34(3)(f) of SSL authorizes the Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 410 of the SSL authorizes local social services officials to provide day care for children at public expense and authorizes the Office to establish criteria for when such day is to be provided.

Section 410-x(3) of the SSL requires the Office to establish, in regulation, minimum health and safety requirements that must be met by providers of child care services providing subsidized child care services under the State Child Care Block Grant, who are not required to be licensed or registered under the SSL or the Administrative Code of the City of New York.

2. Legislative objectives:

The legislative intent of the child care subsidy program is to assist families in meeting their child care costs in programs that provide for the health and safety of their children. Additionally, the child care subsidy program must safeguard the investment of public funds.

3. Needs and benefits:

An audit, conducted by the New York State Office of the Comptroller (OSC) in conjunction with the Office, of legally-exempt informal child care providers serving families receiving publicly funded child care subsidies identified health and safety and fraud issues relating to some of the audited providers. The proposed regulations reasonably address those issues.

Legally-exempt informal child care providers ordinarily care for one or two children in either the children's or the providers' homes. They are exempt from the State's child care licensing and registration requirements but must enroll with the applicable legally-exempt caregiver enrollment agency and meet minimum health and safety regulatory standards established by the Office in order to provide care to children receiving child care subsidies. The proposed regulations are necessary to enhance the health and safety of children receiving subsidized child care services from these informal child care providers and to safeguard the investment of public funds in the child care subsidy program.

The regulations define and designate the legally-exempt caregiver enrollment agencies. These are agencies under contract with the Office to enroll caregivers of legally-exempt child care to provide subsidized services. These agencies in New York State, except New York City, will be the applicable child care resource and referral agency under contract with the Office to serve that social services district (district). For New York City, the designated agency will be an entity or entities identified by the Office.

The regulations provide for additional background checks of individuals providing informal child care to children receiving child care subsidies to determine whether the providers may pose a risk to the children's health and safety. Legally-exempt caregiver enrollment agencies will be required to check the New York State Sex Offender Registry regarding individuals providing subsidized informal child care, their employees and volunteers, and all individuals 18 years of age or older residing in the providers' homes. The legally-exempt caregiver enrollment agencies also will check informal child care providers against the New York State's child care licensing and registration information system. Child welfare databases also will be checked by the districts to determine whether the providers have ever had their parental rights terminated or had children removed from their care under Article 10 of the Family Court Act. Districts will provide the legally-exempt caregiver enrollment agencies with the results of the database check. The legally-exempt caregiver enrollment agencies will use the information obtained from these checks to determine whether individuals should be able to provide subsidized child care services.

The proposed regulations also will improve the health and safety of children receiving subsidized informal child care by promoting the use of the federal Child and Adult Care Food Program (CACFP) by their child care providers. The legally-exempt caregiver enrollment agencies will be required to refer all informal child care providers to the CACFP. Districts may mandate participation in CACFP by those providers who care for subsidized children for 30 or more hours a week. By participating in CACFP, these providers will receive additional funds to purchase meals

and snacks for the children in their care. In addition, their programs will receive on-site visits by a CACFP representative to monitor that care is actually being provided.

Legally-exempt caregiver enrollment agencies will be required to conduct inspections on an annual basis of twenty percent of subsidized informal caregivers who are not participating in CACFP. These inspections will enable legally-exempt caregiver enrollment agencies to assist providers in improving the safety and appropriateness of their child care programs and remove those providers who refuse to comply with the health and safety requirements.

The proposed regulations also will provide incentives to encourage informal providers to improve the quality of the care they provide through training. Research consistently reflects that the quality of child care is directly related to the level of ongoing education and development of the provider. Therefore, the regulations would restructure the market rates available for informal child care by authorizing a higher rate for providers who annually complete ten or more hours of training and a lower rate for those who do not obtain such training.

Districts also will be required to implement enhanced fraud and abuse control activities for their entire child care subsidy programs. These activities will assist in preventing inappropriate child care payments to families and to child care providers. Any resulting savings from the reduction in payments to ineligible families and providers will allow more families to receive subsidies.

4. Costs:

The State Department of Health (DOH) administers the federal CACFP in New York. The State receives open-ended federal funds for CACFP program costs so there will be no adverse financial impact to the State resulting from the increase in the number of informal child care providers participating in CACFP.

It is anticipated that the regulations will result in increased costs. The majority of the costs will be supported through contracts between OCFS and community based organizations serving as the legally-exempt caregiver enrollment agencies to implement the new background check and inspections. To a smaller degree, there will be increased costs incurred by districts to implement the new audit requirements set forth in the regulations. The full annual cost to support the legally-exempt caregiver enrollment agencies to implement the additional background checks and inspections is estimated to be \$7.2 million. This amount is based on the anticipated number of full time equivalent staff needed statewide to perform the function times the average salary and benefit costs for child care resource and referral staff currently involved in family day care registration, a similar function requiring similar skills.

In addition, it is anticipated that the first full year costs to the districts associated with enhancing their existing fraud detection and audit activities for their child care subsidy programs will be \$1.4 million, which is over one and half times more than the districts currently claim for child care audit cost. It should be noted that additional funds for fraud detection and audit activities are only budgeted for a single start-up year as the reduction in improper payments is anticipated to fully off set the ongoing costs in subsequent years.

Each legally-exempt caregiver enrollment agency will be required to maintain an automated roster in the New York State Child Care Facility System (NYSCCFS) of current legally-exempt caregivers enrolled. It is anticipated that the first year cost to the State of providing a legally-exempt component to the NYSCCFS that will track all legally-exempt providers will be \$675,000.

The Office cannot predict the number of informal child care providers that will obtain the annual training needed to be eligible for the enhanced market rates versus the number that will be eligible for the reduced standard market rates. However, the Office does not anticipate that the market rate changes will result in increased costs to the districts during the first year that the regulations are implemented.

In anticipation of these changes to regulations, the State adjusted the districts' New York State Child Care Block Grant allocations for SFY 2005-2006 to reflect the projected increased costs associated with implementing the regulations.

There are no additional costs to informal providers to come into compliance with the regulations. Those informal providers who wish to be eligible for the enhanced market rate may incur some costs in attending the necessary training. However, these costs are expected to be minimal as some of the required training is available free of charge by local community groups. In addition, the informal providers may be able to recoup any costs they incur for training through the enhanced market rates they will be eligible to receive.

5. Local government mandates:

Districts will be required to check each informal child care provider caring for children receiving child care subsidies against the county's child welfare databases to determine whether the caregiver's parental rights have been terminated or children have been removed under Article 10 of the Family Court Act.

In addition, districts will be required to establish comprehensive fraud and abuse control activities for their child care subsidy programs. Furthermore, districts will need to review existing child care subsidy cases where care is being provided by informal child care providers to determine whether the payments reflect the actual cost of care up to new applicable market rates and make any necessary adjustments to the payments.

6. Paperwork:

Districts will be required to track and record the required database checks and audit activities. They also will have to provide notice to those child care recipients where the payment amounts for their informal child care providers change.

7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

8. Alternatives:

In developing this initiative, the Office considered a variety of options for inspections rates and market rate reimbursement levels as well as which background checks could be performed without statutory changes. The proposed regulations reflect a balance between cost and effectiveness and reasonably address the specific problems identified through the audit conducted by OSC in conjunction with the Office. These initiatives are necessary to promote the health and safety of children in informal child care settings.

9. Federal standards:

The federal Child Care and Development Block Grant Act (42 U.S.C. 9858 *et seq.*), as amended by the Personal Responsibility and Work Opportunity Reconciliation Act, requires states to establish minimum health and safety requirements for all providers of subsidized child care services including legally-exempt child care providers. The regulations set forth those requirements that the Office has determined are necessary to enhance the health and safety of children receiving subsidized informal child care.

10. Compliance schedule:

The regulations will be effective immediately upon their adoption by the Office. Districts will have to implement the regulatory provisions immediately for those legally-exempt informal providers who seek to become enrolled with the legally-exempt caregiver enrollment agency on or after the effective date of the regulations. For those legally-exempt informal child care providers who are already enrolled with the districts on the date of the regulations become effective, the legally-exempt caregiver enrollment agency will have to implement the new provisions no later than the next redetermination of eligibility for child care services for a child in the caregiver's care. The new market rates for legally-exempt informal child care providers will be effective 30 days after the regulations are adopted. This should provide those informal child care providers serving subsidized children who wish to be eligible for the enhanced market rate sufficient time to obtain the necessary training before the new rates become effective.

Revised Regulatory Flexibility Analysis

1. Effect of rule:

The proposed regulations will affect 58 social services districts and the approximately 62,000 informal providers who provide child care to children receiving child care subsidies from those social services districts.

2. Compliance requirements:

Social services districts will need to take an additional action in order to check the county's child welfare systems. The Office will establish and contract with legally-exempt caregiver enrollment agencies to determine the enrollment of legally-exempt caregivers, a function previously conducted by social services districts. The legally-exempt caregiver enrollment agencies will have to check the database of the State Sex Offender Registry and the State child care licensing and registration information system and review enrollment documents. Based upon the results of data base checks, the providers may be requested to provide additional information on any criminal history, termination of parental rights or removal of children from their care, or the denial, revocation or suspension of their day care licenses or registrations. This information will be shared with the parent making a choice of a provider, thereby, allowing the parent to make a more informed choice. Based upon the results, the legally-exempt caregiver enrollment agencies must determine whether the providers may be enrolled or re-enrolled to provide subsidized child care services. In

addition, legally-exempt caregiver enrollment agencies must conduct on-site inspections on an annual basis of at least 20 percent of the enrolled providers who do not participate in the Child and Adult Care Food Program (CACFP).

The social services districts also must establish comprehensive fraud and abuse control activities for their child care subsidy programs and provide the details on their programs in their Consolidated Services Plans or Integrated County Plans. The enhanced fraud and abuse control activities conducted by the social services districts will help prevent inappropriate child care payments to families and to child care providers. Any savings resulting from the reduction in overpayments and payments to ineligible families and providers will allow more families to be served.

The regulations also will affect those small businesses operating legally-exempt informal child care programs that are caring for children receiving child care subsidies. These providers will be subject to inspections, on a random sample basis, by legally-exempt caregiver enrollment agencies. Those informal providers who choose to be eligible for the enhanced market rates will need to attend ten or more hours of training annually.

3. Professional services:

Social services districts may need additional investigative staff to comply with the proposed fraud and abuse control activities. Informal providers seeking to be enrolled will not have to hire additional professional staff in order to implement these regulations.

4. Compliance costs:

The State Department of Health (DOH) administers the federal CACFP in New York. The State receives open-ended federal funds for CACFP program costs so there will be no adverse financial impact to the State resulting from the increase in the number of informal child care providers participating in CACFP.

It is anticipated that the regulations will result in increased costs. The majority of the costs will be supported through contracts between the Office and community based organizations serving as the legally-exempt enrollment agencies to implement the new background check and inspections. To a smaller degree, there will be increased costs incurred by social services districts to implement the new audit requirements set forth in the regulations. The full annual cost to support the legally-exempt enrollment agencies to implement the additional background checks and inspections is estimated to be \$7.2 million. This amount is based on the anticipated number of full time equivalents staff needed statewide to perform the function times the average salary and benefit costs for child care resource and referral staff currently involved in family day care registration, a similar function requiring similar skills.

In addition, it is anticipated that the first full year costs to the social services districts associated with enhancing their existing fraud detection and audit activities for their child care subsidy programs will be \$1.4 million, which is over one and half times more than the social services districts currently claim for child care audit cost. It should be noted that additional funds for fraud detection and audit activities are only budgeted for a single start-up year as the reduction in improper payments are anticipated to fully off set the ongoing costs in subsequent years.

Also, it is anticipated that the first year cost to the State of providing a legally-exempt component to the New York State Child Care Facility System (NYSCCFS) that will track all legally-exempt providers will be \$675,000. Each legally-exempt caregiver enrollment agency will be required to maintain an automated roster in the NYSCCFS, of current legally-exempt caregivers enrolled with the social services district including the name and address of each caregiver and information about the caregiver's compliance with the enrollment requirements.

The Office cannot predict the number of informal child care providers that will obtain the annual training needed to be eligible for the enhanced market rates versus the number that will be eligible for the reduced standard market rates. However, the Office does not anticipate that the market rate changes will result in increased costs to the social services districts during the first year that the regulations are implemented.

In anticipation of these changes to regulations, the State adjusted the social services districts' New York State Child Care Block Grant allocations for SFY 2005-2006 to reflect the projected increased costs associated with implementing the regulations.

There are no additional costs to informal providers to come into compliance with the regulations. Those informal providers who wish to be eligible for the enhanced market rates may incur some costs in attending the necessary training. However, these costs are expected to be minimal as some of the required training is available free of charge by local community groups. In addition, the informal providers may be able to recoup any

costs they incur for training through the enhanced market rates they will be eligible to receive.

5. Economic and technological feasibility:

The social services districts and child care providers affected by these regulations will have the economic and technological ability to comply with the regulations. As noted in the compliance cost section, the social services districts NYSCCBG allocations will be adjusted to reflect the projected increased costs of complying with these regulations. Therefore, they should have the economic ability to comply with the regulations. In addition, the Office of Children and Family Services (the Office) will provide social services districts with an automated file that can be used to comply with the requirement to maintain an automated roster of enrolled providers. Those informal subsidized child care providers who incur any costs associated with obtaining the necessary annual training required for the enhanced market rates may be able to recoup those costs through the enhanced rates they will be eligible to receive.

6. Minimizing adverse impact:

The provisions in the regulations were carefully developed to minimize adverse impact on social services districts and legally-exempt informal child care providers while at the same time enhancing the health and safety of children in informal subsidized child care settings. Legally-exempt caregiver enrollment agencies will be required to perform additional activities and there may be some adverse impact on those informal providers that are determined to have backgrounds that have the potential for posing a risk to children or that provide false information on their enrollment forms. However, any additional duties performed by legally-exempt caregiver enrollment agencies or negative consequences on such providers are necessary to protect the health and safety of the children receiving child care services.

As an incentive to promote the quality of care provided in informal subsidized child care settings, the market rates will be restructured to provide a higher reimbursement rate for those informal child care providers who improve their training and skills. Therefore, the proposed regulations will have a positive impact for those informal providers who choose to become eligible for the enhanced market rates by complete ten or more hours of training annually. However, to further emphasize on the importance of developing quality child care programs, the basic market rates will be reduced for those informal providers who do not choose to obtain such training.

7. Small business and local government participation:

The OCFS conducted a focus group on fraud and abuse control activities with representatives from social services districts in June 2002. This group outlined concerns and issues concerning child care services provided by informal caregivers and promoting the program integrity of child care subsidy. The OCFS also met periodically with the New York Welfare Fraud Investigators Association to hear their comments and recommendations on fraud control activities.

The OCFS also consulted with the three social services districts that participated in the audit conducted by the New York State Office of the Comptroller, in conjunction with OCFS, to assess their local findings and their recommendations for addressing the issues. Furthermore, in October 2003, OCFS surveyed all of the social services districts that had approved plans to impose additional health and safety standards above the existing regulatory provisions on legally-exempt child care providers to determine which ones they felt were most beneficial.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed regulations will affect the 44 social services districts located in rural areas of the State and those informal providers who provide child care to children receiving child care subsidies from those districts.

2. Reporting, recordkeeping, and other compliance requirements and professional services:

Social services districts will have additional paperwork requirements associated with implementing the requirements for informal providers that serve families receiving a child care subsidy. The social service district will need to receive, review and maintain documentation concerning checks with the child welfare databases. The regulations define and designate the legally-exempt caregiver enrollment agencies. These are agencies under contract with the Office to enroll caregivers of legally-exempt child care to provide subsidized services. These agencies in New York State, except New York City will be the applicable child care resource and referral agency under contract with the Office to serve that social services district. For New York City, the designated agency will be an entity or entities identified by the Office in consultation with the New York City Human Resources Agency and the New York City Administration for

Children's Services. The legally-exempt caregiver enrollment agencies will need to receive, review and maintain documentation concerning database checks with the State Sex Offender Registry and the State child care licensing and registration. Legally-exempt caregiver enrollment agencies will be required to refer informal caregivers to the Child and Adult Care Food Program (CACFP). Legally-exempt caregiver enrollment agencies will be required to conduct inspections on an annual basis of twenty percent of informal caregivers not participating in CACFP. Social services districts will need to review cases in which an informal provider is caring for children to determine whether the payments reflect the actual cost of care up to the new applicable market rates. Payment adjustments will have to be made, as needed.

Social services districts are required to establish comprehensive fraud and abuse control activities for the child care subsidy program. These must include, but are not limited to: criteria and procedures for the referral of applications to the district's front end detection system; the sampling methodology to determine cases for verification of the family's continued need for child care; and the sampling methodology to determine the providers the district will verify that care was actually provided by comparing provider attendance forms and CACFP inspection forms.

Social services districts may need additional eligibility or investigative staff in order to comply with the proposed regulations. Informal providers seeking to be enrolled with a legally-exempt caregiver enrollment agencies will not have to hire additional professional staff in order to implement these regulations.

3. Costs:

The State Department of Health (DOH) administers the federal CACFP in New York. The State receives open-ended federal funds for CACFP program costs so there will be no adverse financial impact to the State resulting from the increase in the number of informal child care providers participating in CACFP.

It is anticipated that the regulations will result in increased costs. The majority of the costs will be supported through contracts between the Office and community based organizations serving as the legally-exempt enrollment agencies to implement the new background check and inspections. To a smaller degree, there will be increased costs incurred by social services districts to implement the new audit requirements set forth in the regulations. The full annual cost to support the legally-exempt enrollment agencies to implement the additional background checks and inspections is estimated to be \$7.2 million. This amount is based on the anticipated number of full time equivalents staff needed statewide to perform the function times the average salary and benefit costs for child care resource and referral staff currently involved in family day care registration, a similar function requiring similar skills. In addition, it is anticipated that the first full year costs to the social services districts associated with enhancing their existing fraud and audit activities for their child care subsidy programs will be \$1.4 million, which is over one and half times more than the social services districts currently claim for child care audit cost. It should be noted that additional funds for fraud detection and audit activities are only budgeted for a single start-up year as the reduction in improper payments are anticipated to fully off set the ongoing costs in subsequent years.

Also, it is anticipated that the first year cost to the State of providing a legally-exempt component to the New York State Child Care Facility System (NYSCCFS) that will track all legally-exempt providers will be \$675,000. Each legally-exempt caregiver enrollment agency will be required to maintain an automated roster in the NYSCCFS, of current legally-exempt caregivers enrolled with the social services district including the name and address of each caregiver and information about the caregiver's compliance with the enrollment requirements.

The Office cannot predict the number of informal child care providers that will obtain the annual training needed to be eligible for the enhanced market rates versus the number that will be eligible for the reduced standard market rates. However, the Office does not anticipate that the market rate changes will result in increased costs to the social services districts during the first year that the regulations are implemented.

There are no additional costs to informal providers to come into compliance with the regulations. Those informal providers who wish to be eligible for the enhanced market rates may incur some costs in attending the necessary training. However, these costs are expected to be minimal as some of the required training is available free of charge by local community groups. In addition, the informal providers may be able to recoup any costs they incur for training through the enhanced market rates they will be eligible to receive.

4. Minimizing adverse impact:

The provisions in the regulations were carefully developed to minimize adverse impact on social services districts and legally-exempt informal child care providers in all areas of the State while at the same time enhancing the health and safety of children in informal subsidized child care settings. Social services districts will be required to perform additional activities and there may be some adverse impact on those informal providers that are determined to have backgrounds that have the potential for posing a risk to children or that provide false information on their enrollment forms. However, any additional duties performed by social services districts or negative consequences on such providers are necessary to protect the health and safety of the children receiving child care services.

As an incentive to promote the quality of care provided in informal subsidized child care settings, the market rates will be restructured to provide a higher reimbursement rate for those informal child care providers who improve their training and skills. Therefore, the proposed regulations will have a positive impact for those informal providers who choose to become eligible for the enhanced market rates by complete ten or more hours of training annually. However, to further emphasize on the importance of developing quality child care programs, the basic market rates will be reduced for those informal providers who do not choose to obtain such training.

5. Rural area participation:

In June 2002, the Office of Children and Family Services (the Office) conducted a focus group on fraud and abuse control activities with representatives from social services districts including representatives from some rural social services districts. This group outlined concerns and issues concerning child care services provided by informal caregivers and promoting the program integrity of child care subsidy. The Office also met periodically with the New York Welfare Fraud Investigators Association to hear their comments and recommendations on fraud control activities. Representatives from rural social services districts are part of this Association.

Furthermore, in October 2003, the Office surveyed all of the social services districts that had approved plans to impose additional health and safety standards above the existing regulatory provisions on legally-exempt child care providers to determine which ones they felt were most beneficial. Several rural social services districts were part of this survey.

Revised Job Impact Statement

Section 201-a of the State Administrative Procedure Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State.

The regulations define and designate the legally-exempt caregiver enrollment agencies. These are agencies under contract with the Office to enroll caregivers of legally-exempt child care to provide subsidized services. These agencies in New York State, except New York City will be the applicable child care resource and referral agency under contract with the Office to serve that social services district. For New York City the designated agency will be an entity or entities identified by the Office in consultation with the New York City Human Resources Agency and The New York City Administration for Children's Services.

The requirements that legally-exempt caregiver enrollment agencies check the background information regarding legally-exempt informal child care programs may negatively impact on jobs or employment opportunities of some individuals that currently provide subsidized child care services. The Office of Children and Family Services is unable to predict the number of jobs or employment opportunities that might be adversely affected by this portion of the regulations. However, it is anticipated that it would be a very small number as the regulations only apply to those legally-exempt informal providers that care for children who receive child care subsidies. Furthermore, any negative impact on jobs or employment opportunities for some legally-exempt informal providers that may result from these new requirements are necessary to protect the health and safety of the State's vulnerable children.

It also is anticipated that any such negative impacts will be offset by the positive impacts the requirements will have on employment for low income families that receive subsidized child care from legally-exempt providers. It is expected that the requirements will improve the quality and stability of care received by the children of such families. These improvements should enable the adults in these low-income families to have better job attendance and performance. As a result, their employment opportunities should improve.

The regulations also are anticipated to result in additional job opportunities in some local social services districts and legally-exempt caregiver enrollment agencies that choose to hire additional staff and/or contract

with other agencies to perform the new background checks, inspections and/or audit activities.

Summary of Assessment of Public Comment

The Office of Children and Family Services (Office) received comments from 19 individuals on the proposed changes to Title 18 of New York Codes, Rules and Regulations (NYCRR) § 415.4 and § 415.9. Of these 19, 16 individuals represented social services districts (districts), two represented child care organizations and one represented a legal advocacy organization. The following is a summary of the comments and the response to the comments from the Office.

The Office received 16 comments that the proposed regulations place an exorbitant administrative burden and fiscal cost on districts. In addition, five of the commentators stated that the proposed regulations would be a barrier to parents moving from welfare to work. Eight of the commentators stated that the regulations would reduce the availability of and access to informal care. Five of the commentators also stated that the regulations raise complex liability issues and the State should take full responsibility for funding and implementing the mandates. Four of the commentators also stated that additional time is needed by the districts to implement these regulations. The Office reviewed these comments and modified the proposed regulations to establish legally-exempt caregiver enrollment agencies that will be funded by the Office to enroll legally-exempt caregivers caring for children receiving a child care subsidy. Districts will conduct child welfare database checks for informal caregivers and establish fraud and abuse control activities for all subsidized child care services. The legally-exempt caregiver enrollment agencies will perform the other enrollment activities, which include reviewing the completed enrollment package within 10 days to determine whether the caregiver is exempt from licensing and registration requirements and whether the enrollment attestations raise any immediate concerns. The caregiver may be temporarily enrolled while the legally-exempt caregiver enrollment agency completes a full review, which includes background checks. These revisions will reduce the administrative cost and burden on districts with regard to legally-exempt caregivers as the districts will be relieved of some their existing responsibilities regarding such caregivers. Further, the Office believes that the revisions to the regulations simplify the process and lessen the time by which caregivers can be enrolled and start to receive payment for services provided. Thus, the proposed regulations will not impose additional barriers to the availability of informal caregivers. The Office adjusted the effective date of the enrollment provisions, which allow legally-exempt caregiver enrollment agencies adequate time for implementation with appropriate technical support provided.

The Office received two comments supporting the proposed regulations. No change was made to the regulations based on these comments.

The Office received six comments disagreeing with the establishment of an enhanced rate for legally-exempt providers that complete ten or more hours of training annually. In addition, four of the commentators stated that the market rate payment is already complex and difficult to use and understand. The Office believes that the health and safety of children will be improved by providing incentives to informal caregivers to complete training. Furthermore, the Office does not agree that the addition of a single new market rate makes the payment process overly complex. As such, no change was made to the regulations based on these comments.

The Office received three comments objecting to the reduction in the proposed standard market rates for legally-exempt family and legally-exempt in-home providers that do not complete ten hours of training. The Office disagrees with the comments. The Office believes that the health and safety of children will be improved by providing incentives to informal caregivers to complete training. The Office set the enhanced rate at 75 percent of the registered family day care rate and the standard rate at 65 percent. The standard rate represents a reduction from the previous differential of 70 percent. The Office believes that this reduction will be offset in many cases by the increases in market rates that took effect on October 1, 2005. As such, there is no change to the regulations based on this comment.

The Office received four comments supporting the enhanced child care market rate for legally-exempt providers that complete ten or more hours of training annually. In addition, two of the commentators expressed concern about where the legally-exempt providers will get the money to

pay for the training and recommended that the State should include informal providers in the Education Incentive Program (EIP). The Office reviewed these comments and determined that informal caregivers can seek training through the variety of community offerings and can request the assistance of the legally-exempt caregiver enrollment agency. The Office is not providing specific funding to cover the expense of training and is not extending the EIP to informal caregivers. Rather, the Office believes that the establishment of the enhanced market rate for informal caregivers will help offset the costs of training. As such, there is no change to the regulations based on these comments.

The Office received five comments questioning whether the Child and Adult Care Food Program (CACFP) has the resources to respond in a meaningful way to the volume of new referrals of legally-exempt providers. The Office reviewed these comments. The Office has worked with the New York State Department of Health (DOH), the state agency responsible for CACFP, to establish the process for referring informal providers to CACFP. The Office will continue to work with DOH to monitor the number of referrals and workload of CACFP sponsors. The Office believes that the participation of these caregivers in the CACFP provides an additional source of federal funding for the purchase of healthy and nutritional food for children in care and for the improvement in the quality and safety of care that periodic inspections of the home by CACFP inspectors will bring. As such, no change was made to the regulations based on these comments.

The Office received four comments disagreeing with the requirement to check the county's criminal database. Additionally, the Office received three comments supporting the requirement to conduct county criminal background checks. The Office reviewed these comments. The Office has submitted legislation to require that informal caregivers be checked against the Division of Criminal Justice Services criminal history database. In light of this proposed legislation, the Office has eliminated the requirement that the district check the county's criminal database.

The Office received three comments expressing concern that accessing the toll free number to the New York State Sex Offender Registry will be time consuming for districts. Additionally, two of the commentators would like workers to have easy Internet access to the New York State Sex Offender Registry. The Office reviewed these comments and modified the proposed regulations to establish legally-exempt caregiver enrollment agencies to enroll legally-exempt caregivers including checkups proposed legally-exempt child care providers against the New York State Sex Offender Registry. The New York State Sex Offender Registry does not plan at this point to provide access to level 1 or level 2 sex offenders through its Internet search, or to automate interfaces to its databases. The Office will periodically check to see what factors in the enrollment process cause delays, including the check with the New York State Sex Offender Registry. As such, there is no change to the regulations as a result of these comments.

The Office received three comments supporting the requirement to conduct a check against the New York State Sex Offender Registry. No change is needed to the regulations based on these comments.

The Office received three comments that parents must be accountable for their own decisions regarding informal child care and that districts should not be placed in the role of determining the appropriateness of the child care provider. Further, two of the commentators recommended that most of the proposed regulations should not be implemented; however, a reasonable compromise might be to apply them to only providers that are not family members. The Office reviewed these comments and modified the proposed regulations to establish legally-exempt caregiver enrollment agencies that will enroll legally-exempt caregivers. Districts will be responsible for conducting child welfare database checks. The Office disagrees with the comments that the regulations place the district in the role of determining the appropriateness of the provider, rather than the parent. The Office believes that a parent eligible for a child care subsidy should be provided with appropriate information in order to make an informed decision concerning a legally-exempt caregiver, even those caregivers that are related to the parent. The Office believes that the background checks required in the proposed regulations will help protect the health and safety of children receiving a child care subsidy.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Access to Records

I.D. No. CVS-01-06-00004-P

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

Proposed action: This is a consensus rule making to amend section 80.3 of Title 4 NYCRR.

Statutory authority: Public Officers Law, section 87

Subject: Public access to records.

Purpose: To conform regulations of the Department of Civil Service (President's Regulations) to non-discretionary statutory provisions contained in subdivisions (3) and (4) of section 89 of the Public Officers Law (Freedom of Information Law).

Text of proposed rule: RESOLVED, That Part 80 of the Regulations of the Department of Civil Service (President's Regulation), Public Access to Records, be and hereby is amended as follows:

1. by amending subdivision (a) of section 80.3 to read as follows:
 - a) The records access officer of the Department of Civil Service is the public relations officer of the department unless otherwise designated by the president. The records access officer shall have the duty of coordinating the response of the department to public requests for access to records. Upon receipt of a *request* [an application], the records access officer will [note on it the suggested access and] forward copies of the *request* [application] to the appropriate personnel within the department to search for the records requested, maintaining one copy of the *request* [each application] for his or her files. Thereafter, the records access officer shall [assure that personnel]:
 - 1) Upon locating the records requested:
 - (i) Make such records promptly available for inspection; or,
 - (ii) Deny access to the records in whole or in part and explain in writing the reasons for such denial.
 - 2) Upon failure to locate the records requested, certify that:
 - (i) The Department of Civil Service does not maintain such records; or
 - (ii) The Department of Civil Service maintains such records, but after a diligent search, they cannot be found; or,
 - (iii) The information supplied by the applicant is not sufficiently detailed to enable the department to determine whether or not it maintains such records.
 - 3) Upon request for copies of records: Make a copy available upon payment [or offer to pay] of any fees established in accordance with section 80.7 of this Part or any other duly established fees. The department in its discretion may permit the requester to copy records where it would not administratively inconvenience the department or unduly restrict the use of such records.
 - 4) If the department does not provide or deny access to the record sought within five days of receipt of a request, *the records access officer* [we] shall *within such five day period*, furnish a written acknowledgement of receipt of the request and a statement of the approximate date when the request will be granted or denied, *which date shall be reasonable under the circumstances of the request. If the records access officer determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the records access officer shall state, in writing, both the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part.*

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

Data, views or arguments may be submitted to: Brian S. Reichenbach, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-3177, e-mail: bsr@cs.state.ny.us

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

Consensus Rule Making Determination

Section 87 of Article 6 of the Public Officers Law (Freedom of Information Law) provides that each agency shall promulgate rules and regulations in conformity with the Freedom of Information Law and applicable rules and regulations promulgated by the Committee on Open Government pertaining to the availability of records and procedures to be followed. In accordance therewith, Part 80 of Title 4 of the New York Compilation of Codes, Rules and Regulations (4 NYCRR Part 80) was adopted to, among other things, prescribe the Department's procedures upon receipt of a request for records. However, as a result of Chapter 22 of the Laws of 2005, subdivisions (3) and (4) of section 89 of the Freedom of Information Law were amended to revise the procedures agencies must follow in regard to record requests.

In light of the changes imposed by Chapter 22 of the Laws of 2005, the proposed resolution amends subdivision (a) of section 80.3 to provide that where the Department furnishes a written acknowledgement of the receipt of a request for records and a statement of the approximate date when such request will be granted or denied, such date shall be reasonable under the circumstances of the request. In addition, where a determination is made to grant a request in whole or in part, or where circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the records access officer shall provide a written statement as to the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted.

As the amendment conforms current regulations to non-discretionary statutory provisions contained in the Freedom of Information Law, no person is likely to object to the adoption of the rule as written. The other changes are minor and technical in nature. Therefore, the proposed rule is advanced as a consensus rule pursuant to section 202(1)(b)(i) of the State Administrative Procedure Act.

Job Impact Statement

As the rule simply modifies subdivision (a) of section 80.3 of Title 4 of the New York Compilation of Codes, Rules and Regulations to revise the regulations governing public access to records maintained by the Department of Civil Service, the rule will have no impact on jobs or employment possibilities as set forth in section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). Therefore, a Job Impact Statement is not required by section 201-a of such Act.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reimbursement of the Current Monthly Medicare Part B Base Premium

I.D. No. CVS-01-06-00007-P

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

Proposed action: Repeal of section 73.3(b)(6) and addition of new section 73.3(b)(6) to Title 4 NYCRR.

Statutory authority: Civil Service Law, section 160

Subject: Reimbursement of the current monthly Medicare Part B base premium for each employee, retired employee or dependent covered under the New York State Health Insurance Program (NYSHIP) who is or would be eligible for primary coverage under the health insurance plan available under title XVIII of the Federal Social Security Act.

Purpose: To provide for the necessary adjustment of contributions by an employer, employer's employees and retired employees to the health insurance fund established pursuant to subsection six of section 167 of the Civil Service Law. Such contributions are utilized, in part, to fully fund the reimbursement of the current monthly Medicare Part B base premium for each employee, retired employee or dependent covered under the New York State Health Insurance Program (NYSHIP) who is or would be eligible for primary coverage under the health insurance plan available under title XVIII of the Federal Social Security Act.

Text of proposed rule: Paragraph (6) of subdivision (b) of section 73.3 of the President's Regulations of Title 4 NYCRR is hereby repealed and a new paragraph (6) of subdivision (b) of section 73.3 of the President's Regulations is adopted to read as follows:

A sum each month equal to the current monthly Medicare Part B base premium shall be reimbursed to each employee, retired employee or dependent covered under the health insurance plan who is or would be eligible for primary coverage under the health insurance plan available

under title XVIII of the federal social security act; such reimbursement shall be payable from the health insurance fund established pursuant to subsection six of section 167 of the civil service law. An employer's payment of premium into the fund, including amounts contributed by the employer and by the employer's employees, retired employees or dependents, shall be adjusted as necessary to provide for such payments.

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

Data, views or arguments may be submitted to: Brian S. Reichenbach, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-3177, e-mail: bsr@cs.state.ny.us

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

Regulatory Impact Statement

1. **Statutory Authority:** Subdivision (1) of section 160 of the Civil Service Law empowers the President of the New York State Civil Service Commission to establish regulations relating to the terms and conditions of the health insurance contract or contracts, as applied to (a) active employees and (b) retired employees, and adopt such further regulations as may be required for the effective administration of Article XI of the Civil Service Law. The change in payment embodied in the rule was contained in the Executive Budget for State Fiscal Year 2005-06 and the particulars were briefed to staff for both houses of the Legislature. The budget ultimately passed by both houses of the Legislature and enacted contained the State savings achieved by the rule (Ch. 50, Laws of 2005, page 240). Also, section 167(6) of the State Civil Service Law provides for the health insurance fund to have a special reserve "as determined by the president" of the Civil Service Commission, who is also the Commissioner of the Civil Service Department. The Department has obtained the approval of the director of employee relations as required by section 160 subd. 3 of the civil service law.

2. **Legislative Objectives:** This amendment will provide for the continuation of the reimbursement of the current monthly Medicare Part B base premium for each employee, retired employee or dependent covered under the New York State Health Insurance Program (NYSHIP) who is or would be eligible for primary coverage under the health insurance plan available under Title XVIII of the federal Social Security Act. The rule will conform the source of the reimbursement to the enacted State FY 05-06 Budget, by implementing an employee contribution to equitably share this cost on the same basis as other components of NYSHIP premium. Such reimbursement may be adjusted consistent with future modifications to the monthly Medicare Part B base premium.

3. **Needs and Benefits:** Since 1966, New York State has reimbursed Medicare Part B premiums to New York State enrollees who participate in Medicare from funds in the health insurance fund but paid exclusively by employers, in this case the State and participating public authorities. NYSHIP needs to recoup the full cost of monthly Medicare Part B base premium reimbursement expenses through NYSHIP premium payments, which are allocated among employers, employees and retired enrollees. The proposed amendment will ensure that current and future Medicare Part B base monthly reimbursement payments for eligible employees and retirees will be completely funded through NYSHIP premium payments, without additional costs to New York State. The rule will spread the cost for the premium reimbursement among all State and participating employer (mostly State authorities) payors into the health insurance fund.

4. **Costs:**

a. **Costs to regulated persons for the implementation of and continuing compliance with the rule:** All costs related to the calculation and adjustment of NYSHIP premium payments are performed by the Department of Civil Service without additional expense. The Department of Civil Service anticipates a slight increase (3% of active employee contribution, ranging from 68 cents per pay period to a maximum of \$2.74 per pay period) in the annual cost of the employee share of NYSHIP premiums to provide for the full recapture of subject Medicare Part B reimbursement expenses.

b. **Costs to the agency, State and local governments for implementation and continuation of the rule:** All administrative activities related to the collection of NYSHIP premium payments are performed by the Department of Civil Service. The subject rule will be implemented without additional expense. The savings to the State from the change embodied in the rule have been included as part of the enacted State Fiscal Year 2005-06 Budget.

c. **The information, including the source(s) of such information, and methodology upon which the cost analysis is based:** Information regarding the costs of administering the NYSHIP program and NYSHIP rate projections is supplied by the Department of Civil Service. Information regarding Medicare Part B base rates and enrollment eligibility can be obtained from the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

5. **Paperwork:** This rule will not require any new or additional application or reporting forms.

6. **Local Government Mandates:** This rule will impose no mandates upon any local government, including participating agencies and participating employers in NYSHIP.

7. **Duplication:** This rule does not duplicate or conflict with any State or federal requirements.

8. **Alternative Approaches:** While this rule will entail some cost sharing among employers, employees and retiree NYSHIP enrollees, it is the most cost-effective method of assuring that the cost of monthly Medicare Part B base premium reimbursement expenses for NYSHIP enrollees who are eligible for primary coverage under Medicare is equitably shared among all plan participants who receive the benefit of reduced claims costs resulting from participation of eligible enrollees in Medicare Part B. Currently, NYSHIP enjoys a reduced claim cost of four dollars for every dollar of Medicare Part B premium reimbursed. This keeps the cost of the program lower for all payors, the State, employees and participating employers because claim cost is lower for all, thereby keeping the premium cost lower. The alternative of not changing the rule to spread the cost was considered and rejected in part because the revenues and resultant savings to the State (\$28M) was computed as part of the enacted State budget passed by both houses of the Legislature. Failure to enact the rule would continue the practice of the State, through its taxpayers bearing an inequitable share of the cost of Medicare Part B premium reimbursement, as opposed to the cost being spread among users of NYSHIP and all payors in to the health insurance fund. Also, failure to enact the rule would subject the State to an unbudgeted cost of \$28M, as the savings were computed in the budget for the current fiscal year.

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

10. **Compliance Schedule:** NYSHIP administration will implement compliance upon the effective date of this rule.

Regulatory Flexibility Analysis

Since this rule serves only to provide for the reimbursement of the current monthly Medicare Part B base premium for each employee, retired employee or dependent covered under the New York State Health Insurance Program (NYSHIP) who is or would be eligible for primary coverage under Medicare, without regard to the geographic distribution of such persons, this rule will not impose any adverse economic impact or create reporting, recordkeeping or other compliance requirements for public and private entities in rural areas, as defined in section 102(10) of the State Administrative Procedure Act. Therefore, a Rural Area Flexibility Analysis is not required by section 202-bb of such Act.

Rural Area Flexibility Analysis

Since this rule serves only to provide for the reimbursement of the current monthly Medicare Part B base premium for each employee, retired employee or dependent covered under the New York State Health Insurance Program (NYSHIP) who is or would be eligible for primary coverage under Medicare, without regard to the geographic distribution of such persons, this rule will not impose any adverse economic impact or create reporting, recordkeeping or other compliance requirements for public and private entities in rural areas, as defined in section 102(10) of the State Administrative Procedure Act. Therefore, a Rural Area Flexibility Analysis is not required by section 202-bb of such Act.

Job Impact Statement

Since this rule serves only to provide for the reimbursement of the current monthly Medicare Part B base premium for each employee, retired employee or dependent covered under the New York State Health Insurance Program (NYSHIP) who is or would be eligible for primary coverage under Medicare, this rule will have no impact on jobs or employment opportunities for subject individuals, as set forth in section 201-a(2)(a) of the State Administrative Procedure Act. Therefore, a Job Impact Statement (JIS) is not required by section 201-a of such Act.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Moose

I.D. No. ENV-01-06-00003-EP

Filing No. 1522

Filing date: Dec. 15, 2005

Effective date: Dec. 15, 2005

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

Action taken: Amendment of Part 189 of Title 6 NYCRR.

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

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

Specific reasons underlying the finding of necessity: This rulemaking is in response to the recent discovery of chronic wasting disease (CWD) in white-tailed deer in West Virginia and in wild moose in Colorado. CWD is an infectious neurological disease of cervids, the family which includes deer, elk and moose. CWD is a transmissible spongiform encephalopathy, and is a progressively fatal disease with no known immunity, vaccine or treatment. Management of CWD is further complicated by the fact that it is a poorly understood disease with clinical signs not apparent for at least 18 months following exposure and an unknown mode of transmission.

This emergency rulemaking is necessary to protect New York's white-tailed deer herd from CWD by preventing the importation of CWD infectious materials into New York from newly identified sources. Prior to the recent discoveries concerning West Virginia and moose, CWD regulations were adopted by the Department and the Department of Agriculture and Markets in an effort to prevent CWD from entering the state from outside sources, but those regulations did not include West Virginia or moose because they were not known sources at that time. With the discovery of CWD in white-tailed deer in West Virginia and in wild moose in Colorado, amendment of 6 NYCRR Part 189 is necessary to prevent importation of potentially infectious materials from these new sources.

The emergency rulemaking will add moose to the list of species to which importation restrictions apply, and will place restrictions on the importation of wild deer carcasses and parts from West Virginia.

Subject: Definition for the genus *Alces* (moose); prohibition on the importation of moose carcasses and parts from certain states; and imposition of restrictions concerning cervid carcasses imported from West Virginia.

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

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

Section 189.1 remains unchanged.

Section 189.2 is amended as follows:

Subdivisions 189.2(e) through (i) are relettered as subdivisions 189.2(f) through (j).

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

(e) *Genus Alces* means the following species and hybrids: moose (*Alces alces*).

Section 189.3 is amended as follows:

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

(a) Importation of animals of the Genus *Cervus* [or the], Genus *Odocoileus*, or *Genus Alces*. No person shall import into New York State any wild or captive animal of the Genus *Cervus* or the Genus *Odocoileus* or the *Genus Alces* except under permit issued by the New York State Department of Agriculture and Markets, in consultation with the department, pursuant to Section 68.2 of Title 1 NYCRR.

Paragraphs 189.3(b)(1) through 189.3(b)(3) remain unchanged.

Paragraph 189.3(b)(4) is amended to read as follows:

(4) by distribution of food material for legally possessed captive animals of the Genus *Cervus* or the Genus *Odocoileus* or the *Genus Alces*; or

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

(c) Distribution of certain food materials. No person shall feed any wild or captive animal of the Genus *Cervus* or the Genus *Odocoileus* or the *Genus Alces* with any material that contains protein derived from any mammalian tissues.

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

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

Subdivision 189.3(d)(1) through (d)(3) remain unchanged.

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

(e) Importation of carcasses and parts. No person shall import into New York or possess in New York the carcasses or parts of wild, captive, or captive-bred animals of the Genus *Cervus* or the Genus *Odocoileus* or the *Genus Alces* obtained from or taken outside New York, except that:

(1) carcasses and parts of wild animals of the Genus *Cervus* or the Genus *Odocoileus* or the *Genus Alces* taken in the following states and provinces may be imported and possessed provided that all such carcasses and parts are marked as described in Section 189.4 of this Part:

(i) United States: Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, and Virginia [, and West Virginia];

(ii) Canada: New Brunswick, Newfoundland, Nunavut, Ontario, Prince Edward Island, and Quebec.

(2) carcasses and parts of wild animals of the Genus *Cervus* or the Genus *Odocoileus* or the *Genus Alces* taken outside New York, except for those states and provinces listed in paragraph (1) of this subdivision, may be imported and possessed provided that the parts listed in subdivision (d) of this section have been removed.

(3) carcasses and parts of captive or captive-bred animals of the Genus *Cervus* or the Genus *Odocoileus* or the *Genus Alces* taken or obtained from outside New York may be imported and possessed provided that the parts listed in subdivision (d) of this section have been removed.

(4) any meat of wild animals of the Genus *Cervus* or the Genus *Odocoileus* or the *Genus Alces* may be imported and possessed provided that such meat does not contain any parts listed in subdivision (d) of this section;

Paragraphs 189.3(e)(5) and 189.3(e)(6) remain unchanged.

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

(f) Liberation of wild or captive animals. No person shall:

(1) liberate or release to the wild in New York any captive or captive-bred animal of the Genus *Cervus* or the *Genus Alces* or the Genus *Odocoileus* except for wild white-tailed deer (*O. virginianus*) held in temporary captivity under license or permit issued by the Department pursuant to Environmental Conservation Law Sections 11-0507 or 11-0515(3) and 6 NYCRR Part 184; or

(2) liberate or release to the wild in New York any wild animal of the *Genus Alces* or the Genus *Cervus* or the Genus *Odocoileus* except under license or permit issued by the Department pursuant to Environmental Conservation Law Sections 11-0507 or 11-0515(3) and 6 NYCRR Part 184.

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

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

Subdivision 189.3(h) remains unchanged.

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

(i) Possession of wild white-tailed deer.

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

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

Section 189.4 is amended to read as follows:

§ 189.4 Marking of Carcasses and Parts.

All carcasses and parts of any wild animal of the Genus *Cervus* or the Genus *Odocoileus* or the *Genus Alces* imported into New York, or pack-

ages or containers containing such carcasses or parts, shall be affixed with a legible label bearing the following information: the species of animal, the state or province where the animal was taken, and the name and address of the person who took the animal.

Section 189.5 is amended to read as follows:

§ 189.5 Transportation or shipment of carcasses and parts through New York.

A person may transport or ship carcasses or parts of any wild or captive animals of the Genus Cervus or the Genus Odocoileus or the Genus Alces through New York provided that all such carcasses and parts are not disposed of in any manner or delivered to any person in New York.

Section 189.6 is amended to read as follows:

§ 189.6 Special Provisions

(a) Any person who imports into New York a carcass or part or possesses an imported carcass or part of an animal of the Genus Cervus or the Genus Odocoileus or the Genus Alces and who is notified that such animal has tested positive for chronic wasting disease must report such test results to the Department within 24 hours of receiving such notification. Test results shall be reported to the Department either by mail or telephone at the following address and phone number:

Mail: Director, Division of Fish, Wildlife and Marine Resources,
NYSDEC, 625 Broadway, Albany, NY 12233-4750
Telephone: (518) 402-8923

(b) The Department may immediately seize any carcass or part of an animal of the Genus Cervus or the Genus Odocoileus or the Genus Alces if the carcass or part is imported or possessed in violation of the provisions of this Part or if the animal has tested positive for chronic wasting disease.

(c) The Department may immediately seize, quarantine and euthanize any animals of the Genus Cervus or the Genus Odocoileus or the Genus Alces that are imported or possessed in violation of the provisions of this Part.

(d) The Department may direct any person possessing any animals of the Genus Cervus or the Genus Odocoileus or the Genus Alces suspected of having chronic wasting disease to comply with any measures that are deemed necessary to prevent or mitigate the spread or introduction of chronic wasting disease.

Subdivisions 189.6(e) and (f) remain unchanged.

Section 189.7 is amended as follows:

Subdivision 189.7(c) is amended to read as follows:

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

Subdivisions 189.7(c) through (g) remain unchanged.

Subdivision 189.7(h) is amended to read as follows:

(h) Disposal of carcasses and parts. [All] No person shall dispose of carcasses and parts of animals of the Genus Cervus or the Genus Odocoileus [which are to be discarded] or the Genus Alces in the CWD containment area, except those parts removed in the field during normal field dressing, unless such parts shall be disposed of in a landfill authorized pursuant to Part 360 of this Title. Transfer or treatment of the waste prior to disposal, at a facility authorized pursuant to Part 360 of this Title, is acceptable.

Section 189.8 is amended to read as follows:

§ 189.8 Taxidermy.

(a) No person who engages in the art or operation of preparing, stuffing, and mounting the skins or other parts of animals of the Genus Cervus or the Genus Odocoileus or the Genus Alces shall allow live cervids to come in contact with any materials, including taxidermy materials and any waste generated from taxidermy.

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

Paragraph 189.8(b)(1) through end of section 189.8 remains unchanged.

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 March 14, 2006.

Text of rule and any required statements and analyses may be obtained from: Randall Stumvoll, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8919, e-mail: rxstumvo@gw.dec.state.ny.us

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

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

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

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

Regulatory Impact Statement

Statutory authority:

The Commissioner of Environmental Conservation, pursuant to Environmental Conservation Law (ECL) Section 3-0301, has authority to protect the wildlife resources of New York State.

Environmental Conservation Law Section 11-0325 provides the Department of Environmental Conservation (Department) with authority to take action necessary to protect fish and wildlife from dangerous diseases. Where a disease is a threat to livestock, as well as to the fish and wildlife populations of the state, Section 11-0325 requires that the Department consult the Department of Agriculture and Markets. If the Department and the Department of Agriculture and Markets jointly determine that a disease, which endangers the health and welfare of fish or wildlife populations, or of domestic livestock, exists in any area of the state or is in imminent danger of being introduced into the state, the Department is authorized to adopt measures or regulations necessary to prevent the introduction or spread of such disease.

ECL Section 11-1905 provides the Department with authority to regulate the possession, propagation, transportation and sale of captive-bred white-tailed deer.

ECL Section 27-0703 provides the Department with authority to regulate the disposal of solid waste.

Legislative objectives:

The legislative objective of ECL Section 3-0301 is to grant the Commissioner the powers necessary for the Department to protect New York's natural resources, including wildlife, in accordance with the environmental policy of the state.

The legislative objective of ECL Section 11-0325 is to provide the Department with broad authority to respond to the presence or threat of a disease that endangers the health or welfare of fish or wildlife populations. In addition, this Section provides for collaboration between the Department and the Department of Agriculture and Markets when such disease also poses a threat to livestock.

The legislative objective of ECL Section 11-1905 is to provide the Department with authority to regulate the captive-bred white-tailed deer population in New York.

The legislative objective of ECL Section 27-0703 is to provide the Department with authority to regulate the disposal of solid waste.

Needs and benefits:

This rulemaking is in response to the recent discovery of chronic wasting disease (CWD) in white-tailed deer in West Virginia and in wild moose in Colorado. CWD is an infectious neurological disease of cervids, the family which includes deer, elk and moose. CWD is a transmissible spongiform encephalopathy, and is a progressively fatal disease with no known immunity, vaccine or treatment. Management of CWD is further complicated by the fact that it is a poorly understood disease with clinical signs not apparent for at least 18 months following exposure and an unknown mode of transmission.

This emergency rulemaking is necessary to protect New York's white-tailed deer herd from CWD by preventing the importation of CWD infectious materials into New York from newly identified sources. Prior to the recent discoveries concerning West Virginia and moose, CWD regulations were adopted by the Department and the Department of Agriculture and Markets in an effort to prevent CWD from entering the state from outside sources, but those regulations did not include West Virginia or moose because they were not known sources at that time. With the discovery of CWD in white-tailed deer in West Virginia and in wild moose in Colorado, amendment of 6 NYCRR Part 189 is necessary to prevent importation of potentially infectious materials from these new sources.

The emergency rulemaking will add moose to the list of species to which importation restrictions apply, and will place restrictions on the importation of wild deer carcasses and parts from West Virginia.

The white-tailed deer herd in New York is estimated to be approximately one million animals. In 2000-01, over 650,000 licenses were sold to hunt white-tailed deer in New York, resulting in expenditures by hunters and for hunting related activities of approximately \$1 billion dollars.

Costs:

This rulemaking could result in additional costs to hunters who must process their harvested deer or moose prior to importing it into New York.

Local government mandates:

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

Paperwork:

The proposed rule does not impose any additional recordkeeping.

Duplication:

The proposed amendment does not duplicate any state or federal requirement.

Alternatives:

No Action: The Department has rejected this option. Failing to act to prevent the importation of CWD would allow the disease to become established in other parts of the state. The spread of CWD could compromise the health of New York's White-tailed deer herd and could have significant economic impacts on commercial and recreational activities associated with white-tailed deer.

Federal standards:

The United States Department of Agriculture-Animal and Plant Health Inspection Service (USDA-APHIS) developed an Environmental Assessment (EA) in 2002. The EA outlined the role of the federal government in CWD management. This role included providing coordination and assistance with research, surveillance, disease management, diagnostic testing, technology, communications, information dissemination, education and funding for State CWD Programs. At this time, there are no federal standards governing management of deer, moose or elk.

Compliance schedule:

Immediate compliance will be required.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed regulations, also adopted by emergency rulemaking, are necessary to protect the white-tailed deer population in New York from Chronic Wasting Disease (CWD). The white-tailed deer is a very important natural resource to small businesses and local governments in New York. The purpose of the new regulation is to protect this resource so that New Yorkers may continue to enjoy viewing deer, and benefit from deer hunting, and the positive economic and social effects of deer and deer hunting.

Under the proposed regulations, West Virginia will be dropped from the list of states exempt for the importation restrictions. Although this will impact New York residents who may hunt in West Virginia and plan to return to New York with whole carcasses of the deer they harvest, it is anticipated that this will effect relatively few hunters and, with some advanced planning, hunters can easily comply with these regulations without losing hunting opportunity.

The regulation also will add moose to the list of Cervids for which importation of parts are restricted. Since residents hunting out of state generally process harvested moose prior to returning to New York, this regulation should have little impact on the regulated community.

No local governments will be affected by this rule.

2. Compliance Requirements:

Resident hunters who harvest a deer or moose in West Virginia or a moose in the other restricted states will be required to remove specific parts from the animal before bringing it into New York.

3. Professional Services:

The rule will not require local governments or small businesses to engage professional services to comply with this rule.

4. Compliance Costs:

Some successful hunters will be required to pay for the processing of their harvested deer or moose before returning to the state. Most hunters who hunt in the restricted states have their harvested game processed before they return as a matter of course.

5. Economic and Technological Feasibility:

There is no economic or technological affect on local governments or small businesses. The rule will not require any technological changes or capital expenditures to comply with the new regulation.

6. Minimizing Adverse Impact:

As the serious nature of Chronic Wasting Disease is explained to the public, the new restrictions are likely to be accepted as reasonable and balanced. The Department strongly supports continued research on Chronic Wasting Disease to understand the paths of transmission, and associated risk variables. As new information becomes available, the Department will adjust regulations in response to new data or findings.

7. Small Business and Local Government Participation:

When Chronic Wasting Disease was first confirmed, the Department held public meetings in the containment area to explain the nature of the disease and the Department's initial response. Since early April 2005, the Department has issued press releases to continue to inform the public of developments and findings relative to the monitoring program. Similarly, as the Department establishes appropriate and necessary regulations to contain the disease, outreach to affected stakeholders (businesses and local governments) will be done so that the importance of the new regulations is understood.

Rural Area Flexibility Analysis

This rulemaking is in response to the recent discovery of chronic wasting disease (CWD) in white-tailed deer in West Virginia and in wild moose in Colorado. CWD is an infectious neurological disease of cervids, the family which includes deer, elk and moose. CWD is a transmissible spongiform encephalopathy, and is a progressively fatal disease with no known immunity, vaccine or treatment. Management of CWD is further complicated by the fact that it is a poorly understood disease with clinical signs not apparent for at least 18 months following exposure and an unknown mode of transmission.

This emergency rulemaking is necessary to protect New York's white-tailed deer herd from CWD by preventing the importation of CWD infectious materials into New York from newly identified sources. Prior to the recent discoveries of CWD in White-tailed deer in West Virginia and moose in Colorado, CWD regulations were adopted by the Department and the Department of Agriculture and Markets in an effort to prevent CWD from entering the state from outside sources, but those regulations did not include West Virginia or moose because they were not known sources at that time. With the discovery of CWD in white-tailed deer in West Virginia and in wild moose in Colorado, amendment of 6 NYCRR Part 189 is necessary to prevent importation of potentially infectious materials from these new sources.

This rulemaking is directed at the importation of certain animal parts into New York from outside the state. It does not have any direct impacts on rural areas or entities therein. Therefore, the Department has determined that this rulemaking will not have any adverse impacts on rural areas. In fact, the rulemaking will have a positive impact on rural areas by preventing the importation of CWD infectious materials and the introduction of CWD to new areas of the state. The Department has further determined that this rule will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. Therefore, a rural area flexibility analysis is not required for this rulemaking.

Job Impact Statement

This rulemaking is necessary to protect New York's white-tailed deer herd from CWD by preventing the importation of CWD infectious materials into New York from newly identified sources. The rulemaking will add moose to the list of species to which importation restrictions apply, and will place restrictions on the importation of wild deer carcasses and parts from West Virginia.

The Department has determined that this rulemaking will not have a substantial adverse impact on jobs and employment opportunities, and that by its nature and purpose (protecting the white-tailed deer resource), the proposed rule will protect jobs and employment opportunities. Therefore, the Department has determined that a job impact statement is not required.

NOTICE OF ADOPTION

Low-Level Radioactive Waste Transporter Permit and Manifest System Regulations

I.D. No. ENV-36-05-00002-A

Filing No. 1525

Filing date: Dec. 14, 2005

Effective date: Jan. 4, 2006

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

Action taken: Amendment of section 381.18 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, art. 27, title 3, sections 27-0303 and 27-0305

Subject: Update the dates of publication of Federal regulations that are incorporated by reference to the most currently available volumes and delete an invalid room number referenced in the regulations.

Purpose: To maintain compatibility with the Nuclear Regulatory Commission's (NRC) Agreement State Program by correcting deficiencies identified in NRC's Integrated Materials Performance Evaluation Program review of 1998.

Text or summary was published in the notice of proposed rule making, I.D. No. ENV-36-05-00002-P, Issue of September 7, 2005.

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

Text of rule and any required statements and analyses may be obtained from: John B. Zeh, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8579, e-mail: radregs@gw.dec.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Provision of Information by The EPIC Program

I.D. No. HLT-01-06-00014-E

Filing No. 1528

Filing date: Dec. 20, 2005

Effective date: Dec. 20, 2005

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

Action taken: Amendment of section 9600.4(c) of Title 9 NYCRR.

Statutory authority: Elder Law, sections 244, 245 and 246

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

Specific reasons underlying the finding of necessity: The specific reason underlying the finding of necessity to adopt as an emergency rule: The proposed regulation will require EPIC to share data with OTDA so that OTDA can match the data against its files of individuals who are in receipt of Food Stamp benefits. The match will enable an automated increase in Food Stamp benefits for those EPIC participants enrolled in the Medicare prescription drug discount program who are also Food Stamp beneficiaries. In order to obtain a deduction for medical expenses that will result in this increased benefit for calendar year 2004, the exchange of data must take place before the end of the calendar year. There is not enough time to canvas all EPIC participants for their consent to release of data. An emergency regulation mandating the sharing of data is the only way to ensure that those EPIC participants enrolled in the Medicare prescription drug program who are Food Stamp eligible will have the opportunity to get their medical deduction before the end of this calendar year and that the sharing of the data does not violate the confidentiality requirements of HIPAA. For these reasons, the Department finds that the immediate adoption of the regulation is necessary for the preservation of the public health, safety and general welfare and that compliance with the procedural requirements of the State Administrative Procedure Act (SAPA) 202(1) would be contrary to the public interest.

Subject: Provision of information by the EPIC Program.

Purpose: To enable the provision of information to OTDA by EPIC regarding participants who are enrolled in the Medicare Prescription Drug Card Program, thereby assisting these participants to receive an enhanced medical deduction in the calculation of food stamp benefits.

Text of emergency rule: A new subdivision (c) is added to Section 9600.4 of Title 9 NYCRR to read as follows:

(c) For the purpose of assisting participants to receive an appropriate amount of federal Food Stamp benefits, the Program for Elderly Pharmaceutical Insurance Coverage (EPIC) shall provide to the Office of Temporary and Disability Assistance (OTDA) information identifying EPIC par-

ticipants who are also enrolled in the Medicare prescription drug discount card program authorized by Title XVIII of the Social Security Act. Information provided shall be limited to eligibility and enrollment data available to EPIC and sufficient to enable OTDA to identify those participants who are also Food Stamp recipients. OTDA's use of this information shall be limited to the purpose of identifying EPIC participants who are also Food Stamp recipients and are eligible for additional Food Stamp benefits by virtue of their enrollment in the Medicare prescription drug discount card program.

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 19, 2006.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the amendment of this regulation is contained sections 244(5)(a), 245(2) and 246(4) of the Elder Law.

Legislative Objectives:

Section 244(5)(a) of the Elder Law requires the Elderly Pharmaceutical Insurance Coverage (EPIC) panel, consisting of the Commissioners of the Departments of Education and Health, the Superintendent of Insurance, and the Directors of the State Office for the Aging and the Division of the Budget to promulgate regulations pursuant to Section 246(4) of the Elder Law, subject to the approval of the Director of the Budget. The Director of the Budget approved the promulgation of these regulations. Section 245(2) of the Elder Law requires the Executive Director of EPIC to appoint staff and request the assistance of any department or other agency of the State in performing such functions as may be necessary to carry out the provisions of the EPIC law and to perform such other functions as may be specifically required by the law, assigned by the EPIC panel, or necessary to ensure the efficient operation of the program. Section 246(4) of the Elder Law defines the scope of EPIC regulations as including procedures to ensure that all information obtained on persons applying for EPIC benefits remains confidential and is not disclosed to persons or agencies other than those entitled to such information because such disclosure is necessary for the proper administration of the EPIC program.

Needs and Benefits:

The EPIC program provides coverage of certain drugs for residents of the State of New York who are at least 65 years of age, who have incomes within the limitations prescribed by law, who are not in receipt of Medical Assistance and who do not have equivalent or better drug coverage from any other public or private third party payment source or insurance plan. The program provides an essential benefit for elderly New York residents who need financial assistance in order to obtain medications but who do not have other insurance benefits and are not in receipt of Medical Assistance coverage of their drug expenses. Chapter 49 of the Laws of 2004 authorizes the EPIC program to apply for transitional assistance under the Medicare prescription drug discount card program with a specific drug discount card under Title XVIII of the federal Social Security Act. EPIC automatically enrolled eligible participants in the Medicare prescription drug discount card program.

Section 1860D-31(g)(6) of the Social Security Act, as amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), 42 USC 1395w-141(g)(6), states that the availability of negotiated prices or transitional assistance received through the Medicare prescription drug card "shall not be treated as benefits or otherwise taken into account in determining an individual's eligibility for, or the amount of benefits under, any other Federal program." The Secretary of the United States Department of Agriculture, through its Northeast Regional office, has interpreted this statute as requiring that the discounts and subsidy a household receives through the Medicare prescription drug discount card be treated as standard medical expenses to be used in determining the household's medical expenses deduction for Food Stamp eligibility purposes.

EPIC seeks to assist its participants who are enrolled in the Medicare prescription drug discount program who are applying for or in receipt of Food Stamp benefits to receive the appropriate amount of Food Stamp benefits. Providing information to the Office of Temporary and Disability Assistance (OTDA) about its participants who are also enrolled in the Medicare Prescription Drug card program will assist these participants to

receive an enhanced medical deduction in the calculation of Food Stamp benefits. Improved health outcomes for these participants as a result of increased Food Stamp benefits and the resultant potential for decreased prescription drug needs for these participants has a direct impact on the EPIC program and justifies the sharing of this information with OTDA.

COSTS:

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

There are no costs to regulated entities as a result of this proposed regulation which requires EPIC to share data with OTDA.

Costs to State and Local Governments:

There are no costs to State and local governments as a result of this proposed regulation.

Costs to the Department of Health:

The Department of Health will incur minimal costs in producing and transmitting the data required by this proposed regulation.

Local Government Mandates:

The proposed regulatory amendment does not impose any new mandates on local governments.

Paperwork:

No reporting requirements, forms, or other paperwork are necessitated by this proposed regulatory amendment.

Duplication:

The proposed regulatory amendment does not duplicate any existing State or federal requirements.

Alternatives:

The alternative considered to the proposed regulatory amendment was to obtain individual consents for release of information from all EPIC participants who were enrolled in the Medicare prescription drug card program. The length of time required to obtain this consent would have meant that many elderly participants would lose the medical deduction to which they are entitled for the current year. Release of the information pursuant to regulation is a permissible release of protected health information under regulations implementing the Health Insurance Portability and Accountability Act (HIPAA) pursuant to 45 CFR 164.512(k)(6)(i).

Federal Standards:

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

Compliance Schedule:

The EPIC program will transfer data as required by this regulation as of the effective date of the regulation's filing.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required. The proposed amendment would not impose any adverse impact on businesses, either large or small, nor will the proposal impose any new reporting, recordkeeping or other compliance requirements on a business.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for this proposed action is not required. As mentioned in the regulatory impact statement, the proposed amendment would require the EPIC program to share data concerning EPIC participants enrolled in the Medicare prescription drug program with OTDA in order for those participants to receive appropriate Food Stamp benefits. This provision would not affect rural areas any more than non-rural areas. The proposed amendment does not impose any new reporting, recordkeeping or any other new compliance requirements on rural or non-rural areas.

Job Impact Statement

A Job Impact Statement is not required. The proposal will not have an adverse impact on jobs and employment opportunities. The proposed rule is required to assist EPIC participants enrolled in the Medicare prescription drug program to receive in a timely manner medical deductions, to which they are entitled, for Food Stamp eligibility purposes.

**EMERGENCY
RULE MAKING**

Cytotechnologists Work Standard

I.D. No. HLT-01-06-00015-E

Filing No. 1530

Filing date: Dec. 20, 2005

Effective date: Dec. 20, 2005

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

Action taken: Amendment of section 58-1.12(b)(7) of Title 10 NYCRR.

Statutory authority: Public Health Law, section 576-a

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

Specific reasons underlying the finding of necessity: New York Public Health Law Section 576-a establishes work standards for cytotechnologists who examine cytology slides at clinical laboratories. After initial enactment of Section 576-a, the Department adopted the first regulations in the United States establishing cytotechnologist workload limits, a registration process for cytotechnologists, quality standards for cytology slides, as well as operational standards for clinical laboratories performing cytopathology testing. Since that time, the Department has worked closely with 285 clinical laboratories holding permits in the category of cytology (and which employ approximately 1,100 registered cytotechnologists full-time and part-time). The Department has gained significant experience in applying workload standards at these clinical laboratories.

Public Health Law Section 576-a also authorizes the Department to promulgate regulations to increase the maximum number of cytology slides that may be examined in a workday by cytotechnologists who use cytology slide examination or preparation technologies approved by the federal Food and Drug Administration (FDA). The Department has become aware of recent advances in cytology slide preparation and examination technology, which, according to recent studies conducted with the involvement of device manufacturers, improve detection of serious diseases (*i.e.*, cervical cancers). These new technologies also vastly increase the rate at which cytotechnologists can effectively examine slides. The Department has examined claims made by developers of these new technologies and has considered the potential impact that they could have on public health and welfare.

The vast majority of New York permitted clinical laboratories are not acquiring and using these costly new slide examination technologies. Use of these technologies by cytotechnologists at workload levels currently authorized by New York law is not cost effective. Increased workload standards are essential to ensure that clinical laboratories can afford, and immediately acquire and use these important, potentially life saving technologies. Therefore, the Department must immediately authorize, pursuant to this proposed emergency rulemaking, clinical laboratories to increase the workload limits for its cytotechnologists who use this new technology. This proposed rule making allows needed flexibility in increasing workload limits for cytotechnologists using FDA approved slide preparation and/or examination devices, as soon as they become commercially available for use by clinical laboratories.

The Department is committed to ensuring that New York residents and laboratories promptly benefit from new technologies with potential to improve gynecological cytology test methods without adding significantly to health care costs. This proposed rule making, once adopted, would promote use of new technologies that hold promise for more accurate, efficient and effective cervical cancer diagnosis, without compromising accuracy and reliability.

For the foregoing reasons, the Department finds that immediate adoption of this rule is necessary to preserve the public health, safety and general welfare, and that compliance with State Administrative Procedure Act (SAPA) Section 202(1) for this rulemaking would be contrary to the public interest and welfare. The alternative – to promulgate this proposed rulemaking pursuant to SAPA section 202(1) would unreasonably delay and hinder the Department's ability encourage appropriate use of new, and perhaps better, technology. To avoid unnecessary and potentially detrimental delay in the Department's implementation of appropriate work standards for cytotechnologists using new technologies for cervical cancer detection and diagnosis, the amendment to 10 NYCRR Section 58-1.12(b) is hereby proposed for adoption by emergency promulgation.

Subject: Cytotechnologists work standard.

Purpose: To provide flexibility to the department in the establishment of work standards that consider new technologies for pap smear screening.

Text of emergency rule: Paragraph (7) of subdivision (b) of Section 58-1.12 is amended to read as follows:

(7) Exceptions. (i) Each laboratory [must] *shall* evaluate the performance of each cytotechnologist *in its employ*, and establish an appropriate examination volume limitation based on *the cytotechnologist's* experience, documented accuracy[,] and performance in proficiency testing, or[for] *on* other reasons, including false-negative *or false-positive interpretations* [reports]. Under no circumstances [should] *shall* this volume be exceeded, even if it is [less] *lower* than the maximum work standard.

(ii) A cytotechnologist may exceed the work standard by [10] *twenty (20)* percent, with the written approval of the department. The laboratory director may request such approval based on each cytotechnologist's experience, documented accuracy, including false-negative or false-

positive [reports] *interpretations*, and a performance score in proficiency testing of not more than two (2) errors. Documentation of [this] *department* approval [must] *shall* be available in the laboratory, and may be revoked by the department with prior notice to the laboratory, based on a cytotechnologist's performance in proficiency testing or other evidence that the cytotechnologist's accuracy is [less] *other* than acceptable. The laboratory director [must] *shall* monitor the performance of each cytotechnologist and advise the department [when the] *whenever the* approval is to be revoked based on on-the-job performance.

(iii) Cytotechnologists who qualify as supervisors under section 58-1.4 of this Subpart may re-examine up to [20] *twenty (20)* slides per day [separate from] *in addition to* the workload standard, *provided the combined total number of slides does not exceed one-hundred (100)*, as part of the [quality control-] quality assurance program of the laboratory, with the prior approval of the department, based on documented accuracy, including [false negative or positive reports] *false-negative and false-positive interpretations*, and performance in proficiency testing. Such approval may be revoked, with prior notice to the laboratory, based on proficiency testing performance or other evidence that the cytotechnologist's accuracy is [less] *other* than acceptable. Records [must] *shall* be maintained to document the *examination* volume and hours worked by each cytotechnologist.

(iv) *The department may increase the cytotechnologist work standard beyond the level already authorized elsewhere in this section for cytotechnologists using a federal Food and Drug Administration (FDA)-approved device in the preparation or examination of cytology slides:*

(a) *in determining whether to increase the cytotechnologist work standard with respect to a particular device, the department shall consider the following: the FDA's approved use of the device; studies of the accuracy, reliability and appropriate use of the device; input from clinical laboratories using the device; recommendations of experts in the field of cytology and/or cytotechnology; and other relevant information as appropriate;*

(b)(1) *the department may require a clinical laboratory wishing to exceed the cytotechnologist work standard set forth elsewhere in this section to request in writing the department's approval. The department may also require the applicant laboratory to provide, in a form acceptable to the department, some or all of the following information regarding the device in use at the laboratory: the device manufacturer's recommendations, if any, regarding the quantity (i.e., slide volume), speed or manner of slide examination, and the basis for such recommendations; documentation of training for each cytotechnologist using the device; each cytotechnologist's experience using the device, including false-negative and false-positive interpretations, workload, and number of hours spent examining slides; each cytotechnologist's performance on proficiency testing; as well as any other information as determined appropriate by the department to assess device capacity and user capability; and*

(2) *the department shall provide written notice of the authorized work standard established pursuant to this subparagraph. The department may set a work standard in writing that applies to one or more cytotechnologists.*

(c) *laboratories shall maintain documentation of approval pursuant to this subparagraph for a minimum of two (2) years after use of the device is discontinued;*

(d) *if the department determines that a cytotechnologist work standard authorized pursuant to this subparagraph increases the rate of errors or compromises the reliability of results, the department shall adjust the standard as it deems appropriate and shall notify the affected clinical laboratories in writing of such change. Clinical laboratories that find the adjustment unacceptable may request only in writing that the department reconsider its determination; and*

(e) *notwithstanding the foregoing, any cytotechnologist work standard authorized by the department pursuant to this subparagraph shall be at least as stringent as the federal standards promulgated under the federal clinical laboratory improvement amendments of nineteen hundred and eighty-eight (1988) and/or other applicable law(s).*

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 19, 2006.

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law Section 576-a was enacted as Chapter 539 of the Laws of 1988. The statute established standards for cytotechnologists' workload, a registration requirement for individuals engaged in initial examination of slides, and quality standards for preparing and examining the slides. Regulations adopted as 10 N.Y.C.R.R. Sections 58-1.12 and 58-1.13 pursuant to that legislation have been in effect since 1989. Public Health Law, Article 5, Title V was amended by Chapter 436 of the Laws of 1993. Section 576-a of that legislation modified the state's cytotechnologist work standard, (*i.e.*, a numeric limitation on the cytology slides, including Pap smears, that a cytotechnologist may examine during a work day) to effect parity with federal standards in the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88). Section 576-a also includes a provision authorizing the Department to increase the cytotechnologist work standard in response to technological advances in instrumentation and devices for assisted examination of cytology slides.

Legislative Objectives:

In 1988, media reports made the public aware of problems associated with inordinate cytotechnologist workloads in clinical laboratories examining gynecologic slides (Pap smears) for evidence of cervical cancer. At that time, New York was the only state with a comprehensive program of oversight of these laboratories, including review of cytotechnologist qualifications, and on-site assessment of laboratory operations and proficiency testing. While excessive testing volumes had not been reported in New York State, the Legislature determined that additional steps were required to protect women residents of the State, and Public Health Law Section 576-a was enacted as Chapter 539 of the Laws of 1988. The legislation established a work standard for initial examination of cytologic specimens (*i.e.*, a numeric limitation on the cytology slides, including Pap smears, that a cytotechnologist or pathologist may examine during a work day), a registration requirement for individuals engaged in slide examination, and quality standards for the slides. Chapter 436 of the Laws of 1993 modified the State's cytotechnologist work standard for parity with federal standards in CLIA '88; specifically, the Legislature enacted an increase of 20 percent above the limit of 80 gynecologic slides, or 96 slides per work day, from the previous limit of 10 percent above the 80-slide limit, or 88 slides.

Needs and Benefits:

After initial enactment of Section 576-a, the Department adopted the first regulations in the country establishing cytotechnologist workload standards, a registration process for cytotechnologists, requirements for the quality of slides, as well as general standards for operation of cytopathology laboratories. The Department has not revised these regulations since their promulgation in 1990. During that time, the Department has gained significant experience in applying workload standards for 285 clinical laboratories with a permit in the cytology testing category that employ more than 1,200 registered cytotechnologists full-time and part-time.

The Food and Drug Administration (FDA) has approved for marketing a cytology slide screening device that increases the number of slides a cytotechnologist can accurately and reliably examine per day. The Department needs to consider, on a case by case basis and in the most expeditious manner possible, establishment of a cytotechnologist workload limit other than that set earlier to promote accurate and reliable slide examination by the conventional (manual) method. The Department must now ensure that New York residents and laboratories benefit from new technologies with the potential to improve gynecological cytology test methods without adding significantly to health care costs. To this end, it is proposed to amend existing regulations, and allow needed flexibility for increasing the workload limit for cytotechnologists using automated slide preparation and/or examination methods as new methods are approved by the FDA and become available for use by clinical laboratories.

Technological advances have permitted automation to make inroads in the discipline of cytology, a field of laboratory medicine that historically has relied solely on the joint expertise of cytotechnologists and pathologists for accurate and reliable diagnosis of cancers and other abnormalities detectable at the cellular level. Slides for cervical cancer screening, once prepared in the physician's office, can now be produced in the laboratory as a clean preparation of target cells, free of any obscuring blood or inflammation debris, deposited on a glass slide in a single layer, well-separated and with little or no overlap of cells to interfere with a cytotechnologist's ability to locate and identify aberrant cell types indicative of cervical cancer and other abnormalities. The FDA's approval of several automated systems for cytology slide preparation (*i.e.*, fix-and-stain material on microscopic slides) as in-vitro diagnostic devices, and

overwhelming acceptance of the devices by the clinical laboratory industry and women's health practitioners and advocates have opened the door to further advances in the science of cytology, specifically, development of computerized algorithms for detection of cells not meeting criteria as normal. The purported advantage of this new technology is that it allows cytotechnologists to focus on accurate interpretation, resulting not only in increased productivity but, more importantly, the potential to improve diagnostic performance.

During conventional (manual) slide examination, the cytotechnologist must use locator skills to detect cells that are abnormal according to pre-established criteria for nuclear density and other factors, such as the relative size of the cell nucleus compared to the rest of the cell. Several device manufacturers have programmed a computer with an algorithm similar to that used by cytotechnologists to identify abnormal cells, thereby allowing a computer to take over the tiresome task of scanning numerous slides to look for the usually rare abnormal cell. The algorithms are sophisticated, but, as yet, are not capable of definitively classifying cells as pre-cancerous or indicative of malignancy. Devices that locate and mark suspect cells, guiding the cytotechnologist to them for interpretation, have already received FDA approval. Another device approved by the FDA classifies as within normal limits slides with no to very low probability of an abnormal finding, allowing up to 25 percent of gynecologic specimens to be reported as within normal limits without human review.

New slide preparation and screening technologies are changing the way laboratories diagnose cervical cancer and other malignant diseases detectable at the cellular level. Clinical trial data and preliminary data from laboratories using location guidance devices for detection of cancerous cells may increase by 50 percent or more the number of slides a cytotechnologist may reliably examine during a given time period. More importantly, evidence is emerging that this technology can increase the probability that no truly abnormal cell, however rare, would be missed due to human factors, such as fatigue and momentary lapses in vigilance, which have been widely recognized as capable of compromising result reliability. Manufacturers' claims that this technology can better locate cells typical of low- and high-grade squamous intraepithelial lesions (LSIL and HSIL, respectively), the most clinically important findings other than squamous cell carcinoma, are of particular interest to the Department in fulfilling its mandate to promote and protect the public health, because such claims, if proved correct, signal the potential to reduce morbidity in women who are routinely screened for cervical cancer.

Moreover, the Department has been informed that laboratories are reluctant to purchase automated devices for cytology examinations if the instrumentation cannot be utilized to near-full potential or in an otherwise cost-effective manner. This proposed rulemaking to increase the workload limit would better enable laboratories to acquire new technologies that hold promise for more efficient and effective cervical cancer diagnosis without compromising safety, accuracy and reliability.

In addition to allowing flexibility to change cytology workload standards without repetitive rulemaking, the proposed regulation would also provide affected parties with Department criteria for setting such standards, and make clear that, at the Department's discretion, laboratories may be required to request and be granted device-specific approval to examine Pap smears applying a workload standard other than that in place for conventional (manual) examination methods. Moreover, the proposed amendment establishes the Department's authority to make an immediate adjustment to any work standard pursuant to the rule upon a determination that error rates have increased or the reliability of results has been compromised following approval of an increased work standard.

The proposed amendment would also make the regulation consistent with its authorizing statute as modified by Chapter 436 of the Laws of 1993, which provided for an increase in the work standard of 20 percent above the limit of 80 gynecologic slides, or 96 slides per work day. Existing regulation must be changed, as it set the previous restriction as 10 percent above the 80-slide limit, or 88 slides, and, as such, does not accurately reflect the Department's practice of authorizing up to 96 slides to be examined per work day.

Several housekeeping modifications were also proposed to facilitate compliance. The Department has received numerous inquiries related to the allowance for cytotechnologists' qualified supervisors to examine up to 20 slides beyond the work standard, and finds it necessary to clarify that the combined total number of slides may not exceed 100. In three instances, the term "reports" has been changed to "interpretations" to make clear that the Department considers all errors as relevant to approval (*i.e.*, false-negatives and false-positives), including errors in the cytotechnologist's interpretation, regardless whether corrected during re-examination

or slide review by a pathologist prior to reporting - and not only erroneous results (typically false-negatives) reported to medical practitioners and discovered through retrospective review following a finding of HSIL or an equivalent, or malignancy.

Costs:

Costs to Private Regulated Parties:

Since the proposed rulemaking does not require purchase or use of any devices for preparation and/or examination of cytology slides, this proposed rulemaking does not require private parties to incur costs. To the contrary, several clinical laboratories operating in New York State and using or considering use of new technology for examination of slides, have conveyed to the Department their desire to have cytotechnologist work standards specific to such devices in place as soon as practicable so that specimen throughput may be increased, which, in turn, would allow for increased reimbursement for cytopathology services and potentially increased profits.

Costs for Implementation and Administration of the Rule:

Costs to State Government:

State government is not expected to incur costs attributable to this proposed amendment.

Costs to the Department:

The Department is not expected to incur costs attributable to this proposed amendment. A system is already in place for review of laboratories' requests for qualified cytotechnologists to exceed the existing workload limit by 20 percent, and it is expected that the few additional requests submitted as a direct result of this amendment would be able to be processed under the same system and using the same personnel.

Costs to Local Government:

Local government-operated clinical laboratories would have the opportunity to increase reimbursement and profits by increasing throughput of cytology examination specimens under the provisions of this proposal, as described for private regulated parties.

Paperwork:

The Department may experience a minimal increase in paperwork from the intermittent need to communicate new standards to affected laboratories in writing. The Department already has an established system for review of laboratories' requests for qualified cytotechnologists to exceed the workload limit by 20 percent, and expects few additional requests as a direct result of this amendment.

Local Government Mandates:

The proposed regulation imposes no new mandates on any county, city, town or village government; or school, fire or other special district.

Duplication:

These rules do not duplicate any other law, rule or regulation.

Alternative Approaches:

In drafting this proposed rule, the Department has considered the diversity of technological approaches to automating Pap smear examinations already in place and those known to be in development. The only consistent feature of these devices appears to be generalized use of a computerized algorithm to simulate human decision-making. The Department believes it is not feasible to arrive at a single, universally applicable work standard that could be set forth in regulation for all existing and future Pap examination technologies. The alternative — promulgation of revised regulations to establish workload limits each time a device is granted FDA approval — would be unacceptably burdensome to the Department, and would possibly delay the use of technology in New York that could more effectively identify cancerous and precancerous cells.

Federal Standards:

Federal workload standards for cytotechnologists performing conventional (manual) examination of cytology slides have been promulgated under CLIA '88. Both the FDA and U.S. Centers for Medicaid and Medicare Services (CMS) have declined to set in federal regulation standards specific to any current commercial automated slide examination device. This proposed amendment contains a provision that any cytotechnologist work standard authorized by the Department pursuant to the amendment must be at least as stringent as the respective federal standards.

Compliance Schedule:

The Department has been engaged in ongoing communication with several device manufacturers, and has responded to many letters from women's health organizations and laboratories stating its intent to ensure that safe, efficient and effective tests for cervical cancer are available to New York's women. These interested parties include: National Association of Nurse Practitioners in Women's Health; National Black Women's Health Imperative; Center for Women Policy Studies; National Partnership for Women and Families; National Family Planning & Reproductive

Health Association; Memorial Hospital for Cancer & Allied Diseases, Department of Pathology; Memorial Sloan-Kettering Cancer Center; Albany Cytopath Labs, Inc.; Centrex Clinical Laboratories, Inc.; ACM Medical Laboratory, Inc.; ClearPath Diagnostics; University of Rochester-Strong Memorial Hospital Clinical Laboratories; and Sunrise Medical Laboratories, Inc.

The Department is not aware of any opposition to increasing workload limits for cytotechnologists using automated devices, and there appears to be no potential for organized opposition. Regulated parties should be able to comply with these amendments as of their effective date, upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This proposed amendment to allow needed flexibility to increase workload limits for cytotechnologists using automated slide preparation and/or examination methods would affect clinical laboratories operated as small businesses or by local government, provided such facilities hold or are seeking a permit in the category of cytology, and opt to use U.S. Food and Drug Administration (FDA)-approved devices for automated slide preparation and/or examination. Of the 253 clinical laboratories holding a Department permit in cytology, 44 have declared themselves to be small businesses in permit applications submitted to the Department, and local governments, including the City of New York, operate seven such laboratories.

Compliance Requirements:

The Department expects that affected clinical laboratories operated as small businesses or by local governments would experience minimal impact from this proposal's adoption. Most of these facilities engaged in the examination of cytologic material, including Pap smears, do not process the high number or type of specimens that would make purchase and use of an automated device for slide examination a financially prudent decision. However, any laboratory that has purchased automated devices for preparation and/or examination of cytology slides would benefit from the flexibility this amendment would afford.

The Department has a system already established for review of laboratories' requests for qualified cytotechnologists to exceed the workload limit by 20 percent, and anticipates few, if any, additional requests as a direct result of this amendment from laboratories operated as small businesses or by a local government. Therefore, the Department expects that this small segment of the affected regulated parties would be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated.

Compliance Costs:

This rulemaking does not impose any additional costs on clinical laboratories operating as small businesses or by a local government since it does not require purchase or use of automated devices for preparation and/or examination of cytology slides. To the contrary, several clinical laboratories operating in New York State, and using or considering use of such devices have conveyed to the Department their desire to have cytotechnologist work standards specific to such devices in place as soon as practicable so that they may increase specimen throughput, in turn allowing for increased reimbursement for cytopathology services and potentially increased profits. This potential benefit may also apply to any small business or local government laboratory operator opting to use automated devices for cytologic material examination.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to any small businesses or local governments that operate clinical laboratories affected by this amendment. This proposal does not impose a requirement for purchase or use of new technologies, *i.e.*, automated devices for cytologic material examination.

Minimizing Adverse Impact:

These amendments will not have an adverse impact on the ability of regulated parties that are small businesses or operated by local governments to comply with Department requirements for cytotechnologist work standards.

Small Business and Local Government Participation:

This amendment is being proposed as an emergency rule. Notifying small businesses or local government affected parties about its provisions and requirements in accordance with the State Administrative Procedure Act (SAPA) process would incur unnecessary and potentially detrimental delay in establishing new and expanded work standards for cytotechnologists using automated devices for slide preparation and/or examination. All

laboratories holding a permit in the category of cytology, including those operated as small businesses or by local government, are being notified of the provisions of this amendment, and, following its adoption, will be invited to provide comments and otherwise participate in the development of standards for workload limits.

Compliance Schedule:

The director of the Department's Wadsworth Center and his staff, including the director for Regulatory Affairs, held discussions with representatives of the Governor's Office, the Commissioner of Health's Office, firms that manufacture and/or distribute automated devices for cytological examinations, and regulated parties (*i.e.*, clinical laboratories) currently using such devices. Various Department groups, including the Office of Medicaid Management and the Office of Managed Care, have been working together in an ongoing effort to ensure adequate reimbursement for cytological examinations, including Pap smears, using FDA-approved cytological screening devices.

This amendment does not impose any new or more stringent requirements on regulated clinical laboratories; rather, it affords flexibility to laboratories that handle medium- to high-volumes of cytology specimens, and wish to use automated devices to examine increased numbers of slides without compromising testing accuracy and reliability. Strong support for the amendment is expected from clinical laboratories holding or seeking a permit in the category of cytology, and patient advocacy organizations, especially those focused on women's health; indications of support have been expressed by the medical community at large, which has just begun to become educated in the availability and reliability of the new technologies for cytological examination. The Department will continue to work with interested and affected parties in carrying out this amendment's provisions, and will notify laboratories in an unequivocal and timely manner of any changes affecting the cytotechnologists' workload standard or exceptions to that standard following adoption of this proposal.

The Department is not aware of any opposition to increasing workload limits for cytotechnologists using new technologies, and no potential of organized opposition is apparent. Consequently, regulated parties, including those operated as a small business or by local government, should be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Rural Area Flexibility Analysis

Effect of Rule:

Rural areas are defined as counties with a population under 200,000 and, for counties with a population larger than 200,000, rural areas are defined as towns with population densities of 150 or fewer persons per square mile. Forty-four counties in New York State with a population under 200,000 are classified as rural, and nine other counties include certain townships with population densities characteristic of rural areas. Of the 253 clinical laboratories holding a permit in the category of cytology, 88, many of which are hospital-based, are located in rural areas.

Compliance Requirements:

The Department expects that affected clinical laboratories located in and serving rural areas will experience minimal impact by anticipated adoption of this proposal. With the possible exception of one or two large rural hospital pathology departments, most laboratories operated in rural areas and engaged in examination of cytologic material, including Pap smears, do not process the high volume and type of cytologic specimens that would make purchase and use of an automated device for slide examination a financially prudent decision. However, any laboratory that has purchased such automated devices will be able to take advantage of the flexibility this amendment would afford. Therefore, the Department anticipates that regulated parties in rural areas will be able to comply with this amendment as of its effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated.

Compliance Costs:

Clinical laboratories operating in rural areas are not required to incur additional costs as a result of this proposed amendment, since this rulemaking does not require purchase or use of automated devices for preparation and/or examination of cytology slides. To the contrary, several clinical laboratories operating in New York State and using or considering use of devices for the examination of slides, have conveyed to the Department their desire to have cytotechnologist work standards specific to such devices in place as soon as practicable so that they may increase specimen throughput, in turn allowing increased reimbursement for cytopathology services and potentially increased profits. This benefit may also apply to laboratories located in rural areas, especially larger hospital-based pathol-

ogy laboratories opting to use automated devices for cytologic material examination.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to facilities located in rural areas. This proposal does not impose a requirement for purchase or use of new technologies, *i.e.*, devices for cytologic material examination.

Minimizing Adverse Impact:

These amendments will not have an adverse impact on the ability of regulated parties in rural areas to comply with Department requirements for cytotechnologist work standards.

Rural Area Participation:

This amendment is being proposed as an emergency rule. Notifying affected parties in rural areas about its provisions and requirements in accordance with the State Administrative Procedure Act (SAPA) process would cause unnecessary and potentially detrimental delay in establishing new and expanded work standards for cytotechnologists using automated devices for slide preparation and/or examination. All laboratories holding a permit in the category of cytology, including those located in rural areas, are being notified of this amendment's provisions, and, following its adoption, will be invited to provide comments and otherwise participate in development of standards for workload limits.

Compliance Schedule:

The Department has been engaged in ongoing communication with several device manufacturers, and has responded to many letters from women's health organizations and laboratories stating its intent to ensure that safe, effective, and efficient tests for cervical cancer are available to New York's women. These interested parties include: National Association of Nurse Practitioners in Women's Health; National Black Women's Health Imperative; Center for Women Policy Studies; National Partnership for Women and Families; National Family Planning & Reproductive Health Association; Memorial Hospital for Cancer & Allied Diseases, Department of Pathology; Memorial Sloan-Kettering Cancer Center; Albany Cytopath Labs, Inc.; Centrex Clinical Laboratories, Inc.; ACM Medical Laboratory, Inc.; ClearPath Diagnostics; University of Rochester-Strong Memorial Hospital Clinical Laboratories; and Sunrise Medical Laboratories, Inc.

The Department is not aware of any opposition to increasing workload limits for cytotechnologists using new technology, and no potential for organized opposition is apparent. Regulated parties, including those operating in rural areas, should be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Job Impact Statement

Nature of Impact:

This proposed rulemaking would have an impact on the productivity of cytotechnologists who use the new cytology slide preparation and examination technology. The proposed rule would authorize cytotechnologists using such technologies to increase, with Department approval, the number of slides that can be effectively reviewed in a given time period.

In addition, the proposed rulemaking would make it more financially attractive for clinical laboratories to acquire new cytology slide preparation and examination technology. Therefore, more cytotechnologists will use such technology. Experienced cytotechnologists will have to receive on the job training to use some of the new technologies, while persons studying to become cytotechnologists will learn to use the new technology as part of their course work. However, given workforce shortage of cytotechnologists nationally and in New York, the Department does not expect that the use of the new technologies will have an adverse impact on employment opportunities for cytotechnologists.

Category and Numbers Affected:

Cytotechnologists working in New York licensed clinical laboratories may be affected by this rule. There are approximately 1,100 registered cytotechnologists working (on a part time or full time basis) in New York licensed clinical laboratories. However, many of these cytotechnologists work in clinical laboratories that are not located in New York State. It is unclear how many cytotechnologists will use new technologies pursuant to this proposed rulemaking to review more slides than is currently permissible.

Regions of Impact:

Cytotechnologists work in laboratories throughout New York State. However, as described below, the Department of Health does not believe that this proposed rulemaking would have a significant adverse impact on employment opportunities for cytotechnologists.

Likelihood of Adverse Impact:

The Department expects that the proposed rulemaking, if implemented, will increase cytotechnologists' productivity, and it will not adversely affect job opportunities for cytotechnologists. There is currently a significant workforce shortage of cytotechnologists in the United States, including New York. This workforce shortage is expected to worsen in coming years as large numbers of cytotechnologists retire and relatively few are being trained to replace them. The federal Clinical Laboratory Advisory Committee, the US Department of Labor and several health care professional organizations have acknowledged this workforce shortage problem. Some clinical laboratories have urged the Department to promulgate this regulation to alleviate cytotechnologist-staffing shortages.

NOTICE OF ADOPTION

Adult Care Facility Regulations

I.D. No. HLT-40-05-00016-A

Filing No. 1529

Filing date: Dec. 20, 2005

Effective date: Jan. 4, 2006

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

Action taken: Amendment of sections 486.4 and 493.2 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 460-d(4)(b)

Subject: Amendment of adult care facility regulations to extend the maximum period for which an operating certificate can be suspended or limited without a hearing to 60 days.

Purpose: To conform with the language of section 460-d(4)(b) of the Social Services Law, which allows for an adult care facility operating certificate to be suspended or limited without a hearing for a maximum of 60 days.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-40-05-000016-P, Issue of October 5, 2005.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF EXPIRATION

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

Medicaid Utilization Thresholds

I.D. No.	Proposed	Expiration Date
HLT-50-04-00001-P	December 15, 2004	December 15, 2005

Division of the Lottery

**EMERGENCY
RULE MAKING**

Mega Millions Multi-State Lottery Game

I.D. No. LTR-01-06-00005-E

Filing No. 1523

Filing date: Dec. 19, 2005

Effective date: Dec. 19, 2005

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

Action taken: Amendment of Part 2806 of Title 21 of NYCRR.

Statutory authority: Tax Law, section 1617

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

Specific reasons underlying the finding of necessity: The New York Lottery and other participating Mega Million States have added California to the Mega Millions game, and have amended the game rules, including the prize structure by which the game is governed. The next drawing under the new rules is scheduled to take place on December 20, 2005, and thus the amended regulations need to be in place by that date.

Subject: Mega Millions Multi-State Lottery game.

Purpose: To add a new state in the Mega Millions game and clarify regulations.

Text of emergency rule:

PART 2806 MEGA MILLIONS
LOTTERY GAME

(Statutory Authority: New York State Tax Law Section 1617)

21 NYCRR Section 2806.1 subdivision (a)-(c) is hereby repealed and replaced by new 21 NYCRR Section 2806.1 subdivision (a)-(c).

§ 2806.1 Purpose.

(a) The purpose of MEGA MILLIONS is the generation of revenue for education in New York through the operation of specially-designed multi-state lottery game(s) that will award prizes to ticket holders consistent with the game rules established for a particular game. Such game(s) may include instant tickets ("instants") and/or matching specified combinations of numbers randomly selected in regularly scheduled drawings ("on-line").

(b) During each MEGA MILLIONS on-line drawing, six (6) MEGA MILLIONS Winning Numbers will be selected from two (2) fields of numbers in the following manner: five (5) winning numbers from a field of one (1) through fifty-six (56) numbers, and one (1) winning number from a field of one (1) through forty-six (46) numbers.

(c) The objective of MEGA MILLIONS on-line drawings shall be to select at random, with the aid of drawing equipment, MEGA MILLIONS Winning Numbers, pursuant to the controls and methods established for the game.

21 NYCRR Section 2806.2 paragraphs (1), (4), (5), (7) through (13), (16) of subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.2 paragraphs (1), (4), (5), (7) through (13), (16) of subdivision (a).

(1) Agent – The person who has been licensed and authorized by the New York Lottery to sell lottery tickets pursuant to Part 2801 of these regulations.

(4) Cash Option – The manner in which the on-line MEGA MILLIONS Jackpot Prize may be paid in a single payment.

(5) Claimant – Any person or entity submitting a claim form within the required time period to collect a prize for any MEGA MILLIONS Ticket. A Claimant may be the person or entity named on a signed MEGA MILLIONS Ticket, or the bearer of an unsigned MEGA MILLIONS Ticket. No Claimant may assert rights different from the rights acquired by the original Purchaser at the time of purchase.

(7) Jackpot Prize – For the on-line MEGA MILLIONS game, the prize awarded for selecting all the numbers drawn from both fields. If more than one player from all participating lottery states has selected all the numbers drawn, the jackpot prize shall be divided among those players. Jackpot prize may also be referred to from time to time as "Grand Prize". For any other game, the Jackpot Prize will be identified in game rules issued for such game.

(8) MEGA MILLIONS Play Area – For the on-line MEGA MILLIONS game, the areas on a MEGA MILLIONS play slip identified by an alpha character, A through E, containing two separate fields - one field of 56 and a second field of 46 – both containing one or two digit numbers each. This is the area where the player, or computer if the player is using the Quick Pick option, will select five (5) one or two-digit numbers from the first field, and will select one (1) one or two-digit numbers from the second field.

(9) MEGA MILLIONS Play Slip – For the on-line MEGA MILLIONS game, a computer-readable form, printed and issued by the New York Lottery, used in purchasing a MEGA MILLIONS Ticket, having up to five (5) separate play areas. The Play Slip additionally includes boxes for selection of Cash Option or Annuity Option. The play slip also provides for multiple drawing wagering up to 26 draws.

(10) MEGA MILLIONS Ticket – A game ticket, produced on official paper stock, by an agent in an authorized manner, bearing player or computer selected numbers from the play area on the play slip, game name, drawing dates, amount of wager, jackpot prize payment option, and validation data.

(11) MEGA MILLIONS Winning Numbers – For the on-line MEGA MILLIONS game, five (5) one or two digit numbers, from one (1) through fifty-six (56) and one (1) one or two-digit number from one (1) through forty-six (46), randomly selected at each MEGA MILLIONS drawing, which shall be used to determine winning MEGA MILLIONS plays contained on MEGA MILLIONS Tickets.

(12) Pari-Mutuel – For the on-line MEGA MILLIONS game total amount of prize money allocated to pay prize Claimants, at the designated prize level, divided among the number of winning MEGA MILLIONS Tickets.

(13) Party Lottery or Party Lotteries – One or more of the state lotteries established and operated pursuant to the laws of any state lottery which becomes a signatory to the Mega Millions Game agreement.

(16) Quick-Pick – For the on-line MEGA MILLIONS game, a player option in which MEGA MILLIONS number selections are determined at random by the lottery terminal.

21 NYCRR Section 2806.3 subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.3 subdivision (a).

§ 2806.3 Ticket Sales.

(a) The sale of MEGA MILLIONS Tickets within New York State may be conducted only by an agent.

21 NYCRR Section 2806.4 subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.4 subdivision (a)

§ 2806.4 Ticket Price.

(a) For the on-line MEGA MILLIONS game: MEGA MILLIONS Tickets may be purchased for \$1.00 per play at the discretion of the Purchaser, in accordance with the number of game panels and inclusive drawings. The Purchaser receives one play for each \$1.00 wagered in MEGA MILLIONS. Instants will be at the price stated on any such ticket. Tickets may contain multiple plays.

21 NYCRR Section 2806.5 subdivision (f) is hereby repealed and replaced by new 21 NYCRR Section 2806.5 subdivision (f)

§ 2806.5 Play Characteristics and restrictions.

(f) For the on-line MEGA MILLIONS game, purchasers may submit a manually completed MEGA MILLIONS Play Slip to an Agent to have issued a MEGA MILLIONS Ticket. MEGA MILLIONS Play Slips shall be available at no cost to the Purchaser and shall have no pecuniary or prize value, or constitute evidence of purchase or number selections. The use of mechanical, electronic, computer generated or any other non-manual method of marking Play Slips is prohibited.

21 NYCRR Section 2806.6 is hereby repealed and replaced by new 21 NYCRR Section 2806.6

§ 2806.6 Time, Place and Manner of Conducting Drawings

For the on-line MEGA MILLIONS game: MEGA MILLIONS drawings will be conducted twice weekly approximately 11:00 p.m. Eastern Time in one of the party lottery states. The day, time, frequency and location of the MEGA MILLIONS drawings may be changed following public announcement.

21 NYCRR Section 2806.7 subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.7 subdivision (a)

§ 2806.7 Prize Structure

(a) For the on-line MEGA MILLIONS game – Matrix of ⁵/₅₆ and ¹/₄₆ with 50 Percent Anticipated Prize Fund

Match Field 1	Match Field 2	Odds	Prize Category	Percentage of Prize Fund
5	1	1:175,711,536.00	Grand	63.60 percent
5	0	1:3,904,700.80	Second	12.80 percent
4	1	1:689,064.85	Third	2.90 percent
4	0	1:15,312.55	Fourth	1.96 percent
3	1	1:13,781.30	Fifth	2.18 percent
2	1	1:843.75	Sixth	2.38 percent
3	0	1:306.25	Seventh	4.58 percent
1	1	1:140.63	Eighth	4.26 percent
0	1	1:74.80	Ninth	5.34 percent
Reserve				0 percent
Totals		1:39.89		100 percent

21 NYCRR Section 2806.7 paragraph (1) of subdivision (b) is hereby repealed and replaced by new 21 NYCRR Part 2806.7 paragraph (1) of subdivision (b).

(b) Jackpot Prize Payments.

For the on-line MEGA MILLIONS game:

(1) The prize money allocated from the winning pool for the Jackpot Prize, plus any money brought forward from a previous drawing plus any money added from the prize reserve fund or any other available source pursuant to a guaranteed first prize amount announcement will be divided equally among all Jackpot Prize winners in all participating lottery states.

Prior to each drawing, the annuitized MEGA MILLIONS Jackpot Prize amount will be advertised. The advertised Jackpot Prize amount shall be the basis for determining the amount to be awarded for each MEGA MILLIONS Panel matching all five (5) of the five (5) MEGA MILLIONS Winning Numbers drawn for Field 1 and the one (1) MEGA MILLIONS Winning Number drawn for Field 2.

21 NYCRR Section 2806.7 paragraph (1) of subdivision (c), paragraph (2) of subdivision (c), paragraph (6) of subdivision (c) is hereby repealed and replaced by new 21 NYCRR Section 2806.7 paragraph (1) of subdivision (c), paragraph (2) of subdivision (c), paragraph (6) of subdivision (c).

(c) *Second through Ninth Level Prizes*

For the on-line MEGA MILLIONS game:

(1) MEGA MILLIONS Panels matching five (5) of the five (5) MEGA MILLIONS Winning Numbers drawn for Field 1, but not matching the MEGA MILLIONS Winning Number drawn for Field 2 shall be entitled to receive a Second Prize of \$250,000*.

(2) MEGA MILLIONS Panels matching four (4) of the five (5) MEGA MILLIONS Winning Numbers drawn for Field 1 and the MEGA MILLIONS Winning Number drawn for Field 2 shall be entitled to receive a Third Prize of \$10,000*.

(6) MEGA MILLIONS Panels matching three (3) of the five (5) MEGA MILLIONS Winning Numbers drawn for Field 1 but not matching the MEGA MILLIONS Winning Number drawn for Field 2 shall be entitled to receive a Seventh Prize of \$7.

21 NYCRR Section 2806.7 subdivision (d) is hereby repealed and replaced by new 21 NYCRR Section 2806.7 subdivision (d).

(d) *In a single on-line drawing, a Claimant may win in only one prize category per single MEGA MILLIONS Panel in connection with MEGA MILLIONS Winning Numbers, and shall be entitled only to the highest prize.*

Footnote identified by asterisk is hereby repealed and replaced by new footnote identified by asterisk

* *Should total prize liability, exclusive of Grand/Jackpot Prize rollover from previous drawings and California Lottery sales and prizes for prize levels 2 through 9, exceed 300% of draw sales or 50% of draw sales plus \$50,000,000, whichever is less, (both hereinafter referred to as the "Liability Cap"), the Second through Fifth prizes shall be paid on a pari-mutuel rather than fixed prize basis, provided, however, that in no event shall the pari-mutuel prize be greater than the fixed prize. The amount to be used for the allocation of such pari-mutuel prizes shall be the Liability Cap less the amount paid for the Grand/Jackpot Prize and prize levels Six through Nine.*

21 NYCRR Section 2806.9 paragraph (10) of subdivision (a), paragraph (14) of subdivision (a), paragraph (15) of subdivision (a) is hereby repealed and replaced by new 21 NYCRR Part 2806.9 paragraph (10) of subdivision (a), paragraph (14) of subdivision (a), paragraph (15) of subdivision (a).

(10) *The ticket must not be misregistered, defectively printed, or produced in error to an extent that it cannot be processed by the New York Lottery;*

(14) *The ticket must be submitted to the New York Lottery and to no other lottery participating in any MEGA MILLIONS lottery game.*

(15) *No MEGA MILLIONS ticket purchased outside the State of New York may be presented to either the New York Lottery or an agent for payment within New York.*

21 NYCRR Section 2806.9 paragraph (1) of subdivision (b) is hereby repealed and replaced by new 21 NYCRR Part 2806.9 paragraph (1) of subdivision (b).

(b) (1) *The Director may, at his/her option, replace an invalid ticket with a MEGA MILLIONS Ticket of equivalent sales price;*

21 NYCRR Section 2806.12 subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.12 subdivision (a).

§ 2806.12 *Governing Law*

(a) *In purchasing a ticket issued for MEGA MILLIONS within New York State, the Purchaser agrees to comply with and be bound by all applicable statutes, administrative rules and regulations, and procedures of New York State, and by directives and determinations of the Director of the New York Lottery. The Purchaser agrees, as its sole and exclusive remedy, that claims arising out of a ticket purchased in New York State from an agent can be pursued only against the New York Lottery and no other lottery. Litigation, if any, arising from the purchase of a MEGA MILLIONS ticket in New York State from an agent shall only be maintained against the New York Lottery within the State of New York.*

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 18, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Robert J. McLaughlin, General Counsel, New York Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: rmlaughlin@lottery.state.ny.us

Regulatory Impact Statement

1. **Statutory authority:** The Lottery was authorized by Chapter 383 of the Laws of 2001 to commence a multi-state lottery game. The rule amends Lottery regulations pertaining to the operation of such game pursuant to the Lottery's authority under Tax Law Section 1604 to promulgate rules and regulations governing the operation of Lottery games.

2. **Legislative objectives:** The purpose of operating Lottery games is to generate revenue for the support of education in the State. Amendment of these regulations forwards the mission of the New York State Division of the Lottery to generate revenue for education.

3. **Needs and benefits:** The New York Lottery has sustained competitive pressure from large jackpot lottery games in adjoining states. New Yorkers routinely travel outside the state to participate in those games. Entry into a multi-state game has allowed the Lottery to offer large jackpot prizes and permits its retailers around the state to compete with sales of lottery products in bordering states, providing them an immediate competitive advantage at the point of purchase. On average the revenue to education from Mega Millions has been roughly \$158 Million per fiscal year in New York State. The addition of California to Mega Millions is expected to generate roughly another \$30 Million annually for education.

4. **Costs:**

a. **Costs to regulated parties for the implementation and continuing compliance with the rule:** None.

b. **Costs to the agency, the State, and local governments for the implementation and continuation of the rule:** No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing lottery games are expected to be sufficient to support this new game.

c. **Sources of cost evaluations:** The foregoing cost evaluations are based on the Lottery Division's experience in operating State Lottery games for more than 30 years.

5. **Local government mandates:** None.

6. **Paperwork:** There are no changes in paperwork requirements. New play cards and game brochures are required for this game, and the Lottery Division is providing new play cards and game brochures for public convenience at retailer locations free of charge.

7. **Duplication:** None.

8. **Alternatives:** None.

9. **Federal standards:** None.

10. **Compliance schedule:** None.

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

The proposal does not require a Regulatory Flexibility Statement, Rural Flexibility Statement or Job Impact Statement. There will be no adverse impact on jobs, rural areas, small business or local governments.

EMERGENCY RULE MAKING

Video Lottery Gaming

I.D. No. LTR-01-06-00016-E

Filing No. 1531

Filing date: Dec. 20, 2005

Effective date: Dec. 20, 2005

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

Action taken: Addition of Part 2836 of Title 21 NYCRR.

Statutory authority: Tax Law, section 1617-a

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

Specific reasons underlying the finding of necessity: (1) The nature and location of the general welfare need:

The New York Lottery operates lottery games to fund education in New York State. It is projected that the operation of video lottery gaming in New York State may generate over \$1 billion for education annually when fully implemented. Any game delay that jeopardizes start up of video lottery gaming this fiscal year could result in a loss of approximately \$1 to

\$4 million weekly in aid to education that are needed to offset anticipated shortfalls.

Since passage of the legislation in October 2001 which authorized the Division to license the operation of video lottery gaming at racetracks in New York State, the Division has worked diligently with contractors and racetrack owners to develop the game and the gaming facilities. Five facilities are now in operation. The Legislature proposed changes to the existing legislation which are contained in Chapter 61 of the Laws of 2005. In enacting Chapter 61 of the Laws of 2005, the Legislature found that the revenue generated thus far from video lottery gaming has not met predictions. Overall, the Legislature found that lottery revenue will be maximized by making available to the video lottery gaming facilities an increased vendor's fee and a vendor's marketing allowance. The legislation was designed to provide the necessary resources and incentives to the video lottery gaming facilities to undertake the capital, marketing and other expenditures necessary to create and sustain video lottery gaming and maximize lottery revenue to support education. These regulations are a result of the recently enacted legislation. It is now almost six (6) months since the passage of Chapter 61 and the five facilities have continued to operate under the prior legislation until these regulations are completed. Since passage of the Chapter 61, the vendor's have not received the benefits of the increased vendor fee and the vendor marketing allowance, pending adoption of these regulations by the Division. Since this is the earliest the regulations could have been drafted, there is inadequate time to comply with the normal rulemaking procedure set forth in the State Administrative Procedure Act Section 202(1) and meet the stated legislative goal of maximizing lottery support for education by the increased vendor's fee and vendor's marketing allowance.

(2) Description of the cause, consequences, and expected duration of the need to file emergency rules:

The cause of the need is set forth in paragraph #1 above. The consequence of filing this emergency rulemaking is that the stated Legislative goal of Chapter 61 of the Laws of 2005 will be implemented and lottery revenue to support education will be maximized. The Division intends to file shortly a Notice of Proposed Rulemaking pursuant the State Administrative Procedure Act Section 202(4-a) to continue the normal rulemaking procedures relative to these regulations.

(3) Compliance with the requirements of § 202(1) of the State Administrative Procedure Act would be contrary to the public interest because it would delay implementation and deprive the state of needed revenue to education.

(4) Circumstances necessitate that the public and interested parties be given less than the minimum period of 30 days for notice and comment at this time because any delay would result in the video lottery gaming facilities not receiving the benefit of the increased vendor's fee and vendor's marketing allowance. Such delay would thereby result in a loss of needed aid to education. This is the earliest the regulations could have been finalized in light of the new legislation, leaving inadequate time to comply with the normal rulemaking procedure set forth in the State Administrative Procedure Act Section 202(1). Delaying the implementation of the increased vendor's fee and the providing of the marketing allowance would mean a loss in lottery revenue to aid education and frustrate the legislative intent of Chapter 61 of the Laws of 2005.

Subject: Video lottery gaming.

Purpose: To allow the licensed operation of video lottery gaming.

Substance of emergency rule: Chapter 383 of the Laws of 2001, as amended by Chapter 85 of the Laws of 2002, as amended further by Chapters 62 and 63 of the Laws of 2003, and as amended further by Chapter 61 of the Laws of 2005, codified as §§ 1612 and 1617-a of the New York State Tax Law, authorized the Division of the Lottery to license the operation of video lottery gaming at eligible racetracks in New York State. That legislation directed the Division to promulgate rules and regulations for the licensing and operation of those games.

In April, 2005, Chapter 61 of the Laws of 2005 amended § 1612 of the Tax Law to provide an increase to the vendor fee to be paid to each video lottery terminal operator and also permits a marketing allowance for each such facility. These changes have necessitated a revision to the Emergency Regulations. Regulations were initially adopted on an Emergency basis in 2003. Since that date, the regulations have been renewed every 90 days. The regulations begin by setting forth the general provisions, construction, and application of the rules. This section contains the definitions for key terms that are used throughout the body of the document.

Many of the regulations set forth the licensing procedures for the various participants needed to bring video lottery gaming into operation. Licensees include the racetracks that are eligible under the enabling legis-

lation to operate video lottery gaming, and their employees, as well as gaming and non-gaming vendors that will supply goods and services to both the Division and the racetracks. Licensing procedures include financial disclosure and, in some instances, background investigations for principles and key employees. Non-gaming vendors supplying goods and services below a certain threshold will not be required to undergo the licensing process, but will have to register as suppliers.

The racetracks, referred to in the regulations as video lottery gaming agents, will be required to submit business plans for approval by the Division prior to licensing, and to establish a set of internal control procedures pursuant to guidelines provided by the Division. The agents will be required to submit periodic financial reports and undertake other financial controls. Annually, the agents will be required to submit a marketing plan for approval by the Division. The marketing plan will identify those marketing or promotion costs which may be reimbursed from the marketing allowance permitted by § 1612 of the Tax Law. The regulations set forth the continuing obligations of video lottery gaming agents following licensure, and identify penalties that may be imposed on licensees for violation of the regulations.

The regulations establish rules for the conduct and operation of video lottery gaming. Movement of the terminals is closely regulated, and surveillance and security systems are established at each facility.

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 19, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Robert J. McLaughlin, General Counsel, New York Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: rmclaughlin@lottery.state.ny.us

Regulatory Impact Statement

1. **Statutory Authority:** On October 31, 2001, Governor Pataki signed into law Part C of Chapter 383 of the Laws of 2001, codified as §§ 1612 and 1617-a of the New York State Tax Law, which authorizes the New York State Division of the Lottery ("Division") to license the operation of video lottery gaming at racetrack locations around the state. Chapter 383 of the Laws of 2001 has been amended by Chapter 85 of the laws of 2002, as amended further by Chapters 62 and 63 of the Laws of 2003, and amended further by Chapter 61 of the Laws of 2005. The legislation directs the Division to promulgate regulations allowing for the licensed operation of video lottery gaming. These regulations fulfill that mandate, enabling the licensing and operation of video lottery gaming at authorized racetracks.

2. **Legislative Objectives:** These proposed regulations advance the legislative objective of raising additional revenue for education by establishing video lottery gaming and, as required by Chapter 61 of the Laws of 2005, permitted vendors to receive an increased vendor fee and a vendor marketing allowance.

3. **Needs and Benefits:** The regulations satisfy a legislative mandate directing the Division to promulgate regulations for the design, licensing and implementation of video lottery gaming. Pursuant to a Memorandum of Understanding between the Division and the Racing and Wagering Board, potential duplicative licensing requirements for the racetrack employees have been eliminated.

The regulations set forth the manner in which the regulated community will be licensed to conduct video lottery gaming. Additionally, they describe the game operation, financial operations, terminal design, the manner in which the security systems must operate, certain requirements for the physical layout of the gaming facilities, and how the marketing allowance will be disbursed. These regulations provide the regulated community with the details and guidance to effectively implement video lottery gaming in New York State.

While video lottery gaming has been held to be similar to other lottery games that the Division has successfully conducted for over thirty years, some components set it apart from those more traditional games. For example, most of the Division's current licensed agents are food and beverage retailers. Video lottery gaming requires the Division to license racetrack venues as video lottery gaming agents, in addition to licensing video lottery gaming and non-gaming suppliers, as well as principals, key and other employees.

A Notice of Proposed Rulemaking was first published in July 2003. Since that time, the game design has continued to develop during the start up phase of the project. Based on comments received during the public comment period, it was necessary to revise the proposed regulations. Emergency regulations have been promulgated since early 2004. Subsequently, the Legislature made certain additional changes to the statute

authorizing video lottery gaming. By way of example, Chapter 61 of the Laws of 2005 increases the vendors fee originally promulgated and adds a new marketing allowance subject to the supervision of the Lottery.

These regulations will assist the regulated parties to fully understand and comply with all the requirements of the operation of video lottery gaming, while generating sales and revenue to aid education in the State of New York.

4. Costs: This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming. It is expected that the decision to apply for a license will result from the exercise of sound business judgment.

The regulations, as well as the legislation, require facilities be in conformance with state and local building codes. These requirements, in addition to the necessary changes to facilities to accommodate video lottery terminals and related peripheral equipment, will result in each video lottery gaming agent incurring construction costs.

According to data provided by the racetracks, total costs for new construction, rehabilitation of facilities and readying facilities for the installation of the video lottery terminals will approximate \$550 million if all eligible venues participate. Each racetrack's proposed project differs. The cost for each facility ranges from \$4 million to \$250 million. The regulations require video lottery gaming agents to equip the facility with an alternate emergency power source. It is estimated that this could cost those agents an additional \$250-\$300 per video lottery terminal. The individual facilities will also be incurring closing costs and interest expenses on any funds borrowed to pay project costs. Each track's expenditures in readying the facility for compliance with the regulations include adequate heating, venting, air conditioning, cashier's cages, electrical and communication upgrades.

The racetracks will incur certain labor costs associated with operating video lottery gaming. Such gaming facilities throughout the state are expected to employ more than 4,000 people. Individual video lottery gaming agents will be employing approximately 110 to 1,200 people. The average number of employees at each facility is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual salaries ranging from \$22,000 to \$250,000. Total annual payroll for each racetrack could range from \$1.8 million to over \$10.8 million.

There are other incidental costs that will be incurred by the video lottery gaming agents. These include costs relative to providing sufficient internal controls to satisfy Division guidelines as well as auditing, both expected to exceed what is currently in place at the racing facilities. It is anticipated that most of these controls will be established through sufficient experienced racetrack personnel. Additional external auditing costs are expected to average approximately \$100,000 annually.

Members of the regulated community will be required to expend money for licensing costs. Gaming vendors will be required to pay a \$10,000 licensing fee to cover costs related to conducting background investigations of their principals and key employees. Principals and employees will be required to pay approximately \$100 to cover the cost of fingerprints.

Portions of these rules and regulations identify the guidelines and requirements in relation to marketing expenses and the utilization of the legislatively provided funds. It is anticipated that the licensed video gaming facilities will take full advantage of the allowable uses of the funds which when fully implemented will create over \$70 million annually in available resources for increasing the amount of aid to education from the video gaming program. The use of the marketing allowance funds is voluntary for video gaming facilities as is participation in the video gaming program in general.

The Lottery expects to annually expend over \$110 million in gaming vendor fees in generating over \$800 million in aid to education annually from the video gaming program when fully implemented. Video gaming facilities which are not yet open, but have construction intentions, will likely expend approximately \$300 million in renovations and new construction for video gaming.

5. Local Government Mandates: No local mandates are imposed by rule upon any county, city, village, etc. The legislation permits local communities which have racetracks not expressly identified in the legislation to pass local laws authorizing video lottery gaming at racetracks in their communities, if they so choose.

6. Paperwork: The regulations require that the regulated entities complete a licensing application, including fingerprints, and to update and renew the application periodically. The application will follow a standard multi-state format used by other states that license similar gaming activi-

ties. Completion of these applications will be a new responsibility for the video lottery gaming agents, their principals, and key employees. Agents, their principals and key employees will be required to provide more detailed disclosure than they have previously been required to provide for licensure. This level of disclosure is common in other gaming states. Provisional licenses will be granted under certain circumstances, so that the licensing review process is not expected to pose a barrier to immediate entry into the business.

The regulated vendors should be familiar with these licensing forms and reporting requirements as they are similar to those required in other states where these vendors currently do business. In fact, gaming vendors routinely have regulatory compliance departments to assist in fulfillment of these requirements.

Vendors supplying goods or services not directly related to gaming must register to do business with the video lottery gaming agents. Any registered vendor may be required to be licensed as determined by the Division and if their contracts exceed certain thresholds outlined in the regulations, they will be required to undergo a full licensing procedure. In particular, non-gaming vendors will be required to submit license applications if any of the following conditions exist:

(a) the non-gaming vendor has a contract with a video lottery gaming agent that exceeds \$150,000.00 in any twelve (12) month period;

(b) the non-gaming vendor has contracts with more than one video lottery gaming agent that combined exceed \$500,000.00 in any twelve (12) month period;

Video lottery gaming agents will be required to submit business plans that will include floor plans of the gaming areas, staffing plans, internal control procedures, marketing plans, and security plans. These will need to be updated periodically.

In order to ensure the financial integrity and security of video lottery gaming, the video lottery gaming agents will be required to develop internal control procedures, to undergo an auditing process and to submit financial reports. These financial reports are produced during the regular course of business, and their submission should not prove burdensome. These will need to be updated periodically.

Finally, video lottery gaming agents are required to submit an annual marketing plan to the Division which describes the proposed use of the marketing allowance permitted by Chapter 61 of the Laws of 2005.

7. Duplication: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules. Currently, the New York State Racing and Wagering Board must license the operation of pari-mutuel wagering at the racetracks as well as licensing racetrack employees. Because the operation of video lottery gaming is separate and distinct from pari-mutuel wagering, and further because only the Division may license the operation of video lottery gaming, dual licensing of the racetracks is not duplicative. Pursuant to a Memorandum of Understanding between the Division and that agency, potential duplicative licensing requirements for the racetrack employees have been eliminated.

8. Alternatives: The Division has conducted outreach sessions with each of the operating video lottery gaming facilities and believes that these regulations fulfill its statutory mandate while addressing those comments. While the majority of requests for revision were accommodated whenever feasible, the Division did not accept any requests for change that in its estimation would undermine the security and integrity of the game. All comments received are available for public review by contacting Robert J. McLaughlin, Esq., General Counsel, New York State Division of the Lottery at One Broadway Center, P.O. Box 7500, Schenectady, New York 12301 or by calling 518-388-3408 or e-mailing to rmclaughlin@lottery.state.ny.us.

As another alternative, the Division entered into a Memorandum of Understanding with the Racing and Wagering Board to avoid potential duplicative licensing requirements for the racetrack employees.

9. Federal Standards: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules.

10. Compliance Schedule: The licenses must be issued prior to commencement of video lottery gaming. In many instances, the license applicants will be issued provisional licenses immediately upon filing their application. All requirements concerning the conduct and operation of video lottery gaming must be complied with prior to actual commencement of the games and maintained on-going throughout the operation of the games.

Regulatory Flexibility Analysis

1. Effect of Rule: The Division of the Lottery finds that the rule will not adversely affect local government. The rule will impact a number of different types of businesses:

(a) Licensed racetracks: It is expected that the racetracks will employ greater than 100 employees at their facilities and, therefore, are not "small businesses" as that term is defined in New York State Administrative Procedure Act § 102;

(b) Gaming vendors: Vendors wishing to supply gaming products and services must be licensed. These include the supplier of the central computer system that will support the video lottery games, the companies supplying the games and terminals, management companies and certain lenders. It is anticipated that, these companies will recoup any costs associated with licensing and start-up from operations;

(c) Non-gaming vendors: Most vendors supplying goods and services not directly related to gaming will be required to complete a registration process only. However, if their contract exceeds a certain value, or if the Division otherwise determines, such vendors will be required to comply with licensing provisions. While it is difficult to estimate all costs associated with doing business with a video lottery gaming agent, the costs of registration will be minimal. The costs of licensing, should that be necessary, should not exceed \$100 per application for the costs of fingerprinting.

Participation in video lottery gaming by any of these entities is voluntary and it is expected they will use good business judgment when deciding whether or not to participate in these games. It is expected there will be no adverse economic impact on any of these regulated businesses.

2. Compliance Requirements: These rules will not require small businesses to complete burdensome forms or reports. Certain small vendors may not even be required to register.

3. Professional Services: It is not anticipated that any professional services by a small business or local government will be needed to comply with these proposed rules.

4. Compliance Costs: This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming operation. It is expected that the decision to apply for a license will result from the exercise of sound business judgment.

The regulations, as well as the legislation, require facilities be in conformance with state and local building codes. These requirements, in addition to the necessary changes to facilities to accommodate video lottery terminals and related peripheral equipment, will result in each video lottery gaming agent incurring construction costs.

Based on forecasted estimates, total costs for new construction, rehabilitation of facilities and readying facilities for the installation of the video lottery terminals will exceed \$550 million if all eligible remaining venues participate. Each facility's proposed project differs. The cost for each facility ranges is from \$4 million to over \$250 million dollars. The regulations require video lottery gaming agents equip the facility with an alternate emergency power source. It is estimated that this will cost those agents an additional \$250-\$300 per installed video lottery terminal. The individual facilities will also be incurring closing costs and interest expenses on any funds borrowed to pay project costs. Each racetrack's expenditures in readying the facility for compliance with the regulations include adequate heating, venting, air conditioning, cashier's cages, electric and communication upgrades.

The gaming facilities throughout the state are expected to employ more than 4,000 people. Individual gaming agents will be employing between approximately 110 to 1,200 people. The average number of employees at each facility is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual hourly salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

There are other incidental costs which will be incurred by the video lottery gaming agents. These include costs relative to providing sufficient internal controls to satisfy Division guidelines as well as auditing, both expected to exceed what is currently in place at the racetrack facilities. The majority of these controls are put in place through adequate experienced personnel and the personnel costs are set forth above. Additional external auditing costs are expected to average approximately \$100,000 annually.

Members of the regulated community will be required to expend money for licensing costs. Gaming vendors will be required to pay a \$10,000 licensing fee to cover costs related to conducting background investigations of their principals and key employees. Principals and employees will be required to pay approximately \$100 to cover the cost of fingerprints.

5. Economic and Technological Feasibility: The economic and technological impact of these rules on local government is minimal.

There are no expected adverse economic or technological impact on small businesses in complying with these regulations.

6. Minimizing Adverse Impact: In the case of smaller, non-gaming vendor contracts, these vendors will not be required to comply with licensing and background checks.

7. Small Business and Local Government Participation: During the pre-proposal stage of the regulatory process, members of the regulated community were contacted and given the opportunity to participate in the formation of these regulations. The New York Lottery received numerous comments from members of the community, many of which were incorporated during the final drafting of the proposed regulations. These emergency regulations include revisions made to the regulations as a result of such comments.

Rural Area Flexibility Analysis

Many of the racetracks eligible for video lottery gaming licenses are located within "rural areas" as that term is defined in New York State Executive Law Section 481(7): Batavia Downs in Genesee County, Finger Lakes Racetrack in Ontario County, Saratoga Harness Track in Saratoga County, and Monticello Racetrack in Sullivan County.

However, the Division has determined that these regulations will impose no adverse impact on these rural areas. The rule places no additional requirements on racetracks, other businesses or communities located within the rural areas than it does on racetracks, businesses or communities located outside rural areas.

The Division believes that there will be positive impact on these rural areas, as this new industry brings increased levels of business and employment to the communities.

Job Impact Statement

The Division has determined that the rule will not have a substantial adverse impact on jobs and employment opportunities. To the contrary, the agency has determined the rule will have a positive impact on jobs and employment opportunities.

According to estimates provided by the racetracks, it is anticipated that racetracks, or gaming agents, throughout the state are expected to employ more than 4,000 people. Individual gaming agents will be employing between approximately 110 to 1,200 people. The average number of employees at each gaming facility (incremental over current operations) is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

In addition to added employment from gaming operations, needed construction to the racetrack facilities will generate many new jobs. It is expected that, employment in the surrounding communities will increase to service the increased labor population and influx of patrons to the racetracks.

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-01-06-00006-EP

Filing No. 1524

Filing date: Dec. 19, 2005

Effective date: Dec. 19, 2005

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

Action taken: Repeal of section 1950.20 and addition of new section 1950.20 to 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: 1950.20 Schedule of Rates, Fees and Charges.

(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, 2006 through December 31, 2006. 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 per 100 cu. ft.
- Next succeeding 60,000 cu. ft. per quarter, \$2.19 per 100 cu. ft.
- Next succeeding 120,000 cu. ft. per quarter, \$1.86 per 100 cu. ft.
- Over 200,000 cu. ft. per quarter, \$1.54 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.

(c) The following rates shall be charged and collected for the use of water outside the city for residential and commercial purposes supplied by the water board as hereby fixed and established:

- First 20,000 cu. ft. per quarter, \$7.62 per 100 cu. ft.
- Next 60,000 cu. ft. per quarter, \$6.65 per 100 cu. ft.
- Next succeeding 120,000 cu. ft. per quarter, \$5.54 per 100 cu. ft.
- Over 200,000 cu. ft. per quarter, \$4.66 per 100 cu. ft.

The minimum charge for water consumed in any premises located outside the city for domestic purposes for any quarter or portion thereof shall not be less than \$99.06.

(d) Water used for testing fire hoses, filling tanks, swimming pools, testing sprinkler systems, and like use shall be billed at \$2.52 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.

(e) Use of hydrant for any purpose whatsoever shall be subject to a rental charge of one dollar and 50 cents (\$1.50) per day or partial day.

(f) The cost of hydrant use will include a fee of thirty-five (\$35.00) for backflow device certification, payable at the time of hydrant use application. In addition, daily hydrant and meter rental rates and security deposit amounts shall be established by the director based upon the real cost to the water board.

(g) In addition to the above schedule of rates for water consumed there shall be assessed a demand charge for each user's meter as set forth below.

Size and Type	Charge Per Quarter
Under 1"	\$ 2.80
1" Disc	\$ 6.99
2" Disc	\$ 10.07
2" Compound	\$ 16.79
3" Compound	\$ 32.17
4" Compound	\$ 47.56
6" Compound	\$ 78.61
8" Compound	\$ 94.00
10" Compound	\$109.38
12" Compound	\$126.17

(h) The rates set forth in section 2 herein, however, shall not apply to any user of water with whom there is now outstanding a valid and binding contract with the city and/or water board to supply water at a rate different than the rates stated in this Schedule, or to users obtaining water service from the Village of LaSalle prior to May 4, 1927.

(i) In the event the water board or the director terminates water supply service to any property owner or user, such property owner, user or users located at such property shall pay a reactivation fee in the amount of seventy-five dollars (\$75.00) to the water board prior to the supply of water.

(j) There shall be small meter testing charge of one hundred dollars (\$100.00) for the bench testing of any meter less than two inches in size.

(k) An account reactivation charge of one hundred dollars (\$100.00) shall be applied whenever a meter is re-installed and an account reactivated.

(l) The water board shall charge a twenty-five dollar (\$25.00) final read fee for all owner requested meter reads.

(m) A hydrant flow test charge shall be applied whenever an owner, user or his agent requests a hydrant flow test.

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

Diameter of Service Connection	Annual Fee
2" or less	\$ 59.00
3"	\$ 84.00
4"	\$ 152.00
6"	\$ 343.00
8"	\$ 607.00
10"	\$ 947.00
12"	\$1366

(o) A backflow submittal fee of twenty-five dollars (\$25.00) shall be charged for all backflow plans submitted to the water board for approval and forwarding to the state health department.

(p) There shall be a fifty dollar (\$50.00) inspection fee for each request for a cross-connection inspection.

(q) In addition to the above rates, fees and charges, the following rates shall apply to all users with respect to sewer or wastewater services prescribed in the water board's wastewater regulations 21 N.Y.C.R.R. Part 1960. There shall be two (2) user classes as provided in Part 1960, to wit:

Commercial/Small Industrial/Residential Users (CSIRU) and Significant Industrial Users (SIU).

(a) CSIRU

Sewer rates for the CSIRU class are determined by total metered water consumption in each quarter.

The schedule of quarterly charges for the CSIRU class shall be as follows:

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

(b) SIU

1. CONVENTIONAL POLLUTANT PARAMETER CHARGES.

Sewer rates for the SIU class each quarter are based on measured quantities of the actual discharge parameters: flow, suspended solids and soluble organic carbon. Such determination shall be made by the water board and shall be based upon five (5) representative 24-hour composite samples taken quarterly, at such locations as are adequate to provide proper representation.

The schedule of charges for conventional pollutant parameters shall be as follows:

SCHEDULE II	
POLLUTANT PARAMETERS	RATE
Flow	\$2375.00 per million gallons
Suspended Solids	\$ 0.79 per pound
Soluble Organic Carbon	\$ 1.34 per pound

2. SUBSTANCES OF CONCERN PARAMETER CHARGES.

SIU's, who have wastewater discharge permits which limit any substance of concern listed in Schedule III below, will be billed for discharge of these substances based on the unit rates shown in Schedule III. Discharge loading for billing purposes shall be determined by arithmetic average of the last six acceptable self-monitoring results. At the option of the SIU, increased self-monitoring can be performed. For billing purposes, when six (6) or more acceptable results are obtained over the three (3) month billing period, all such results shall be used in the computation of the arithmetic average, with a requirement that there be at least two (2) sample results for each month. Average discharge loadings will then be multiplied by the corresponding unit rates from Schedule III to obtain total charges per quarter for each substance of concern listed in the SIU's wastewater discharge permit. All substances of concern charges will be added to the charges for conventional parameters, as specified above, to compute the total quarterly sewer rate.

SCHEDULE III	
SUBSTANCES OF CONCERN UNIT CHARGES	
PARAMETERS	UNIT RATE
Benzene	\$269.37 per pound

Chloroform	\$47.92 per pound
Dichloroethylenes	\$292.68 per pound
Toluene	\$12.96 per pound
Trichloroethanes	\$60.86 per pound
Trichloroethylene	\$77.70 per pound
Vinyl Chloride	\$38.86 per pound
Monochlorotoluenes	\$2.60 per pound
Tetrachloroethylene	\$36.26 per pound
Total Phenols	\$5.90 per pound

3. BILLING.

SIU charges shall be billed on a monthly basis by the water board. The first and second monthly billings in each quarter shall be estimated and shall be one-third (1/3) of the total billing in the immediately preceding quarter. The third monthly bill in each quarter shall be based upon actual discharge quantities for that quarter and shall reflect adjustments for the estimated billings in that quarter.

(r) Unless the context specifically indicates otherwise, all terms contained herein shall have the meanings set forth in the regulations adopted by the water board 21 N.Y.C.R.R. Part 1950 and 1960, as applicable.

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 March 18, 2006.

Text of rule and any required statements and analyses may be obtained from: Gerald Grose, Niagara Falls Water Board, 5815 Buffalo Ave., Niagara Falls, NY 14304, (716) 283-9770 ext. 104, e-mail: gg-rose@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.

Niagara Frontier Transportation Authority

NOTICE OF ADOPTION

Weapons Policy

I.D. No. NFT-36-05-00005-A

Filing No. 1501

Filing date: Dec. 14, 2005

Effective date: Jan. 4, 2006

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

Action taken: Repeal of section 1151.6 and addition of new section 1151.6 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1299-e(14) and 1299-f(4), (7)

Subject: Weapons and dangerous instruments.

Purpose: To expand upon the types of weapons and dangerous instruments prohibited in transportation facilities.

Text or summary was published in the notice of proposed rule making, I.D. No. NFT-36-05-00005-P, Issue of September 7, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Ruth A. Keating, Senior Counsel, Niagara Frontier Transportation Authority, 181 Ellicott St., Buffalo, NY 14203, (716) 855-7398, e-mail Ruth_Keating@nfa.com

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

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

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

Filing date: Dec. 16, 2005

Effective date: Dec. 16, 2005

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

Action taken: The commission, on Dec. 14, 2005, adopted an order approving Saratoga Water Services, Inc.'s request to enter into a loan agreement with the Adirondack Trust Company.

Statutory authority: Public Service Law, section 89-f

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

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

Substance of final rule: The Commission adopted an order approving Saratoga Water Services, Inc.'s request to enter into a loan agreement with the Adirondack Trust Company for up to \$260,000, subject to the terms and conditions set forth in the terms and conditions of 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.

(05-W-0801SA1)

NOTICE OF ADOPTION

Retirement of Electric Generating Units

I.D. No. PSC-32-05-00007-A

Filing date: Dec. 20, 2005

Effective date: Dec. 20, 2005

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

Action taken: The commission, on Dec. 14, 2005, adopted an order regarding policies and procedures for addressing the retirement of electric generating units, and the resolution of related issues.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), 66(1), (2), (5) and 70

Subject: Policies and procedures regarding electric generating unit retirements.

Purpose: To establish policies and procedures regarding electric generating unit retirements.

Substance of final rule: The Commission adopted an order regarding policies and procedures for addressing the retirement of electric generating units, including requiring advanced notice of retirements, and the resolution of related issues, subject to the terms and conditions of 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.

(05-E-0889SA1)

NOTICE OF ADOPTION

Power for Jobs Program by Consolidated Edison Company of New York, Inc.**I.D. No.** PSC-35-05-00011-A**Filing date:** Dec. 14, 2005**Effective date:** Dec. 14, 2005

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

Action taken: The commission, on Dec. 14, 2005, approved the tariff filing of Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 9.

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

Subject: Power for Jobs Program.

Purpose: To eliminate the term of service contained in Rider Q—Power for Jobs Program.

Substance of final rule: The Commission approved the tariff filing submitted by Consolidated Edison Company of New York, Inc. to turn to eliminate the term of service contained in Rider Q - Power for Jobs Program.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-E-0997SA1)

NOTICE OF ADOPTION

Composition of the Telephone Relay Service Advisory Board by Targeted Accessibility Fund of New York, Inc.**I.D. No.** PSC-36-05-00016-A**Filing date:** Dec. 19, 2005**Effective date:** Dec. 19, 2005

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

Action taken: The commission, on Dec. 14, 2005, approved the petition of the Targeted Accessibility Fund of New York, Inc., to expand and modify the composition of the telephone relay service advisory board with certain modifications.

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

Subject: Modification of the composition of the telephone relay service advisory board.

Purpose: To modify the composition.

Substance of final rule: The Commission approved the Targeted Accessibility Fund's request to expand and modify the composition of the New York State Telephone Relay Service Advisory Board, 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. (05-C-0985SA1)

NOTICE OF ADOPTION

Long-Term Debt by New York Water Service Corporation**I.D. No.** PSC-36-05-00019-A**Filing date:** Dec. 15, 2005**Effective date:** Dec. 15, 2005

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

Action taken: The commission, on Dec. 14, 2005, adopted an order approving the petition of New York Water Service Corporation for authorization to enter into loan agreements for \$12.59 million of long-term debt.

Statutory authority: Public Service Law, section 89-f

Subject: Authority for New York Water Service Corporation to issue long-term debt.

Purpose: To authorize New York Water Service Corporation to enter into loan agreements for \$12.59 million of long-term debt.

Substance of final rule: The Commission approved New York Water Service Corporation's request to enter into loan agreements for \$12.59 million of long-term debt, 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. (05-W-0986SA1)

NOTICE OF ADOPTION

Electric Transmission Lines and Gas Transmission Lines 10 or More Miles Long**I.D. No.** PSC-37-05-00005-A**Filing No.** 1527**Filing date:** Dec. 20, 2005**Effective date:** Jan. 4, 2005

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

Action taken: Amendment of Subpart 85-2 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections 4(1) and 20(1)

Subject: Electric transmission lines and gas transmission lines 10 or more miles long.

Purpose: To bring the regulatory provisions into conformance with Article VII of the Public Service Law and with 16 NYCRR Part 4 (as amended since Subpart 85-2 was adopted in 1984), repeal obsolete provisions and make technical corrections to an address and other regulatory provisions.

Substance of final rule: The Commission adopted amendments to bring Title 16 NYCRR Subpart 85-2 into conformance with Article VII of the Public Service Law and with 16 NYCRR Part 4 as amended since Subpart 85-2 was amended in 1984, repeal obsolete provisions and make technical corrections to an address and other regulatory provisions. Subpart 85-2 implements the provisions of Article VII of the Public Service Law relating to the review of applications for all electric transmission lines and gas transmission lines ten or more miles long.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 82-2.3(a), 85-2.11(a)(6), (c)(2) and 85-2.14.

Text of rule and any required statements and analyses may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2600

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

The referenced statements and analyses are not submitted because no comments on the proposed rule were received and they were clarified in a non-substantive manner that will not change the impact of the rules.

Assessment of Public Comment

The agency received no public comment.

(05-M-0679SA1)

NOTICE OF ADOPTION

Transmission Revenue Adjustment by Niagara Mohawk Power Corporation**I.D. No.** PSC-40-05-00009-A**Filing date:** Dec. 14, 2005**Effective date:** Dec. 14, 2005

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

Action taken: The commission, on Dec. 14, 2005, approved the tariff filing by Niagara Mohawk Power Corporation to make various changes in the rate, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 207.

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

Subject: Transmission revenue adjustment.

Purpose: To approve modifications to the procedures currently used to calculate the transmission revenue adjustment on a monthly basis.

Substance of final rule: The Commission approved Niagara Mohawk Power Corporation's tariff amendments to modify the procedures used to calculate the Transmission Revenue Adjustment on a monthly basis.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-E-1140SA1)

NOTICE OF ADOPTION

Reallocation of Funds**I.D. No.** PSC-41-05-00002-A**Filing date:** Dec. 19, 2005**Effective date:** Dec. 19, 2005

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

Action taken: The commission, on Dec. 14, 2005, adopted as a permanent rule the request for reallocating System Benefits Charge Program budget and providing \$500,000 for additional outreach and education programs for unused funds previously budgeted, but unneeded, for the Environmental Disclosure Program.

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

Subject: Reallocation of funds from one major System Benefits Charge Program category to another category.

Purpose: To inform consumers of expected higher fuel costs and the measures than can take to reduce their energy usage before the winter heating season.

Substance of final rule: The Commission adopted as a permanent rule the request for reallocating funding in the System Benefits Charge program budget and providing \$500,000 for additional outreach and education programs for unused funds previously budgeted, but unneeded, for the Environmental Disclosure program.

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.

(94-E-0952SA36)

NOTICE OF ADOPTION

Reconnection Charges and Returned Check Charge by Massena Electric Department**I.D. No.** PSC-41-05-00029-A**Filing date:** Dec. 14, 2005**Effective date:** Dec. 14, 2005

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

Action taken: The commission, on Dec. 14, 2005, approved the tariff filing by Massena Electric Department to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 2.

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

Subject: Reconnection charges and returned check charge.

Purpose: To approve the reconnection charges and establish a returned check charge.

Substance of final rule: The Commission approved the tariff filing by Massena Electric Department to update its reconnection charges and establish a returned check charge.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-E-1150SA1)

NOTICE OF ADOPTION

Electronic Data Interchange Testing by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI**I.D. No.** PSC-42-05-00010-A**Filing date:** Dec. 14, 2005**Effective date:** Dec. 14, 2005

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

Action taken: The commission, on Dec. 14, 2005, approved KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island's proposal to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 1.

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

Subject: Deposit required by an energy services company for electronic data interchange testing.

Purpose: To require a deposit from an energy services company in order for them to be able to participate in electronic data interchange testing.

Substance of final rule: The Commission approved the tariff amendments filed by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island to require a deposit from an Energy Services Company as a condition of participating in the Electronic Data Interchange Testing Process.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-G-1226SA1)

NOTICE OF ADOPTION

Electronic Data Interchange Testing by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY

I.D. No. PSC-42-05-00011-A
Filing date: Dec. 14, 2005
Effective date: Dec. 14, 2005

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

Action taken: The commission, on Dec. 14, 2005, approved The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York's proposal to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12.

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

Subject: Deposit required by an energy services company for electronic data interchange testing.

Purpose: To require a deposit from an energy services company in order for them to be able to participate in electronic data interchange testing.

Substance of final rule: The Commission approved the tariff amendments filed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York to require a deposit from an Energy Services Company as a condition of participating in the Electronic Data Interchange Testing Process.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-1225SA1)

NOTICE OF ADOPTION

Area Development and Business Incentive Rate Program by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY

I.D. No. PSC-42-05-00012-A
Filing date: Dec. 14, 2005
Effective date: Dec. 14, 2005

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

Action taken: The commission, on Dec. 14, 2005, approved the tariff filing by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12.

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

Subject: Area Development and Business Incentive Rate Program.

Purpose: To open a new window for the submission of applications for the Area Development and Business Incentive Rate Program.

Substance of final rule: The Commission approved The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York's tariff amendments to extend its Area Development and Business Incentive Rate Program for an additional three years.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-1218SA1)

NOTICE OF ADOPTION

Rider T—DC Conversion Program by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-42-05-00013-A
Filing date: Dec. 14, 2005
Effective date: Dec. 14, 2005

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

Action taken: The commission, on Dec. 14, 2005, approved the tariff filing of Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 9.

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

Subject: Rider T—DC Conversion Program.

Purpose: To approve the revisions to the language of Rider T—DC Conversion Program.

Substance of final rule: The Commission approved the tariff filing by Consolidated Edison Company of New York, Inc. (the company) to reuse the language of Rider T – DC Conversion Program to clarify that the Company may use remaining actual revenues received before 12/31/05, in combination with DC Surcharge Revenues received thereafter to offset DC conversion incentive expenses in 2006 and beyond.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-E-1232SA1)

NOTICE OF ADOPTION

Stand by Rates by Rochester Gas and Electric Corporation

I.D. No. PSC-43-05-00012-A
Filing date: Dec. 14, 2005
Effective date: Dec. 14, 2005

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

Action taken: The commission, on Dec. 14, 2005, approved a tariff filing by Rochester Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. Nos. 18 and 19.

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

Subject: Standby rates.

Purpose: To approve the modifications to Service Classification No. 14—standby service in compliance with commission order adopting provisions of joint proposals with conditions, issued May 20, 2004.

Substance of final rule: The Commission approved Rochester Gas and Electric Corporation's tariff amendments to modify Service Classification No. 14 — Standby Service, reflecting new transition charges, filed in compliance with Commission Order Adopting Provisions of Joint Proposals with conditions.

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. (03-E-0765SA7)

NOTICE OF ADOPTION

Mini Rate Increase by the Village of Castile

I.D. No. PSC-43-05-00014-A

Filing date: Dec. 19, 2005

Effective date: Dec. 19, 2005

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

Action taken: The commission, on Dec. 14, 2005, approved the proposal filed by the Village of Castile to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 1.

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

Subject: Mini rate increase.

Purpose: To approve an increase in annual electric revenues.

Substance of final rule: The Commission allowed the Village of Castile (Village) to increase its annual electric revenues by \$5,069 or 1.3% to become effective January 1, 2006 provided the Village files the necessary revisions, 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.

(05-E-1247SA1)

NOTICE OF ADOPTION

Rider J – NYPA Power for Jobs Service Rider by Orange and Rockland Utilities, Inc.

I.D. No. PSC-43-05-00015-A

Filing date: Dec. 14, 2005

Effective date: Dec. 14, 2005

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

Action taken: The commission, on Dec. 14, 2005, approved the tariff filing of Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in schedule for electric services—P.S.C. No. 2.

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

Subject: Rider J – NYPA Power for Jobs Service Rider.

Purpose: To eliminate the term limitations contained in Rider J – NYPA Power for Jobs Service Rider and indicate that the term will be established in customer's contract with NYPA.

Substance of final rule: The Commission approved the tariff filing of Orange and Rockland Utilities, Inc. to eliminate the term of service contained in Rider J – New York Power Authority, Power for Jobs Service Rider.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-E-1250SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Approval of New Types of Electric Meters by Hunt Technologies

I.D. No. PSC-01-06-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Hunt Technologies for commission approval of the Hunt Technologies TS1 and TS2 power line carrier automatic meter reading system.

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

Subject: Approval of new types of electric meters—Case 279.

Purpose: To permit electric utilities in New York State to use the Hunt Technologies TS1 and TS2 power line carrier, automatic meter reading devices.

Substance of proposed rule: The Commission will consider a request filed by Hunt Technologies for the approval of the TS1 and TS2 power line carrier automatic meter reading devices for use in utility metering applications. National Grid has submitted a letter to the Commission stating its intent to use the TS1 and TS2 automatic meter reading systems, if approved. National Grid plans to utilize this line of automatic meter reading system in its customer billing applications in New York State.

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

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

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

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

(05-E-1520SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Submetering of Electricity by Riverdale Heights LLC

I.D. No. PSC-01-06-00009-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Riverdale Heights LLC to submeter electricity at 640 W. 237th 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 Riverdale Heights LLC to submeter electricity at 640 W. 237th St., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Riverdale Heights LLC to submeter electricity at 640 West 237th 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: Jaelyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(05-E-1573SA1)

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

Memorandum of Agreement on Net Congestion Charges by Niagara Mohawk Power Corporation

I.D. No. PSC-01-06-00010-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, modify, or reject, in whole or in part, a petition filed by Niagara Mohawk Power Corporation for approval of a memorandum of agreement on net congestion charges associated with the March 2004 Leeds Substation outage.

Statutory authority: Public Service Law, section 66

Subject: Memorandum of agreement on net congestion charges associated with the March 2004 Leeds Substation outage.

Purpose: To implement a memorandum of agreement that would provide for a credit to customers of \$6.0 million through Niagara Mohawk's transmission revenue adjustment clause, P.S.C. No. 207, Electricity, Rule 43.

Substance of proposed rule: The Commission is considering whether to approve, modify, or reject, in whole or in part, a petition filed by Niagara Mohawk Power Corporation to approve a Memorandum of Agreement that would credit \$6.0 million to customers through the Company's Transmission Revenue Adjustment Clause ("TRAC"), P.S.C. No. 207, Electricity, Rule 43.

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

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

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

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

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

(05-E-1604SA1)

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

Discounted Retail Access Transportation Service Program by National Fuel Gas Distribution Corporation

I.D. No. PSC-01-06-00011-P

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

Proposed action: The commission is considering whether to adopt, modify or reject, in whole or in part, a proposal by National Fuel Gas Distribution Corporation (NFG) to establish a Discounted Retail Access Transportation Service (DRS) Program that matches customers interested in receiving a discount on gas supplies during an incentive period with energy service companies that participate in the program.

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

Subject: Consideration of the establishment of NFG's DRS Program.

Purpose: To approve the program.

Substance of proposed rule: The Commission is considering whether to adopt, modify or reject, in whole or in part, a proposal by National Fuel Gas Distribution Corporation (NFG) to establish a Discounted Retail Access Transportation Service (DRS) program that matches customers inter-

ested in receiving a discount on Gas supplies during an incentive period with Energy Service Companies that participate in the program.

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

Data, views or arguments may be submitted to: Jaclyn A. 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.

(04-G-1047SA3)

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

Uncompressed Natural Gas Vehicle Transportation Service by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI

I.D. No. PSC-01-06-00012-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 KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI (KeySpan) to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 1

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

Subject: S.C. No. 11—uncompressed natural gas vehicle transportation service.

Purpose: To replace S.C. No. 11 with S.C. No. 5 — firm transportation service.

Substance of proposed rule: The Commission is considering KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI's (KeySpan) request to replace its S.C. No. 11 — Uncompressed Natural Gas Vehicle Transportation Service with the current S.C. No. 5 — Firm transportation Service. KeySpan believes that S.C. No. 5 is a more feasible and appropriate service classification for natural gas vehicle fueling stations.

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

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

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

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

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

(05-G-1554SA1)

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

Competitive Opportunities Development Plan by Niagara Mohawk Power Corporation

I.D. No. PSC-01-06-00013-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 Niagara Mohawk Power Corporation's d/b/a National Grid ("Company") joint

proposal on retail access issues submitted in Case No. 05-M-0333 — Niagara Mohawk Power Corporation's Competitive Opportunities Development Plan.

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

Subject: The company's joint proposal on certain retail access issues in accordance with its Competitive Opportunities Development Plan.

Purpose: To consider the approval of the company's joint proposal.

Substance of proposed rule: The Public Service Commission is considering a Joint Proposal on Retail Access Issues filed by Niagara Mohawk Power Corporation d/b/a National Grid ("Company"), issued on December 19, 2005. The Joint Proposal deals with implementation of a program for purchase of Energy Service Company accounts receivable without recourse. The Joint Proposal also implements revised backout credits for the Company's electric and natural gas retail access programs. The Commission may adopt or reject the Joint Proposal.

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

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

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

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

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

(05-M-0333SA1)

Racing and Wagering Board

NOTICE OF ADOPTION

Authorizing and Prohibiting Drugs and Medications Used to Treat Race Horses Prior to a Given Race

I.D. No. RWB-40-05-00001-A

Filing No. 1526

Filing date: Dec. 19, 2005

Effective date: Jan. 4, 2006

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

Action taken: Amendment of sections 4043.2 and 4120.2 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutual Wagering and Breeding Law, sections 101.1, 902.1 and 301.2(a)

Subject: Authorizing and prohibiting drugs and medications used to treat race horses prior to a given race.

Purpose: To eliminate obsolete drugs or medications; add new drugs or medications; and reclassify the timing of administration of certain drugs or medications to harness and thoroughbred racehorses prior to the start of a given race.

Text of final rule: Section 4043.2 is hereby amended to read:

4043.2 Restricted use of drugs, medication and other substances. Drugs and medications are permitted to be used only in accordance with the following provisions.

(a) The following substances are permitted to be used at any time up to race time:

(1) topical applications (such as antiseptics, ointments, salves, DMSO, leg rubs, leg paints and liniments) which may contain antibiotics but do not contain benzocaine, steroids or other drugs; and

(2) antibiotics, vitamins, electrolytes, and other food supplements as long as they are administered orally and as long as they do not contain any other drug or by their nature, exhibit drug-like actions or properties.

(b) Eligibility for the administration of furosemide. (1) The administration of furosemide is permissible to a horse, which has qualified for its use by any of the following means:

(i) the horse has bled visibly during a race or a workout, as determined by the association veterinarian; or

(ii) the horse has bled during a race or workout, as determined by [endoscopic examination] *an attending veterinarian based upon his/her clinical assessment of the horse which may or may not include an endoscopic examination* after the race or workout [by an attending veterinarian]; or

(iii) the horse has been qualified by the State veterinarian or a veterinarian employed by the racetrack for the administration of furosemide in another racing jurisdiction; or

(iv) the horse has raced on furosemide in its last race in a jurisdiction with rules substantially similar to New York State.

(2) If it is determined that a horse has qualified pursuant to paragraph (1) of this subdivision, and the owner or trainer elects to make the horse eligible for the administration of furosemide, the horse shall be placed on a list of horses that have bled, to be maintained by the association veterinarian, and shall not be permitted to race for the following periods of time:

(i) 1st time - 10 days after such episode of bleeding;

(ii) 2nd time - 30 days after such episode of bleeding;

(iii) 3rd time - 90 days after such episode of bleeding; and

(iv) 4th time - one year after such episode of bleeding. Such list shall be made available to the public for inspection.

(3) Eligibility to race on furosemide. For a horse to be eligible to race on furosemide, the trainer of that horse must file satisfactory documentation of eligibility pursuant to this rule with the association veterinarian on or before time of entry.

(4) Removal from the furosemide list. A horse, which has been eligible for the administration of furosemide, may be removed from the list, upon authorization from the stewards.

(5) Reinstatement to furosemide list. After removal from the furosemide list, a horse may be reinstated for the administration of furosemide if the horse again meets the requirements set forth in paragraph (1) of this subdivision and such horse shall not be permitted to race for the applicable time period set forth in subparagraphs (2)(i) through (iv) of this subdivision.

(6) Administration of furosemide. For the purposes of this rule, furosemide shall be administered only in the following manner:

A single intravenous (IV) injection of no less than 150 [250] milligrams 3cc [5cc] and no more than 500 milligrams (10cc) on the grounds of a licensed or franchised racing association or corporation during the time period from 4 to 4½ hours before the scheduled post time of the race in which the horse is to compete.

(7) Ineligibility to start. Any horse, which is eligible for the administration of furosemide, must be present on the grounds of the racing association or corporation no less than four hours prior to scheduled post time of the race in which the horse is scheduled to compete. A horse, which is not present, at least four hours prior to post time or which has not received the administration of furosemide pursuant to this rule shall be ineligible to start.

(c) The following substances may be administered by [injection] *any means* until 24 hours before the [start of a racing program] *scheduled post time of the race in which the horse is to compete*:

(1) antibiotics,

(2) *sulfa-expectorants, (e.g. sulfa-methoxypridazine)*

(3) tetanus antitoxin,

(4) electrolytes, vitamins, and other food supplements and body nutrients not containing procaine or other drugs,

(5) *Omeprazole*;

(6) *Cimetidine*;

(7) *Ranitidine*;

(8) *Sucralfate*.

They may not be administered by [injection (including intravenous injection known as jugging)] *any means* within 24 hours of the [start of a racing program] *scheduled post time of the race in which the horse is to compete*. *In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 24 hours.*

(d) *Either one, but no more than one, of the following two non-steroidal anti-inflammatory drugs may be administered by intravenous injection until 24 hours before the scheduled post time of the race in which the horse is to compete:*

(1) *flunixin*

(2) *phenylbutazone*.

[(d)] (e) The following substances are permitted to be administered by any means until 48 hours before the [start of a racing program] *scheduled post time of the race in which the horse is to compete*:

- (1) aminophylline or theophylline;
- (2) arsenic solution (e.g., Fowlers Solution);
- (3) aspirin or sodium thiosalicylate;
- (4) chymotrypsin (e.g., Kymar);
- (5) diuretics (e.g., furosemide [Lasix], except as otherwise provided pursuant to subdivision [b] of this section, thiazide derivatives [e.g., Diuril], trichlormethiazide and dexamethazone [e.g., Naquazone bolets]);
- (6) epinephrine (adrena[-]line);
- (7) selenium/vitamin E (e.g., E-Se);
- (8) griseofulvin (e.g., Fulvicin);
- [(9)] guaiacol derivatives (e.g., Guaifenesin, Ripercol-L);
- [(10)] (9) hormones and steroids (e.g., testosterone, progesterone, estrogens, chorionic gonadotropin, glucocorticoids [e.g., Prednisolone, Depomedrol], and anabolic steroids [e.g., Equipoise]), except in conjunction with joint aspiration as restricted in subdivision (i) of this section;
- (10) *Hyaluronic Acid derivatives*
- (11) *Immuno stimulants*
- [(11)] (12) iodine injection (e.g., Hypodermin, Harvey's Injectable Blister);
- [(12)] (13) methenamine (e.g., Urotropin);
- [(13)] (14) the following nonsteroidal anti-inflammatory drugs (NSAID's): Phenylbutazone (e.g., Butazolodin), Flunixin (e.g., Banamine), meclufenamic acid (Arquel), naproxen (e.g., Naprosyn, Equiproxen);, *Ketoprofen (e.g., Orudis)*;
- [(14)] (15) orgotein (e.g., Palosein);
- [(15)] (16) hydroxychloroquine sulfate (e.g., Rheaform);
- [(16)] (17) sarapin;
- [(17)] (18) sulfonamide drugs (e.g., Sulfa); and
- [(18)] (19) biologics (e.g., bacterins, antitoxins except tetanus antitoxin).

They may not be administered within 48 hours of the [start of a racing program] *scheduled post time of the race in which the horse is to compete*, except that *phenylbutazone or flunixin may be used in accordance with the specific authorization set forth in paragraph d of this rule*.

In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 48 hours.

[(e)] (f) The following substances may be administered by any means until 72 hours before the [start of a racing program] *scheduled post time of the race in which the horse is to compete*:

- (1) antihistamines;
- (2) *dantrolene*;
- [(2)] (3) ketamine hydrochloride;
- [(3)] (4) methocarbamol (e.g., Robaxin);
- [(4)] (5) pentazocine (e.g., Talwin);
- (6) *trichloromethiazide*;
- [(5)] (7) vermifuges (worm medicines), except phenothiazine [and (2) xylazine (e.g., Rompun)].

They may not be administered within 72 hours of the start of [a racing program] *the scheduled post time of the race in which the horse is to compete*. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 72 hours.

(g) *The following substances are permitted to be administered by any means until 96 hours before the scheduled post time of the race in which the horse is to compete*:

- (1) *acepromazine*;
- (2) *albuterol*;
- (3) *atropine*;
- (4) *butorphanol*;
- (5) *clenbuterol*;
- (6) *detomidine*;
- (7) *glycopyrrolate*;
- (8) *guaifenesin*;
- (9) *hydroxyzine*
- (10) *isoxsuprine*;
- (11) *lidocaine*;
- (12) *mepivacaine*;
- (13) *pentoxifylline*;
- (14) *phenytoin*;
- (15) *pyrilamine*;

(16) [z]xylazine.

They may not be administered within 96 hours of the scheduled post time of the race in which the horse is to compete. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 96 hours.

[(f)] (h) No other drugs or medications including procaine may be administered by any means within one week of the [start of a racing program] *scheduled post time of the race in which the horse is to compete. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such one-week period.*

(i) In addition, a horse which has had a joint aspirated (in conjunction with a steroid injection) may not race for at least five days following such procedure, and whenever such procedure is performed, the trainer shall notify the stewards of such fact, in writing, before the horse is entered to race.

[(g)] (j) The listing, reference to, or denomination herein of any drug or other substance does not constitute endorsement, or recommendation by the board for its use.

Section 4120.2 Restricted use of drugs, medication and other substances. Drugs and medications are permitted to be used only in accordance with the following provisions.

(a) The following substances are permitted to be used at any time up to race time:

(1) topical applications (such as antiseptics, ointments, salves, DMSO, leg rubs, leg paints and liniments) which may contain antibiotics but do not contain benzocaine, steroids or other drugs; and

(2) antibiotics, vitamins, electrolytes, and other food supplements as long as they are administered orally and as long as they do not contain any other drug or by their nature, exhibit drug-like actions or properties.

(b) Eligibility for the administration of furosemide. (1) The administration of furosemide is permissible to a horse, which has qualified for its use by any of the following means:

(i) the horse has bled visibly during a race or a workout, as determined by the association veterinarian; or

(ii) the horse has bled during a race or workout, as determined by [endoscopic examination] *an attending veterinarian based upon his/her clinical assessment of the horse which may or may not include an endoscopic examination* after the race or workout [by an attending veterinarian]; or

(iii) the horse has been qualified by the State veterinarian or a veterinarian employed by the racetrack for the administration of furosemide in another racing jurisdiction; or

(iv) the horse has raced on furosemide in its last race in a jurisdiction with rules substantially similar to New York State.

(2) If it is determined that a horse has qualified pursuant to paragraph (1) of this subdivision, and the owner or trainer elects to make the horse eligible for the administration of furosemide, the horse shall be placed on a list of horses that have bled, to be maintained by the association veterinarian, and shall not be permitted to race for the following periods of time:

(i) 1st time - 10 days after such episode of bleeding;

(ii) 2nd time - 30 days after such episode of bleeding;

(iii) 3rd time - 90 days after such episode of bleeding; and

(iv) 4th time - one year after such episode of bleeding. Such list shall be made available to the public for inspection.

(3) Eligibility to race on furosemide. For a horse to be eligible to race on furosemide, the trainer of that horse must file satisfactory documentation of eligibility pursuant to this rule with the association veterinarian on or before time of entry.

(4) Removal from the furosemide list. A horse, which has been eligible for the administration of furosemide, may be removed from the list, upon authorization from the stewards.

(5) Reinstatement to furosemide list. After removal from the furosemide list, a horse may be reinstated for the administration of furosemide if the horse again meets the requirements set forth in paragraph (1) of this subdivision and such horse shall not be permitted to race for the applicable time period set forth in subparagraphs (2)(i) through (iv) of this subdivision.

(6) Administration of furosemide. For the purposes of this rule, furosemide shall be administered only in the following manner:

A single intravenous (IV) injection of no less than 150 [250] milligrams (3cc) [(5cc)] and no more than 500 milligrams (10cc) on the grounds of a licensed or franchised racing association or corporation

during the time period from 4 to 4½ hours before the scheduled post time of the race in which the horse is to compete.

(7) Ineligibility to start. Any horse, which is eligible for the administration of furosemide, must be present on the grounds of the racing association or corporation no less than four hours prior to scheduled post time of the race in which the horse is scheduled to compete. A horse, which is not present, at least four hours prior to post time or which has not received the administration of furosemide pursuant to this rule shall be ineligible to start.

(c) The following substances may be administered by [injection] *any means* until 24 hours before the [start of a racing program] *the scheduled post time of the race in which the horse is to compete*:

- (1) antibiotics,
- (2) *sulfa-expectorants*, (e.g. *sulfa-methoxy-pyridazine*)
- (3) tetanus antitoxin,
- (4) electrolytes, vitamins, and other food supplements and body nutrients not containing procaine or other drugs,
- (5) *Omeprazole*;
- (6) *Cimetidine*;
- (7) *Ranitidine*;
- (8) *Sucralfate*.

They may not be administered by [injection (including intravenous injection known as jugging)] *any means* within 24 hours of the [start of a racing program] *scheduled post time of the race in which the horse is to compete*. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 24 hours.

(d) *Either one, but no more than one, of the following two non-steroidal anti-inflammatory drugs may be administered by intravenous injection until 24 hours before the scheduled post time of the race in which the horse is to compete*:

- (1) *flunixin*
- (2) *phenylbutazone*.

[(d)] (e) The following substances are permitted to be administered by any means until 48 hours before the [start of a racing program] *scheduled post time of the race in which the horse is to compete*:

- (1) aminophylline or theophylline;
- (2) arsenic solution (e.g., Fowlers Solution);
- (3) aspirin or sodium thiosalicylate;
- (4) chymotrypsin (e.g., Kymar);
- (5) diuretics (e.g., furosemide [Lasix], except as otherwise provided pursuant to subdivision [b] of this section, thiazide derivatives [e.g., Diuril], trichlormethiazide and dexamethazone [e.g., Naquazone bolets]);
- (6) epinephrine (adrenaline);
- (7) selenium/vitamin E (e.g., E-Se);
- (8) griseofulvin (e.g., Fulvicin);
- (9) guaiacol derivatives (e.g., Guaifenesin, Ripercol-L);

[(10)] (9) hormones and steroids (e.g., testosterone, progesterone, estrogens, chorionic gonadotropin, glucocorticoids [e.g., Prednisolone, Depomedrol], and anabolic steroids [e.g., Equipoise]), except in conjunction with joint aspiration as restricted in subdivision (i) of this section;

(10) *Hyaluronic Acid derivatives*

(11) *Immuno stimulants*

[(11)] (12) iodine injection (e.g., Hypodermin, Harvey's Injectable Blister);

[(12)] (13) methenamine (e.g., Urotropin);

[(13)] (14) the following nonsteroidal anti-inflammatory drugs (NSAID's): Phenylbutazone (e.g., Butazolidin), Flunixin (e.g., Banamine), meclofenamic acid (Arquel), naproxen (e.g., Naprosyn, Equiproxen;), *Ketoprofen* (e.g., *Orudis*);

[(14)] (15) orgotein (e.g., Palosein);

[(15)] (16) hydroxychloroquine sulfate (e.g., Rheaforn);

[(16)] (17) sarapin;

[(17)] (18) sulfonamide drugs (e.g., Sulfa); and

[(18)] (19) biologics (e.g., bacterins, antitoxins except tetanus antitoxin). They may not be administered within 48 hours of the [start of a racing program] *scheduled post time of the race in which the horse is to compete*, except that phenylbutazone or flunixin may be used in accordance with the specific authorization set forth in paragraph d of this rule.

In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 48 hours.

[(e)] (f) The following substances may be administered by any means until 72 hours before the [start of a racing program] *scheduled post time of the race in which the horse is to compete*:

(1) antihistamines;

(2) *dantrolene*;

[(2)] (3) ketamine hydrochloride;

[(3)] (4) methocarbamol (e.g., Robaxin);

[(4)] (5) pentazocine (e.g., Talwin);

(6) *pentoxifylline*;

(7) *trichloromethiazide*;

[(5)] (8) vermifuges (worm medicines), except phenothiazine [and (3) xylazine (e.g., Rompun)].

They may not be administered within 72 hours of the [start of a racing program] *scheduled post time of the race in which the horse is to compete*. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 72 hours.

(g) *The following substances are permitted to be administered by any means until 96 hours before the scheduled post time of the race in which the horse is to compete*:

(17) *acepromazine*;

(18) *albuterol*;

(19) *atropine*;

(20) *butorphanol*;

(21) *clenbuterol*;

(22) *detomidine*;

(23) *dipyrrone*;

(24) *glycopyrrolate*;

(25) *guaifenesin*;

(26) *hydroxyzine*;

(27) *isoxsuprine*;

(28) *lidocaine*;

(29) *mepivacaine*;

(30) *phenytoin*;

(31) *pyrilamine*;

(32) [z]xylazine.

They may not be administered within 96 hours of the start of the scheduled post time of the race in which the horse is to compete. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such 96 hours.

[(f)] (h) No other drugs or medications including procaine may be administered by any means within one week of the [start of a racing program] *scheduled post time of the race in which the horse is to compete*. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such one-week period.

(i) In addition, a horse which has had a joint aspirated (in conjunction with a steroid injection) may not race for at least five days following such procedure, and whenever such procedure is performed, the trainer shall notify the stewards of such fact, in writing, before the horse is entered to race.

[(g)] (j) The listing, reference to, or denomination herein of any drug or other substance does not constitute endorsement, or recommendation by the board for its use.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 4043.2(e)(5), 4120.2(e)(5) and (6).

Text of rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Watervliet Ave. Ext., Suite 2, Albany, NY 12206, (518) 453-8460, e-mail: info@racing.state.ny.us

Revised Regulatory Impact Statement

A revised regulatory impact statement is not required pursuant to Section 202-a of the State Administrative Procedure Act because the changes to the current text compared to the text that published in the proposed rulemaking are technical, nonsubstantive amendments.

The changes to the current rule text are as follows:

-- Section 4043.2, new subdivision (e), paragraph 5, the comma before "trichlormethiazide" is now deleted;

-- Section 4120.2, new subdivision (e), paragraph 5, the comma before "trichlormethiazide" is now deleted; and

-- Section 4120.2, new subdivision (e), paragraph 6, the original text did not contain a hyphen in the word "adrenaline," so the amendment to delete the hyphen is unnecessary and removed.

These revisions are corrections to punctuation and are nonsubstantive.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendments merely continue the Board's program governing the administration of medication to race horses on a time basis prior to participating in a race pursuant to the existing rule and the amendments prescribed herein. Consequently, the rule neither affects small business, local governments, jobs nor rural areas. The rule proposal allows the Board to prescribe or prohibit administration of drugs to horses pursuant to an updated list, which eliminates obsolete drugs, adds new drugs, changes withdrawal times for other drugs and establishes additional withdrawal categories based on regulatory and industry needs. Prescribing or prohibiting the administration of medications to race horses does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8), nor does it 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, and because the Board has been previously been monitoring, and regulating the administration of medications to harness and thoroughbred race horses.

Assessment of Public Comment

The Board received one public comment during the Proposed Rulemaking public comment period, which concluded on November 21, 2005. Dave Marcy from the Legislative Bill Drafting Commission called by telephone and identified three typographical errors. Based upon his telephone call, the following nonsubstantive changes have been made to the rule text:

- Section 4043.2, new subdivision (e), paragraph 5, the comma before "trichlormethiazide" is now deleted.
- Section 4120.2, new subdivision (e), paragraph 5, the comma before "trichlormethiazide" is now deleted.
- Section 4120.2, new subdivision (e), paragraph 6, the original text did not contain a hyphen in the word "adrenaline," so the amendment to delete the hyphen is unnecessary and removed.