

# RULE MAKING ACTIVITIES

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

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

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

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## Department of Agriculture and Markets

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### EMERGENCY RULE MAKING

#### Importation of Deer

**I.D. No.** AAM-29-03-00013-E  
**Filing No.** 707  
**Filing date:** July 2, 2003  
**Effective date:** July 3, 2003

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

**Action taken:** Addition of section 62.8 to Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 18(6), 72 and 74

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

**Specific reasons underlying the finding of necessity:** The proposed adoption of section 62.8 of 1 NYCRR will help to prevent the introduction of chronic wasting disease (CWD) into New York State. CWD is an infectious and communicable disease of deer belonging to the Genus Cervus (including elk, red deer and sika deer) and the Genus Odocoileus (including white tailed deer and mule deer). It has been detected in Colorado, Wyoming, Nebraska, Montana, Oklahoma, South Dakota, Wisconsin and, most recently, New Mexico. Initially, it was found to be present in

captive herds of elk and white-tailed and mule deer. It has now been confirmed in free-ranging white tailed deer, elk and mule deer in Colorado, Nebraska, Wisconsin, Saskatchewan and New Mexico.

The origin of CWD is unknown. The mode of transmission is suspected to be from animal to animal. The disease is progressive and always fatal. There is no live animal test for CWD, so it is impossible to determine whether a live animal is positive, nor is there a vaccine to prevent the disease. The incubation period is lengthy and 3 to 5 years of continued surveillance is needed with no new infection found before a herd can be declared free of CWD through quarantine. The United States Secretary of Agriculture has declared CWD to be an emergency that threatens the livestock industry of the United States and authorized the United States Department of Agriculture to establish a CWD eradication program.

New York State has over 400 entities engaged in raising approximately 9,424 deer and elk in captivity with a value of several million dollars, and many of these entities import captive bred deer and elk from other states, including Wisconsin, a state with confirmed CWD. The rule prohibits, with certain exceptions and until further notice, the importation or movement of deer belonging to the Genus Cervus (including elk, red deer and sika deer) or the Genus Odocoileus (including white tailed deer and mule deer), into the State due to the presence of CWD in wild and domestic animals outside the State and the threat this disease poses to the State's domestic animals, specifically captive deer. Deer belonging to the Genus Cervus and Odocoileus are the deer known to be susceptible to CWD.

The promulgation of this regulation on an emergency basis is necessary because the introduction of CWD into New York State would be devastating from both an animal health and economic standpoint given the threat the disease poses to the approximately 9,424 captive deer in the State and the 400 entities which raise them.

**Subject:** Importation of deer.

**Purpose:** To prevent the introduction of chronic wasting disease into the State.

**Text of emergency rule:** Section 62.8 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York (1 NYCRR) is adopted to read as follows:

62.8 Prohibition on the importation of deer. (a) Notwithstanding any other provision of this Title to the contrary and except as provided in subdivision (b) of this section, until further notice, no deer belonging to the Genus Cervus or the Genus Odocoileus shall be imported or moved into this State, due to the presence of chronic wasting disease in wild and domestic animals outside the State and the threat said disease poses to domestic animals within the State. Members of the Genus Cervus include, but are not limited to, red deer, elk, and sika deer. Members of the Genus Odocoileus include, but are not limited to, white tailed deer and mule deer (black tailed deer).

(b) Deer belonging to the Genus Cervus or the Genus Odocoileus may be imported and moved into the State for the following purposes after the issuance of a permit by the Department, in consultation with the New York State Department of Environmental Conservation:

(1) Such deer may be imported and moved from a zoological park accredited by the American Zoo and Aquarium Association to a zoological park in New York State accredited by said Association.

(2) Such deer may be imported and moved into the State for exhibition, provided that they are kept biologically separate from resident captive and wild deer and are in the State for no longer than 30 days.

(c) Deer belonging to the Genus Cervus or the Genus Odocoileus imported pursuant to subdivision (b) of this section must comply with all applicable requirements of the Agriculture and Markets Law and this Title

and the health certificate accompanying such deer must be endorsed with the number of the permit issued by the Department authorizing their importation and movement into the State.

(d) As provided in 1 NYCRR Part 62.1 (b)(4)(c), for the purposes of this Part, deer means any member of the family cervidae.

**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 September 29, 2003.

**Text of emergency rule and any required statements and analyses may be obtained from:** Jeffrey Huse, DVM, Director, Division of Animal Industry, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235, (518) 457-3502

#### **Regulatory Impact Statement**

##### 1. Statutory Authority:

Section 18(6) of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department.

Section 72 of the Law authorizes the Commissioner to adopt and enforce rules and regulations for the control, suppression or eradication of communicable diseases among domestic animals and to prevent the spread of infection and contagion.

Section 72 of the Law also provides that whenever any infectious or communicable disease affecting domestic animals shall exist or have recently existed outside this State, the Commissioner shall take measures to prevent such disease from being brought into the State.

Section 74 of the Law authorizes the Commissioner to adopt rules and regulations relating to the importation of domestic or feral animals into the State. Subdivision (10) of said Section provides that feral animal means an undomesticated or wild animal.

##### 2. Legislative Objectives:

The statutory provisions pursuant to which these regulations are proposed are aimed at preventing infectious or communicable diseases affecting domestic animals from being brought into the State. The Department's proposed adoption of 1 NYCRR section 62.8 will further this goal by preventing the importation of deer which may be infected with chronic wasting disease (CWD).

##### 3. Needs and Benefits:

CWD is an infectious and communicable disease of deer belonging to the Genus *Cervus* (including elk, red deer and sika deer) and the Genus *Odocoileus* (including white tailed deer and mule deer). It has been detected in Colorado, Wyoming, Nebraska, Montana, Oklahoma, South Dakota, Wisconsin and, most recently, New Mexico. Initially, it was found to be present in captive herds of elk and white-tailed and mule deer. It has now been confirmed in free-ranging white-tailed deer, elk and mule deer in Colorado, Nebraska, Wisconsin, Saskatchewan and New Mexico.

The origin of CWD is unknown. The mode of transmission is suspected to be from animal to animal. The disease is progressive and always fatal. There is no live animal test for CWD, so it is impossible to determine whether a live animal is positive, nor is there a vaccine to prevent the disease. The incubation period is lengthy and 3 to 5 years of continued surveillance is needed with no new infection found before a herd can be declared free of CWD through quarantine. The United States Secretary of Agriculture has declared CWD to be an emergency that threatens the livestock industry of the United States and authorized the United States Department of Agriculture to establish a CWD eradication program.

New York State has over 400 entities engaged in raising approximately 9,424 deer and elk in captivity with a value of several million dollars, and many of these entities import captive bred deer and elk from other states, including Wisconsin, a state with confirmed CWD. The rule prohibits, with certain exceptions and until further notice, the importation or movement of deer belonging to the Genus *Cervus* or the Genus *Odocoileus* into the State due to the presence of CWD in wild and domestic animals outside the State and the threat this disease poses to the State's domestic animals, specifically captive deer and elk. This is an essential disease control measure that will help to prevent the introduction of CWD into New York State.

An exception to the general prohibition against the importation of deer belonging to the Genus *Cervus* (including elk, red deer and sika deer) and the Genus *Odocoileus* (including white-tailed deer and mule deer) has been made for deer being imported and moved from a zoological park accredited by the American Zoo and Aquarium Association to a zoological park in New York State accredited by said Association. The reason for this exception is to permit zoological parks to maintain breeding programs that

require the introduction of new animals and are necessary to preserve and perpetuate populations of rare and endangered species. The accreditation of the zoological parks that are the source and destination of such animals will help to ensure that they are free of disease and are cared for in a manner that keeps them healthy.

Another exception to the general prohibition has been made for deer that are imported and moved into the State for exhibition, provided that they are kept biologically separate from wild and captive deer and are in the State for no longer than 30 days. This exception will permit these deer to be exhibited for educational and entertainment purposes. The limited period of time the animals will be in the State and the fact that they are kept biologically separate from resident captive and wild deer will help to ensure that they do not pose a disease risk.

As an added precaution, both deer moved to zoological parks and deer moved into the State for exhibition purposes could only move after a permit for such movement has been issued and the deer have met the health and test requirements of the Agriculture and Markets Law and 1 NYCRR and an animal health certificate attesting to that fact has been issued.

##### 4. Costs:

###### (a) Costs to regulated parties:

There are approximately 400 entities raising a total of approximately 9,424 captive deer in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. Since February 1, 2000, a total of 104 elk from 8 states and 181 deer from 12 states were imported into New York, together with 287 elk and 146 deer from Canada. During the past year, 195 elk and 165 deer were imported into New York. The value of elk range from \$500 to \$2,000 per animal. The value of deer range from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, the rule would prohibit the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis.

###### (b) Costs to the agency, state and local governments:

None.

###### (c) Source:

Costs are based upon data from the records of the Department's Division of Animal Industry.

##### 5. Local Government Mandates:

The proposed amendments would not impose any program, service, duty or other responsibility upon any county, city, town, village, school district, fire district or other special district.

##### 6. Paperwork:

The rule would require the endorsement of the health certificate which currently must accompany deer being imported into New York State with the number of the permit required for the importation of deer of the Genus *Cervus* and *Odocoileus* being imported to zoological parks and for exhibition. Such permits will be issued by the Department in consultation with the New York State Department of Environmental Conservation after a determination that the deer in question qualify for the exceptions in the rule to the general prohibition against the importation of deer.

##### 7. Duplication:

None.

##### 8. Alternatives:

Various alternatives, from the imposition of a total prohibition against the importation of all cervids, to no additional restriction on their importation were considered.

Due to the spread of CWD in other states and the threat that this disease poses to the State's captive deer population, a prohibition with limited exceptions was determined to be the best method of preventing the introduction of this disease into New York State. It was concluded that no restriction on the importation of deer and broader exceptions were alternatives that posed an unacceptable risk of introducing CWD to the State's herds of captive deer.

##### 9. Federal Standards:

The federal government currently has no standards restricting the interstate movement of cervids due to CWD, but has implemented an indemnity program for elk and is considering a CWD monitoring program for elk.

##### 10. Compliance Schedule:

It is anticipated that regulated parties can immediately comply with the rule.

#### **Regulatory Flexibility Analysis**

##### 1. Effect of Rule:

There are approximately 400 small businesses raising a total of approximately 9,424 captive cervidae (the family that includes deer and elk) in New York State. The rule would have no impact on local governments.

##### 2. Compliance Requirements:

Regulated parties will be prohibited, with certain exceptions, from importing deer belonging to the Genus *Cervus* or the Genus *Odocoileus* into New York State. Those importing such deer, as permitted, for zoological parks and exhibition will be required to have the health certificate accompanying the deer endorsed with the number of the permit issued by the Department, in consultation with the New York State Department of Environmental Conservation.

The rule would have no impact on local governments.

### 3. Professional Services:

It is not anticipated that regulated parties will have to secure any professional services in order to comply with this rule.

### 4. Compliance Costs:

#### (a) Costs to regulated parties:

There are approximately 400 entities raising a total of approximately 9,424 captive cervidae in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. Since February 1, 2000, a total of 104 elk from 8 states and 181 deer from 12 states were imported into New York, together with 287 elk and 146 deer from Canada. During the past year, 195 elk and 165 deer were imported into New York. The value of elk range from \$500 to \$2,000 per animal. The value of deer range from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, the rule would prohibit the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis.

#### (b) Costs to the agency, state and local governments:

None.

#### (c) Source:

Costs are based upon data from the records of the Department's Division of Animal Industry.

### 5. Economic and Technological Feasibility:

The economic and technological feasibility of complying with the proposed amendments has been assessed.

The rule is economically feasible. Although the prohibition, with certain exceptions, on the importation of captive deer into New York State will have an economic impact on the approximately 400 entities that imported a total of 360 captive deer into New York State last year, the economic consequences of the infection or exposure to CWD of the approximately 9,424 captive cervids already in the State would be far greater.

The rule is technologically feasible. Captive deer imported into the State are already required to be accompanied by a health certificate. Endorsement of that certificate with the number of the permit issued by the Department pursuant to the limited exceptions to the general prohibition against the importation of deer presents no technological problem.

### 6. Minimizing Adverse Impact:

In conformance with State Administrative Procedure Act section 202-b(1), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses by limiting the types of deer subject to these requirements to those known to be susceptible to Chronic Wasting Disease, members of the Genus *Cervus* (red deer, elk and sika deer) and Genus *Odocoileus* (white-tailed deer and mule deer). Originally consideration was given to subjecting all members of the family cervidae to these requirements. By narrowing the scope of the rule, owners of deer such as fallow deer, which are members of the Genus *Dama*, and are not known to be susceptible to Chronic Wasting Disease will not be subject to the requirements imposed by this rule.

In addition, the exceptions for the importation and movement into the State of deer belonging to the Genus *Cervus* and the Genus *Odocoileus* for zoological parks and exhibition were designed to minimize economic impact by permitting these activities while protecting the health of the State's wild and captive deer.

The provision for issuance of a permit for importation by the endorsement of the permit number issued for such movement on the interstate health certificate already required by State and federal law is designed to minimize reporting requirements and expedite the issuance of such permits. The issuance of a permit number for deer meeting the import requirements can be done by telephone and the number can then be endorsed on the interstate health certificates already required to accompany deer entering the State. This will provide prior notice and approval of the entry of such animals into the State and facilitate the monitoring of such animals after they arrive, without unduly burdening regulated parties.

The rule would have no impact on local governments.

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

The Department has advised the owners of captive deer in New York State of the proposed rule by mailings utilizing the list of approximately 400 deer owners known to the Department. In addition, the Department has

notified public officials and private parties of the adoption of the proposed rule on an emergency basis, as required by the State Administrative Procedure Act.

### **Rural Area Flexibility Analysis**

#### 1. Types and Estimated Numbers of Rural Areas:

The approximately 400 entities raising captive deer in New York State are located throughout the rural areas of New York. The zoos are located in non-rural areas and the exhibitions take place in both rural and non-rural areas.

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

Regulated parties in rural areas will be prohibited, with certain exceptions, from importing deer belonging to the Genus *Cervus* or the Genus *Odocoileus* into New York State. Those importing such deer, as permitted, for zoological parks and exhibition will be required to have the health certificate accompanying the deer endorsed with the number of the permit issued by the Department in consultation with the New York State Department of Environmental Conservation. It is not anticipated that regulated parties in rural areas will have to secure any professional services in order to comply with the rule.

#### 3. Costs:

##### (a) Costs to regulated parties:

There are approximately 400 entities raising a total of approximately 9,424 captive cervidae (the family that includes deer and elk) in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. Since February 1, 2000, a total of 104 elk from 8 states and 181 deer from 12 states were imported into New York, together with 287 elk and 146 deer from Canada. During the past year, 195 elk and 165 deer were imported into New York. The value of elk range from \$500 to \$2,000 per animal. The value of deer range from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, the rule would prohibit the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis.

##### (b) Costs to the agency, state and local governments:

None.

##### (c) Source:

Costs are based upon data from the records of the Department's Division of Animal Industry.

#### 4. Minimizing Adverse Impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses by limiting the types of deer subject to these requirements to those known to be susceptible to Chronic Wasting Disease, members of the Genus *Cervus* (red deer, elk and sika deer) and Genus *Odocoileus* (white-tailed deer and mule deer). Originally consideration was given to subjecting all members of the family cervidae to these requirements. By narrowing the scope of the rule, owners of deer such as fallow deer, which are members of the Genus *Dama*, and are not known to be susceptible to Chronic Wasting Disease will not be subject to the requirements imposed by this rule.

In addition, the exceptions for the importation and movement into the State of deer belonging to the Genus *Cervus* and the Genus *Odocoileus* for zoological parks and exhibition were designed to minimize economic impact by permitting these activities while protecting the health of the State's wild and captive deer.

The provision for issuance of a permit for importation by the endorsement of the permit number issued for such movement on the interstate health certificate already required by State and federal law is designed to minimize reporting requirements and expedite the issuance of such permits. The issuance of a permit number for deer meeting the import requirements can be done by telephone and the number can then be endorsed on the interstate health certificates already required to accompany deer entering the State. This will provide prior notice and approval of the entry of such animals into the State and facilitate the monitoring of such animals after they arrive, without unduly burdening regulated parties.

#### 5. Rural Area Participation:

The Department has advised the owners of captive deer in New York State of the proposed rule by mailings utilizing the list of approximately 400 deer owners known to the Department. In addition, the Department has notified public officials and private parties of the adoption of the proposed rule on an emergency basis, as required by the State Administrative Procedure Act.

### **Job Impact Statement**

#### 1. Nature of Impact:

It is not anticipated that there will be an impact on jobs and employment opportunities.

2. Categories and Numbers Affected:

The number of persons employed by the 400 entities engaged in raising captive deer in New York State is not known.

3. Regions of Adverse Impact:

The 400 entities in New York State engaged in raising captive deer are located throughout the rural areas of the State. The zoos are located in non-rural areas and the exhibitions take place in both rural and non-rural areas.

4. Minimizing Adverse Impact:

By helping to protect the approximately 9,424 captive deer currently raised by approximately 400 New York entities from the introduction of CWD, this rule will help to preserve the jobs of those employed in this agricultural industry.

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## Banking Department

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### NOTICE OF WITHDRAWAL

#### Schedule of Fees

**I.D. No.** BNK-23-03-00004-W

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

**Action taken:** Notice of proposed rule making, I.D. No. BNK-23-03-00004-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on June 11, 2003.

**Subject:** Schedule of fees.

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## Department of Civil Service

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### NOTICE OF ADOPTION

#### Life Insurance

**I.D. No.** CVS-20-03-00011-A

**Filing No.** 704

**Filing date:** July 8, 2003

**Effective date:** July 23, 2003

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

**Action taken:** Amendment of section 75.1(e) of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 158(1)

**Subject:** Life insurance for employees who leave State service after vesting in the New York State and Local Employees Retirement System.

**Purpose:** To allow employees who leave public service after vesting in a retirement or pension plan or system administered by the State of New York or a civil division thereof, and defer receipt of their pension benefits to continue their life insurance coverage.

**Text or summary was published** in the notice of proposed rule making, I.D. No. CVS-20-03-00011-P, Issue of May 21, 2003.

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

**Text of rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

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## Education Department

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

#### Modified Temporary Licenses for Classroom Teaching

**I.D. No.** EDU-29-03-00009-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 80-5.10 and addition of new section 80-5.10 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided); 305(1), (2) and (7); 3004(1); 3006(1)(b), (c) and (2)(a)(iii); 3009(1) and 3010

**Subject:** Modified temporary licenses for classroom teaching.

**Purpose:** To eliminate the current provision for the issuance of temporary licenses and add a new provision to establish the requirements for the issuance of modified temporary licenses, permitting uncertified teachers who meet prescribed requirements to teach in subject matter shortage areas in the schools of the State.

**Text of proposed rule:** Section 80-5.10 of the Regulations of the Commissioner of Education is repealed and a new section 80-5.10 is added, effective October 2, 2003, as follows:

*80-5.10 Modified Temporary License.*

(a) *The Commissioner may issue a modified temporary license when the requirements of this section are met. Such modified temporary license shall be valid for up to one year, and shall be available and limited for use in the 2003-2004 and 2004-2005 school years only. Such modified temporary licenses may only be issued in certificate titles in the classroom teaching service with a demonstrated shortage of certified teachers as determined by the department and shall be limited to employment with the employing entity.*

(b) *Pursuant to section 3006 of the Education Law, the Commissioner may issue a modified temporary license, which permits an uncertified teacher to be employed by a board of education, board of cooperative educational services, county vocational education and extension board, or other entity required by law to employ certified teachers, when the following conditions are met:*

(1) *no certified and qualified teacher is available after extensive and documented recruitment; and*

(2) *the Chancellor, in the case of the City School District of the City of New York; or the superintendent, in the case of other employing boards; or the chief education officer, in the case of another entity required by law to employ certified teachers, has submitted for approval an application for a modified temporary license, accompanied by the fee prescribed in section 3006 of the Education Law, which includes the following:*

(i) *the employing entity's justification for the employment of the uncertified person;*

(ii) *evidence that the candidate has achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test;*

(iii) *until February 1, 2004, evidence that the uncertified person has the minimum degree level required for the corresponding provisional certificate, and after February 1, 2004, evidence that the uncertified person has the minimum degree level required for the corresponding initial certificate;*

(iv) *until February 1, 2004, evidence that the uncertified person has completed at least 27 semester hours of coursework required in the content core and/or pedagogical core for the provisional certificate in the title of the modified temporary license sought, and after February 1, 2004, evidence that the uncertified person has completed at least 27 semester hours of coursework required in the content core and/or pedagogical core for the initial certificate in the title of the modified temporary license sought;*

(v) *official transcripts of all collegiate study completed to date by the uncertified teacher; and*

(vi) *a certification by the Chancellor, in the case of the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief education officer, in the*

case of another entity required by law to employ certified teachers, of the following facts:

(a) that no certified and qualified teacher is available after extensive and documented recruitment;

(b) for candidates that are currently or were previously employed by the employing entity as a teacher, that the candidate has a record of satisfactory service;

(c) for candidates that are not currently or were not previously employed by the employing entity as a teacher, that the candidate has been subject to a rigorous interview and screening process;

(d) that the candidate will not be assigned or otherwise permitted to teach in a building that is a School Under Registration Review, as defined in section 100.2(p) of this Title, or that is a School in School Improvement Status or School in Corrective Action Status, as defined in Part 120 of this Title, unless the candidate is currently employed in such building as a teacher and has rendered satisfactory service there as a teacher;

(e) that the candidate will not be assigned to a position supported by Title 1 funds in violation of section 119 of the No Child Left Behind Act of 2001 or 34 CFR 200.55.

(c) After approval of the application, the department shall transmit the modified temporary license to the employing entity.

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

**Data, views or arguments may be submitted to:** Johanna Duncan-Poitier, Deputy Commissioner, Office of Higher Education, Education Department, 2M West Wing Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: hedepcom@mail.nysed.gov

**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 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Paragraph (c) of subdivision (1) of section 3006 of the Education Law provides the Commissioner of Education with the authority to issue temporary teaching licenses.

Subparagraph (iii) of paragraph (a) of subdivision (2) of section 3006 of the Education Law establishes an application fee that the Commissioner of Education may charge for a temporary license.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or any part thereof, be collected by a district tax except as provided in the Education Law.

Section 3010 of the Education Law provides that any trustee or member of a board of education who applies, or directs, or consents to the application of, any district money to the payment of an unqualified teacher's salary, thereby commits a misdemeanor.

##### 2. LEGISLATIVE OBJECTIVES:

The proposed amendment to the Regulations of the Commissioner of Education carries out the objectives of the above-referenced statutes by

establishing requirements for modified temporary licenses that would permit uncertified teachers who meet prescribed requirements to teach in the schools of the State.

##### 3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to eliminate the current provision for the issuance of temporary licenses and to add a new provision establishing the requirements for the issuance of modified temporary licenses, permitting uncertified teachers who meet prescribed requirements to teach in subject matter shortage areas in the schools of the State. The candidate for the modified temporary license would have to meet educational, assessment, and other prescribed requirements. The modified temporary license would permit the candidate to teach for a one-year period, upon documentation that no certified teacher is available for employment in that position. The amendment creates a time-limited mechanism to meet the critical need for classroom teachers in demonstrated shortage areas, by employing candidates who have not yet completed all of the requirements for a regular teaching certificate but who have demonstrated significant progress in meeting those requirements. The modified temporary licenses would only be available in the 2003-2004 and 2004-2005 school years.

This action is necessary because, despite strenuous teacher recruitment efforts and the enactment of a number of Regents initiatives creating additional pathways for teacher certification, a persistent shortage of certified teachers remains in New York City and certain upstate regions, including in the subject matter areas of math, science, bilingual education and special education. This action is necessary in order to avert an impending crisis of classroom staffing, particularly in the New York City schools.

##### 4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to process applications for modified temporary licenses.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. The application fee for the modified temporary license of \$50 is established in section 3006 of the Education Law. In addition, the candidate will also have to pay a \$70 fee for the New York State Teacher Certification Examination liberal arts and sciences test.

(d) Costs to the regulatory agency. As stated above in Costs to State Government, the amendment will not impose any additional costs on the State Education Department.

##### 5. LOCAL GOVERNMENT MANDATES:

The amendment will provide New York State school districts and BOCES a pool of candidates, not otherwise available, from which to draw teachers. School districts and BOCES that which to draw from this pool will have to apply to the State Education Department for a modified temporary license for the uncertified teacher.

##### 6. PAPERWORK:

Schools that wish to employ a teacher under a modified temporary license must apply to the State Education Department. This application requires the employing entity to include the employing entity's justification for the employment of an uncertified person, evidence that the candidate passed the New York State Teacher Certificate Examination liberal arts and sciences test, met minimum degree requirements, official transcripts of all collegiate study completed by the candidate, and a certification to a number of facts prescribed in the regulation.

##### 7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

##### 8. ALTERNATIVES:

The proposal responds to a request from the Chancellor of the City School District of the City of New York for the modified temporary license to address immediate personnel shortages facing that school district. No alternative proposals were considered.

##### 9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment.

##### 10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the permissive nature of the amendment, it is unnecessary to afford regulated parties additional time to comply.

#### **Regulatory Flexibility Analysis**

(a) Small Businesses:

The proposed amendment establishes requirements for modified temporary license that would permit a candidate to teach in the public schools and other schools where teacher certification is required. The amendment does not impose any reporting, recordkeeping, or compliance requirements and will not have an economic impact on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken.

(b) Local Governments:

1. Effect of the rule:

The proposed amendment affects all school districts and BOCES in the State that wish to hire an uncertified teacher for employment under a modified temporary license.

2. Compliance requirements:

The amendment will provide New York State school districts and BOCES a pool of candidates, not otherwise available, from which to draw teachers. School districts and BOCES that wish to draw from this pool will have to apply to the State Education Department for a modified temporary license for the uncertified teacher. This application requires the employing entity to include the employing entity's justification for the employment of an uncertified person, evidence that the candidate passed the New York State Teacher Certificate Examination liberal arts and sciences test, evidence that the candidate met minimum degree requirements, official transcripts of all collegiate study completed by the candidate, and a certification to a number of facts prescribed in the regulation.

3. Professional services:

The proposed amendment does not mandate school districts or BOCES to contract for additional professional services to comply.

4. Compliance costs:

There is no compliance cost for school districts or BOCES that exercise the option of applying for a modified temporary license, on behalf of a candidate. However, the candidate must pay an application fee of \$50 for the modified temporary license.

5. Economic and technological feasibility:

Meeting the requirements of the proposed amendment is economically and technologically feasible. As stated above in compliance costs, the amendment imposes no costs on school districts or BOCES.

6. Minimizing adverse impact:

The amendment establishes requirements for a modified temporary license to address immediate shortages of teachers, and it only applies to school districts and BOCES that apply for a modified temporary license. It will not impose costs on local governments. The State Education Department has determined that uniform requirements for the modified temporary license are necessary to ensure the adequacy of candidates' qualifications.

7. Local government participation:

The proposed amendment is in response to a request received from the Chancellor of the City School District of the City of New York for modified temporary licenses. Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State. In addition, copies of the proposed rule were provided to each charter school to give them an opportunity to participate in this proposed rule making.

**Rural Area Flexibility Analysis**

1. Types and estimate of number of rural areas:

The proposed amendment will impact all school districts and boards of cooperative educational services (BOCES), and other employing entities that are required by law to hire certified teachers, that elect to apply for modified temporary licenses, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less. It also affects individuals in such rural areas of the State that elect to teach under a modified temporary license.

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

The purpose of the proposed amendment is to eliminate the current provision for the issuance of temporary licenses and to add a new provision establishing the requirements for the issuance of modified temporary licenses, permitting uncertified teachers who meet prescribed requirements

to teach in subject matter shortage areas in the schools of the State. The candidate for the modified temporary license would have to meet educational, assessment, and other prescribed requirements. The modified temporary license would permit the candidate to teach for a one-year period, upon documentation that no certified teacher is available for employment in that position. The amendment creates a time-limited mechanism to meet the critical need for classroom teachers in demonstrated shortage areas, by employing candidates who have not yet completed all of the requirements for a regular teaching certificate but who have demonstrated significant progress in meeting those requirements. The modified temporary licenses would only be available in the 2003-2004 and 2004-2005 school years.

The amendment will provide New York State school districts and BOCES, including those located in rural areas of the State, a pool of candidates, not otherwise available, from which to draw teachers. School districts and BOCES that wish to draw from this pool will have to apply to the State Education Department for a modified temporary license for the uncertified teacher. This application requires the employing entity to include its justification for the employment of an uncertified person, evidence that the candidate passed the New York State Teacher Certification Examination liberal arts and sciences test, met minimum degree requirements, official transcripts of all collegiate study completed by the candidate, and a certification to a number of facts prescribed in the regulation.

3. Costs:

The application fee for the modified temporary license of \$50 is established in section 3006 of the Education Law. In addition, the candidate will also have to pay a \$70 fee for the New York State Teacher Certification Examination liberal arts and sciences test.

4. Minimizing adverse impact:

The amendment establishes requirements for a modified temporary license to address immediate shortages of certified teachers. It only applies to schools that wish to hire an uncertified teacher in a certificate title in the classroom teaching service for which there is a demonstrated shortage of certified teachers. The State Education Department has determined that uniform requirements for the modified temporary license are necessary, no matter the geographic location of the school, to ensure the adequacy of candidates' qualifications. Because of the nature of the proposed amendment, establishing different standards for schools and candidates located in rural areas is not warranted.

5. Rural area participation:

Comments on the proposed rule were solicited from the Department's Rural Advisory Committee, whose membership includes schools located in rural areas. In addition, copies of the proposed rule will be provided to each charter school.

**Job Impact Statement**

The proposed amendment would permit uncertified teachers who meet prescribed requirements to teach in subject matter shortage areas in the schools of the State. The candidate for the modified temporary license would have to meet educational, assessment, and other prescribed requirements. The modified temporary license would permit the candidate to teach for a one-year period, upon documentation that no certified teacher is available for employment in that position. The amendment creates a time-limited mechanism to meet the critical need for classroom teachers in demonstrated shortage areas, by employing candidates who have not yet completed all of the requirements for a regular teaching certificate but who have demonstrated significant progress in meeting those requirements.

The amendment is needed to meet the critical need for classroom teachers in subject shortage areas. As the proposed amendment establishes requirements for employment under a modified temporary license, it will have no impact on the number jobs or number of employment opportunities in New York State in teaching. It will expand the pool of potential candidate who may be employed as classroom teachers in the schools of the State.

Because it is evident from the nature of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

## Department of Environmental Conservation

### EMERGENCY RULE MAKING

#### Chronic Wasting Disease

**I.D. No.** ENV-31-02-00002-E

**Filing No.** 705

**Filing date:** July 8, 2003

**Effective date:** July 23, 2003

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

**Action taken:** Addition of Part 189 to Title 6 NYCRR.

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

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

**Specific reasons underlying the finding of necessity:** This rulemaking is necessary to protect New York's wild white-tailed deer herd, as well as captive deer and elk herds, from the threat of chronic wasting disease (CWD). CWD is an infectious neurological disease of cervidae, the family which includes deer and elk. It is categorized within a group of diseases known as transmissible spongiform encephalopathies. Chronic Wasting Disease 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 and an unknown mode of transmission.

At this time, there are no confirmed cases of CWD in deer or elk in New York. However, CWD has been diagnosed in captive-bred deer and elk in a number of western states and two Canadian provinces. It has also been confirmed in wild white-tailed deer and/or mule deer populations in Colorado, Wyoming, Nebraska, Wisconsin, South Dakota, New Mexico, Illinois and, most recently, Utah. The primary suspected pathway for CWD introduction into an area is the importation of infected deer or elk by operators of deer or elk "farms" or the importation of CWD-infected carcasses or parts. In New York, there are approximately 130 deer farmers licensed by the Department to possess captive-bred white-tailed deer for various purposes. The Department of Agriculture and Markets reports that there are approximately 250 additional deer or elk farmers who possess captive-bred deer and elk.

This rulemaking will help protect New York's wild white-tailed deer population from CWD by prohibiting the importation into New York of any wild or captive animal of the Genus *Cervus* or the Genus *Odocoileus*, except as permitted by the Department of Agriculture and Markets in consultation with this Department pursuant to 1 NYCRR Section 62.8. The rulemaking also prohibits the feeding of wild deer, with certain clearly defined exceptions. Providing feed to wild deer can increase the risk that CWD will be introduced into the state, and can increase the risk that CWD will spread, should introduction occur. Feeding concentrates deer and increases the risk that the disease may be spread directly from deer to deer or indirectly through a contaminated environment created by concentrating diseased deer.

In addition, this rulemaking prohibits the importation of certain parts or carcasses of deer and elk taken in or originating from CWD positive states and all "game" farms outside New York. For those parts of deer or elk that may be imported, this rulemaking requires that such parts be labeled with certain information prior to importation. Labeling is necessary to ensure compliance with this rule and to enable the Department to trace possible sources of infection.

The promulgation of this regulation on an emergency basis is necessary because the normal rulemaking process would not address the immediate threat of CWD entering the state. The introduction of CWD would be devastating to the Department's ability to manage New York's white-tailed deer herd, which numbers approximately one million animals. It would also result in severe negative economic impacts to the State. In 2000-01, over 650,000 licenses were sold to hunt white-tailed deer in New York, resulting in expenditures of approximately \$1 billion dollars.

**Subject:** Chronic Wasting Disease.

**Purpose:** To prevent the introduction of Chronic Wasting Disease into New York State.

**Text of emergency rule:** Title 6 of the Codes, Rules and Regulations of the State of New York is amended as follows: Part 189 is adopted to read as follows:

#### Part 189

#### CHRONIC WASTING DISEASE

##### § 189.1 Findings and Purpose.

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

##### § 189.2 Definitions.

For purposes of this Part, the following definitions shall apply:

(a) Department means the Department of Environmental Conservation.

(b) Person means an individual, a co-partnership, joint stock company or corporation.

(c) Genus *Cervus* means the following species and hybrids: Thorold's Deer (*C. albirostris*), Visayan Deer (*C. alfredi*), Barasingha (*C. duvaucelii*), Elk (*Red Deer*, *Wapiti*) (*C. elaphus*), Eld's Deer (*Thamin*) (*C. eldii*), Philippine Sambar (*C. mariannus*), Sika Deer (*C. nippon*), Schomburgk's Deer (*C. schomburgki*), Sunda Sambar (*C. timorensis*) and Sambar (*C. unicolor*).

(d) Genus *Odocoileus* means the following species and hybrids: Mule Deer (*O. hemionus*), Black-tailed Deer (*O. hemionus columbianus*) and White-tailed Deer (*O. virginianus*).

(e) Feed or Feeding means the act of using, placing, giving, exposing, depositing, distributing or scattering any material, or any act to maintain the availability of such material, that attracts wild white-tailed deer to feed on such material including the distribution of such material in deer wintering areas.

(f) Wild means an animal existing in a wild state.

(g) Captive means an animal that is privately or publicly maintained or held for any purpose within a perimeter fence or other confined space.

(h) Captive-bred means born in captivity.

§ 189.3 Prohibitions. Notwithstanding any other provision of this Chapter to the contrary, the following prohibitions shall apply:

(a) Importation of Animals of the Genus *Cervus* or the Genus *Odocoileus*. No person shall import into New York State any wild or captive animal of the Genus *Cervus* or the Genus *Odocoileus* except under permit issued by the New York State Department of Agriculture and Markets, in consultation with the Department, pursuant to 1 NYCRR Section 62.8 for zoological or exhibition purposes only.

(b) Feeding Wild White-tailed Deer in New York. No person shall feed wild white-tailed deer at any time in New York State except:

(i) under a license or permit issued by the Department pursuant to Article 11, Title 5 of the Environmental Conservation Law for bona fide scientific research, mitigation of wildlife damage or nuisance problems, or wildlife population reduction programs only; or

(ii) by planting, cultivating or harvesting of crops directly associated with bona fide agricultural practices, including planted wildlife food plots; or

(iii) by distribution of food material for livestock directly associated with bona fide agricultural practices; or

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

(v) by cutting of trees or brush.

(c) Distribution of Certain Food Materials. No person shall feed wild or captive deer or elk with any material that contains protein derived from any mammalian tissues.

(d) Prohibited Carcass Parts. No person shall import or possess in New York the brain, eyes, spinal cord, lymph nodes, tonsils, or spleen of wild animals of the Genus *Cervus* or the Genus *Odocoileus* taken in or originating from the states of Colorado, Wyoming, South Dakota, Wisconsin, Minnesota, New Mexico, Nebraska, Kansas, Oklahoma, Montana, Illinois, Utah, or the Canadian provinces of Saskatchewan or Alberta, or such parts from captive or captive-bred animals of the Genus *Cervus* or the Genus *Odocoileus* obtained from outside New York, except that:

(i) such parts may be imported and possessed as specimens in a bona fide laboratory research study provided that such parts or specimens are disposed of in accordance with accepted laboratory practices; or

(ii) as provided in Section 189.5 of this Part, such parts and carcasses may be shipped or transported through New York.

(e) *Importation of Carcasses and Parts of Wild Animals.* Except as provided in Section 189.5 of this Part, no person shall import into New York or possess in New York the carcasses or parts of wild animals of the Genus Cervus or the Genus Odocoileus taken in or originating from the states of Colorado, Wyoming, South Dakota, Wisconsin, Minnesota, New Mexico, Nebraska, Kansas, Oklahoma, Montana, Illinois, Utah, or the Canadian provinces of Saskatchewan or Alberta, except that:

(i) meat may be imported and possessed provided that all such meat from an individual animal shall be boned, cut up, packaged and wrapped and such meat shall not be commingled with the meat of another animal and provided that all such packages are marked as described in section 189.4 of this Part;

(ii) the hide or cape may be imported provided that all such parts are marked as described in section 189.4 of this Part;

(iii) the skull-cap with antlers attached may be imported provided that all such parts are marked as described in section 189.4 of this Part;

(iv) the antlers may be imported provided that all such parts are marked as described in section 189.4 of this Part;

(v) finished taxidermy mounts may be imported provided that all such parts are marked as described in section 189.4 of this Part;

(vi) tanned hides may be imported provided that all such parts are marked as described in section 189.4 of this Part;

(vii) the upper canine teeth may be imported provided that all such parts are marked as described in section 189.4 of this Part.

(f) *Importation of Carcasses and Parts of Captive Animals.* Except as provided in Section 189.5 of this Part, no person shall import into New York or possess the carcasses or parts of captive or captive-bred animals of the Genus Cervus or the Genus Odocoileus obtained from outside New York except that:

(i) meat may be imported and possessed provided that all such meat from an individual animal shall be boned, cut up, packaged and wrapped and such meat shall not be commingled with the meat of another animal and provided that all such packages are marked as described in section 189.4 of this Part;

(ii) the hide or cape may be imported provided that all such parts are marked as described in section 189.4 of this Part;

(iii) the skull-cap with antlers attached may be imported provided that all such parts are marked as described in section 189.4 of this Part;

(iv) the antlers may be imported provided that all such parts are marked as described in section 189.4 of this Part;

(v) finished taxidermy mounts may be imported provided that all such parts are marked as described in section 189.4 of this Part;

(vi) tanned hides may be imported provided that all such parts are marked as described in section 189.4 of this Part;

(vii) the upper canine teeth may be imported provided that all such parts are marked as described in section 189.4 of this Part.

(g) *Liberation of Wild or Captive Animals.* No person shall:

(i) liberate or release to the wild in New York any captive or captive-bred animal of the Genus Cervus 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

(ii) liberate or release to the wild in New York any wild animal of 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.

§ 189.4 Marking of Carcasses and Parts.

All carcasses and parts of any animal of the Genus Cervus or the Genus Odocoileus imported into New York, or packages or containers containing such carcasses or parts, shall be affixed with a legible label bearing the following information: the species of animal, the State, Province or Country where the animal was taken or where the shipment originated, the name of the person who legally took the animal or the name of the shipper, the address of the taker or shipper and, for transport through the State, the destination of the shipment. Hunter harvested carcasses, parts or meat taken outside New York shall also bear the marking, tagging or labeling required by the State where the animal was legally taken.

§ 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 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 and provided that all such carcasses and parts are marked as described in section 189.4 of this Part.

§ 189.6 Special Provisions.

(a) Any person who imports carcasses or parts or possesses imported carcasses or parts of animals of the Genus Cervus or the Genus Odocoileus consents to allow any authorized representative of the Department access to enter upon his or her premises or access to his or her vehicle to conduct inspections for compliance with the provisions of this Part.

(b) The Department may immediately seize carcasses or parts that are imported or possessed in violation of the provisions of this Part.

(c) The Department may immediately seize, quarantine and euthanize any animals of the Genus Cervus or the Genus Odocoileus 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 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.

(e) Department staff may euthanize, using firearms or other means, any wildlife which is at large and is suspected of having been exposed to or having chronic wasting disease.

(f) Pursuant to the Department's authority under ECL 11-0325, the Department may undertake any additional measures it deems necessary to eliminate, reduce, or confine chronic wasting disease or to prevent chronic wasting disease from entering the State.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. ENV-31-02-00002-EP, Issue of July 31, 2002. The emergency rule will expire July 29, 2003.

**Revised rule making(s) were previously published in the State Register on** May 28, 2003.

**Text of emergency rule and any required statements and analyses may be obtained from:** Patrick P. Martin, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4750, (518) 402-8995, e-mail: pxmartin@gw.dec.state.ny.us

#### **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, is in imminent danger of being introduced into the state, the Department is authorized to adopt measures or regulations necessary to prevent the introduction 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.

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 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.

**Needs and Benefits:**

This rulemaking is necessary to protect New York's wild white-tailed deer herd, as well as captive herds, from the threat of chronic wasting disease (CWD). CWD is an infectious neurological disease of cervidae, the family which includes deer and elk. It is categorized within a group of diseases known as transmissible spongiform encephalopathies. CWD 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 18-36 months and an unknown mode of transmission. To date, CWD has been found only in members of the deer family in North America. There has never been a case reported in a human or in livestock other than captive-bred elk or deer. At this time, there are no confirmed cases of CWD in deer or elk in New York.

CWD has been diagnosed in captive deer or elk in Colorado, Kansas, Nebraska, Montana, Oklahoma, South Dakota, Minnesota, Wisconsin and the Canadian provinces of Saskatchewan and Alberta. It has also been confirmed in wild white-tailed deer and/or mule deer populations, in Colorado, Wyoming, Nebraska, Wisconsin, South Dakota, New Mexico, Illinois and, most recently, Utah. At this time, the primary source of introduction of CWD into an area is thought to be the importation of infected deer or elk by operators of deer or elk "farms." In New York, there are approximately 130 deer farmers licensed by the Department to possess captive-bred white-tailed deer for various purposes. The Department of Agriculture and Markets reports that there are approximately 250 additional deer or elk farmers who possess captive-bred mule deer, elk, and sika deer.

This rulemaking will help protect New York's wild white-tailed deer population from CWD by prohibiting the importation of wild or captive deer of the Genus *Odocoileus* and elk of the Genus *Cervus* into New York, except as permitted by the Department of Agriculture and Markets in consultation with this Department pursuant to 1 NYCRR Section 62.8. Members of the Genus *Cervus* include the following species and hybrids: Thorold's Deer, Visayan Deer, Barasingha, Elk, Eld's Deer, Philippine Sambar, Sika Deer, Schomburgk's Deer, Sunda Sambar, and Sambar. Members of the Genus *Odocoileus* include the following species and hybrids: Mule Deer, Black-tailed Deer and White-tailed Deer.

This rulemaking also prohibits the feeding of wild deer, with certain exceptions for bona fide agricultural practices, forest management practices, wildlife management practices and feeding of captive deer and elk herds. Providing feed to wild deer can increase the risk that CWD will be introduced into the state, and can increase the risk that CWD will spread, should introduction occur. Feeding concentrates deer and increases the risk that the disease may be spread directly from deer to deer or indirectly through a contaminated environment created by concentrating diseased deer.

In addition, this rulemaking prohibits the importation of certain parts from wild or captive deer or elk because these parts are suspected of serving as reservoirs for CWD. Persons who wish to import meat and certain other parts of deer or elk are required to handle the meat in a certain manner to avoid contributing to the spread of CWD. For those parts that are allowed to be imported, this rulemaking requires that all such parts must be labeled with certain information, such as the species of animal and the state of origin of the shipment. This is required to ensure that source records are maintained in the event that CWD is detected in a certain shipment or at the location from which the shipment originated.

The promulgation of this regulation on an emergency basis is necessary because the normal rulemaking process would not address the immediate threat of CWD entering the state. The introduction of CWD would be devastating to the Department's ability to manage New York's white-tailed deer herd, which numbers approximately one million animals. It would also result in severe negative economic impacts to the State. In 2000-01, over 650,000 licenses were sold to hunt white-tailed deer in New York, resulting in expenditures of approximately \$1 billion dollars.

**Costs:**

This rulemaking will not impose costs on state or local governments.

CWD is a national issue, and all states are now engaged in an effort to manage this disease. CWD poses an enormous risk to the health of the wild white-tailed deer in New York and the captive deer and elk farm businesses in New York. The prohibitions on importation and marking requirements established by this rulemaking are basic measures necessary for disease management. This rulemaking will help to protect the deer and elk farming industry in the state from CWD, and the costs that would be incurred if a captive herd were contaminated, by preventing the importation of CWD from outside the state.

The impact of this rule on a particular farm or importing business will depend upon the species of deer or elk owned, the products sold (including

meat, urine, antlers and the opportunity to shoot an animal), and the stock the farmer has on hand. Under this rule, deer and elk farmers in New York will not be allowed to import any listed animals from outside the state, but they will be allowed to buy and sell the listed animals within the state. The Department cannot provide an estimate of potential lost income for deer and elk farmers because the nature of deer and elk farming businesses are varied. The Department is working with the Department of Agriculture and Markets to develop a CWD herd certification program that would allow successful participants to import deer or elk from other certified herds outside New York.

In addition, this rulemaking prohibits the importation of certain parts of deer or elk that are suspected of serving as collection points for CWD. At this time, there is no known, effective alternative to a prohibition on the importation of these parts. For parts of deer or elk that may be imported, this rulemaking requires that the meat be handled in a certain manner to avoid contamination, and that all such packages of meat or parts must be marked or labeled in a manner that would allow the state and herd of origin to be traced.

**Local Government Mandates:**

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

**Paperwork:**

No new paperwork is required for submission to government. However, persons wishing to import parts of deer or elk must comply with the labeling requirements established by this rulemaking.

**Duplication:**

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

**Alternatives:**

**No Action:** The Department has considered and rejected this option. Failing to address the threat posed to New York's wild white-tailed deer population by CWD would be contrary to the Department's responsibility to protect New York's natural resources in accordance with the environmental policy of the state.

There are no other known alternatives at this time. However, the Department is continuing to collect information on CWD. While the Department has not held formal meetings with representatives of the deer and elk industry or deer and elk hunters, attempts have been made to address concerns that have been brought to the Department's attention. Much of the information and recommendations included in this rule originated in those states now grappling with CWD. CWD is a national issue. Prior to adopting a permanent CWD rule, the Department, in collaboration with the Department of Agriculture and Markets and the Department of Health, will establish formal meetings and actively seek participation from the affected or regulated parties and from concerned members of the public. In addition, the Department has established a formal working relationship with those two agencies and the USDA:APHIS Veterinary Services and the USDA:APHIS Wildlife Services. This group meets on a regular basis for the purpose of developing and implementing a statewide CWD response program. In the short term, there are no significant alternatives that would effectively protect New York's white-tailed deer herd from CWD.

**Federal Standards:**

The United States Secretary of Agriculture has authorized the transfer of \$2.6 million from the Commodity Credit Corporation to enhance CWD surveillance and to purchase and euthanize animals from CWD positive herds during FY 2001 and FY 2002. The U.S. Department of Agriculture, Animal and Plant Health Inspection Service has been working with state fish and game agencies and state departments of agriculture in those states where CWD has been confirmed. The Department will follow USDA guidelines and recommendations in developing a comprehensive CWD management plan that will protect New York's wild white-tailed deer herd and captive-bred herds of deer and elk.

**Compliance Schedule:**

This rule becomes effective upon filing with the Department of State. Immediate compliance with the rule is required to prevent the importation of deer or elk that may be infected with CWD.

**Regulatory Flexibility Analysis****1. Effect of Rule:**

No local governments will be affected by this rule. The small businesses affected by this rule are deer and elk "farmers" and those businesses who import carcasses and parts of captive deer of the Genus *Odocoileus* and elk of the Genus *Cervus*. The rule prohibits certain parts from being imported into New York and requires the meat of deer and elk to be boned, cut, wrapped and labeled in a certain manner. The deer and elk farming business includes: selling urine, selling meat, selling antlers, selling live animals for stock, and selling the opportunity to shoot a captive-bred live

animal. The rule does not affect how this business operates inside New York.

In addition, this rule prohibits the feeding of wild white-tailed deer in New York. The rule will indirectly affect those businesses in New York that sell products or materials for feeding deer. While the rule does not prohibit the sale of such products, it does prohibit the feeding of deer.

#### 2. Compliance Requirements:

The regulations require deer and elk farmers to refrain from importing deer into New York State. The only exception to the ban on importation is pursuant to permit issued by the Department of Agriculture and Markets in accordance with 1 NYCRR Section 62.8. Also, the importation of certain parts from captive deer or elk is prohibited, and, for those parts that may be imported, the parts must be handled and labeled in a certain manner. There are no recordkeeping requirements other than the labeling requirements.

#### 3. Professional Services:

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

#### 4. Compliance Costs:

This rule prohibits the importation of deer and elk and the feeding wild white-tailed deer. Most states have prohibited these activities in response to Chronic Wasting Disease (CWD), and the deer and elk farm industry is working at the national level to develop standards for use across the country. The prohibition on feeding wild deer in New York may indirectly affect the sale of products specifically intended for feeding deer.

This rule may result in costs for businesses that import carcasses and parts of deer or elk. Such businesses must comply with requirements for handling meat and labeling packages of meat imported into New York. The alternative meat market in New York is relatively small, and it is expected that, due to CWD, the demand for deer and elk meat in the speciality foods market will decrease significantly.

#### 5. Economic and Technological Feasibility:

There is no economic or technological affect on local governments. Small businesses, deer and elk farmers, will not be able to import live deer belonging to the Genus Cervus or the Genus Odocoileus into New York. The rule will not require any technological changes or capital expenditures to comply with a ban on importation of live animals.

Small businesses directly involved in the importation of meat and other parts from deer and elk will be required to change how that meat is handled, and they will be required to label all packages containing the meat or parts from deer or elk. The Department believes that such requirements are not only feasible for affected small businesses, they are also essential. These requirements are intended to prevent the economic devastation such businesses would experience were CWD to be introduced into New York.

#### 6. Minimizing Adverse Impact:

This rule continues the prohibition on the importation of deer and elk consistent with many other states across the country. The Deer and Elk Farmers organizations are working with the U.S. Department of Agriculture and Markets and the New York State Department of Agriculture and Markets to develop a model program of captive herd certification that would eventually allow importation once a herd has been certified as Chronic Wasting Disease free. At this time, the proposed certification program will require at least five years before a herd could obtain CWD free status.

The prohibition on the importation of certain parts from deer or elk is designed to only prohibit those parts that present the greatest threat for harboring CWD. The requirements for handling and labeling meat from deer or elk is intended to protect businesses from CWD while allowing certain import activities to continue. These requirements are necessary to manage the disease threat.

The prohibition on feeding does not directly prohibit the sale of deer food. However, it is possible that sales of such products will decline as a result of this rulemaking. Until more is known about the nature and mode of transmission of CWD, the prohibition on deer feeding is necessary to protect the entire wild white-tailed deer herd in New York.

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

The proposed rule establishes certain prohibitions and provides exceptions based on the current knowledge available to "manage" this disease. Department of Agriculture and Markets have received unsolicited comments about both rules. While the Department has not held formal meetings with representatives of the deer and elk industry or deer and elk hunters, the Department has received unsolicited comments about prior CWD regulations. The Department has considered those comments in adopting this rule. Information and suggestions have also been obtained from states that are currently grappling with CWD. CWD is a national issue. Prior to adopting a permanent CWD rule, the Department, in collab-

oration with the Department of Agriculture and Markets and the Department of Health will hold formal meetings and actively seek participation from the affected or regulated parties and from concerned members of the public.

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

##### 1. Types and estimated numbers of rural areas:

The proposed rule will directly affect persons engaged in "farming" elk, white-tailed deer, and other members of the Genus Cervus or the Genus Odocoileus. These deer and elk farmers number approximately 400 across the state in rural farm areas.

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

The proposed rule prohibits the importation of deer of the Genus Odocoileus and elk of the Genus Cervus; prohibits the importation of certain carcasses or parts of such animals and requires that those parts that are allowed to be imported be packaged and marked with the species and origin of the animal, and the name and address of the person importing the animal parts. No professional services are required to comply with the proposed rule.

##### 3. Costs:

There will be no initial capital costs incurred by public or private entities in rural areas in order to comply with this rule. However, there may be some costs incurred by the people who import the carcasses or parts of deer or elk. Certain parts may no longer be imported into New York under these regulations. In addition, the meat that is allowed into New York must be boned, packaged, and labeled according to the terms of these regulations. Meat from different animals must not be commingled. The rule prohibits the importation of deer and elk from outside New York while DEC and DAM develop a comprehensive management plan for Chronic Wasting Disease (CWD). There may be some lost profits for some deer and elk farmers due to these prohibitions and requirements.

##### 4. Minimizing adverse impact:

This rule prohibits the importation of deer and elk because they could be carriers of chronic wasting disease (CWD). The only exception to the ban on importation is pursuant to permit issued by the Department of Agriculture and Markets in accordance with 1 NYCRR Section 62.8. The rule prohibits importation while DEC and DAM develop a comprehensive CWD management plan for New York. It is expected that the Department of Agriculture and Markets will promulgate regulations that allow deer and elk farmers to obtain certification that their animals are CWD free after a five year period of compliance with certain guidelines.

The Department is prohibiting the importation of certain parts of deer or elk. Those parts that are prohibited represent a possible threat of the importation of CWD. As more is learned about the mode of disease transmission, the Department will seek to amend this rule to allow activities that have proven not to pose a threat to the wild white-tailed deer. In addition, the Department is requiring that those parts that are allowed for importation be marked in a manner to allow inspection for compliance and, if necessary, to trace the parts to their source. These requirements represent a change in the deer and elk farm business and how products are shipped from outside the State into New York. However, the Department is adopting these regulations in an effort to avoid the adverse impacts that the regulated community, including deer and elk farms, would experience if CWD were to enter New York.

##### 5. Rural area participation:

As noted above, this rule seeks to prohibit the importation of deer and elk and the feeding wild white-tailed deer. The rule also prohibits the importation of certain carcasses and parts. In addition, the rule describes how parts must be cut up, packaged and labeled for importation into New York. While this rule will be perceived as restrictive as it relates to importation of animals, parts and carcasses, the Department is working with the Department of Agriculture and Markets to develop a certification program that would allow deer and elk farmers to obtain a 'certified CWD free' herd status over a five year period.

The Department will actively involve and seek input from the regulated community during the development of the certification program and prior to adopting permanent CWD regulations.

#### **Job Impact Statement**

##### 1. Nature of impact:

The Department of Agriculture and Markets estimates that there are approximately 400 deer and elk farms in New York State with an industry value of approximately \$2 million. Generally speaking, these deer and elk farms are small operations that may own more than one species of deer or elk. These deer and elk farmers sell urine, meat, antlers, live animals for

stock, and the opportunity to shoot a captive-bred animal. It is not anticipated that jobs or employment opportunities will be effected by this rule.

2. Categories and numbers affected:

Most of the 400 plus deer and elk farms are small operations that have stock on hand from year to year. The number of individuals employed by each farm is unknown.

3. Regions of adverse impact:

This rulemaking will effect deer and elk farms throughout the rural areas of the State. The overall impact of this rule will be positive in that it will establish restrictions designed to prevent the introduction of CWD into New York. The restrictions will affect those persons currently engaged in deer or elk farming, persons who import carcasses or parts of deer or elk, persons who feed deer and, indirectly, persons who sell deer food.

4. Minimizing adverse impact:

This rule will not have an adverse impact on jobs or employment opportunities. It is designed to prevent the introduction of CWD into New York. The rule may, in fact, protect existing jobs associated with deer or elk farms by protecting captive herds from decimation due to CWD infection.

This rulemaking prohibits the importation of deer of the Genus *Odocoileus* and elk of the Genus *Cervus* that could be carriers of CWD. The only exception to the ban on importation is pursuant to permit issued by the Department of Agriculture and Markets in accordance with 1 NYCRR Section 62.8. In addition, this rule prohibits the importation of certain parts of such animals taken or originating outside of New York. Certain parts of such animals may be imported if marked or labeled in accordance with provisions of the rule.

In states that have CWD, it appears that the disease was brought in through the movement of captive-bred deer or elk. This rule will prohibit the importation such deer and elk while DEC and DAM develop a comprehensive CWD management plan for New York that will include Agriculture and Markets regulations for deer and elk farmers to obtain certification as a CWD- free herds.

5. Self-employment opportunities:

The proposed rule would not prevent a person from starting out in the deer or elk farm business. However, while this emergency rule remains in effect, the business could only use deer or elk from within New York to establish his or her captive-bred herd.

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## Insurance Department

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### NOTICE OF ADOPTION

**Minimum Provisions for Automobile Liability Insurance**

**I.D. No.** INS-19-03-00001-A

**Filing No.** 703

**Filing date:** July 8, 2003

**Effective date:** July 23, 2003

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

**Action taken:** Addition of section 60-1.6 (Regulation 35-A) to Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 3420(a) and (g); Vehicle and Traffic Law, section 311; and L. 2002, ch. 584

**Subject:** Minimum provisions for automobile liability insurance.

**Purpose:** To require insurers to offer supplemental spousal liability (SSL) insurance as an option to all policyholders who are covered under motor vehicle liability insurance policies that satisfy the requirements of art. 6 of the Vehicle and Traffic Law.

**Text or summary was published** in the notice of proposed rule making, I.D. No. INS-19-03-00001-P, Issue of May 14, 2003.

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

**Text of rule and any required statements and analyses may be obtained from:** Benita Hirsch, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5595, e-mail: bhirsch@ins.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Motor Vehicles

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

**Traffic Violation Bureau Regulations**

**I.D. No.** MTV-29-03-00010-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 123.4(a) of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 225(3) and 226(1)(b)

**Subject:** Traffic Violation Bureau regulations.

**Purpose:** To increase statutory fines for certain Vehicle and Traffic Law violations.

**Text of proposed rule:** Subdivision (a) of Part 123.4 is amended to read as follows:

(a) When a motorist pleads guilty by mail or in person at a bureau hearing office, he or she is required to pay the appropriate fine as follows:

(1) [\$50] \$75 for a first red light violation, except that such fine shall be [\$100] \$150 in the City of New York where such violation occurred on or after [August 25, 1995] *May 15, 2003*;

(2) [\$100] \$150 for a second red light violation committed within a period of 18 months, except that such fine shall be [\$200] \$300 in the City of New York where such violation occurred on or after [August 25, 1995] *May 15, 2003*;

(3) [\$250] \$375 for a third red light violation committed within a period of 18 months, except that such fine shall be [\$500] \$750 in [theistic] *the City of New York* where such violation occurred on or after [August 25, 1995] *May 15, 2003*;

(4) [\$30] \$45 for all speed offenses where the charge is driving 10 miles per hour or less above the speed limit;

(5) [\$60] \$90 for all speeding offenses where the charge is driving at least 11 miles per hour but not more than 30 miles per hour above the speed limit;

(6) \$50 for operating an [unregistered or] uninspected vehicle[, or for unlicensed operation, unless the violation is based upon a certificate of inspection, registration or license which has been expired for 60 days or less, in which case the fine shall be \$25];

(7) \$30 for any equipment violation; [or]

(8) \$75 for operating an unregistered vehicle, or for unlicensed operation, unless the violation is based upon a registration or license which has been expired for 60 days or less, in which case the fine shall be \$40; or

[(8)] (9) \$40 for any other traffic infraction, except where otherwise specified by statute.

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

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

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

**Consensus Rule Making Determination**

Vehicle and Traffic Law § 225(3) provides that in Traffic Violation Bureaus the Commissioner may establish by regulation a "schedule of monetary penalties to be used where an answer is made, other than before a hearing officer, admitting a charge, provided that no such penalty shall exceed the maximum fine established by law for the traffic infraction involved." The Department has established a schedule of fines for certain Vehicle and Traffic Law violations, and such fines are listed on the back of the traffic summons issued to a motorist by a police officer. The motorist is given the option of pleading guilty by mail, a process that includes paying the fine listed on the back of such summons.

The fines for passing a red light, speeding, unregistered operation and unlicensed operation were increased in the recently enacted Budget Bill

(S.1406-B/A. 2106-B). This proposed regulation revises the schedule of monetary penalties to reflect the increase in the fine assessed motorists who plead guilty by mail. The Department, under the current rule and pursuant to this proposed amendment, assesses only the minimum mandatory fine in the schedule of penalties. This proposal reflects the increased mandatory minimums in the Budget Bill.

Since the increased fines in this proposal merely reflect the statutory amendments codified in the Budget Bill, it is submitted as a consensus rulemaking.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this proposed rule because it will have no adverse effect on job development or job creation in New York State. This rule involves the schedule of fines assessed in Traffic Violation Bureaus.

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

#### **Notification to Motorcyclists**

**I.D. No.** MTV-29-03-00011-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 34.11(d) of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 318(4), (9) and 319(5)

**Subject:** Insurance company notification to motorcyclists.

**Purpose:** To revise notice insurance companies must send to insureds who own motorcycles.

**Text of proposed rule:** Subdivision (d) of Part 34.11 is amended to read as follows:

(d) Motorcycles. When the notice or acknowledgment of termination is for a motorcycle, the warning specified in subdivision (a) of this section may be contained on the notice or acknowledgment of termination and in addition to or in place of that warning the following warning shall also accompany each such notice or acknowledgment or termination. Such information shall be in no smaller than twelve point type face.

"Proof of financial security is required to be maintained continuously throughout the registration period. Liability insurance must be maintained on all registered vehicles. However, you are not required to surrender your registration plates to the Department of Motor Vehicles when your liability insurance terminates. If you operate your vehicle on the public highways without liability insurance, you will be subject to having your driver's license and registration revoked for a period of one year, a fine imposed by a court and payment of a civil penalty of [\$500] 750."

The warning notice and information required by Part 34.11(a), (b), (d) and (e) shall also be required on any notice of intent to cancel or notice of cancellation sent to an insured by a premium finance agency pursuant to section 576 of the Banking Law.

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

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

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

#### **Consensus Rule Making Determination**

The recently enacted State Budget for Fiscal Year 2003-04, amended Vehicle and Traffic Law section 319(5) to raise the civil penalty accompanying a conviction for operating without insurance from \$500 to \$750. VTL section 318(9)(c)(3) also requires the collection of this increased penalty upon a finding of an uninsured accident. The fine increases apply to violations/incidents occurring on or after May 15, 2003. The warnings in 15 NYCRR Part 34.11 given by insurance companies to their insureds who operate motorcycles must be revised to reflect the increased penalty for operating without insurance.

This is a consensus rulemaking because the Legislature has enacted the fee increase into law. This regulation merely reflects the mandate of the Legislature and the fines required by statute.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this consensus rulemaking because it will have no impact on job development in the State. This rule concerns the civil penalty for operating without insurance and uninsured accidents.

## **Public Service Commission**

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

#### **Sale of 345 kV Circuit Breaker by Consolidated Edison Company of New York, Inc. to Entergy Nuclear Indian Point 3, LLC**

**I.D. No.** PSC-29-03-00012-EP

**Filing date:** July 2, 2003

**Effective date:** July 2, 2003

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

**Action taken:** The commission, on July 2, 2003, adopted an order in Case 03-E-0967 approving a request by Consolidated Edison Company of New York, Inc. (Con Edison) for the sale of a 345 kV circuit breaker to Entergy Nuclear Indian Point 3, LLC.

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

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

**Specific reasons underlying the finding of necessity:** Emergency action is necessary to preserve system reliability at Entergy Nuclear Indian Point 3, Inc. Immediate installation of the 345 kV circuit breaker is crucial to satisfy the energy demands of New York City.

**Subject:** Sale of a 345 kV circuit breaker.

**Purpose:** To preserve system reliability.

**Substance of emergency/proposed rule:** The Commission approved on an emergency basis the sale of a 345kV circuit breaker from Consolidated Edison Company of New York, Inc. to Entergy Nuclear Indian Point 3, LLC (ENIP3) to preserve system reliability at ENIP3's plant and to ensure New York City's energy demands are satisfied, subject to the terms and conditions set forth in the order.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of proposed rule making. The rule will expire September 29, 2003.

**Text of rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

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

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

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

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

(03-E-0967SA1)

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

#### **Pole Attachment Rates by Verizon New York Inc.**

**I.D. No.** PSC-29-03-00001-P

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

**Proposed action:** The commission is considering the pole attachment rates of Verizon New York Inc. pursuant to the order instituting proceeding issued March 28, 2003.

**Statutory authority:** Public Service Law, sections 92(2) and 94(2)

**Subject:** Pole attachment rates.

**Purpose:** To determine the appropriate pole attachment rates.

**Substance of proposed rule:** The Commission is considering the pole attachment rates of Verizon York Inc. pursuant to the Order Instituting Proceeding, issued March 28, 2003.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-C-0483SA1)

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

**Interconnection Agreement between Verizon New York Inc. and Broadview Networks, Inc.**

**I.D. No.** PSC-29-03-00002-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 modification filed by Verizon New York Inc. and Broadview Networks, Inc. to revise the interconnection agreement effective on Feb. 12, 2003.

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

**Subject:** Inter-carrier agreement to interconnect telephone networks for the provisioning of local exchange service.

**Purpose:** To amend the agreement.

**Substance of proposed rule:** The Commission approved an Interconnection Agreement between Verizon New York Inc. and Broadview Networks, Inc. in February 2003. The companies subsequently have jointly filed amendments to clarify the provisions regarding Dark Fiber. The Commission is considering these changes.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-C-0616SA2)

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

**Interconnection Agreement between Verizon New York Inc. and InterGlobe Communications**

**I.D. No.** PSC-29-03-00003-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 Verizon New York Inc. and InterGlobe Communications for approval of an interconnection agreement executed on June 18, 2003.

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

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

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

**Substance of proposed rule:** Verizon New York Inc. and InterGlobe Communications have reached a negotiated agreement whereby Verizon New York Inc. and InterGlobe Communications will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 20, 2004, or as extended.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-C-0948SA1)

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

**Interconnection Agreement between Verizon New York Inc. and Cypress Communications Operating Company, Inc.**

**I.D. No.** PSC-29-03-00004-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 Verizon New York Inc. and Cypress Communications Operating Company, Inc. for approval of an interconnection agreement executed on May 27, 2003.

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

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

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

**Substance of proposed rule:** Verizon New York Inc. and Cypress Communications Operating Company, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Cypress Communications Operating Company, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 20, 2004, or as extended.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-C-0949SA1)

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

**Interconnection Agreement between Verizon New York Inc. and Northeast Optic Network of New York, Inc.**

**I.D. No.** PSC-29-03-00005-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 Verizon New York Inc. and Northeast Optic Network of New York, Inc. for approval of an interconnection agreement executed on May 9, 2003.

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

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

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

**Substance of proposed rule:** Verizon New York Inc. and Northeast Optic Network of New York, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Northeast Optic Network of New York, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until May 8, 2005, or as extended.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-C-0950SA1)

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

**Electric Meter Testing and Reporting Requirements**

**I.D. No.** PSC-29-03-00006-P

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

**Proposed action:** Amendment of Part 92 of Title 16 NYCRR.

**Statutory authority:** Public Service Law, section 67(4)

**Subject:** Electric meter testing and reporting requirements.

**Purpose:** To streamline requirements for electric metering testing and require non-utility meter service providers to comply with the rule.

**Substance of proposed rule:** The Commission will consider revisions to its regulations which require electric utilities to test meters and meter apparatus, conduct complaint tests and maintain testing facilities in order to ensure the accuracy of meters. The revisions will require compliance by non-utility meter service providers. The revisions are designed to foster competitive metering.

**Text of proposed rule and any required statements and analyses may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

**Data, views or arguments may be submitted to:** Janet H. Deixler, 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**

**1. Statutory Authority:**

Public Service Law Sections 4 (1) and 67 (4). Section 4 (1) creates a Public Service Commission in the Department of Public Service and gives it the power and duties specified in the Public Service Law. Section 67 (1)

gives the Commission power to appoint inspectors to ascertain the accuracy of all electric meters used or intended be used for measuring the quantity of electric current and to ascertain the accuracy of all apparatus for testing and proving the accuracy of electric meters. Section 67 (2) requires that all electric corporations maintain apparatus and facilities for testing and proving the accuracy of electric meters furnished for use by it, and by which apparatus every meter may be tested. Section 67 (4) gives the Commission the power to prescribe rules and regulations to carry into effect the provision of Section 67.

**2. Legislative Objectives:**

The purpose of the sections of the statute cited in Statutory Authority above is to ensure the accuracy of meters. The proposed revisions to the rules would do that by replacing outdated regulations: the revisions are more appropriate to the state of technology today.

**3. Needs and Benefits:**

Accurate billing of energy use is dependent on meters that register energy use precisely. Part 92 helps ensure that all meter used to measure energy consumption for customer billing purposes meets established performance and accuracy standards. Part 92 requires electric utilities to test meters and meter apparatus, conduct complaint tests and maintain testing facilities.

The Commission recently ordered that electric metering services is opened to competition. Customers may procure meters and other meter services from providers other than utilities. On January 24, 2001, the Commission approved a competitive metering manual entitled *New York Practices and Procedures for the Provision of Electric Metering In a Competitive Environment*, which provides requirements for all meter service providers. The competitive metering environment increases the number of entities that may be responsible for meter accuracy, however the current regulations do not apply to non-utility meter service providers. The revisions are necessary to ensure an accurate meter population by requiring each meter service provider to comply with the Commission's regulations. The most significant benefit to be derived from this rule change is an assurance of a high degree of meter accuracy regardless of who is providing meters and metering services.

The proposed regulations also streamline and simplify the existing regulations and move much of the technical detail to a staff administered Operations Manual (Department of Public Service 16 NYCRR Part 92 Operating Manual, dated March 14, 2003.) The existing regulation contains various outdated technical details and is prone to continued obsolescence. In addition, electronic meters are far more accurate, reliable, and functionally advanced than they were when the regulations were first drafted. As meter technology advances the technical details, previously included in the regulations, will become outdated or mute and require change. The proposed revisions recognize these advances and provide the necessary flexibility to modify the testing requirements as technology advances and when changes are necessary and supported by industry studies and/or experience, by updating the Operations Manual rather than initiating changes to the regulations.

The revisions contain general provisions, definitions and references to operating procedures that must be complied with in order to maintain the metering infrastructure and many of the current rules for the testing and maintenance of meters, maintenance of meter test standards and test facilities, etc.

The proposed Part 92 Operating Manual contains procedural details for the regulations, which would include actual test requirements for in-service testing and acceptance testing, details of reporting requirements, and acceptable test methods.

The staff will continue to oversee compliance and will receive all of the meter test reports from all meter service providers. These tests are frequently used as a basis for identifying poorly performing meter types and, in conjunction with root cause analyses, for deciding whether a replacement program is appropriate. Staff will continue to act as arbitrators in resolving customer metering complaints by witnessing accuracy tests on metering devices suspected of malfunction or inaccuracy.

**4. Costs:**

**a. Costs to regulated parties:**

In an environment where metering services can be provided competitively, the number of non-regulated entities that will bear responsibility for meter accuracy and maintenance will increase. Staff has had informal discussions with utility meter personnel, who have indicated that if non-regulated meter service providers could perform the metering functions effectively and efficiently, the regulated utility would then be willing to consider outsourcing their metering to these entities. In 1995 it was estimated that the aggregate cost of testing one meter by a utility was approxi-

mately \$100. Utilities would require fewer technicians, a reduced inventory of meters, and less test equipment as the number of meters tested, repaired and maintained by the utilities decreased. It is difficult to calculate an actual aggregate savings that could be realized since there have been no meter service providers certified to do business in New York State. However, the proposed rule changes should result in cost reductions to the state's utilities if significant numbers of other entities test meters. More broadly, because the proposed rule provides a more efficient method of testing meters the overall cost of insuring the legislative objective of accurate meters will decrease.

b. Costs to the agency, state and local governments:

There should be no costs to state or local governments due to the implementation of this rule. The existing rule requires compliance by only utilities. By expanding the compliance process to also include competitive meter service providers, the agency is likely to increase its oversight of these entities. We estimate that the proposed rule will result in an additional 500 hours of staff time annually, at an average cost of \$50 per hour for a total of \$25,000.

c. Cost analysis:

The estimations of costs were developed on the basis of past experience regarding oversight of the test facilities and equipment of regulated utilities.

5. Local Government Mandates:

The proposed revisions do not impose any new program, service duty or responsibility upon any count, city, town, village, school district, fire district, or other special district.

6. Paperwork:

This proposal imposes no new reporting requirements on regulated utilities, however the current reporting requirements will apply to all competitive meter service providers. In addition, the revised regulation anticipates that, to the extent possible, reports will be transmitted electronically.

7. Duplication:

The proposed rule will be consistent with, but not duplicate any other legal requirements of state or local governments.

8. Alternatives:

The proposed revisions are based on discussions and written comments of a working group of staff, industry and consumer representatives. Stakeholders agree that the regulations are in need of revision as failure to implement these revisions could mean that competitive meter service providers would provide meters to consumers that do not comply with the accuracy requirements of the New York Public Service Commission. The stakeholders also agreed that the current regulation contains obsolete technical detail removal of the technical detail from the regulation and placement of that detail into PSC staff administered procedures can eliminate the obsolescence. The stakeholders considered revisions to the existing regulations, including the technical details but decided that if the details were not placed in a procedures manual, frequent revisions to the regulations and/or petitions for waiver of the regulations would be required. Other alternatives were considered. One alternative suggested that current market forces could provide sufficient oversight of all meter service providers. It was determined that market forces would not provide adequate information to consumers or provide the appropriate financial incentives to providers or end users. Another alternative suggested that competitive independent laboratories would lack the authority to enforce standards. The stakeholders agree that consistent oversight is necessary and would be accomplished through revision of the regulation.

9. Federal Standards:

There are no federal standards in this area.

10. Compliance Schedule:

As this is not a mandate upon electric utilities, there is no compliance schedule.

**Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for Small Business and Local Governments is not submitted because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on existing small businesses or local governments. This rule will not impose such adverse economic impact or compliance requirements on existing small businesses or local governments because it is not a mandate that applies to such entities. Instead, it is a proposal that requires a broader range of meter service providers to comply with Commission regulations that help ensure meter accuracy. This rule, however, will apply to any new competitive meter service providers that choose to provide services to end-use customers in New York. The number of new competitive meter service providers is unknown as none exist today.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not submitted because this rule will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on existing public or private entities in rural areas. This rule will not impose such adverse economic impacts or compliance requirements on existing public or private entities in rural areas because it is not a mandate that applies to such entities. Instead, it is a proposal that requires a broader range of meter service providers to comply with Commission regulations that help ensure meter accuracy. This rule, however, will apply to any new competitive meter service providers, some of which may be located in rural areas, that choose to provide services to end-use customers in New York. The number of new competitive meter service providers is unknown as none exist today.

**Job Impact Statement**

A Job Impact Statement is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on existing jobs and employment opportunities. Depending on the number of competitive meter service providers who choose to provide services in New York, this rule may have a positive impact on jobs and employment opportunities. The number of new competitive meter service providers is unknown as none exist today.

(02-E-0255SA1)

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

**Natural Gas Transmission, Distribution and Gathering Line Facilities**

**I.D. No.** PSC-29-03-00007-P

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

**Proposed action:** This is a consensus rule making to amend Parts 10 and 255 of Title 16 NYCRR.

**Statutory authority:** Public Service Law, sections 65(1) and 66(1)

**Subject:** The design, installation, testing operation, and maintenance of natural gas transmission, distribution, and gathering line facilities.

**Purpose:** To revise several current safety requirements to bring New York State's requirements into conformance with the Federal pipeline safety regulations in 49 CFR 192.

**Substance of proposed rule:** The proposed changes to Title 16 NYCRR Parts 10 and 255 will bring them into conformance with Federal Pipeline Safety Regulations. Specifically, the proposed amendments conform to the Commission's regulations to the Federal regulations regarding the requirement that companies inform certain customers about excess flow valves, clarifies the extent to which a pipeline must be examined when external corrosion is found, updates the requirements concerning pipeline repairs, and adds additional requirements concerning the abandonment of pipelines.

Most gas distribution companies in New York State already comply with the proposed changes to Part 255. The proposed changes to Part 10, Referenced Material, is a routine administrative process to update referenced materials to their current editions. The following is a discussion of the proposed changes to Part 255.

A new requirement for companies to notify and inform certain gas customers about excess flow valves has been added to 49 CFR Part 192. Specifically, gas customers of new or replacement service lines that serve single residences and operate continuously throughout the year at a pressure of at least 10 psig, must be provided with written notification about the availability, capabilities, and limitations of excess flow valves. Staff discussed this rule with the gas companies and the Northeast Gas Association (NGA). The NGA member companies already comply with the Federal regulations.

Regarding the regulations concerning external corrosion of gas pipelines, the proposed rule would require companies to determine the full extent of external corrosion by investigating beyond the exposed portion of the pipe using visual examination or approved indirect examination, to determine whether there is additional corrosion. This is considered an effective practice and companies are currently taking this action when external corrosion is found.

The proposed changes to the transmission pipeline repair requirements in Part 255 consist of housekeeping changes to improve readability, and the addition of alternate repair methods that reliable engineering tests and analyses show can permanently restore the serviceability of the pipeline. This allows companies more flexibility in determining which repair

method to employ and allows them to take advantage of new technologies that can provide equivalent or better level of safety for the repaired pipeline segment, along with potential cost savings.

The proposed amendments add a definition of abandoned and a requirement that information on abandoned pipelines crossing over, under or through commercially navigable waterways be submitted to the National Pipeline Mapping System (NPMS) or to the U.S. Department of Transportation in accordance with the requirements of 49 CFR 192.727(g).

**Text of proposed rule and any required statements and analyses may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

**Data, views or arguments may be submitted to:** Janet H. Deixler, 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.

#### **Consensus Rule Making Determination**

This amendment is being proposed as a Consensus Rule because no objection to the rule as written is expected. The proposed changes will bring Commission regulations into compliance with Federal regulations (49 CFR 192) which has preemption over less stringent State regulations. Affected parties are already subjected to the rules at the Federal level.

#### **Job Impact Statement**

This agency finds that the rules will not have a substantial impact of job and employment opportunities. The proposed changes will bring Commission regulations into compliance with Federal regulations (49 CFR 192) which has preemption over less stringent State regulations. Affected parties are already subjected to the rules at the Federal level.  
(02-G-0134SA1)

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

#### **Initial Tariff Schedule by Great Expectations, LLC**

**I.D. No.** PSC-29-03-00008-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, or modify, Great Expectations, LLC's initial tariff schedule, P.S.C. No. 1—Water, effective Aug. 1, 2003.

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

**Subject:** Initial tariff schedule.

**Purpose:** To approve a tariff schedule.

**Substance of proposed rule:** On June 26, 2003, Great Expectations, LLC, (Great Expectations or the company) made an electronic filing, to file an initial tariff schedule, P.S.C. No. 1—Water, which sets forth the rates, charges, rules and regulations under which the company will operate to become effective August 1, 2003. The company proposes to establish metered rates. There will be minimum charges with water allowances that vary by type of customer, payable in advance, and a usage rate of \$3.50 per 1,000 gallons for all usage in excess of the minimum allowance. The average residential customer's bill will be about \$1,228 per year. The tariff also establishes rates for public and private fire protection service of \$125 per hydrant or connection per quarter. The company is also proposing to establish an escrow account with a maximum balance of \$50,000 for extraordinary repairs and/or plant replacements. This escrow account will be funded at a rate of about \$7,500 per year through escrow surcharges that vary depending on the type of customer. The proposed quarterly surcharge for the residential customer is \$13.00. The tariff also contains a Rate of Return Incentive Statement, the purpose of which is to ensure that the water system is properly managed and operated. The tariff defines when a bill will be delinquent and establishes a late payment charge and a returned check charge. The restoration of service charge will be \$50.00 during normal business hours of 8 am to 4 pm Monday through Friday and \$75.00 outside of normal business hours Monday through Friday, and \$100.00 on weekends or public holidays. The company's tariff will be available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us)) — located under the file room — Tariffs). The Commission may approve or reject, in whole or in part, or modify, Great Expectations' request.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(03-W-0941SA1)