

# 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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### NOTICE OF EXPIRATION

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

#### National Institution of Standards and Technology Handbook 44

I.D. No.	Proposed	Expiration Date
AAM-06-05-00001-P	February 9, 2005	August 8, 2005

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

#### Scrapies in Sheep and Goats

I.D. No. AAM-34-05-00002-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 Part 62 of Title 1 NYCRR.

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

**Subject:** Health requirements relative to scrapies in sheep and goats and requirements for the movement of sheep and goats.

**Purpose:** To incorporate by reference the current Federal regulations set forth in Part 79 of Title 9 of the Code of Federal Regulations (9CFR).

**Text of proposed rule:** Sections 62.5, 62.6 and 62.7 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York (1 NYCRR) are renumbered sections 62.6, 62.7 and 62.8 and a new 62.5 is added to read as follows:

Section 62.5 Scrapie in Sheep and Goats

(a) *For purposes of the enforcement of article 5 of the Agriculture and Markets Law, and except where in conflict with the statutes of this State or with the rules and regulations promulgated by the commissioner, the commissioner hereby adopts the current Federal regulation as it appears in title 9 of the Code of Federal Regulations, part 79 (revised as of January 1, 2005; U.S. Government Printing Office, Washington DC 20402), at pages 296-318, entitled Scrapie in Sheep and Goats. In order to meet the requirements of scrapie consistent state status, official identification in the manner described in part 79 of title 9 of the Code of Federal Regulations shall be required for any sheep over 18 months of age and for any sheep and goats of any age upon change of ownership, unless such sheep and goats have been sold for slaughter.*

(b) *Copies of this regulation, as published in title 9 of the Code of Federal Regulations, are maintained in a file at the Department of Agriculture and Markets, Division of Animal Industry, 10-B Airline Drive, Albany, New York 12235, and are available for public inspection and copying during regular business hours.*

**Text of proposed rule and any required statements and analyses may be obtained from:** John Huntley, DVM, Director, Division of Animal Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-3502

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

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

#### Consensus Rule Making Determination

The Department has considered the proposed addition of a new section 62.5 of 1 NYCRR and has determined that no person is likely to object to the rule as written.

The proposed addition of a new section 62.5 of 1 NYCRR would incorporate by reference, Federal regulations in Part 79 of Title 9 of the Code of Federal Regulations (9 CFR), relating to implementation of a scrapie eradication program. The regulations require the identification of sheep and goats to their flocks of origin, thereby enabling trace-back of scrapie positive animals to their flocks or herds of origin. The regulations also restrict the movement of sheep and goats which have been infected with or exposed to scrapie, thereby helping prevent the potential spread of the disease. In addition, the regulations establish standards for testing animals for scrapie as well as for handling those animals which have been infected with or exposed to the disease. Finally, under the regulations, states that meet the requirements of the scrapie eradication program in Part 79 are classified as scrapie consistent states by the United States Department of Agriculture (USDA). In order for New York to meet scrapie consistent state status, the regulations also require official identification in the manner described in 9 CFR Part 79 for any sheep over 18 months of age and for any sheep and goats of any age upon change of ownership, unless such sheep and goats have been sold for slaughter. This is an economic benefit to sheep and goat producers in these states, since they would be able to move their animals through interstate commerce with fewer restrictions.

Scrapie is a fatal, degenerative disease affecting the central nervous system of sheep and goats. Scrapie belongs to a family of diseases known

as transmissible spongiform encephalopathies (TSE). Other such diseases include bovine spongiform encephalopathy (BSE) in cattle, commonly called mad cow disease, and chronic wasting disease (CWD) in deer and elk. The origin of scrapie is unknown. It is believed that the disease spreads animal to animal, most likely from mother to offspring through placental fluids. Sheep and goats infected with the disease may not manifest symptoms until two to five years after exposure. Symptoms of scrapie include weight loss, loss of coordination, changes in temperament and changes in behavior, including the tendency to rub up or scrape against fencing and other fixed objects. There is no known cure or treatment for scrapie.

Scrapie was first identified as a disease of sheep in Great Britain and other countries of western Europe more than 250 years ago, and has since spread throughout the world. In 1947, the first case of scrapie in the United States was isolated in a flock of sheep in Michigan. Since then, scrapie has spread throughout the United States and the USDA estimates that there have been approximately 2,718 reported cases of scrapie in sheep and 13 cases of scrapie in goats. Most recently, in April of 2005, a ewe in Madison County, New York tested positive for scrapie.

There are approximately 2,800 sheep and goat producers in New York State that would be affected by this rule. However, this rule is an essential disease control measure that will help eradicate scrapie in New York State. This will not only help safeguard New York State's sheep and goat industries from an animal health standpoint, but from an economic standpoint as well. The American Sheep Industry Association estimates that scrapie costs its industry more than 20 million dollars each year in lost sales, disposal costs for offal and lost productivity.

Regulated parties would benefit by the animal disease control measures for scrapies contained in the Federal regulations which would be incorporated by reference. In addition, if regulated parties are engaged in interstate commerce, they are already required to comply with these Federal regulations. Accordingly, it is unlikely that anyone will object to this rule as written.

#### **Job Impact Statement**

The proposed addition of a new section 62.5 of 1 NYCRR would incorporate by reference, Federal regulations in Part 79 of Title 9 of the Code of Federal Regulations (9 CFR), relating to requirements for the identification, testing and movement of sheep and goats under the federal scrapie eradication program. The rule would not have a substantial adverse impact on jobs and employment opportunities. In fact, the rule may actually have a positive impact on jobs and employment opportunities in New York State's sheep and goat industries, since the rule would help eradicate scrapie, thereby helping safeguard these industries from both an animal health and economic standpoint.

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## Department of Environmental Conservation

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### NOTICE OF ADOPTION

#### **Bear-Resistant Food Canisters**

**I.D. No.** ENV-20-05-00026-A

**Filing No.** 860

**Filing date:** Aug. 9, 2005

**Effective date:** Aug. 24, 2005

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

**Action taken:** Amendment of section 190.13 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-101, 3-0301 and 9-0105

**Subject:** Required use of bear-resistant food canisters in the Eastern High Peaks Wilderness Area of the Adirondack Park.

**Purpose:** To reduce the incidence of negative interactions between black bears and people in the Eastern High Peaks Wilderness Area.

**Text or summary was published** in the notice of proposed rule making, I.D. No. ENV-20-05-00026-P, Issue of May 18, 2005.

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

**Text of rule and any required statements and analyses may be obtained from:** Kenneth Kogut, Department of Environmental Conservation, Route 86, P.O. Box 296, Ray Brook, NY 12977-0296, (518) 897-1291, e-mail: kxkogut@gw.dec.state.ny.us

**Additional matter required by statute:** A negative declaration has been prepared by the department pursuant to the State Environmental Quality Review Act.

#### **Assessment of Public Comment**

The Department of Environmental Conservation (Department or DEC) received comments concerning the proposed rulemaking. A summary of the comments received, along with the Department's response, follows:

**Comment:** Comments were received in support of the proposed rulemaking. Reasons for support included minimizing the negative interactions between bears and humans, reducing the prevalence of trash from campers' food supplies strewn about the woods by bears, eliminating the need for lethal control of bears, and keeping campers safe from bears.

**Response:** The Department concurs. The incidences of bears obtaining food from campers in the Eastern High Peaks Wilderness Area (EHPWA) has increased over the last decade to a point that has become unacceptable both to the users and staff who work in the EHPWA. Bears habituated to human food in this heavily used area have learned to defeat most traditional methods of food storage, including hanging food from a tree, and using Department-built cable systems.

Bear resistant canisters have proven to be an effective means for preventing bears from obtaining campers' food in the EHPWA. Data collected by the Department during the summer of 2004 shows that of the approximately 400 reported bear interactions with humans in the EHPWA, 50 percent resulted in bears taking campers' food. More than 75 percent of the people who reported that they suspended their food from trees, lost their food; and 50 percent of the people who used DEC bear cables lost food as well. Only one person who used a bear resistant canister reported a loss of food, due to failure to properly secure the canister's lid. Canisters have also been proven to significantly reduce human-bear interactions in many national parks and national forests in the western United States.

**Comment:** Bear-resistant canisters are too heavy and bulky for backpackers to carry.

**Response:** Bear-resistant canisters have been developed, tested, and refined for twenty or more years and now are as light and small as possible, and shaped to fit either inside a backpack or easily strapped on a pack frame. Canisters are now available in a range of sizes that can accommodate enough food for one person for trips of two days to as many as nine days. Canisters range in weight from 1.5 to 4 pounds. The ropes and bags that some campers carry for suspending their food from trees may weigh as much or more than a canister. The Department has begun an education and outreach campaign in conjunction with the proposed regulation to inform the public about the kinds of food that can be carried in a canister, and how to pack the canister.

**Comment:** Bear-resistant canisters are too expensive to buy or rent.

**Response:** Canisters range in price from approximately \$50 to \$200, depending on size and brand, and may be purchased from a variety of sources (e.g., local merchants, internet sales). An average canister with a capacity for up to six days of food for one person costs about \$70. Most other equipment used by backpackers costs as much or more than a canister, including backpacks, sleeping bags, tents, cooking stoves, boots, and water purifiers. Canisters are also readily available for rent for as little as \$5 per trip from local merchants in communities surrounding the EHPWA, and through major retailers located in Montreal, Albany, Syracuse, Buffalo, and other major metropolitan areas in New York. It is the Department's position that the cost associated with renting or purchasing a bear resistant canister is outweighed by the public safety concern - namely, the need to prevent negative bear-human contact and the potential for human injury - that has led the Department to propose the canister requirement.

**Comment:** The Department should educate hikers and campers on proper food storage, instead of requiring bear-resistant canisters.

**Response:** Bears in the EHPWA have learned through association and repetition how to defeat traditional methods of keeping food secure. The volume of camping activity in the EHPWA gives bears many opportunities to obtain food from campers. These methods of food storage, which may work in other areas where the amount of use by hikers/campers is much less, are no longer effective in the EHPWA. The Department has conducted education outreach programs for many years on how to keep food secure from bears, but in recent years that education effort has shifted to a focus on the use of bear-resistant canisters as the most reliable and consistent method of keeping food from bears in the EHPWA. As mentioned

above, the Department is conducting an extensive education and outreach program in conjunction with this rulemaking, but education alone will not be enough to address the food attraction issue and thereby eliminate nuisance bear problems.

Comment: The Department should use other methods of food storage, such as food lockers, cable systems, and pole hang systems, instead of requiring the use of bear-resistant canisters.

Response: The Department considered the use of alternative methods for keeping campers' food away from bears. Large metal food lockers or pole hanging systems installed near concentrated camping areas and at the interior outposts could effectively keep food away from bears. However, these systems are "non-conforming structures in wilderness areas" according to the State Land Master Plan, and would not be approved for installation in the EHPWA by the Adirondack Park Agency (APA).

DEC did install pulley-type cable systems several years ago as a temporary measure with approval from the APA. These cable systems were more effective in keeping food away from bears than traditional rope hangs, and were used extensively by campers. However, bears have learned that these sites provided a concentrated source of food. Bears were able to regularly obtain food from the cables through persistent effort. They learned to break the cable components through chewing or physically abusing the cable systems, or by defeating the cable hangs when campers incorrectly used the cables to hang their food. By contrast, the use of canisters will spread the food out over the entire camping area, and food in canisters will be inaccessible even to the most persistent bears.

Comment: The Department should allow the use of other storage containers in addition to those specified in the proposed regulation, such as soft-sided bear-resistant bags and home-made canisters, including empty paint cans.

Response: Soft-sided bear-resistant bags are commercially made and constructed of a material that purportedly cannot be torn open by bears. The Department has tested these bags in the EHPWA and has also documented the experience of campers who have used them in the EHPWA. In two cases, bears were able to tear through the material and obtain food from the bags in the EHPWA. Even where the bear is not successful in opening the bag, the food inside becomes pulverized and mixed with bear saliva and dirt, rendering it unsuited for human consumption. Therefore, DEC does not believe that these bags are a reliable or practical method of storing food in the EHPWA.

Department staff have also witnessed campers using home-made canisters that failed to resist an attack by a bear. Although it is possible for someone to construct a bear-resistant canister at home, authorizing use of these home-made devices through regulation would likely result in the use of unreliable canisters, thus defeating the purpose of the regulation. Bears can easily bite through food cans to obtain food, so it is possible, if not likely, that they could also bite through paint cans that had food stored in them.

Comment: DEC did not provide sufficient public notice of the proposed regulation.

Response: The Department proposed this rulemaking pursuant to the State Administrative Procedure Act (SAPA) and fully complied with the applicable statutory requirements concerning public notice. Moreover, the Department made additional public outreach efforts beyond that required by SAPA.

The Department began providing public notice of the intent to require the use of bear-resistant canisters in May 2004. There have been several press releases discussing the proposed regulation, letters about the proposal were sent to over five hundred outdoor retailers, recreational user groups, scouting groups, and conservation organizations in New York and surrounding states and Canadian provinces, articles on the bear situation and the proposed regulation have appeared in several newspapers and outdoor and hiker magazines, and the DEC website has included the text of the proposed regulation for over a year. DEC staff have given presentations to many groups about the bear problem in the EHPWA and the proposed regulation, signs have been posted at all EHPWA trailheads, and extensive contacts have been made with users in the EHPWA over the last two hiking seasons.

Comment: Instructions on the proper use of bear-resistant canisters, such as where to place them and how to pack them, should be included as part of the regulation.

Response: The Department agrees that this information is necessary and valuable, but does not agree that it should be part of the regulation. Most campers will learn of the new regulation through the Department's public outreach and education efforts. Therefore, information on the proper use of canisters is more likely to be read by campers through

materials provided by manufacturers when a canister is purchased, and through publications, signs, and other outreach materials provided by DEC, rather than through the actual text of the regulation.

Comment: The new regulation should define the word "stay" since it is not defined in 6 New York Codes, Rules, and Regulations Part 190. The use of this term is vague and does not give individuals fair notice of the conduct that is prohibited.

Response: Section 190.13(b)(6) reads as follows: "'Overnight camper' means a person who stays or intends to stay in the Eastern High Peaks Zone during the night." It is the Department's position that the wording of the proposed regulation is sufficiently clear and that the term "stay" as part of the definition of "overnight camper" needs no additional clarification.

The Department has concluded that the adoption of the proposed regulation will result in a significant reduction in the amount of camper's food available to bears in the EHPWA and will therefore reduce the number of negative human-bear encounters. The reduction of the bear attraction and food supply will change the dynamics of the bear population in the area, ultimately reducing the density of bears that can be supported in the EHPWA. For these reasons, the Department is adopting the proposed amendments to 6 NYCRR Part 190.13 without modification.

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## Department of Health

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### NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

#### Adult Care Facility Inspection Reports

I.D. No. HLT-09-05-00007-C

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

**The notice of proposed rule making**, I.D. No. HLT-09-05-00007-P was published in the *State Register* on March 2, 2005.

**Subject:** Adult care facility inspection reports.

**Purpose:** To conform regulations to statute, requiring the department's inspection reports to find whether each area of an ACF operation is or is not in compliance with regulations, pursuant to a recent State Supreme Court decision.

**Substance of rule:** While SSL Section 461-a(2)(c) directs that inspection reports clearly identify and indicate in detail each area of operation and whether each such area or any of its component parts is or is not in compliance with regulations, Section 486.2(i)(1) of Title 18 of New York Codes, Rules and Regulations (NYCRR) further requires the Department to identify in its inspection reports those areas of operation that have been found to meet or exceed compliance standards.

Prior to August 2, 1994, the Department was required by SSL Section 461-a(2)(c) to make inspection reports which identified areas in which the facility exceeded minimum standards, and 18 NYCRR Section 486.2(i)(1) was enacted in conformance with this provision. However, when SSL Section 461-a(2)(c) was amended by Chapter 735 of the Laws of 1994 to require only a finding of whether each area of operation "is or is not in compliance," the Department concluded that its administrative regulation was in fact superceded by the new statute and it was no longer obligated to include this data in its inspection reports.

On August 20, 2003, the New York State Supreme Court ruled that "the Department is required to follow its regulations. If it is of the view that its regulations are not to be enforced, the Department is obligated to take appropriate action to insure that the regulations in question are no longer part of the applicable administrative scheme" (*Bavview Manor Home for Adults v. Novello Index No. 7662-20, Supreme Court, Albany Co., decision of August 20, 2003*). Therefore, in order to maintain consistency with the intent of Chapter 735 of the Laws of 1994, this regulation amends the inconsistent provisions of 18 NYCRR Section 486.2(i)(1).

**Changes to rule:** No substantive changes.

**Expiration date:** March 2, 2005.

**Text of proposed rule and changes, if any, may be obtained from:** William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza,

Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

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

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

**Newborn Screening Panel**

**I.D. No.** HLT-34-05-00001-P

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

**Proposed action:** Amendment of sections 69-1.1, 69-1.2 and 69-1.3 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2500-a

**Subject:** Newborn screening panel.

**Purpose:** To add 33 disorders to the newborn screening panel.

**Text of proposed rule:** Section 69-1.1 of Subpart 69-1 is amended as follows:

Section 69-1.1 Definitions. As used in this Part:

(a) Testing laboratory means the Wadsworth Center Laboratory of Newborn Screening and Genetic Services, New York State Department of Health, Empire State Plaza, Albany, [NY] New York 12201.

(l) Biohazardous specimen means a specimen collected from an infant who may have, or whose mother may have, an infectious disease agent transmissible by blood contact as determined by the infectious disease officer of the responsible institution.]

[(m)](l) Repeat specimen means an additional satisfactory specimen required by the testing laboratory.

[(n)](m) Specialized care center means a health care facility established under article 28 of the Public Health Law which is approved by the department and certified by the Wadsworth Center [for Laboratories and Research] to provide treatment and/or services to children identified by the testing laboratory.

[(o)](n) HIV specialized care center means a health care facility established under article 28 of the Public Health Law which: (1) is designated as an AIDS Center for [provision of] providing care to women and children; or (2) receives state and/or federal funds [to provide] for comprehensive treatment and services to HIV-exposed newborns identified by the testing laboratory, and to [their] the newborns' mothers and [their] families.

[(p)](o) Department means the New York State Department of Health.

Section 69-1.2 of Subpart 69-1 is amended as follows:

(a) Diseases and conditions tested. (a) Unless a specific exemption is granted by the State Commissioner of Health, the testing required by section 2500-a and section 2500-f of the Public Health Law shall be [done] performed by the testing laboratory according to recognized clinical laboratory procedures.

(b) Diseases and conditions to be tested for shall include: [phenylketonuria, branched-chain ketonuria, homocystinuria, galactosemia, homozygous sickle cell disease, hypothyroidism, biotinidase deficiency, human immunodeficiency virus (HIV) exposure and infection, cystic fibrosis, congenital adrenal hyperplasia, and medium-chain acyl-CoA dehydrogenase deficiency (MCADD).]

*argininemia (ARG);*

*argininosuccinic acidemia (ASA);*

*biotinidase deficiency;*

*branched-chain ketonuria, also known as maple syrup urine disease (MSUD);*

*carnitine palmitoyl transferase Ia deficiency (CPT-IA);*

*carnitine palmitoyl transferase II deficiency (CPT-II);*

*carnitine-acylcarnitine translocase deficiency (CAT);*

*carnitine uptake defect (CUD);*

*citrullinemia (CIT);*

*cobalamin A,B cofactor deficiency (Cbl A,B);*

*congenital adrenal hyperplasia (CAH);*

*cystic fibrosis (CF);*

*dienoyl-CoA reductase deficiency (DE REDUCT);*

*galactosemia;*

*glutaric acidemia type I (GA-I);*

*hemoglobinopathies, including homozygous sickle cell disease;*

*homocystinuria;*

*human immunodeficiency virus (HIV) exposure and infection;*

*3-hydroxy-3-methylglutaryl-CoA lyase deficiency (HMG);*

*hyperammonemia/ornithinemia/citrullinemia (HHH);*

*hypermethioninemia (HMET);*

*hypothyroidism;*

*isobutyryl-CoA dehydrogenase deficiency (IBG or IBCD);*

*isovaleric acidemia (IVA);*

*long-chain 3-hydroxyacyl-CoA dehydrogenase deficiency (LCHADD);*

*malonic aciduria (MAL);*

*medium-chain acyl-CoA dehydrogenase deficiency (MCADD);*

*medium-chain ketoacyl-CoA thiolase deficiency (MCKAT);*

*medium/short-chain hydroxyacyl-CoA dehydrogenase deficiency (M/SCHAD);*

*2-methylbutyryl-CoA dehydrogenase deficiency (2MBG);*

*3-methylcrotonyl-CoA carboxylase deficiency (3-MCC);*

*3-methylglutaconic aciduria (3MGA);*

*2-methyl 3-hydroxy butyryl-CoA dehydrogenase deficiency (2M3HBA);*

*methylmalonic acidemia (Cbl C, D);*

*methylmalonyl-CoA mutase deficiency (MUT);*

*mitochondrial acetoacetyl-CoA thiolase deficiency (BKT);*

*mitochondrial trifunctional protein deficiency (TFP);*

*multiple acyl-CoA dehydrogenase deficiency (MADD, also known as GA-II);*

*multiple carboxylase deficiency (MCD);*

*phenylketonuria (PKU);*

*propionic acidemia (PA);*

*short-chain acyl-CoA dehydrogenase deficiency (SCADD);*

*tyrosinemia (TYR); and*

*very long-chain acyl-CoA dehydrogenase deficiency (VLCADD).*

Section 69-1.3 of Subpart 69-1 is amended as follows:

Section 69-1.3 Responsibilities of the chief executive officer. The chief executive officer shall ensure that a satisfactory specimen is submitted to the testing laboratory for each newborn born in the hospital, or admitted to the hospital within the first twenty-eight (28) days of life [with] from whom no specimen [having] has been previously collected, and that the following procedures are carried out:

(a) The infant's parent is informed of the purpose and need for newborn screening, and given newborn screening educational materials provided by the testing laboratory.

(b) [Biohazardous specimens shall be thoroughly] Thoroughly dried [and then individually sealed in a transparent, plastic bag. The outside of the plastic bag shall be labeled as a biohazardous specimen] specimens shall be submitted in accordance with instructions provided by the testing laboratory.

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

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

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

**Summary of Regulatory Impact Statement**

Statutory Authority:

Public Health Law (PHL) Section 2500-a requires institutions caring for infants 28 days of age or under to cause newborns to be tested for phenylketonuria, branched-chain ketonuria, homocystinuria, galactosemia, homozygous sickle cell disease, hypothyroidism, and other conditions to be designated by the Commissioner of Health. Specifically, PHL Section 2500-a (a) provides statutory authority for the Commissioner of Health to designate in regulation other diseases or conditions for newborn testing in accordance to the Department's mandate to prevent infant and child mortality, morbidity, and diseases and disorders of childhood.

Legislative Objectives:

In enacting PHL Section 2500-a, the Legislature intended to promote public health through mandatory screening of New York State newborns to detect those with serious but treatable neonatal conditions and to ensure their referral for medical intervention. This proposal, which would add 33 conditions – all inherited metabolic disorders – to the list of ten genetic/congenital disorders and one infectious disease currently in regulation, is in keeping with the Legislature's public health aims of early identification and timely medical intervention for all the State's youngest citizens.

Needs and Benefits:

Data compiled from New York State's Newborn Screening Program and other states' programs have shown that timely intervention and treatment for metabolic disorders can drastically improve affected infants'

survival chances and quality of life. Advancing technology, emerging medical treatments and rising public expectations for this critical public health program demand that the panel of screening conditions be expanded at this time through this amendment of Subpart 69-1.2, which would add 33 inherited metabolic disorders to the scope of newborn screening services already provided by the Department. For ease of readability, all conditions — those in the existing screening panel and the proposed 33 additional conditions — have been arranged alphabetically in a column format.

The 33 conditions — all inborn errors of metabolism — can be grouped according to the resulting abnormality: organic acidemias; fatty acid oxidation disorders; urea cycle disorders; and amino acid disorders. Although individually each of the conditions is rare, it is expected that in the aggregate their prevalence will approach that of PKU — approximately 1 in 18,000 births. Infants may die during an early clinical episode, and children who survive severe clinical episodes may experience varying degrees of central nervous system dysfunction, including developmental delay and other abnormalities. However, many inborn errors of metabolism can be effectively treated when detected early, primarily through dietary intervention and avoidance of metabolic stressors such as fasting, especially during childhood illness. Without newborn screening a child may not be recognized with a metabolic disorder until he/she develops cognitive or behavioral symptoms, and/or is admitted to the hospital with seizures, ataxia, movement disorder, stroke, coma or other afflictions. Early diagnosis of the error can make the difference between lifelong impairment and healthy development.

Overall, the potential positive effect on public health of the proposed screening panel is significant. It is best illustrated by considering that many of the conditions in the expanded screening panel proposed by this amendment carry several variants or subtypes, each with a different clinical presentation, which, if viewed as separate disorders, would translate into the Newborn Screening Program's ability to detect more than 71 serious but treatable neonatal conditions.

This amendment would also codify the Program's practice of reporting clinically significant abnormalities of hemoglobin detected concurrently with homozygous sickle cell disease. In addition, this amendment would append an acronym in regulation to each condition for which an acronym is commonly used (e.g., PKU for phenylketonuria). Such linkage will facilitate recognition by primary care physicians and laypersons, most of whom are unfamiliar with the full, complex scientific names of these relatively rare metabolic conditions, and will make the regulation's express terms consistent with acronyms used in the Program's administrative forms and educational materials. This amendment also proposes to modify paragraph (h) of Section 69-1.3 to include in regulation current procedures for use and labeling of mailers for forwarding newborn specimens to the Department, procedures that are consistent with United States Postal Service (USPS) regulations, as amended effective January 1, 2004. The Program's new specimen collection form folds over to cover the dried blood spot specimens with a protective flap preprinted with the universal biohazard symbol. Therefore, the existing requirement in Section 69-1.3(h) for enclosing the specimen in a transparent plastic bag and labeling the package by hand is no longer necessary and must be deleted.

Since the Program introduced the new specimen collection form, which provides packaging at a safety level suitable for biohazardous specimens, the facility's infection control officer is no longer required to consider the possible infectious status of the infant or his/her mother to determine how a specimen should be submitted. Therefore, this amendment would also delete from Section 69-1.1 the definition for biohazardous specimen, and modify Section 69-1.3(h) accordingly as it is no longer necessary to make such a distinction in packaging specimens.

#### Costs:

##### Costs to Private Regulated Parties:

Regulated parties that are birthing facilities will incur no new costs related to collection and submission of blood specimens to the Program, since the dried blood spot specimens now collected and mailed to the program for other currently available testing would also be tested for the additional disorders proposed by this amendment.

The Program estimates that, following implementation of this proposal, 2,700 newborns will screen positive for one or more of the new conditions annually, and will require either repeat screening or referral to facilities and practitioners, depending on whether the value of the initial screening result for the condition's marker is close to the empirically determined cutoff point for positive, or significantly above that point. Cost figures that follow are based on this high-end estimate for presumptive positives and an estimated maximum number of infants needing immediate referral. The

Department has revised its estimate of the number of infants expected to screen positive annually based on the results of a two-pronged approach: the Program's four months' experience with screening approximately 85,000 specimens for the 20-test panel mandated by the emergency rulemaking effective October 28, 2004; and a shorter-term, parallel study on 2,000 residual newborn specimens stripped of all identifiers and analyzed for any one of the 13 conditions added by emergency rulemaking effective April 25, 2005. Both undertakings used preliminary values for the cutoff point (marker level) for considering a specimen positive, values that intentionally maximize the number of presumptive positives. As the Program gains experience testing and verifies clinical outcomes, it is reasonable to expect that cutoff points will be adjusted to reduce the number of false positives to as few as possible, while retaining the capability to capture all true positives and eliminate false negatives.

Approximately 500 of the 2,700 screen-positive infants are expected to show marker levels significantly above the cutoff for positive and will be referred immediately for clinical assessment; repeat specimens will be requested from the remaining 2,200 screen-positive infants. Of the repeat specimens submitted, about 20 percent will be screen-positive on the repeat specimen and require referral for clinical assessment. The Department estimates that, on average, each of the seven metabolic centers would be referred an additional three infants per week for clinical assessment and possible additional testing to confirm or refute screening results.

Birthing facilities would likely incur minimal additional costs related to fulfilling their responsibilities for ensuring collection of a repeat specimen and referral of identified infants. Such costs would be limited to human resources costs of approximately 2.0 person-hours for arranging collection of a second specimen and its forwarding to the Department. On average, each birthing facility can expect to handle 4.5 additional infants in need of referral to a metabolic center per year as a result of screening tests conducted pursuant to this proposal. This increase is expected to have little effect on the facility's workload since currently the number of infants referred to all facilities annually ranges from 350 to 500; therefore, no additional staff would be required at these institutions to comply with this proposal. Any facility can calculate its specific cost impact based on its annual number of births and expenses applying the following factors: an estimated rate of ten screen-positive infants per 1,000 births; and a referral rate of 3.5 infants per 1,000 births.

Facilities and practitioners would incur human resources costs per referral of approximately \$300 for: medical evaluation, including confirmatory testing in some cases; ongoing care; and treatment supplies and dietary supplements. However, given the low specificity of the screening tests, the Department anticipates that as many as 98 percent of referred infants will ultimately be found not to be afflicted with the target condition, based on clinical assessment and laboratory tests.

Regulated parties will incur additional human resources costs of two to five person-hours and an estimated \$450 per affected infant, for providing post-evaluation and ongoing medical management services to the approximately two percent of screen-positive infants whose disorders are confirmed.

Infants who screen positive for one or more of the 33 new metabolic conditions will require laboratory tests and comprehensive-level office visits at a metabolic center to determine final diagnosis. The cost of these services is estimated to range from \$261,000 to \$754,000 annually, applying the prevailing rate of \$300 for a comprehensive-level office visit, and, for the various laboratory tests that may be required, charges ranging from \$150 to \$1,000. The number and kind of laboratory tests, and therefore testing costs, will vary greatly, depending on the type of metabolic disorder, the specific condition under consideration and the availability of definitive laboratory methods, such as mutation analysis by DNA-based genetic tests.

The Department expects that costs of medical services and supplies will be reimbursed by all payor mechanisms now covering the care of children identified with conditions currently in the newborn screening panel. Payors include indemnity health plans, managed care organizations, New York State's medical assistance program (Medicaid), Child Health Plus, and Children with Special Health Care Needs programs.

Many of the costs associated with medical management of a child affected with a metabolic disorder are not attributable solely to the proposed regulation, as most would have been incurred at some point following diagnosis, if targeted testing had been sought at the primary care level for children in whom the disorder was not fatal shortly after birth. Although early diagnosis through the proposed rule may result in increased overall lifetime health care costs for patients who would have died in the absence of screening, e.g., those with propionic acidemia, substantial cost

savings are likely to be accrued from avoided complications. Early diagnosis and treatment may prevent or lessen irreversible organ damage, and thereby reduce costs related to caring for affected individuals incurred by New York's health care and education systems. Furthermore, early detection affords those affected with the opportunity for improved quality of life, a benefit that cannot be quantified.

#### Costs for Implementation and Administration of the Rule:

##### Costs to State Government:

Although funding for the State's Newborn Screening Program requires State expenditures, proactively treating congenital abnormalities may save money by avoiding more financially burdensome medical costs and institutional services.

State-operated facilities providing birthing services, infant follow-up and medical care would incur costs and savings as described for regulated parties. The Medicaid Program would also experience costs equal to the 25-percent State share for treatment and medical care of affected Medicaid-eligible children. However, Medicaid would also benefit from cost savings, since early diagnosis avoids medical complications, thereby reducing the average length of hospital stays and need for expensive high-technology health care services.

##### Costs to the Department:

Costs incurred by the Department's Wadsworth Center for performing newborn screening tests, providing short- and long-term follow-up, and supporting continuing research in neonatal and genetic diseases are covered by State budget appropriations recently augmented by dedicated line-item funding for program expansion.

A system for follow-up and assurance of access to necessary treatment for identified infants is fully established. In order to accommodate testing panel expansions effective October 28, 2004, the Department bolstered staffing in the Program's follow-up unit to handle the increased number of screen-positive results and interface with medical practitioners and facilities, by redeploying staff and filling three positions with an annual value of \$138,381. The Department has requested permission to fill one clerical and eight scientific/clinical positions with a total annual value of \$565,365. The requested positions would allow the Department to meet public demands for a reduction in both the time required to generate screening test results and the number of infants with false positive screen test results, by conducting testing and data entry during weekday evening hours and on weekends and by assisting in development of molecular tests to better differentiate infants in need of immediate referral from infants whose marker levels may have been temporarily elevated or otherwise falsely positive. The Department also expects that staffing costs attributable to hiring a physician, which are included in the cost figures identified above, would translate to long-term cost savings across all affected parties. The physician would provide review of screen test results, thereby potentially reducing both the number of infants requiring testing of a second specimen and the number of infants requiring referral to metabolic centers for medical evaluation and testing.

##### Costs to Local Government:

Local government-operated facilities providing birthing services, infant follow-up and medical care would incur the costs and savings described for private regulated parties. County governments would also incur costs equal to the 25-percent county share for treatment and medical care of affected Medicaid-eligible children, and realize cost savings as described above for State-operated facilities.

##### Local Government Mandates:

The proposed regulations impose no new mandates on any county, city, town or village government; or school, fire or other special district, unless a county, city, town or village government; or school, fire or other special district operates a facility, such as a hospital, caring for infants 28 days of age or under and, therefore, is subject to these regulations to the same extent as a private regulated party.

##### Paperwork:

No increase in paperwork would be attributable to activities related to specimen collection, and reporting and filing of test results, as the number and type of forms now used for these purposes will not change. Facilities that submit newborn specimens will sustain minimal to no increases in paperwork, specifically, only that necessary to conduct and document follow-up and/or referral.

##### Duplication:

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

##### Alternative Approaches:

Potential delays in detection of serious but treatable neonatal conditions until onset of clinical symptoms would result in increased infant morbidity and mortality, as well as higher health care costs, and are

therefore unacceptable. Given the decided public health benefits of preventing adverse clinical outcomes in affected infants, the Department has determined that there are no alternatives to requiring newborn screening for these conditions.

##### Federal Standards:

There are no existing federal standards for medical screening of newborns.

##### Compliance Schedule:

The director of the Newborn Screening Program has participated in discussions with representatives of the Governor's Office, the Health Commissioner's Office and the Department's Public Affairs Group to optimize coordinated notification and implementation of this proposed newborn test panel expansion. Educational materials for parents and health care professionals have been updated with information on the expanded screening panel.

The Department is continuing to work with the Newborn Screening Task Force, comprised of directors of specialty care centers, payors, national experts in newborn screening quality assurance, and health care professionals, for ongoing assessment of the scope of needed follow-up services, and their availability at specialized care centers and other health care settings. The Program is collaborating with various Department offices, including the Office of Medicaid Management and the Office of Managed Care, to ensure adequate reimbursement and coverage inclusiveness for required follow-up services, and confirmatory, diagnostic and monitoring testing.

The Commissioner of Health is expected to notify all New York State-licensed physicians by letter informing them of this newborn screening panel expansion. The letter will also be distributed to hospital CEOs and their designees responsible for newborn screening, as well as other affected parties.

There appears to be no potential for organized opposition. Consequently, regulated parties should be able to comply with these regulations as of their effective date.

#### **Regulatory Flexibility Analysis**

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

This proposed amendment to add 33 conditions – all inherited metabolic disorders – to the list of ten genetic/congenital disorders and one infectious disease for which every newborn in New York State must be tested will affect hospitals; alternative birthing centers; and physician and midwifery practices operating as small businesses or operated by local government, provided such facilities care for infants 28 days of age or under, or are required to register the birth of a child. The Department estimates that ten hospitals and one birthing center in the State meet the definition of a small business. Local government, including the New York City Health and Hospitals Corporation, operates 21 hospitals. No metabolic center is operated by a local government or as a small business. New York State licenses 67,790 physicians and certifies 350 licensed midwives, some of whom, specifically those in private practice, operate as small businesses. It is not possible, however, to estimate the number of these medical professionals operating an affected small business, primarily because the number of physicians directly involved in delivering infants cannot be ascertained.

##### Compliance Requirements:

The Department expects that affected facilities, and medical practices operated as small businesses or by local governments, will experience minimal additional regulatory burdens in complying with the amendment's requirements, as functions related to mandatory newborn screening are already embedded in established policies and practices of affected institutions and individuals. Activities related to collection and submission of blood specimens to the State's Newborn Screening Program will not change, since newborn dried blood spot specimens now collected and mailed to the Program for other currently performed testing would also be used for the additional tests proposed by this amendment. However, birthing facilities and at-home birth attendants (*i.e.*, licensed midwives) would be required to follow up infants screening positive for any one or more of the conditions proposed for addition to the State's panel, and assume responsibility for referral for medical evaluation and additional testing as appropriate for each infant's medical status. The anticipated increased burden is expected to have minimal effect on the ability of small businesses or local government-operated facilities to comply, as no such facility would experience an increase of more than two per week in the number of infants requiring referral. Therefore, the Department expects that regulated parties will be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

##### Professional Services:

No need for additional professional services is anticipated. Although increased numbers of repeat specimens and referrals are foreseen, affected facilities' existing professional staff should be able to assume the minimal increase in workload. Infants with positive screening tests for one or more of the disorders included in this amendment would be referred to the facility physician already designated to receive positive screening results for MCADD and PKU.

#### Compliance Costs:

Birthing facilities operated as small businesses and by local governments, and practitioners who are small business owners (*i.e.*, private practicing licensed midwives who assist with at-home births) will incur no new costs related to collection and submission of blood specimens to the State Newborn Screening Program, since the dried blood spot specimens now collected and mailed to the Program for other currently available testing would also be used for the additional tests proposed by this amendment. However, such facilities, and, to a lesser extent, at-home birth attendants, would likely incur minimal costs related to following up infants screening positive for one or more of the 33 disorders proposed for addition to the newborn screening panel, primarily because testing proposed under this regulation is expected to result in, on average, fewer than one screen-positive infant per week at each of the 11 birthing facilities that are small businesses. Communicating the need and/or arranging referral for medical evaluation of one additional identified infant would take 1.0 person-hour, and is expected to be able to be accomplished with existing staff.

Providers, such as clinical specialists (*i.e.*, medical geneticists), and primary and ancillary care providers (*i.e.*, pediatricians, nutritionists and physical therapists), some of whom operate small businesses, would incur costs for first response and ongoing care of affected infants, as well as treatment supplies and dietary supplements. Specifically, such providers would incur human resources costs of approximately \$300 for an initial comprehensive medical evaluation of one infant with an abnormal screening test result. However, given the low specificity of screening tests to ensure no false-negative test results, the Department anticipates that as many as 98 percent of infants will be found to not have the target condition, based on clinical assessment and relatively simple confirmatory tests.

Hospitals and independent providers will incur additional costs for providing post-evaluation and ongoing medical management services to the approximately two percent of screen-positive infants whose disorders are confirmed. Human resources costs for post-confirmation services of two to five person-hours, involving medical geneticists, genetic counselors and nutritionists, have been estimated at \$450 per affected infant, including \$300 for a comprehensive-level visit and \$150 for a genetic or nutritional counseling session.

The Department expects that costs of medical services and supplies will be reimbursed by all payor mechanisms now covering the care of children identified with conditions in the present newborn screening panel, as well as the care of children diagnosed with a metabolic disorder by targeted testing at the primary care level. Payors include indemnity health plans, managed care organizations, and New York State's medical assistance program (Medicaid Program), Child Health Plus and Children with Special Health Care Needs programs. The Department also expects that medical care providers will claim reimbursement from one or more of these payors at a rate equal to the usual and customary charge, thereby recouping costs.

Overall health care costs for definitive diagnosis and comprehensive medical management of affected individuals will vary significantly, primarily depending on the condition and the services and supplies required for sustaining some level of continued health. Many of the costs associated with medical management of a child affected with a metabolic disorder are not attributable solely to the proposed regulation, as most such expenses would have been incurred at some point following diagnosis, by targeted testing at the primary care level. Although the proposed rules' speeding early diagnosis may result in increased overall lifetime care and treatment costs for patients who would have died in the absence of screening, *e.g.*, those with propionic acidemia, substantial cost savings are likely to be accrued from prevented medical complications to set off against treatment costs. Early diagnosis and treatment may prevent or lessen irreversible organ damage, and thereby reduce costs related to caring for affected individuals incurred by New York's health care and education system infrastructure. Furthermore, early detection affords affected individuals the opportunity for improved quality of life, a benefit that cannot be quantified.

#### Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to any small businesses and local governments affected by this amendment.

#### Minimizing Adverse Impact:

The Department did not consider alternate, less stringent compliance requirements, or regulatory exceptions for facilities operated as small businesses or by local government, because of the importance of the proposed testing to statewide public health and welfare. These amendments will not have an adverse impact on the ability of small businesses or local governments to comply with Department requirements for mandatory newborn screening, as full compliance would require minimal enhancements to present collection, reporting, follow-up and recordkeeping practices.

#### Small Business and Local Government Participation

The requirements proposed by this amendment are in effect as an emergency rule. Notification of the amendment already occurred prior to and concurrent with statewide implementation of the expanded newborn screening panel.

#### Rural Area Flexibility Analysis

##### Types of Estimated Numbers of Rural Areas:

Rural areas are defined as counties with a population under 200,000; and, for counties with a population larger than 200,000, rural areas are defined as towns with population densities of 150 or fewer persons per square mile. Forty-four counties in New York State with a population under 200,000 are classified as rural, and nine other counties include certain townships with population densities characteristic of rural areas.

This proposed amendment to add 33 conditions — all inherited metabolic disorders — to the list of ten genetic/congenital disorders and one infectious disease for which every newborn in the State must be tested will affect hospitals, alternative birthing centers, and physician and midwifery practices located in rural areas, provided such facilities care for infants 28 days of age or under, or are required to register the birth of a child. The Department estimates that 54 hospitals and birthing centers operate in rural areas, and another 30 birthing facilities are located in counties with low-population density townships. Although they are well distributed throughout the State, no specialized care center operates in a rural area. New York State licenses 67,790 physicians and certifies 350 licensed midwives, some of whom are engaged in private practice in areas designated as rural; however, the number of professionals practicing in rural areas cannot be estimated because licensing agencies do not maintain records of licensees' employment addresses.

##### Reporting, Recordkeeping and other Compliance Requirements:

The Department expects that facilities and medical practices affected by this amendment and operating in rural areas will experience minimal additional regulatory burdens in complying with the amendment's requirements, as activities related to mandatory newborn screening are already part of established policies and practices of affected institutions and individuals. Collection and submission of blood specimens to the State's Newborn Screening Program will not be altered by this amendment, since the dried blood spot specimens now collected and mailed to the program for other currently available newborn testing would also be used for the additional tests proposed by this amendment. However, birthing facilities and at-home birth attendants (*i.e.*, licensed midwives) would be required to follow up infants screening positive for one of the 33 disorders proposed for addition to the panel, and assume responsibility for referral for medical evaluation and additional testing as appropriate for each infant's medical status. This requirement is expected to affect minimally the ability of rural facilities to comply, as no such facility would experience an increase of more than two per week in infants requiring referral. Therefore, the Department anticipates that regulated parties in rural areas will be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

##### Professional Services:

No need for additional professional services is anticipated. Although small increases in the number of repeat specimens and referrals are foreseen, affected facilities' existing professional staff are expected to be able to assume the resulting minimal increase in workload. Infants with a positive screening test for one or more of the disorders included in this amendment will be referred to the facility physician already designated to receive positive screening results for MCADD and PKU.

##### Compliance Costs:

Birthing facilities operating in rural areas and practitioners in private practice in rural areas (*i.e.*, licensed midwives who assist with at-home births) will incur no new costs related to collection and submission of blood specimens to the State's Newborn Screening Program, since the

dried blood spot specimens now collected and mailed to the program for other currently available testing would also be used for the additional tests proposed by this amendment. However, such facilities and, to a lesser extent, at-home birth attendants would likely incur minimal costs related to follow-up of infants screening positive for one of the metabolic disorders, since the proposed added testing is expected to result in no more than one more referral per week. Communicating the need and/or arranging referral for medical evaluation of one additional identified infant would take 1.0 person-hour, and is expected to be able to be accomplished with existing staff.

Rural providers, including clinical specialists (*i.e.*, medical geneticists) and primary and ancillary care providers (*i.e.*, pediatricians, nutritionists and physical therapists), would incur costs for first response and ongoing care of identified infants, as well as treatment supplies and dietary supplements. Specifically, such medical professionals would incur human resources costs of approximately \$300 for an initial comprehensive medical evaluation of each infant with an abnormal screening result. However, given the low specificity of screening tests to ensure no false negative results, the Department anticipates that as many as 98 percent of infants will be ultimately found to not be afflicted with the target condition, based on clinical assessment practices and relatively simple confirmatory tests.

To the extent specialized services are delivered in a rural area, hospitals and independent providers in rural areas will incur additional costs for post-evaluation and ongoing medical management services to the approximately two percent of screen-positive infants whose disorders are confirmed. Human resources costs of two to five person-hours for post-confirmation services, involving medical geneticists, genetic counselors and nutritionists, have been estimated at \$450 per affected infant, including \$300 for a comprehensive-level office visit, and \$150 for a genetic or nutritional counseling session.

The Department expects that costs of medical services and supplies will be reimbursed by all payor mechanisms now covering the care of children identified with conditions already in the newborn screening panel, as well as children diagnosed with one of the metabolic disorders proposed for addition to the State panel by means of targeted testing at the primary care level. Payors include indemnity health plans, managed care organizations, and New York State's medical assistance program (Medicaid), Child Health Plus and Children with Special Health Care Needs programs. The Department also expects that medical care providers will claim reimbursement from one or more of these payors at a rate equal to the usual and customary charge, thereby recouping costs.

Overall health care costs for definitive diagnosis and comprehensive medical management of affected individuals will vary significantly, primarily by the condition, and the services and supplies required for sustaining some level of continued health. Many of the costs associated with medical management of a child affected with a metabolic disorder are not attributable solely to the proposed regulation, as most would have been incurred at some point following diagnosis by targeted testing at the primary care level. Although early diagnosis provided through the proposed rule may result in increased overall lifetime costs for patients who would have died in the absence of screening, *e.g.*, those with propionic acidemia, substantial cost savings are likely to be accrued from prevented complications to offset treatment costs. Early diagnosis and treatment may prevent or lessen irreversible organ damage, and thereby reduce costs related to caring for affected individuals incurred by New York's health care and education system infrastructure. Moreover, early detection affords affected individuals with the opportunity for improved quality of life, a benefit that cannot be quantified.

#### Minimizing Adverse Impact:

The Department did not consider less stringent compliance requirements or regulatory exceptions for facilities located in rural areas because of the importance of expanded infant testing to statewide public health and welfare. These amendments will not have an adverse impact on the ability of regulated parties in rural areas to comply with Department requirements for mandatory newborn screening, as full compliance would entail minimal changes to present collection, reporting, follow-up and recordkeeping practices.

#### Rural Area Participation:

The requirements proposed by this amendment are in effect as an emergency rule. Notification of the amendment already occurred prior to and concurrent with statewide implementation of the expanded newborn screening panel.

#### Job Impact Statement

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial

adverse impact on jobs and employment opportunities. The amendment proposes the addition of 33 conditions – all inherited metabolic disorders – to the scope of newborn screening services already provided by the Department. It is expected that, of the small number of regulated parties that will experience moderate rather than minimal impact on their workload, few, if any, will need to hire new personnel. Therefore, this proposed amendment carries no adverse implications for job opportunities.

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## Office of Mental Health

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### NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

#### Personalized Recovery-Oriented Services

I.D. No. OMH-09-05-00003-C

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

**The notice of proposed rule making**, I.D. No. OMH-09-05-00003-P was published in the *State Register* on March 2, 2005.

**Subject:** Personalized recovery-oriented services.

**Purpose:** To establish standards for personalized recovery-oriented services.

**Substance of rule:** This rule will establish a new licensed program category for Personalized Recovery-Oriented Services (PROS) programs. The purpose of PROS programs is to assist individuals to recover from the disabling effects of mental illness through the coordinated delivery of a customized array of rehabilitation, treatment and support services. Such services are available both in traditional program settings and in off-site locations where such individuals live, learn, work or socialize. Providers are expected to create a therapeutic environment which fosters awareness, hopefulness and motivation for recovery, and which supports a harm reduction philosophy.

Depending upon program configuration and licensure category, PROS programs will be required to include the following four components:

- 1) Community Rehabilitation and Support (CRS): designed to engage and assist individuals in managing their illness and in restoring those skills and supports necessary to live in the community.
- 2) Intensive Rehabilitation (IR): designed to intensively assist individuals in attaining specific life roles such as those related to competitive employment, independent housing and school. The IR component may also be used to provide targeted interventions to reduce the risk of hospitalization or relapse, loss of housing or involvement with the criminal justice system, and to help individuals manage their symptoms.
- 3) Ongoing Rehabilitation and Support (ORS): designed to assist individuals in managing symptoms and overcoming functional impairments as they integrate into a competitive workplace. ORS interventions focus on supporting individuals in maintaining competitive integrated employment. Such services are provided off-site.
- 4) Clinical Treatment: designed to help stabilize, ameliorate and control an individual's symptoms of mental illness. Clinical Treatment interventions are expected to be highly integrated into the support and rehabilitation focus of the PROS program. The frequency and intensity of Clinical Treatment services must be commensurate with the needs of the target population.

There are 3 license categories for PROS programs: Comprehensive PROS with clinical treatment (provides all 4 components), Comprehensive PROS without clinical treatment (provides CRS, IR and ORS components), and limited license PROS (provides IR and ORS components only).

All PROS providers will be required to offer individualized recovery planning services and pre-admission screening services. Any additional services may be offered if they are clinically appropriate and approved by OMH. Persons eligible for admission to a PROS program must: be 18 years of age or older; have a designated mental illness diagnosis; have a functional disability due to the severity and duration of mental illness; and have been recommended for admission by a licensed practitioner of the healing arts. Such recommendation may be made by a member of the PROS staff, or through a referral from another provider.

A PROS provider will be required to continuously employ an adequate number and appropriate mix of clinical staff consistent with the objectives of the program and the number of individuals served. Providers must maintain an adequate and appropriate number of professional staff relative to the size of the clinical staff. At least one of the members of the provider's professional staff must be a licensed practitioner of the healing arts, and must be employed on a full-time basis. IR services must be provided by, or under the direct supervision of, professional staff. The regulation provides that if a PROS provider has recipient employees, such employees must adhere to the same requirements as other PROS staff, and must receive training regarding confidentiality requirements.

An Individualized Recovery Planning (IRP) process must be carried out by, or under the direct supervision of, a member of the professional staff, and must be in collaboration with the individual and any persons the individual has identified for participation. The regulation sets out the contents and the time frames for development of the IRP.

The regulation provides standards and requirements that must be met in order for providers to receive medicaid reimbursement. The reimbursement will be based on a case payment basis in accordance with the total number of hours of service provided to PROS participants and collaterals in specific components. The rate of payment will be a monthly fee determined by the Commissioner and approved by the Division of the Budget. Fee schedules, based on defined Upstate and Downstate geographic area, are included in the regulation.

The regulation also addresses requirements relating to the content of the case record, co-enrollment in PROS and other mental health programs, quality improvement, organization and administration, governing body, recipient rights, and physical space and premises.

**Changes to rule:** No substantive changes.

**Expiration date:** March 2, 2006.

**Text of proposed rule and changes, if any, may be obtained from:** Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

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

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## Public Service Commission

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### NOTICE OF ADOPTION

#### Deferred Accounting by Aquarion Water Company of New York

**I.D. No.** PSC-32-04-00017-A

**Filing date:** Aug. 8, 2005

**Effective date:** Aug. 8, 2005

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

**Action taken:** The commission, on June 15, 2005, adopted an order in Case 04-W-0878 approving a petition by Aquarion Water Company of New York (Aquarion Water) to defer, with interest, an increase in the cost of purchased water from Westchester Joint Water Works Company (WJWW) resulting from an increase in the rates charged for water it purchases from the New York City Water Board (NYCWGB).

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

**Subject:** Deferred accounting.

**Purpose:** To approve Aquarions Water's request to defer an increase in the cost of purchased water from WJWW.

**Substance of final rule:** The Commission approved a petition by Aquarion Water Company of New York to defer, with interest, an increase in the cost of purchased water from Westchester Joint Water Works Company resulting from an increase in the rates charged for water it purchases from the New York City Water Board, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-

1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(04-W-0878SA1)

### NOTICE OF ADOPTION

#### Calculation of Franchise Fees by Cablevision of Wappingers Fall, Inc. and the Town of Plattekill

**I.D. No.** PSC-06-05-00016-A

**Filing date:** Aug. 3, 2005

**Effective date:** Aug. 3, 2005

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

**Action taken:** The commission, on July 20, 2005, adopted an order in Case 04-V-0923 granting Cablevision of Wappingers Falls, Inc. d/b/a Cablevision a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Town of Plattekill.

**Statutory authority:** Public Service Law, section 216(1)

**Subject:** Calculation of franchise fees.

**Purpose:** To allow exclusion of franchise fee collections from calculation of gross revenues.

**Substance of final rule:** The Commission approved Cablevision of Wappingers Falls, Inc. d/b/a Cablevision's request for a waiver of Section 595.1(o)(2) to permit exclusion of franchise fee collections from calculation of gross receipts to determine the franchise fee for the Town of Plattekill, Ulster County.

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

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

**Assessment of Public Comment**

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

(04-V-0923SA2)

### NOTICE OF ADOPTION

#### Safe Transportation and Distribution of Gas

**I.D. No.** PSC-10-05-00012-A

**Filing No.** 859

**Filing date:** Aug. 8, 2005

**Effective date:** Aug. 8, 2005

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

**Action taken:** Amendment of Parts 10 and 255 of Title 16 NYCRR.

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

**Subject:** Safe transportation and distribution of gas.

**Purpose:** To bring the commission's rules into conformation with Federal regulations contained in 49 CFR Part 192, Transportation of Natural Gas and Other Gas by Pipeline: Minimum Safety Standards.

**Text or summary was published** in the notice of proposed rule making, I.D. No. PSC-10-05-00012-P, Issue of March 9, 2005.

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

**Text of rule may be obtained from:** Elaine Lynch, Three Empire State Plaza, Albany, NY 12223, (518) 486-2660.

**Assessment of Public Comment**

The agency received no public comment.

(04-G-1201SA1)

## NOTICE OF ADOPTION

**Transfer of Real Property by Consolidated Edison Company of New York, Inc. and 735 Avenue of the Americas LLC****I.D. No.** PSC-12-05-00011-A**Filing date:** Aug. 5, 2005**Effective date:** Aug. 5, 2005

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

**Action taken:** The commission, on July 20, 2005, adopted an order in Case 05-M-0181 approving a joint petition by Consolidated Edison Company of New York, Inc. and 734 Avenue of the Americas LLC to transfer certain real property located at 735-51 6th Avenue, Manhattan.

**Statutory authority:** Public Service Law, sections 5(b), (c), 65(1), (2), (5), (8), (9), (10), (11), (12) and 70

**Subject:** Transfer of a parcel of property located at Sixth Avenue in Manhattan, and the accounting and rate treatment of the transaction.

**Purpose:** To allow the transfer of a parcel of property and determine the accounting and rate treatment of the transaction.

**Substance of final rule:** The Commission approved the joint petition of Consolidated Edison Company of New York, Inc. (Con Edison) and 735 Avenue of the Americas LLC (735 LLC) to transfer real property located 735-51 6th Avenue, Manhattan, a.k.a. 101-7 West 24th Street, from Con Edison to 735 LLC, and directed Con Edison to defer the net after-tax gain resulting from the sale in accordance with the requirements of its Electric Rate Plan and to provide a detailed accounting of all actual proceeds, costs and expenses associated with the transaction, revised journal entries, and an updated calculation of the net after-tax gain resulting from the sale, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-M-0181SA1)

## NOTICE OF ADOPTION

**Calculation of Franchise Fees between Cablevision Systems Long Island Corporation and the Village of Bellerose****I.D. No.** PSC-13-05-00016-A**Filing date:** Aug. 3, 2005**Effective date:** Aug. 3, 2005

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

**Action taken:** The commission, on July 20, 2005, adopted an order in Case 05-V-0191 granting Cablevision Systems Long Island Corp. d/b/a Cablevision a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Village of Bellerose.

**Statutory authority:** Public Service Law, section 216(1)

**Subject:** Calculation of franchise fees between Cablevision Systems Long Island Corporation and the Village of Bellerose.

**Purpose:** To allow exclusion of franchise fee collections from calculation of gross revenues.

**Substance of final rule:** The Commission approved Cablevision Systems Long Island Corp. d/b/a Cablevision's request for a waiver of Section 595.1(o)(2) to permit exclusion of franchise fee collections from calculation of gross receipts to determine the franchise fee for the Village of Bellerose, Nassau County.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-V-0191SA1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Submetering of Electricity by the Hudson Waterfront Company A, LLC****I.D. No.** PSC-34-05-00003-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 grant, deny or modify, in whole or in part, the petition filed by the Hudson Waterfront Company A, LLC, to submeter electricity at 120 Riverside Blvd. at Trump Place, New York, NY.

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

**Subject:** Petition for the submetering of electricity.

**Purpose:** To submeter electricity at 120 Riverside Blvd. at Trump Place, New York, NY.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by the Hudson Waterfront Company A, LLC, to submeter electricity at 120 Riverside Boulevard at Trump Place, New York, New York.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-E-0932SA1)

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**State University of New York**

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**EMERGENCY  
RULE MAKING****State Basic Financial Assistance for Operating Expenses of Community Colleges****I.D. No.** SUN-34-05-00004-E**Filing No.** 861**Filing date:** Aug. 9, 2005**Effective date:** Aug. 9, 2005

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

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

**Statutory authority:** Education Law, sections 355(1)(c) and 6304(1)(b); and L. 2005, ch. 53

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

**Specific reasons underlying the finding of necessity:** The State University of New York finds that immediate adoption of amendments to the Code of Standards and Procedures for the Administration and Operation of Community Colleges (the Code) is necessary for the preservation of the

general welfare and that compliance with the requirements of subdivision 1 Section 202 of the State Administrative Procedures Act would be contrary to the public interest. The 2005-2006 Education, Labor and Social Services Budget Bill (the Budget) requires amendments to the existing funding formula for State financial assistance for operating expenses of community college of the State and City Universities of New York. The funding formula is to be developed jointly with City University of New York, subject to the approval of the Director of the Budget. Although negotiations between the State University, City University and the Division of the Budget were concluded in April 2005, the State University Trustees were unable to take the necessary action to invoke the rule making process until July 15, 2005. Amendments to the Code on an emergency basis for the 2005-2006 college fiscal year are necessary in order to:

1. provide timely State operating assistance to public community colleges of the State and the City Universities of New York;
2. obtain the necessary revenue to maintain essential staffing levels, program quality, and accessibility.

Compliance with the provision of subdivision (1) of Section 202(6) of the State Administrative Procedures Act would be contrary to the public interest. The requirements of subdivision (1) of Section 202(6) of SAPA would not allow implementation of the State financial assistance provided in the Budget Bill in time for the 2005-2006 college fiscal year.

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

**Purpose:** To modify the existing limitations formula for basic financial assistance in order to conform with the provisions of the Education Law and the 2005-2006 Budget Bill.

**Text of emergency rule:** 602.8(c) Basic State financial assistance.

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

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

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

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

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2235] \$2350; and

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

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

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

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

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

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$1863] \$1,959; and

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

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

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt 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 November 6, 2005.

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

**Regulatory Impact Statement**

This is a technical amendment to implement the provisions of the 2005-2006 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York.

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

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

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

**State Basic Financial Assistance for Operating Expenses of Community Colleges**

**I.D. No.** SUN-34-05-00004-P

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

**Proposed action:** This is a consensus rule making to amend section 602.8(c) of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 355(1)(c) and 6304(1)(b); and L. 2005, ch. 53

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

**Purpose:** To modify existing limitations formula for basic State Financial assistance for operating expenses of community colleges of the State University and City University of New York.

**Text of proposed rule:** 602.8(c) Basic State financial assistance.

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

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

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

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

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2235] \$2350; and

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

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

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

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

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

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$1863] \$1,959; and

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

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

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

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

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

**Consensus Rule Making Determination**

The State University of New York has determined that no person is likely to object to this rule as written because it provides timely State operating assistance to public community colleges of the State and City Universities of New York and adopts amendments to the tuition regulations for community colleges under the program of the State University of New York for the 2005-2006 fiscal year.

**Job Impact Statement**

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