

# 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.)

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

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## Department of Agriculture and Markets

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### EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Importation of Poultry, That Have Not Been Determined to be Free of Avian Influenza, into the State

**I.D. No.** AAM-22-15-00004-EP

**Filing No.** 384

**Filing Date:** 2015-05-14

**Effective Date:** 2015-05-14

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

**Proposed Action:** Amendment of sections 45.1 and 45.6 of Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 16, 18, 72 and 74

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

**Specific reasons underlying the finding of necessity:** The proposed rule will prohibit poultry that have not been determined to be free of avian influenza from entering the State; presently, poultry that have not been so determined may enter the State if they are not being shipped to a live bird market. Poultry that contract avian influenza die quickly, and the proposed rule will help to minimize the incidence of avian influenza in the State, thereby benefitting the State's poultry industry.

**Subject:** Importation of poultry, that have not been determined to be free of avian influenza, into the State.

**Purpose:** To minimize the incidence of avian influenza in the State's poultry population.

**Public hearing(s) will be held at:** 11:00 a.m., July 23, 2015 at Department of Agriculture and Markets, 10B Airline Dr., Albany, NY.

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

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

**Text of emergency/proposed rule:** Section 45.1 of 1 NYCRR is amended by adding thereto subdivisions (n), (o), (p), (q) and (r), to read as follows:

(n) *Imported for Immediate Slaughter* means importation of poultry into the State followed by slaughter within 144 hours of the time of import.

(o) *Avian Influenza Monitored Source Flock* means a flock that has been so certified by the source state or country and that has met the following requirements:

(1) *The flock has been together, without any additions thereto, for a minimum of 21 days before the first test for avian influenza is performed; and*

(2) *No birds have been added to the flock after the first test was performed; and*

(3) *Samples have been properly collected from thirty birds, each of which are at least three weeks of age and all of which are representative of the flock, from all pens and houses on the farm. If the flock contains less than 30 birds, all birds within the flock must be tested. Notwithstanding the preceding:*

i. *For serology, blood collection from silkies and other small breeds of chickens may be delayed until the birds are 6 to 8 weeks of age.*

ii. *For serology, blood collection from guineas, chukars, and quail may be delayed until the birds are 5 to 6 weeks of age.*

iii. *Eggs may be substituted for blood samples from quail and chukars after they start laying; and*

(4) *The samples referred to in paragraph (3) of this subdivision have been tested using an official test approved by the United States Department of Agriculture conducted in a laboratory approved by the United States Department of Agriculture and/ or the State to conduct such testing, to determine if the birds from which such samples were obtained have avian influenza; and*

(5) *Three consecutive series of samples of the type referred to in paragraph (3) of this subdivision, each of which was collected between 21 – 30 days after the previous collection, have been determined by a laboratory of the type referred to in paragraph (4) of this subdivision to be free of avian influenza. New birds may be added to a flock that has been certified as an avian influenza monitored flock, as provided for herein, only if such birds are from a flock that has been certified as an avian influenza monitored flock or have been determined by the Commissioner of Agriculture and Markets to be a flock or part of a flock that is of an equal or higher status; however, an avian influenza monitored flock to which such birds have been added may not be moved to a live bird market or into the State until samples from such flock have been tested and found to be free of avian influenza, as provided in this subdivision.*

(p) *National Poultry Improvement Plan* means a cooperative industry, state, and federal program that was developed through which new diagnostic technology can be applied to evaluate the health status of poultry, set forth in Title 9 of the Code of Federal Regulations Parts 145-147.

(q) *U.S. Avian Influenza Clean* means that a flock has been so designated by the state or country of origin, utilizing the procedures set forth in the current version of the National Poultry Improvement Plan.

(r) *U.S. H5/H7 Avian Influenza Clean* means that a flock has been so designated by the state or country of origin, utilizing the procedures set forth in the current version of the National Poultry Improvement Plan.

Section 45.6 of 1 NYCRR is amended by adding thereto a new subdivision (g), to read as follows:

(g) *A poultry dealer or poultry transporter who imports or causes the importation of poultry into the State for any purpose other than immediate slaughter shall comply with the requirements set forth in paragraphs (1), (2), and (3) of this subdivision.*

(1) *No live poultry or poultry products may be moved into the State unless they are moving on an approved certificate of veterinarian inspection or USDA VS Form 9-3, Report of Sales of Hatching Eggs, Chicks, and Poult, which states that either:*

(i) *the poultry identified thereon are moving through a poultry dealer or poultry transporter from a source flock which is certified by the state or country of origin as an avian influenza monitored source; or*

(ii) *the poultry identified thereon are moving through a poultry dealer or poultry transporter from a source flock in which a random sample of 30 birds were tested negative for avian influenza within 10 days prior to the date of movement, using an official test approved by the United States Department of Agriculture conducted in a laboratory approved by the United States Department of Agriculture and/or the State to conduct such testing; or*

(iii) *The poultry identified thereon originate directly from a National Poultry Improvement Plan flock designated "Avian Influenza Clean" or "U.S. H5/H7 Avian Influenza Clean."*

(2) *No live poultry which is held on premises where within the previous 12 months there has been a positive avian influenza serology, culture or a trace back to said premises of birds that tested positive for avian influenza within the previous 12 months shall be moved into the State unless the State Animal Health Official of the state or country of origin certifies that:*

(i) *all birds held on the premises at or after the time of the positive serology, culture, or trace back and prior to the cleaning and disinfection of the premises were removed to slaughter or slaughtered and the premises were thereafter cleaned and disinfected under official supervision and the replacement flock complies with paragraph (2) of this subdivision; or*

(ii) *tracheal and cloacal swabs were obtained for virus isolation from 150 randomly selected birds in a flock held on such premises or from all of the birds in such flock, whichever is less, and such tests demonstrated that avian influenza was not present, and no bird in such flock exhibited clinical signs of avian influenza in the 45 days preceding the date of sampling. If the birds so tested are waterfowl, then only cloacal swabs shall be required. Such samples may be pooled in groups of up to five samples per culture.*

(3) *Live poultry that qualify for movement must be kept separate and apart from all other poultry of infected, exposed or unknown health status.*

**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 August 11, 2015.

**Text of rule and any required statements and analyses may be obtained from:** Dr. David Smith, Director, Division of Animal Industry, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-3502, email: David.Smith@agriculture.ny.gov

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

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

**This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.**

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the Register within 30 days of the rule's effective date.

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## Department of Civil Service

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### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-20-14-00003-A

**Filing No.** 396

**Filing Date:** 2015-05-19

**Effective Date:** 2015-06-03

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

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

**Text of final rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by adding thereto the positions of Empire Fellow (230) (temporary twenty-four month period).

\*Originally submitted omitting "(temporary twenty-four month period)"

**Final rule as compared with last published rule:** Nonsubstantive changes were made in Appendix 2.

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA, and JIS.

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-30-14-00003-A

**Filing No.** 397

**Filing Date:** 2015-05-19

**Effective Date:** 2015-06-03

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

**Action taken:** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class and to delete positions from and classify positions in the non-competitive class.

**Text of final rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by increasing the number of positions of Deputy State Fire Administrator from 1 to 2; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by deleting therefrom the positions of Communications Technician 1 (2) and by adding thereto the positions of Communications Specialist (DHSES) (3) and Assistant Director Office of Interoperable and Emergency Communications (1).

\*Originally submitted to include adding the positions of Assistant Radio Engineer (6) and Radio Engineer 2 (4) in the non-competitive class.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in Appendix 2.

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA, and JIS.

#### Assessment of Public Comment

The agency received no public comment.