

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Captive Cervids

I.D. No. AAM-41-06-00025-E
Filing No. 1408
Filing date: Nov. 27, 2006
Effective date: Nov. 27, 2006

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

Action taken: Repeal of section 62.8 and addition of Part 68 to Title 1 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed repeal of section 62.8 of 1 NYCRR and the adoption of 1 NYCRR Part 68 will help to prevent further introduction of chronic wasting disease (CWD) into New York State and permit it to be detected and controlled if it were to arise within the captive cervid population of the State. CWD is an infectious and communicable disease of deer belonging to the Genus *Cervus* (including elk, red deer and sika deer) and the Genus *Odocoileus* (including white tailed deer and mule deer).

CWD has been detected in free-ranging deer and elk in Colorado, Wyoming, Nebraska, Wisconsin, South Dakota, New Mexico, Illinois and Utah. It has been diagnosed in captive deer and elk herds in South Dakota, Nebraska, Colorado, Oklahoma, Kansas, Minnesota, Montana, Wisconsin and New York and the Canadian provinces of Saskatchewan and Alberta.

The origin of CWD is unknown. The mode of transmission is suspected to be from animal to animal. The disease is progressive and always fatal. There is no live animal test for CWD, so it is impossible to determine whether a live animal is positive, nor is there a vaccine to prevent the disease. The incubation period is lengthy and 3 to 5 years of continued surveillance is needed with no new infection found before a herd can be declared free of CWD through quarantine. The United States Secretary of Agriculture has declared CWD to be an emergency that threatens the livestock industry of the United States and authorized the United States Department of Agriculture to establish a CWD eradication program. On December 24, 2003, the USDA proposed CWD regulations establishing a Federal CWD Herd Certification Program and governing the interstate movement of captive deer and elk. The proposed Federal regulations permit herd owners to enroll in State programs that it determines are equivalent to the proposed Federal program. The Department believes that the State CWD herd certification program established by this rule is equivalent to the proposed Federal program.

New York State has 433 entities engaged in raising approximately 9,600 deer and elk in captivity with a value of several million dollars, and many of these entities have imported captive bred deer and elk from other states, including Wisconsin, a state with confirmed CWD. The rule repeals a prohibition on the importation of captive cervids susceptible to CWD and adopts a prohibition on the importation or movement of captive cervids into or within the State unless a permit authorizing such movement has been obtained from the Department prior to such importation or movement. Except for cervids moving directly to slaughter, permits shall be issued only for captive cervids that meet the health requirements established by the rule.

The rule establishes general health requirements for captive cervids, special provisions for captive cervids susceptible to CWD, requirements for CWD Certified Herd Program, requirements for a CWD Monitored Herd Program, requirements for approved susceptible cervid slaughter facilities, requirements for the importation of captive susceptible cervids for immediate slaughter and requirements for the management of CWD positive, exposed or suspect herds of captive cervids. This is an essential disease control measure that will help to prevent the introduction of CWD into New York State and permit it to be detected and controlled within the captive cervid population of the State.

The promulgation of this regulation on an emergency basis is necessary because further introduction and spread of CWD into and within New York State would be devastating from both an animal health and economic standpoint given the threat the disease poses to the approximately 9,600 captive deer in the State and the 433 entities which raise them.

Subject: Captive cervids.

Purpose: To prevent the introduction and spread of chronic wasting disease into and within the State.

Substance of emergency rule: Section 62.8 of 1 NYCRR is repealed.

Section 68.1 of 1 NYCRR sets forth definitions for "CWD susceptible cervid," "CWD exposed cervid," "CWD positive cervid," "CWD negative cervid," "CWD suspect cervid," "CWD infected zone," "captive," "CWD Certified Herd Program," "Cervid," "Chronic Wasting Disease," "Commingleing," "Department," "Enrollment Date," "Herd," "Herd Inventory,"

“CWD Herd Plan,” “CWD Herd Status,” “CWD positive herd,” “CWD Suspect herd,” “Special purpose herd,” “CWD Exposed herd,” “CWD certified herd,” “Official identification,” “CWD Monitored herd,” “Owner,” “Premises,” “CWD Premises plan,” “Quarantine,” “State animal health official,” “Status date,” “Official test,” “USDA/APHIS,” and “Certificate of Veterinary Inspection (CVI)”.

Section 68.2 of 1 NYCRR establishes general health requirements for captive cervids including requirements relating to mandatory reporting, the movement of captive cervids, enforcement, facilities, fencing, herd integrity, sample collection and premises location.

Section 68.3 of 1 NYCRR establishes special provisions for captive cervids susceptible to chronic wasting disease including requirements relating to importation, enrollment in the CWD Herd Certification program, Monitored herd program, licenses and permits issued by the Department of Environmental Conservation, fencing, premises inspection and record-keeping.

Section 68.4 of 1 NYCRR establishes requirements for the CWD Certified Herd program including requirements for captive susceptible cervid operations engaged in breeding and/or the sale or removal of live cervids from the premises for any purposes, the establishment of a CWD herd status, sampling and testing, animal identification, annual physical herd inventory and additions to CWD Certified Herd program herds.

Section 68.5 of 1 NYCRR establishes requirements for CWD Monitored Herds including requirements for special purpose herds consisting of one or more susceptible cervids, sampling and testing, additions to CWD monitored herds, animal identification and permitted movement to an approved CWD slaughter facility.

Section 68.6 of 1 NYCRR establishes requirements for approved susceptible cervid slaughter facilities, including requirements for holding pens, sample retention and holding facilities, susceptible cervid offal disposal plans and inspection.

Section 68.7 of 1 NYCRR establishes requirements for the importation of captive susceptible cervids for immediate slaughter including requirements for source herds, permits, direct movement, samples, waste and slaughter.

Section 68.8 of 1 NYCRR establishes requirements for the management of CWD positive, exposed or suspect herds including premises quarantine, establishment of a herd plan, depopulation, cleaning and disinfection, future land use restrictions, restocking constraints and timeframes, fencing requirements, risk analysis, official herd quarantines, elimination of high-risk cervids within the herd, special fencing requirements and the disposal of carcasses.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. AAM-41-06-00025-EP, Issue of October 11, 2006. The emergency rule will expire January 25, 2007.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

2. Legislative Objectives:

The statutory provisions pursuant to which these regulations are proposed are aimed at preventing infectious or communicable diseases affecting domestic animals from being brought into the State to control, suppress and eradicate such diseases and prevent the spread of infection and contagion. The Department’s proposed repeal of 1 NYCRR section 62.8 and

adoption of 1 NYCRR Part 68 will further this goal by preventing the importation of deer which may be infected with chronic wasting disease (CWD), and permitting CWD to be detected and controlled within the captive cervid population of the State.

3. Needs and Benefits:

CWD is an infectious and communicable disease of deer belonging to the Genus *Cervus* (including elk, red deer and sika deer) and the Genus *Odocoileus* (including white tailed deer and mule deer). CWD has been detected in free-ranging deer and elk in Colorado, Wyoming, Nebraska, Wisconsin, South Dakota, New Mexico, Illinois and Utah. It has been diagnosed in captive deer and elk herds in South Dakota, Nebraska, Colorado, Oklahoma, Kansas, Minnesota, Montana, Wisconsin and New York and the Canadian provinces of Saskatchewan and Alberta.

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

New York State has 433 entities engaged in raising approximately 9,600 deer and elk in captivity with a value of several million dollars, and many of these entities import captive bred deer and elk from other states, including Wisconsin, a state with confirmed CWD. This rule repeals a rule that had prohibited, with certain exceptions, the importation of captive cervids susceptible to CWD and adopts a prohibition on the importation or movement of captive cervids into or within the State unless they are accompanied by a valid certificate of veterinary inspection and a permit authorizing such importation or movement has been obtained from the Department, in consultation with the New York State Department of Environmental Conservation. The rule establishes general health requirements for captive cervids, special requirements for captive cervids susceptible to CWD, requirements for a CWD Certified Herd Program, requirements for a CWD Monitored Herd Program, requirements for approved susceptible cervid slaughter facilities, requirements for the importation of captive susceptible cervids for immediate slaughter and requirements for the management of CWD positive, exposed or suspect herds of captive cervids. This is an essential disease control measure that will help to prevent the introduction of CWD into New York State, and permit it to be detected and controlled if it were to arise within the captive cervid population of the State.

4. Costs:

(a) Costs to regulated parties:

There are approximately 433 entities raising a total of approximately 9,600 captive deer in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. During 2002, 195 elk and 165 deer were imported into New York. The value of elk range from \$500 to \$2,000 per animal. The value of deer range from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, the prior prohibition on the importation of captive cervids susceptible to CWD prevented the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis. It is not known how many captive cervids will meet the health requirements of 1 NYCRR Part 68 or otherwise qualify for importation or movement within the State of New York. The number and value of the captive cervids that will continue to be prohibited from importation will depend upon the extent to which the owners of herds of captive cervids outside the State comply with the requirements of 1 NYCRR Part 68.

Owners of captive cervids within New York State will incur certain costs as a result of this rule. The New York State Department of Environmental Conservation currently regulates 129 farms with whitetailed deer. DEC requires these farms to have an eight-foot fence, as does this rule. There are 82 farms with elk, red deer, sika deer or mule deer in the State that do not have whitetailed deer. Assuming that half of these farms do not have adequate fences, that they have an average of 20 adult cervids and a 160-acre square enclosure, it would require two miles of fence extensions to raise the fence to eight feet. Assuming the farms will use post extensions and wire or tape at a cost of \$1.00 a foot, the cost to each of the 41 farms that will need to upgrade their fences will be \$10,560. The cost of erecting a solid barrier or a second fence on a farm in an area of the State designated as CWD containment area is estimated to be approximately \$1.00 per foot

of fence for 7' plastic mesh and \$2.00 per foot for posts (\$20 post every 10 feet) or \$16,000 for two miles of fence. There are currently two cervid farms in the existing designated CWD containment area.

The rule also requires that captive cervid operations, with the exception of special purpose herds, have proper restraining facilities, chutes, gates and corrals to capture and restrain cervids for diagnostic testing and inventory. Assuming that the 30 farms that are currently tested have adequate handling facilities and that the 102 farms that are currently under tuberculosis quarantine will be special purpose herds, there are currently 79 farms that will need to upgrade their capture and restraint facilities. The owners of those farms will have to build catch pens and chutes at an approximate cost of \$10,000 to \$20,000 per farm.

Whitetailed deer experience a five to ten percent death loss when handled for purposes such as testing. The majority (1,975 out of 2,950) of captive whitetailed deer in the State are in quarantined premises and will not have to be handled. Handling the other whitetailed deer can be expected to produce a total death loss of 49 to 98 deer on 43 farms for a loss of \$1,700 to \$3,400 per farm per year, assuming the deer each have a value of \$1,500.

The labor costs associated with the handling of captive cervids required by this Part will average three person days, or \$250.00 per year. It is estimated that the recordkeeping associated with this rule will require less than one hour annually on the average farm.

The 102 herds designated as special purpose herds will require an area in which to keep, for testing purposes, the heads of captive cervids that have died. It is estimated that this will result in a one-time cost of \$400 to \$500 per farm.

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

There will be no cost to local government or the State, other than the cost to the Department. The cost to the Department will be between \$500 and \$1,000 per farm annually, or between \$121,500 and \$243,000 annually to carry out necessary inspections and to collect and process samples.

(c) Source:

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

5. Local Government Mandates:

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

6. Paperwork:

The rule requires that captive cervids being imported or moved into or within New York State be accompanied by a movement permit. Such permits will be issued by the Department in consultation with the New York State Department of Environmental Conservation after a determination that the deer in question qualify for importation. A valid certificate of veterinary inspection must also accompany all cervids imported into New York State, with the exception of those moving directly to slaughter. Accurate records documenting purchases, sales, interstate shipments, intrastate shipments, escaped cervids and deaths (including divested cervids) will have to be established by herd owners and maintained for at least seventy-two months for all captive susceptible cervids. A report of the required annual inventory of CWD certified herds must be made and submitted to the Department. For each natural death, clinical suspect and cervid harvested from a CWD Monitored Herd, tag numbers must be entered into the CWD Monitored Herd record along with the corresponding information that identifies the disposition of the carcass. A CWD herd plan must be developed by each herd owner, in conjunction with the Department and USDA/APHIS officials containing the procedures to be followed for positive or trace herds that will be implemented within sixty days of a diagnosis of CWD.

7. Duplication:

None.

8. Alternatives:

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

Due to the spread of CWD in other states and the threat that this disease poses to the State's captive deer population, the proposed rule was determined to be the best method of preventing the further introduction of this disease into New York State and permitting it to be detected and controlled if it were to arise within the State. It was concluded that a total prohibition against the importation of captive cervids susceptible to CWD was not necessary if health standards and a permit system were established. It was also concluded that a failure to regulate the importation of cervids was an

alternative that posed an unacceptable risk of introducing CWD to the State's herds of captive cervids.

9. Federal Standards:

The federal government currently has no standards restricting the interstate movement of cervids due to CWD, but has proposed CWD regulations establishing a Federal CWD Herd Certification Program and governing the interstate movement of captive deer and elk. The proposed Federal regulations permit herd owners to enroll in State programs that are determined to be equivalent to the proposed Federal program. The Department believes that the State CWD program established by this rule is equivalent to the proposed Federal program.

10. Compliance Schedule:

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

Regulatory Flexibility Analysis

1. Effect of Rule:

There are approximately 433 small businesses raising a total of approximately 9,600 captive cervidae (the family that includes deer and elk) in New York State. The rule would have no impact on local governments.

2. Compliance Requirements:

Regulated parties are prohibited from importing captive cervids, other than those moving directly to slaughter, without a valid certificate of veterinary inspection. In addition, regulated parties importing or moving captive cervids into the State or within the State for any purpose must first obtain a permit from the Department, in consultation with the New York State Department of Environmental Conservation, authorizing such movement.

Captive cervid operations, with the exception of special purpose herds, must have proper restraining facilities to capture and restrain cervids for testing, as well as storage facilities for samples.

Captive cervid operations must have a continuous barrier fence and maintain herd integrity.

Regulated parties will be able to import CWD susceptible cervids only if they are moved from a herd which has achieved CWD certified herd status and the state of origin has adopted mandatory reporting and quarantine requirements equivalent to those set forth in 1 NYCRR Part 68. Regulated parties may not hold CWD susceptible cervids in captivity in New York State unless they are enrolled in the CWD Certified Herd Program or the CWD Monitored Herd Program or have a license or permit issued by DEC pursuant to ECL section 11-0515.

Regulated parties with herds containing at least one CWD susceptible cervid must have a perimeter fence that is at least eight feet high. Captive CWD susceptible cervid facilities and perimeter facilities must be inspected and approved by a state or federal regulatory representative.

Regulated parties must keep accurate records documenting purchases, sales, interstate shipments, escaped cervids and deaths, including harvested cervids, and maintain them for at least sixty months for all captive CWD susceptible cervid operations. The owners of all CWD susceptible cervid herds enrolled in the CWD Certified Herd Program shall establish and maintain accurate records that document the results of the annual herd inventory.

All captive CWD susceptible cervid herds that are not special purpose herds or held at an approved CWD susceptible cervid slaughter facility must participate in the CWD Certified Herd program. Samples must be submitted for testing as required by the Program. For reasons of animal disease control, limiting potential contamination of the environment and benefiting trace back/trace forward activities the carcasses of animals that have been tested for CWD must be retained until it has been determined that the tests are negative for CWD. As of the first annual inventory after the effective date of 1 NYCRR Part 68, each herd member and herd addition shall have a minimum of two official/approved unique identifiers. At least one of these identification systems shall include visible identification. A physical herd inventory shall be conducted between ninety days prior to and ninety days following the annual anniversary date established based upon the CWD Certified Herd Program enrollment date. Cervids that were killed or died during the course of the year must be tested. A state or federal animal health official must validate the annual inventory. A report of the validated annual inventory containing all man-made identification of each animal must be submitted to the Department.

All special purpose herds consisting of one or more CWD susceptible cervid shall participate in the CWD Certified Herd Program. Samples shall be submitted for testing as required by the Program. Each herd addition must have a minimum of two official/approved unique identifiers affixed to the animal. Carcass and sample identification tags must be affixed to

unidentified harvested captive cervids, natural deaths, and clinical suspects.

Direct movement from a CWD monitored herd to an approved CWD slaughter facility requires a permit from the Department prior to movement; all animals moved must be individually identified with an approved identification tag and all animals must be slaughtered within six days of the time the animals leave the premises of the CWD monitored herd.

Approved CWD susceptible slaughter facilities must have holding pens constructed to prevent contact with captive or free-ranging cervid populations. Sample retention and holding facilities must be adequate to preserve and store diagnostic tissues for seventy-two hours after slaughter. A CWD susceptible cervid offal disposal plan must be developed, implemented and approved by the Department in consultation with the Department of Environmental Conservation.

Herd owners, in conjunction with the Department and USDA/APHIS, must develop CWD herd plans for any CWD positive, exposed or suspect herd. Perimeter fencing adequate to prevent fence line contact with captive and free-ranging cervids must be established for all CWD positive herds and positive premises. The carcasses of CWD positive cervids that are depopulated shall be disposed of in accordance with disposal plans approved by the Department and USDA/APHIS.

The rule would have no impact on local governments.

3. Professional Services:

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

4. Compliance Costs:

(a) Costs to regulated parties:

There are approximately 433 entities raising a total of approximately 9,600 captive deer in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. During 2002, 195 elk and 165 deer were imported into New York. The value of elk ranges from \$500 to \$2,000 per animal. The value of deer ranges from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, it is estimated that the prior prohibition on the importation of captive cervids susceptible to CWD prohibited the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis. The number and value of the captive cervids that will be prohibited from importation as a result of this rule will depend upon the extent to which the owners of herds of captive cervids outside the State comply with the requirements of 1 NYCRR Part 68.

Owners of captive cervids within New York State will incur certain costs as a result of this rule. The New York State Department of Environmental Conservation currently regulates 129 farms with whitetailed deer. DEC requires these farms to have an eight-foot fence, as does this rule. There are 82 farms with elk, red deer, sika deer or mule deer that do not have whitetailed deer. Assuming that half of these farms do not have adequate fences; that these farms have on average 20 adult cervids and a 160-acre, square, enclosure, it would require 2 miles of extensions to raise the fence to eight feet. Assuming the farms will use post extensions and wire or tape, the cost to each of the 41 farms that will need to upgrade their fences will be \$10,560, at \$1.00 per foot. The cost of erecting a solid barrier or a second fence on a farm in an area of the State designated as a CWD containment area is estimated to be approximately \$1.00 per foot of fence for 7' plastic mesh and \$2.00 per foot for posts (\$20 post every 10 feet) or \$16,000 for two miles of fence. There are currently two cervid farms in the existing designated CWD containment area.

The rule also requires that captive cervid operations, with the exception of special purpose herds have proper restraining facilities, chutes, gates and corals to capture and restrain cervids for diagnostic testing and inventory. Assuming that the 30 farms that are currently tested have adequate handling facilities and that the 102 farms that are currently under tuberculosis quarantine will be special purpose herds, there are currently 79 farms with 1,646 deer that will need to upgrade their capture and restraint facilities. The owners of those farms will have to build catch pens and chutes at an approximate cost of \$10,000 to \$20,000 per farm.

Whitetailed deer experience a five percent to ten percent death loss when handled for purposes such as testing. The majority, 1,975 out of 2,950, of captive whitetailed deer in the State are in quarantined premises and will not have to be handled. Handling the other captive whitetailed deer in the State can be expected to produce a death loss of 49 to 98 deer on 43 farms for a loss of \$1,700 to \$3,400 per farm per year, assuming a \$1,500 value per deer.

The labor costs associated with the handling of captive cervids required by this Part will average three person days or \$250.00 per year per farm. It

is estimated that the recordkeeping associated with this rule will require less than one hour each year on the average farm.

The 102 herds designated as special purpose herds will require an area in which to keep, for testing purposes, the heads of captive cervids that have died. It is estimated that this will result in a one-time cost of \$400 to \$500 per farm.

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

There will be no cost to local government or the State, other than the cost to the Department. The cost to the Department will be between \$500 and \$1,000 per farm annually, or between \$121,500 and \$243,000 to carry out necessary inspections and to collect and process samples.

(c) Source:

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

5. Economic and Technological Feasibility:

The economic and technological feasibility of complying with the proposed amendments has been assessed. The rule is economically feasible. Although the regulation of the importation of captive deer into New York State will have an economic impact on the entities that imported a total of 360 captive deer into New York State in 2002, the economic consequences of the infection or exposure to CWD of the approximately 9,600 captive cervids already in the State would be far greater. The rule is technologically feasible. Captive deer imported into the State are already required to be accompanied by a health certificate. Endorsement of that certificate with the number of the permit issued by the Department presents no technological problem. The structural, recordkeeping and testing requirements of the rule involve existing technologies that are already in use.

6. Minimizing Adverse Impact:

In conformance with State Administrative Procedure Act section 202-b(1), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses by limiting the requirements to those which comply with the proposed USDA requirements for state CWD programs and which are necessary to prevent the introduction of CWD into New York State and permit it to be detected and controlled if it were to arise within the State. It was concluded that a total prohibition against the importation of cervids susceptible to CWD was not necessary, given the imposition of a permit system, health requirements and a CWD Certified Program. These requirements will protect the health of the State's captive cervid population, while giving herd owners access to healthy animals from states with comparable regulatory programs.

The rule would have no impact on local governments.

7. Small Business and Local Government Participation:

In developing this rule, the Department has consulted with representatives of the approximately 433 deer owners known to the Department. In addition, the Department is notifying public officials and private parties of the adoption of the proposed rule on an emergency basis, as required by the State Administrative Procedure Act.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

The approximately 433 entities raising captive deer in New York State are located throughout the rural areas of New York.

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

The rule requires that captive cervids being imported or moved into or within New York State be accompanied by a movement permit. Such permits will be issued by the Department in consultation with the New York State Department of Environmental Conservation after a determination that the deer in question qualify for importation. A valid certificate of veterinary inspection must also accompany all cervids imported into New York State, with the exception of those moving directly to slaughter. Accurate records documenting purchases, sales, interstate shipments, intrastate shipments, escaped cervids and deaths (including divested cervids) will have to be established by herd owners and maintained for at least seventy-two months for all captive susceptible cervids. A report of the required annual inventory of CWD certified herds must be made and submitted to the Department. For each natural death, clinical suspect and cervid harvested from a CWD Monitored Herd, tag numbers must be entered into the CWD Monitored Herd record along with the corresponding information that identifies the disposition of the carcass. A CWD herd plan must be developed by each herd owner, in conjunction with the Department and USDA/APHIS officials containing the procedures to be followed for positive or trace herds that would be implemented within sixty days of a diagnosis of CWD. All captive cervid locations shall be identified by a federal premises identification number issued by the De-

partment and APHIS. The owner of the cervids must provide an adequate geographic location description and contact information in order to receive a federal premises identification number. It is not anticipated that regulated parties in rural areas will have to secure any professional services in order to comply with the rule.

3. Costs:

(a) Costs to regulated parties:

There are approximately 433 entities raising a total of approximately 9,600 captive deer in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. During 2002, 195 elk and 165 deer were imported into New York. The value of elk ranges from \$500 to \$2,000 per animal. The value of deer ranges from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, it is estimated that the prior prohibition on the importation of captive cervids susceptible to CWD prohibited the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis. The number and value of the captive cervids that will be prohibited from importation as a result of this rule will depend upon the extent to which the owners of herds of captive cervids outside the State comply with the requirements of 1 NYCRR Part 68.

Owners of captive cervids within New York State will incur certain costs as a result of this rule. The New York State Department of Environmental Conservation currently regulates 129 farms with whitetailed deer. DEC requires these farms to have an eight-foot fence, as does this rule. There are 82 farms with elk, red deer, sika deer or mule deer that do not have whitetailed deer. Assuming that half of these farms do not have adequate fences; that these farms have on average 20 adult cervids and a 160-acre, square, enclosure, it would require 2 miles of extensions to raise the fence to eight feet. Assuming that the farms will use post extensions and wire or tape, since at that height, only a visual barrier is needed, the cost to each of the 41 farms that will need to upgrade their fences will be \$10,560, at \$1.00 per foot. The cost of erecting a solid barrier or a second fence on a farm in an area of the State designated as a CWD containment area is estimated to be approximately \$1.00 per foot of fence for 7' plastic mesh and \$2.00 per foot for posts (\$20 post every 10 feet) or \$16,000 for two miles of fence. There are currently two cervid farms in the existing designated CWD containment area.

The rule also requires that captive cervid operations, with the exception of special purpose herds have proper restraining facilities, chutes, gates and corrals to capture and restrain cervids for diagnostic testing and inventory. Assuming that the 30 farms that are currently tested have adequate handling facilities and that the 102 farms that are currently under tuberculosis quarantine will be special purpose herds, there are currently 79 farms that will need to upgrade their capture and restraint facilities. Since the Department currently owns three portable deer chutes, the owners of those farms will only have to build catch pens and chutes at an approximate cost of \$10,000 to \$20,000 per farm.

Whitetailed deer experience a five percent to ten percent death loss when handled for purposes such as testing. The majority, 1,975 out of 2,950, of captive whitetailed deer in the State are in quarantined premises and will not have to be handled. Handling the other captive whitetailed deer in the State can be expected to produce a death loss of 49 to 98 deer on 43 farms for a loss of \$1,700 to \$3,400 per farm per year, assuming a \$1,500 value per deer.

The labor costs associated with the handling of captive cervids required by this Part will average three person days or \$250.00 per year per farm. It is estimated that the recordkeeping associated with this rule will require less than one hour each year on the average farm.

The 102 herds designated as special purpose herds will require an area in which to keep, for testing purposes, the heads of captive cervids that have died. It is estimated that this will result in a one-time cost of \$400 to \$500 per farm.

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

There will be no cost to local government or the State, other than the cost to the Department. The cost to the Department will be between \$500 and \$1,000 per farm annually, or between \$121,500 and \$243,000 to carry out necessary inspections and to collect and process samples.

(c) Source:

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

4. Minimizing Adverse Impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses by limit-

ing the requirements to those which comply with the proposed USDA requirements for state CWD programs and which are necessary to prevent the introduction of CWD into New York State and permit it to be detected and controlled if it were to arise within the State. It was concluded that a total prohibition against the importation of cervids susceptible to CWD was not necessary, given the imposition of a permit system, health requirements and a CWD Certification Program. These requirements will protect the health of the State's captive cervid population, while giving herd owners access to healthy animals from states with comparable regulatory programs.

5. Rural Area Participation:

In developing this rule, the Department has consulted with representatives of the approximately 433 deer owners known to the Department. In addition, the Department is notifying public officials and private parties of the adoption of the proposed rule on an emergency basis and of the proposed adoption of the rule on a permanent basis, as required by the State Administrative Procedure Act.

Job Impact Statement

1. Nature of Impact:

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

2. Categories and Numbers Affected:

The number of persons employed by the 433 entities engaged in raising captive deer in New York State is not known.

3. Regions of Adverse Impact:

The 433 entities in New York State engaged in raising captive deer are located throughout the rural areas of the State.

4. Minimizing Adverse Impact:

By helping to protect the approximately 9,600 captive deer currently raised by approximately 433 New York entities from the introduction of CWD, this rule will help to preserve the jobs of those employed in this agricultural industry.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Cuisine Trail

I.D. No. AAM-50-06-00006-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 add Part 206 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, section 284-a

Subject: Cuisine Trail.

Purpose: To designate the Cooperstown Beverage Trail a New York Cuisine Trail.

Text of proposed rule: Part 206 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is added to read as follows:

PART 206

DESIGNATION OF FARM, APPLE AND CUISINE TRAILS

§ 206.1 Cooperstown Cuisine Trail

The Cooperstown Cuisine Trail, promoted as the Cooperstown Beverage Trail, is hereby described as: beginning at exit 17 of Interstate 88, northerly on NY Route 28 to Cooperstown, (approximately 17.3 miles); westerly on NY Route 28/NY Route 80 to the junction of NY Route 28 and NY Route 80 west of Oakville (approximately 5.3 miles) for an overall length of 22.6 miles.

Text of proposed rule and any required statements and analyses may be obtained from: William Kimball, Director Agricultural Protection and Developmental Services, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-7076

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

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

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

Consensus Rule Making Determination

This rule is proposed as a consensus rule, within the definition of that term in State Administration Procedure Act section 102(11) pursuant to the

expectation that no person is likely to object to its adoption because it is non-controversial.

Agriculture and Markets Law § 284-a (L. 2004, C. 248) directs that the Department designate farm, apple and cuisine trails to promote greater agricultural marketing and promotional opportunities for agricultural producers located in the areas of such trails. The proposed adoption of the rule designating the Cooperstown Cuisine Trail implements that directive.

In considering the proposed designation, the Department consulted with the New York State Department of Transportation, the Advisory Council on Agriculture, the New York State Scenic Byways Advisory Board, and the Farmers' Market Federation of New York. Information concerning the proposed designation was sent to a representative of the Hudson Valley Agricultural Advisory Council. The Council was given an opportunity to provide comments although none have been received. There was no consultation with direct marketing advisory councils for regional marketing areas and associations of farmers established pursuant to Agriculture and Markets Law § 290 because no such entities are known to exist at this time.

Job Impact Statement

The proposed addition of 1 NYCRR Part 206 would designate the Cooperstown Cuisine Trail. The rule would not have a substantial adverse impact on jobs and employment activities. The rule designates the Cuisine Trail and describes the trail route, on a portion of State Route 28, to increase tourism and marketing opportunities for the participating producers located on or near the trail. This will benefit agricultural producers and the local economy by attracting patrons to area businesses.

Department of Correctional Services

EMERGENCY RULE MAKING

Packages and Articles Sent or Brought to Institutions

I.D. No. COR-50-06-00008-E

Filing No. 1413

Filing date: Nov. 27, 2006

Effective date: Nov. 27, 2006

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

Action taken: Repeal of Part 724 and addition of new Part 724 to Title 7 NYCRR.

Statutory authority: Correction Law, section 112

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

Specific reasons underlying the finding of necessity: This amendment is adopted as an emergency measure because time is of the essence. Packages have represented a window through which inmates and their external sources have attempted to transmit contraband items such as drugs, money and articles which can be used as or converted to weapons. Because of technological advances, seemingly innocuous consumer items may conceal sinister capabilities, and advances in packaging have sometimes aided in disguising and concealing dangerous products. When such items are successfully smuggled into a correctional facility, they become an instant threat to the safety and security of staff, inmates, visitors, volunteers and the public at large.

Accordingly, the Department has concluded that it must have the capability of making immediate changes to the list of items allowed to be received via packages. For this reason, the listing, previously presented at section 724.4 of this regulation, has been removed. The listing, which has always been printed as part of the Department's internal directive #4911, "Packages and Articles Sent or Brought to Institutions," will henceforth be viewable on the Department's website and, as before, posted in facilities and available to inmates at facility libraries. The department will be able, thereby, to quickly revise the list whenever it becomes evident that an item presents a security risk. Likewise, public access to the up-to-date list will help to minimize the likelihood that someone might purchase and send to an inmate an article that would not be allowed.

Concurrently, the remainder of Part 724 is amended to reflect procedures designed to enhance security, guard against abuse of package privileges and prevent importation of contraband into correctional facilities.

In view of the potential harm to public safety which may arise from abuse of inmate package privileges, I have concluded that this rule should be implemented on an emergency basis.

Subject: Packages and articles sent or brought to institutions.

Purpose: To update procedures consistent with security needs.

Substance of emergency rule: This Part formerly consisted of four sections, 724.1 through 724.4. It now consists of five sections with the addition of a new section 724.2 on applicability, identifying which inmates and facilities may receive packages in accordance with this Part.

Section 724.3, "Policy" (formerly 724.2), has been greatly expanded. New material is summarized as follows:

Subdivision (a).

- Paragraph (3) restricts received articles to those which will be for the inmate's personal use and will not cause the inmate to exceed in-cell limits;

- Paragraph (4) defines the value of an article as the actual purchase price, excluding tax, shipping or handling costs;

- Paragraphs (5) and (6) clarify procedures for disposition of previously received package items which subsequently become disallowed;

- Paragraph (7) specifies that the department is not responsible for articles damaged in shipping or received in spoiled condition;

- Paragraph (8) provides for a record of return-to-sender transactions.

Subdivision (b).

- Paragraphs (1) through (4) specify search procedures, including a procedure for handling items of religious significance;

- Paragraphs (5) and (6) define contraband and articles not permitted and include procedures for disposition;

- Paragraph (7) prohibits alteration of items once received;

- Paragraph (8) provides for review and disposition of items withheld by staff because of non-conformance with specifications.

Subdivision (d).

- Paragraph (1) adds procedures for disposition of packages not having return addresses;

- Paragraph (2) expands procedures for sending a package out of a facility at an inmate's request.

Subdivision (e) – limits receipt of art and handicraft supplies.

Subdivision (f) – explains procedures for handling packages brought by visitors.

Subdivision (g).

- Paragraph (2) requires that a received article valued at over \$20 must be accompanied by a receipt or bill;

- Paragraph (4) establishes special watch procedures to guard against importation of contraband in packages addressed to inmates who have been identified with contraband or drug-related misbehavior;

Subdivision (h).

- Paragraph (2) specifies that an inmate who orders a package while under a "loss of package" disciplinary disposition must pay to have it returned to sender.

Subdivision (i) provides for disposition of packages received for inmates in SHU.

Subdivision (j) provides for processing and forwarding or disposition of packages received for inmates who have been transferred or are temporarily away from a facility.

Section 724.4, "Local permits" (formerly 724.3), has not changed except for the following addition at paragraph (5): "If a permit is revoked, the article will be confiscated and disposed of at the inmate's expense in accordance with the departmental directive on inmate personal property limits."

Section 724.5, "Listing of approved items" (formerly 724.4, "Allowable Items") is completely changed. The department will no longer list items in this regulation because of the necessity of making changes as security needs require and on an expeditious basis. The new section is printed here in its entirety.

§ 724.5 Listing of approved items.

(a) The department shall promulgate a detailed listing of items approved for receipt by inmates through facility package rooms. This listing shall be appended to the departmental directive #4911, "Packages and Articles Sent or Brought to Institutions," made available to inmates in all facility libraries, posted in all facility package rooms and visiting rooms, and posted on the department's website at www.docs.state.ny.us/directives/4911.pdf

(b) This listing only identifies items which may be received through the package room and sets forth the conditions and restrictions for receipt of those items; this listing is not a comprehensive list of all items that an inmate may be authorized to possess.

(c) This list will be periodically updated and amended, consistent with the needs of the department.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 24, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: AJAnnucci@docs.state.ny.us

Regulatory Impact Statement

The New York State Department of Correctional Services (DOCS) seeks to repeal Part 724 and adopt a new Part 724 of Title 7, NYCRR.

Statutory Authority:

Section 112 of the Correction Law assigns to the commissioner of correction the powers and duties of management and control of correctional facilities and inmates, and the responsibility to make rules and regulations for the government of correctional facilities and discipline of inmates.

Legislative Objective:

By vesting the commissioner with this rule making authority, the legislature intended the commissioner to determine if inmates may receive packages from family members and other outside sources and, if allowed, to implement procedures to ensure that the privilege is not abused.

Needs and Benefits:

Inmates have long enjoyed the privileges of receiving packages from family and visitors and of ordering consumer goods from a list of approved articles. Packages, however, have represented a window through which inmates and their external sources have attempted to obtain contraband items such as drugs, money and articles which can be used or converted to weapons. Needless to say, when such items are successfully smuggled in, they become an instant threat to the safety and security of staff, inmates, visitors, volunteers and the public at large.

The Department has preserved these privileges despite the increasing sophistication of those who would attempt to smuggle contraband via packages. Because of technological advances, seemingly innocuous consumer items may conceal sinister capabilities, and advances in packaging have sometimes aided in disguising and concealing dangerous products.

Accordingly, the Department has concluded that it must have the capability of making immediate changes to the list of items allowed to be received via packages. For this reason, the listing, which has always been presented at section 724.4, has been removed and is being published in more rapidly changeable venues, including posting at the Department's website. The department will be able, thereby, to quickly alter the list whenever it becomes evident that an item presents a security risk. Likewise, public access to the up-to-date list will help to minimize the likelihood that someone might purchase and send to an inmate an article that would not be allowed.

The remaining text has been thoroughly overhauled to ensure that package privileges are maintained for most inmates and that all related procedures serve the department's security interests. These detailed policies and procedures are currently implemented at department facilities and are posted and available to inmates.

Significant changes from the repealed text include: addition of a section on applicability, clarifying which inmates and facilities may receive packages in accordance with this Part; restriction of received articles to those which will be for the inmate's personal use and will not cause the inmate to exceed in-cell limits; clarification of procedures for disposition of disallowed items; enhanced package-related recordkeeping; clarification of package and item search procedures; definitions of contraband and articles not permitted; a procedure for review of items withheld by staff because of non-conformance with specifications; procedures for sending packages out of a facility; procedures for handling packages brought with visitors; special watch procedures to guard against importation of contraband; procedures for handling packages for inmates in special housing units and for inmates who have been transferred or are temporarily away from a facility.

Costs:

- a. To State government: None.

b. To local governments: None. The proposed amendment does not apply to local governments.

c. Costs to private regulated parties: None. The proposed amendment does not apply to private regulated parties.

d. Costs to the regulating agency for implementation and continued administration of the rule:

(i) Initial expenses: None.

(ii) Annual cost: None.

Paperwork:

a. New reporting or application forms: None.

b. Additions to existing reporting or application forms: None.

c. New or addition record keeping that will be required of the regulated party to comply with the rule or prove compliance with the rule: None.

Local Government Mandates:

There are no new mandates imposed upon local governments by this proposal. The proposed amendment does not apply to local governments.

Duplication:

This proposed amendment does not duplicate any existing State or Federal requirement.

Alternatives:

The department has considered eliminating package privileges or severely restricting the number and circumstances under which packages may be received by inmates. It has concluded that such privileges represent a significant connection between inmates and their families and friends and, as such, have rehabilitative and quality-of-life value. As explained under "Needs and Benefits," the chosen course of action intends to maintain package privileges for most inmates while strengthening the procedures designed to ensure that these privileges are not abused and do not compromise security.

No other alternatives have been proposed or considered.

Federal Standards:

There are no minimum standards of the Federal government for this of a similar subject area.

Compliance Schedule:

The Department of Correctional Services is in compliance with this proposed rule.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This merely updates policy and procedures for receiving, handling, searching and disposing of packages and articles received by inmates correctional facilities.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Water Quality Standards, Standard-Setting Procedures, and Related Regulations

I.D. No. ENV-50-06-00001-P

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

Proposed action: Amendment of Parts 700 – 704 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301.2.m, 15-0313 and 17-0301

Subject: Water quality standards, standard-setting procedures, and related regulations.

Purpose: To add, revise, and delete water quality standards, and add and/or revise standard-setting procedures and related regulations, based upon the most current scientific information. The triennial review of the State's water quality standards is required by section 303(c) of the Federal Clean Water Act, and its implementing regulations at 40 CFR part 131.

Public hearing(s) will be held at: 2:00 p.m., Jan. 25, 2007 at Department of Environmental Conservation, 625 Broadway, Rms. 129A and 129B, Albany, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: www.dec.state.ny.us): In brief, this proposal:

- Adds or revises numerical ambient water quality standards for six substances;
- Deletes the ambient standard for one substance;
- Adds or revises groundwater effluent limitations for six substances;
- Adds narrative ambient standards for flow and turbidity;
- Revises procedures for deriving standards and guidance values for human health and aquatic life;
- Makes revisions/additions regarding best usages, trout waters, aesthetics, recreation, applicability of coliform standards, definitions, and surface water effluent limitations.

The proposed revisions are described in the table and text below. The reader is referred to the complete express terms for the full text of the proposed amendments. It is available as noted in the Notice of Proposed Rule Making.

The Table below summarizes the changes being proposed for specific parameters in Part 703.

Substance or Parameter	Proposed Action
Flow	Adopt new narrative ambient standard of "No alteration that will impair the waters for their best usages" for all fresh surface water classes.
Turbidity	Adopt new narrative ambient standard of "No increase that will cause a substantial visible contrast to natural conditions" for Class A-S and AA-S waters.
Dissolved Oxygen (DO)	Revise existing ambient standard for Class SA, SB, and SC marine waters, currently never-less-than 5.0 mg/L. Revised standards would be a chronic standard of 4.8 mg/L, with excursions between 4.8 and 3.0 mg/L allowed for a limited period of time. The equation for this is provided in the complete express terms. Revised standards would also include an acute standard of 3.0 mg/L.
Ammonia	Adopt new aquatic life ambient standards for marine waters of 35 ug/L (chronic) and 230 ug/L (acute).
Acetaldehyde	Adopt new Health (Water Source) ambient standard of 8 ug/L for surface waters and groundwaters; adopt new groundwater effluent limitation of 8 ug/L.
Carbon Disulfide	Adopt new (Water Source) ambient standard of 60 ug/L for surface waters and groundwaters; adopt new groundwater effluent limitation of 8 ug/L.
Formaldehyde	Adopt new Health (Water Source) ambient standard of 8 ug/L for surface waters and groundwaters; adopt new groundwater effluent limitation of 8 ug/L.
Iron	Delete existing ambient chronic and acute Aquatic Life standards (see note 1) [no substantive change to Aesthetic standards].

Metolachlor	Adopt new Health (Water Source) ambient standard of 9 ug/L for surface waters and groundwaters; adopt new groundwater effluent limitation of 9 ug/L.
Copper	Revise existing groundwater effluent limitation from 1,000 ug/L to 400 ug/L [no change to GA standard].
Styrene	Revise existing groundwater effluent limitation from 930 ug/L to 5 ug/L [no change to GA standard].

Note 1 (regarding Iron): The Department has reevaluated the basis for its existing iron standards and no longer believes that 300 ug/L is the appropriate value for this substance. The Department's review of the scientific literature on the toxicity of iron has led to the conclusion that the EPA 1976 criteria value of 1,000 ug/L is both protective of aquatic life and a more appropriate ambient value. However, the scientific evidence for the 1,000 ug/L value is not without some uncertainty and there is a good possibility that the Department may further revise its determination in the next several years based on additional scientific information. Therefore, instead of revising the existing aquatic life standards for iron to 1,000 ug/L at this time, the Department proposes to delete them altogether. Coincident with, or soon after the effective date of the deletion, the Department expects to propose aquatic life guidance values of 1,000 ug/L for iron for the Division of Water's TOGS No. 1.1.1. A revised aquatic life standard(s) for iron will be proposed in a future rule making when supported by the appropriate scientific information.

Significant revisions to the standard-setting procedures for human health are proposed, particularly for oncogenic (carcinogenic) effects, but also for nononcogenic effects. These revisions update and improve the procedures, provide the Department greater flexibility to use recently developed risk assessment methodologies, and enhance the Department's ability to derive the most accurate standards to protect human health. Key elements of the proposed revisions for carcinogens include the use of biologically-based dose-response and other models, provision for an uncertainty factor approach for nonlinear oncogens and language ensuring consideration of the special sensitivity of children.

Revision is proposed to subdivision (g) of this section to enable deriving a standard or guidance value to protect aquatic life if a value cannot be derived according to the procedures in section 706.1.

The proposal adds a new procedure to allow the Department to derive a "specific organic mixture guidance value" of 100 ug/L. Under the existing regulations, it is not feasible to derive a standard or guidance value for commercial mixtures of complex composition that vary with conditions of production (such as gasoline or Stoddard Solvent). This represents a significant gap in the Department's ability to establish values to protect human health and sources of drinking water. The wording of the proposed regulations makes clear that this is not a "default" value that applies or will be applied to all organic mixtures.

The "general organic guidance value" provision in the existing regulations enables the Department to establish a guidance value of 50 ug/L for certain individual organic substances in the absence of sufficient toxicity data to derive a specific value. This is not a true "default" that applies to all organics in the absence of a specific standard or guidance value. However, there is a widely held misconception that this is indeed the case, a misconception that must frequently be clarified on a case-by-case basis. To reduce the misconception, the proposal adds language explaining that this value is only derived for those substances as specified by the Department.

Revisions are proposed to the Aesthetic Type standards and guidance values, in effect splitting this into two Types to better differentiate between those derived to protect aesthetic quality of the water for human uses and those to protect the aesthetic quality of the water for prevention of tainting of aquatic food for human consumption.

A new Type of standard, Recreation (R) is created to facilitate derivation of standards and guidance values to protect the recreational uses of the waters.

Revisions and additions are proposed to procedures for deriving Aesthetic and Recreation Type standards and guidance values.

Additional language is proposed for Part 701 to describe waters classified for trout and trout spawning. The proposal also clarifies the applicability of existing standards for DO (section 703.3) and nitrite (section 703.5), and the thermal criteria (Part 704) to (T) and/or (TS) waters.

Revision is proposed to section 702.16 to more clearly indicate that intermittent streamflow and wet weather events are factors the Department considers in the establishment of surface water effluent limitations.

Revision is proposed to section 703.4 to clarify the applicability of the existing coliform standards. [No revision to the existing standards for bacteria are proposed].

Additional language for best usages in Part 701 is proposed to indicate that, where waters are to be suitable for the propagation and survival of fish, they must also be suitable for the propagation and survival of shellfish and wildlife.

The proposal adds and revised definitions in Part 700 commensurate with other changes in the regulations and to provide greater clarity and understanding.

Text of proposed rule and any required statements and analyses may be obtained from: Scott Stoner, Chief, Standards and Analytical Support Section, Bureau of Water Assessment and Management, Division of Water, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3502, or, the department's website at: www.dec.state.ny.us/website/dow/bwam/propwqsreg.html, (518) 402-8193, e-mail: sxstoner@gw.dec.state.ny.us

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

Public comment will be received until: 63 days after publication of this notice.

Additional matter required by statute: These amendments are subject to Environmental Board review pursuant to articles 3 and 5 of the Environmental Conservation Law.

Summary of Regulatory Impact Statement

Statutory Authority and Legislative Objectives:

The statutory authority for adoption of water quality regulations and standards is found in the Environmental Conservation law (ECL), Sections 3-0301.2.m, 15-0313, and 17-0301. The first cited section provides that the Commissioner may adopt regulations to carry out the purposes of the ECL in general. The other sections direct the Department to adopt standards that are applicable to the classification of waters and that are protective of life, health and property. Specifically, Section 17-0301 states:

"1. It is recognized that, due to variable factors, no single standard of quality and purity of the waters is applicable to all waters of the state or to different segments of the same waters.

"2. In order to attain the objectives of this article, the department after proper study, and after conducting public hearing upon due notice, shall group the designated waters of the state into classes. Such classification shall be made in accordance with consideration of best usage in the interest of the public...

"4. The department, after proper study, and after conducting public hearings upon due notice, shall adopt and assign standards of quality and purity for each such classification necessary for the public use or benefit contemplated by such classification..."

The adoption of standards will contribute to the fulfillment of the legislative objective of the ECL to guarantee that the "widest range of beneficial uses of the environment is attained without risk to health or safety" (ECL Section 1-0101.3.b), and to "maintain reasonable standards of purity of the waters of the state consistent with public health and enjoyment thereof..." (ECL Section 17-0101). The action will also contribute to achieving the federal mandate "to restore and maintain the chemical, physical and biological integrity of the Nation's waters," and the national goal, wherever attainable, of "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water" [Clean Water Act (CWA), Sections 101(a) and 101(a)(2)].

Needs and Benefits:

This proposed action is needed to protect and preserve water resources from the threat of toxic substances and to satisfy specific regulatory requirements. Descriptions of the water resource, threats and regulatory requirements follow.

The waters of New York State are one of our greatest natural resources. There are approximately 52,000 miles of surface streams, 7,850 freshwater lakes and ponds with about 5,500 square miles of surface area, and 1,530 square miles of marine waters in the boundaries of the State. They are divided into 17 major drainage basins.

The saline waters of the State are those rivers, bays and estuaries located primarily in and adjacent to Long Island Sound, the Atlantic Ocean, New York Harbor, and the lower Hudson River. Those around Long Island, in particular, provide a significant recreational and shellfish seafood resource for the State's population.

New York's fresh surface waters provide the source of drinking water for most of the population of New York City (72 percent) and upstate. They are widely used for swimming, boating, and fishing. They are also

the means for elimination of much of its wastes, and support a multitude of uses for its industrial, commercial and agricultural activities.

Groundwater resources of New York State supply water to millions of New Yorkers each day. They are also a major component of the overall hydrologic cycle. For Long Island's Nassau and Suffolk Counties, the groundwater is the only source of drinking water available for nearly 3 million residents. In upstate New York, the groundwater is also utilized to supply potable water to a substantial portion of the population.

New York is a highly populated and industrialized state, with about 19 million residents, and home to both the nation's largest metropolis and to thousands of industrial facilities. Activities associated with maintaining approximately seven million households result in the discharge of large volumes of wastewater to septic systems and municipal treatment plants. Toxic substances from sewage and industrial wastewaters, as well as from nonpoint sources, are discharged to the waters of the State. About 700 facilities released approximately 60 million pounds of toxic substances to water, air and land as reported through the New York State Toxic Release Inventory in 2000. Thousands of smaller facilities release additional quantities of toxic substances. Approximately 49 million gallons of hazardous substances can be bulk stored in about 5,400 tanks. Approximately 540 industries have SPDES permits for the discharge of toxic substances directly to surface waters and groundwaters. Over 1,500 industries classified in significant categories discharge to publicly owned treatment works (POTWs), and the majority of these are sources of toxic substances to the water environment. Thousands of industries in non-significant categories discharge additional quantities of toxic substances to POTWs.

The water resources of New York State have been damaged at various times and locations by the excessive release of pollutants. The construction of wastewater treatment facilities during the past three decades has made major progress in restoring the integrity of the State's waters. However, the continuing widespread use and release of toxic chemicals, as well as contamination resulting from past abuses, requires the maintenance of a sound system of water quality regulations to effectively control the release of toxic chemicals. Beyond this general need, the federal Clean Water Act requires states to maintain adequate standards for pollutants that threaten a state's water. It includes a requirement for formal review every three years. New York State last revised its water quality standards effective in March of 1998.

Because the only costs associated with this proposal are from the new standard for ammonia for marine waters, the needs and benefits for only this provision are described below. Needs and benefits for the remaining provisions of the proposal are discussed in detail in the full RIS.

A new standard is being added for ammonia for saltwater (marine waters), based on EPA's 1989 criteria recommendation. This fills a key gap in New York's standards and is described as a priority by the EPA. New York is undertaking extensive and expensive nitrogen control programs to abate low dissolved oxygen conditions in the marine district; now is the time to refine those programs to minimize the toxic effects of nitrogenous compounds, specifically ammonia. The proposed standard would be protective of marine resources.

Ammonia has been found to be toxic to a variety of marine organisms, including crustaceans, bivalve mollusks, fishes, and marine algae. Winter flounder, a popular recreational species in population decline, is the most sensitive species tested to date. The mean acute sensitivity of 88 percent of the species tested is within a factor of ten of that for the winter flounder. Other important commercial and recreational species at risk from ammonia toxicity are American lobster and striped bass. The catastrophic die-off of lobsters in 1999 is still unresolved and sediment ammonia toxicity could be one of the involved stressors. Of the tested species, hard clams and oysters appear to be the most tolerant to ammonia toxicity but it does affect their ability to filter algae (their food source) from the water. Hence, they would have slower growth rates (to reach market size) and could be more vulnerable to predation based upon a smaller size.

Information on the toxicity of ammonia to saltwater plants is limited but tests have shown toxicity to benthic algae and red macroalgae species. This could affect the lower levels of the marine food web. Recent studies have shown that ammonia is toxic to eelgrass. Eelgrass beds are extremely important as nursery areas for economically important fish and shellfish (e.g., bay scallops) and coastal sediment stabilization. Eelgrass beds have been decimated in New York Harbor and many have been reduced or lost in Long Island Sound and Peconic Bay. Nitrogenous compounds, which includes ammonia, have been implicated as a potential factor in the loss of tidal wetlands in Long Island Sound.

Costs:

The only cost from the proposal is from the addition of aquatic life standards for ammonia in marine waters. The Department's analysis demonstrates that none of the other provisions of the proposal will result in any costs. A summary of the costs for marine ammonia is presented below. The full RIS presents the detailed explanation of why there is no impact from any other part of this proposal.

In general, to determine the pollution abatement costs associated with the proposed standards, the Department evaluated the treatment requirements for the proposed standards and compared them to the existing treatment facilities or treatment required by the current regulations but not yet implemented. SPDES permits that contain limitations or monitoring requirements for the proposed substances were identified through the Department's computerized Permit Compliance System (PCS). For those permittees, both current permit requirements and requirements for the proposed standards were established and compared. Existing treatment capacity and performance were assessed and the additional treatment requirements, if any, were evaluated using generalized designs for unit treatment operations. Treatment costs were computed using generalized cost information.

Four (4) sewage treatment facilities (publicly-owned treatment works or POTWs) were identified as impacted by the proposed standards for marine ammonia for aquatic life. Some form of upgrade to their treatment infrastructure will be needed to meet the water quality based effluent limit that will result from the proposed standard. One (1) additional facility could incur capital costs if operational modifications alone do not accomplish the necessary treatment. The total capital and Operation and Maintenance (O&M) costs to all facilities are: Capital Cost: 25.49 million dollars (includes Construction Cost); O&M Cost per year: 1.01 million dollars.

A small additional cost for monitoring for ammonia is expected to be incurred by three (3) other facilities; these facilities do not currently monitor for this parameter. The cost of this would be approximately 20 dollars per sample, once per month for each facility. The additional annual cost for each facility would be 240 dollars, for a total monitoring costs for the three facilities of 720 dollars per year.

Paperwork:

As part of the SPDES program, all significant permittees are required to periodically report monitoring data for substances include in their permit. The proposed regulations are not expected to significantly increase or decrease the number of SPDES permittees or the amount of information that must be reported. Applicants for SPDES permits are currently required to report on the discharge of a broad list of toxics substances that are or may be present in the discharge. New or more stringent standards are not expected to significantly increase the reporting requirements for SPDES applicants.

Those dischargers who may be required to report on a parameter for which they were previously not regulated will have to maintain records and report the discharge level of the newly regulated parameter. Facilities that discharge ammonia to marine waters will have to report this additional parameter on their Discharge Monitoring Reports, a negligible increase in paperwork. Other than this, there is no increase in paperwork from this proposal.

Local Government Mandates:

There are no specific mandates to local governments that result from this rule. However, it is again noted that the impacted facilities belong to local governments, so the above mentioned impact from the ammonia marine standard is to those specific local governments that operate the facilities described above.

Duplication Between This Regulation and Other Regulations and Laws:

The proposed regulation will not result in duplication of administrative requirements for regulated parties or the State.

Alternatives:

Numerical ambient water quality standards represent levels protective of the best usages of New York's waters. They are derived according to scientific procedures that are in regulation and based on the best available data. Thus, they represent the Department's best judgement of the maximum allowable concentration of chemicals consistent with the protection of human health, aquatic life, wildlife and the aesthetic quality of the water.

A no-action alternative was considered for the proposed numerical ambient standards for ammonia. Taking no action would maintain the existing situation, *i.e.*, no standard or guidance value. Ammonia has been found to be toxic to a variety of marine organisms, including crustaceans, bivalve mollusks, fishes, and marine algae. Winter flounder, a popular recreational species in population decline, is the most sensitive species

tested to date. Other important commercial and recreational species at risk from ammonia toxicity are American lobster and striped bass. Not adding the standard for ammonia for marine waters would continue to jeopardize these and other species and was therefore rejected. Adding guidance values instead of standards for ammonia was rejected because guidance values lack the legal strength of standards. In addition, federal and state laws provide strong incentives for the adoption of water quality standards. Under these laws, a no-action alternative might be reasonable only if the revisions to the regulations were of marginal value or not within the work capacity of the Department. The proposed revisions are considered to be a significant improvement to the water quality standards regulations and are within the current work capacity of the Division of Water.

Federal Standards:

The proposal does not exceed any federal minimum standards. Under federal law, surface water standards are primarily a state responsibility. EPA provides oversight and guidance and approves state standards for surface water, but does not promulgate standards that apply nationwide. Thus, there are no true federal standards to which the proposal can be compared. However, the proposed standards for ammonia are equivalent to EPA's recommended criteria.

Compliance Schedule:

The new water quality standards go into effect on the day that these regulations become effective. However, it is unreasonable, both physically and fiscally, to expect all the treatment works to be able to comply immediately. Therefore, when additional treatment is required, the compliance schedule would be worked out on a case-by-case basis with the permittee. Usually, the Department requires the permittee to submit a report in one or two years describing their chosen treatment alternative and including a schedule of construction. The Department would review and, hopefully, approve the report before construction would commence. So, it's difficult to say what the compliance schedule would be. The 5-year permit cycle is not considered during this process.

Summary of Regulatory Flexibility Analysis

Effects on Small Business and Local Governments:

The only impact from the proposal is from the new standard for ammonia for marine waters. For the purposes of this assessment, small businesses are defined as any business independently owned, wholly within New York State, and employing 100 or fewer persons. One (1) small business will be affected by this proposal. Seven (7) facilities belonging to local governments will also be affected.

Four (4) municipal sewage treatment plants (publicly-owned treatment works or POTWs; *i.e.*, local governments) are expected to incur capital and Operation and Maintenance (O&M) costs. All four facilities are located on Long Island and belong to local governments. Thus, the costs to those facilities are also the costs to local governments.

Two (2) additional POTW facilities, also belonging to local governments on Long Island, are expected to need operational modifications in order to achieve the new limit. No costs are expected from these modifications. However, for one (1) of these facilities, capital costs may be incurred if operational modifications do not accomplish the necessary treatment.

A small additional cost for monitoring for ammonia is expected to be incurred by one local government facility, also on Long Island, and one small business on Long Island. These facilities do not currently monitor for this parameter.

Compliance Requirements:

Facilities that discharge ammonia to marine waters will have to report this additional parameter on their Discharge Monitoring Reports, a negligible increase in paperwork. Other than this, there is no increase in paperwork from this proposal.

Professional Services:

For the four POTWs for which upgrades will be necessary, professional services of consulting engineers will likely be needed. These engineers would likely address a range of issues including an evaluation of the existing facilities, plans and specifications for the upgraded facility, and various bid documents and estimated staffing and O&M budget for the upgraded facility.

For sampling and analysis, there would be no professional services necessary to comply with the regulation as the facilities already have technical staff people to do their sampling and analysis, or they would send out the sample for analysis.

Compliance Costs:

The only cost from the proposal is from the addition of aquatic life standards for ammonia in marine waters. The Department's analysis demonstrates that none of the other provisions of the proposal will result in any costs. A summary of the costs for marine ammonia is presented below. The

full RIS presents the detailed explanation of why there is no impact from any other part of this proposal.

Because the facilities that are expected to incur capital and O&M costs due to this proposed standard all belong to local governments, those costs to the regulated parties and cost to local governments are identical. The two facilities that will need operational modifications also belong to local governments.

Four sewage treatment facilities (POTWs) were identified as potentially impacted by the proposed standards for marine ammonia for aquatic life. Some form of upgrade to their treatment infrastructure will be needed to meet the water quality based effluent limit that will result from the proposed standard. The total capital and O&M costs to all facilities are: Capital Cost: 25.49 million dollars (includes Construction Cost); O&M Cost per year: 1.01 million dollars.

A small additional cost for monitoring for ammonia is expected to be incurred by two other facilities, one belongs to a local government and the other to a small business. These facilities do not currently monitor for this parameter. The cost of this would be approximately 20 dollars per sample, once per month for each facility. The additional annual cost for each facility would be 240 dollars, for a total monitoring costs for the two facilities of 480 dollars per year.

Minimizing Adverse Impact:

Regarding the capital costs, it is possible that the facilities affected could comply with the effluent limits to meet the proposed standard in a more cost-effective way than projected.

The proposed standard itself was derived according to procedures set forth in regulation to protect the best usage of the waters, and is based on the national EPA criteria. Under the federal Clean Water Act, EPA criteria and state standards are derived solely based on scientific information and are independent of economic factors. However, the water quality regulations have a number of provisions that can mitigate economic impacts.

Where a standard or guidance value is developed on a statewide basis, a site-specific standard may be derived. A site-specific value has the potential to be less stringent and may mitigate impact. Such a standard could be considered in a future rule making for marine ammonia if information warrants. 6 NYCRR 702.16 allows the substitution of a modified effluent limitation based on specified factors including that an effluent limitation cannot reasonably be achieved. Section 702.17 allows for a variance and a modified effluent limitation based on certain physical factors and economic and social impacts. Where the proposed regulations may result in substantial adverse impacts on production, it is anticipated that a permittee will request a variance.

Cost estimates for wastewater treatment facilities to meet proposed standards are broadly based assessments that include a number of assumptions and condition. Construction costs for each affected permittee will typically commence with the issuance or renewal of the SPDES permit and continue through a construction compliance period. The compliance schedule would be worked out on a case-by-case basis with the permittee. Usually the Department requires them to submit a report in one or two years describing their chosen treatment alternative and including a schedule of construction. The Department would review and, hopefully, approve the report before construction would commence. So, it's difficult to say what the compliance schedule would be. The 5 year permit cycle is not considered during this process.

Small Business and Local Government Participation:

The Department has reached out to the public and regulated community throughout the development of this proposal. Specific activities in this regard include:

- Statewide Notice in the Environmental Notice Bulletin (ENB) on April 1, 1998 that we were in the initial stage of developing ambient water quality values for several substances, including acetaldehyde, carbon disulfide, and formaldehyde, and inviting the public to submit information relevant to their toxicity for us to consider.
- Publication in the New York *State Register* of the fact of the potential rule making twice a year in the DEC Regulatory Agenda from 2000 through 2002, and in March of 2003 and 2004. Ammonia was specifically mentioned in several of these publications.
- Presentation to Annual Meeting of the New York Water Environment Association (NYWEA) on February 4, 2002 by Philip DeGaetano.
- Presentation to NYWEA's Legislative/Regulatory Forum May 7, 2002 by Scott Stoner.
- Presentation to NYS Business Council April 14, 2003 by Sandra Allen.

- Presentation to NYWEA's Legislative/Regulatory Forum May 6, 2003 by Sandra Allen.
- Presentation to NYWEA June 2003 by Tom Pearson.
- Presentations to the NYS Business Council at their October 2003 Industry-Environment Conference on October 8, 2003 by Sandra Allen and Scott Stoner.
- Letters to the nine impacted regulated parties (SPDES permittees) were sent on August 28, 2003 notifying them of the forthcoming rule making proposal and the way in which the Department believes they may be affected. These letters went to the four facilities that are expected to incur capital costs, the three facilities expected to incur monitoring costs, and the two facilities expected to need no-cost operational modifications. Follow-up correspondence and discussion was initiated by several of these permittees. An additional letter was sent to one permittee on November 4, 2004 after the Department determined that operational modifications alone might not be sufficient to accomplish the required treatment (and that a cost might be incurred).

Economic and Technological Feasibility:

The necessary technology is available to effect the upgrades to the four facilities necessary to comply with the new standard. Likewise, the no-cost operational modifications to the two other facilities are also feasible, as are the monitoring requirements. Ammonia analysis is inexpensive and readily available. The costs of the upgrades and monitoring have been estimated above.

Rural Area Flexibility Analysis

The Department has determined that the only regulatory impact is to facilities that are located on Long Island, within Nassau and Suffolk Counties or in the New York City Municipal Area. No other facilities in the state are affected. There are no designated rural areas on Long Island or in New York City. Therefore, the Department has determined that a Rural Area Flexibility Analysis is not required.

Job Impact Statement

The Department has determined that this rule making will not result in the loss of 100 or more jobs or entrepreneurial activities because this rule making will only affect nine facilities, and because of the construction and maintenance required to upgrade the POTWs, the effects upon jobs in the State is likely to be positive. Therefore, a Job Impact Statement is not being submitted.

Department of Health

EMERGENCY RULE MAKING

Neonatal Herpes Reporting and Laboratory Specimen Submission

LD. No. HLT-39-06-00006-E

Filing No. 1407

Filing date: Nov. 24, 2006

Effective date: Nov. 24, 2006

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

Action taken: Amendment of sections 2.1 and 2.5 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225(4), (5)(a), (g), (h) and (i)

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

Specific reasons underlying the finding of necessity: Neonatal herpes is a serious disease that can cause permanent neurological impairments to an infant and neonatal death. Most cases of neonatal herpes are acquired from perinatal transmission from an infected mother, with additional cases acquired by exposure in utero or postnatal exposure to persons with herpes in the community.

Unlike most serious communicable diseases, neonatal herpes is not reportable in New York State. Little data exists to accurately estimate the incidence of the disease, but national data suggest that there are approximately 80 neonates infected each year in New York State. Approximately

the same number of cases are estimated to occur in New York State exclusive of New York City, and in New York City.

Current diagnostic and therapeutic advances enable the disease to be detected in infected neonates. Without timely antiviral therapy, 80% of the infected neonates will die and one to two-thirds of the survivors will have lasting neurodevelopment impairment.

The new reporting requirements will enable the NYSDOH to have more comprehensive and complete information on neonatal herpes cases. Given the ability to detect and treat cases if identified in a timely fashion, it is imperative to better estimate the incidence of neonatal herpes infection. This information will also enable the NYSDOH to systematically monitor outbreaks of neonatal herpes and prevent further transmission. Data can also be used to identify gaps in knowledge by clinicians and the public about maternal and other routes of transmission of herpes to the neonate, as well as the detection and treatment of cases of neonatal herpes, and provide necessary education.

By adopting this rule, neonatal herpes will be added to the list of communicable diseases. Immediate adoption of this rule is necessary for accurate identification and monitoring of neonatal herpes and for preservation of the public health and general welfare.

Subject: Neonatal herpes infection reporting and laboratory specimen submission.

Purpose: To properly identify and treat infected mothers and detect early causes of neonatal herpes. Making neonatal herpes a reportable disease will assist in the diagnosis, prevention and effective management and call public attention to this disease.

Text of emergency rule: Subdivision (a) of Section 2.1 is amended to read as follows:

Section 2.1. Communicable diseases designated: cases, suspected cases and certain carriers to be reported to the State Department of Health.

(a) When used in the Public Health Law and in this Chapter, the term infectious, contagious or communicable disease, shall be held to include the following diseases and any other disease which the commissioner, in the reasonable exercise of his or her medical judgment, determines to be communicable, rapidly emergent or a significant threat to public health, provided that the disease which is added to this list solely by the commissioner's authority shall remain on the list only if confirmed by the Public Health Council at its next scheduled meeting:

- Amebiasis
- Anthrax
- Arboviral infection
- Babesiosis
- Botulism
- Brucellosis
- Campylobacteriosis
- Chancroid
- Chlamydia trachomatis infection
- Cholera
- Cryptosporidiosis
- Cyclosporiasis
- Diphtheria
- E. coli 0157:H7 infections
- Ehrlichiosis
- Encephalitis
- Giardiasis
- Glanders
- Gonococcal infectionG
- Group A Streptococcal invasive disease
- Group B Streptococcal invasive disease
- Hantavirus disease
- Hemolytic uremic syndrome
- Hemophilus influenzae (invasive disease)
- Hepatitis (A; B; C)
- Herpes infection in infants aged 60 days or younger (neonatal)*
- Hospital-associated infections (as defined in section 2.2 of this Part)
- Influenza (laboratory-confirmed)
- Legionellosis
- Listeriosis
- Lyme disease
- Lymphogranuloma venereum
- Malaria
- Measles
- Melioidosis
- Meningitis
- Aseptic

- Hemophilus
- Meningococcal
- Other (specify type)
- Meningococemia
- Monkeypox
- Mumps
- Pertussis (whooping cough)
- Plague
- Poliomyelitis
- Psittacosis
- Q Fever
- Rabies
- Rocky Mountain spotted fever
- Rubella
- Congenital rubella syndrome
- Salmonellosis Severe Acute Respiratory Syndrome (SARS)
- Shigellosis
- Smallpox
- Staphylococcal enterotoxin B poisoning
- Streptococcus pneumoniae invasive disease
- Syphilis, specify stage
- Tetanus
- Toxic Shock Syndrome
- Trichinosis Tuberculosis, current disease (specify site)
- Tularemia
- Typhoid
- Vaccinia disease: (as defined in Section 2.2 of this Part)
- Viral hemorrhagic fever
- Yersiniosis
- * * *

Section 2.5 is amended to read as follows:

2.5 Physician to submit specimens for laboratory examination in cases or suspected cases of certain communicable diseases. A physician in attendance on a person affected with or suspected of being affected with any of the diseases mentioned in this section shall submit to an approved laboratory, or to the laboratory of the State Department of Health, for examination of such specimens as may be designated by the State Commissioner of Health, together with data concerning the history and clinical manifestations pertinent to the examination:

- Anthrax
- Babesiosis
- Botulism
- Brucellosis
- Campylobacteriosis
- Chlamydia trachomatis infection
- Cholera
- Congenital rubella syndrome
- Conjunctivitis, purulent, of the newborn (28 days of age or less)
- Cryptosporidiosis
- Cyclosporiasis
- Diphtheria
- E. coli 0157:H7 infections
- Ehrlichiosis
- Giardiasis
- Glanders
- Gonococcal infection
- Group A Streptococcal invasive disease
- Group B Streptococcal invasive disease
- Hantavirus disease
- Hemophilus influenzae (invasive disease)
- Hemolytic uremic syndrome
- Herpes infection in infants aged 60 days or younger (neonatal)*
- Legionellosis
- Listeriosis
- Malaria
- Melioidosis
- Meningitis
- Hemophilus
- Meningococcal
- Meningococemia
- Monkeypox
- Plague
- Poliomyelitis
- Q Fever
- Rabies

Rocky Mountain spotted fever
 Salmonellosis
 Severe Acute Respiratory Syndrome (SARS)
 Shigellosis
 Smallpox
 Staphylococcal enterotoxin B poisoning
 Streptococcus pneumoniae invasive
 Syphilis
 Tuberculosis
 Tularemia
 Typhoid
 Viral hemorrhagic fever
 Yellow Fever
 Yersiniosis

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-39-06-00006-P, Issue of September 27, 2006. The emergency rule will expire January 22, 2007.

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

Regulatory Impact Statement

Statutory Authority:

Sections 225(4) and 225(5)(a), (g), (h), and (i) of the Public Health Law (“PHL”) authorize the Public Health Council to establish and amend State Sanitary Code provisions relating to designation of communicable diseases dangerous to public health, designation of diseases for which specimens shall be submitted for laboratory examination, and the nature of information required to be furnished by physicians in each case of communicable disease. PHL Section 206(1)(d) authorizes the commissioner to “investigate the causes of disease, epidemics, the sources of mortality, and the effect of localities, employments and other conditions, upon the public health.” PHL Section 206(1)(e) permits the commissioner to “obtain, collect and preserve such information relating to marriage, birth, mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state.” PHL Article 21 requires local boards of health and health officers to guard against the introduction of such communicable diseases as are designated in the sanitary code by the exercise of proper and vigilant medical inspection.

Legislative Objectives:

This regulation meets the legislative objective of protecting the public health by adding neonatal herpes to reportable disease requirements, thereby permitting enhanced monitoring of disease, prompt identification of cases and unusual or dramatic increases in disease reporting that might indicate an outbreak, and the ability to implement measures, if necessary, to prevent further transmission.

Needs and Benefits:

Neonatal herpes, defined as herpes infection in infants aged 60 days or less, is a serious disease associated with neurological devastation of the infant and neonatal death. Neonatal herpes can result from infection with either herpes simplex virus (HSV) type 1 (HSV-1) or HSV type 2 (HSV-2). The disease can be localized to skin, eye and mouth (SEM disease), involve the central nervous system (CNS), or manifest as disseminated infection involving multiple organs. Most infants with CNS or disseminated disease have neurological sequelae, and the mortality rate in the absence of therapy is very high (80%) for these babies.

There are three ways that neonatal herpes infection can occur: (1) congenital (in utero) from an infected mother to the fetus; (2) perinatal from an infected mother to the neonate at delivery; or (3) following delivery (postnatal acquisition).

Congenital infection:

Intrauterine infection represents approximately 5% of cases of neonatal herpes infection. It can result from an ascending infection from the cervix or vulva or as a consequence of transplacental transmission. The risk of herpes transmission to the neonate is greatest, approximately 50 percent, if the pregnant woman develops a primary infection in the third trimester.

Perinatal infection:

Neonatal infection with HSV most often occurs during delivery. In 85% of cases, HSV infection is transmitted to the neonate during labor when the baby comes into direct contact with infected maternal secretions in the birth canal. The risk of neonatal herpes is increased if the woman has

obvious lesions at delivery. Delivery by Caesarean section appears to decrease the risk of HSV transmission in the presence of an active lesion.

Post-partum infection:

Postnatal acquisition of HSV accounts for approximately 10% of all cases of neonatal herpes and occurs as a consequence of the baby coming into contact with an environmental source of herpes, such as a family member or caregiver with orolabial herpes or lesions at other sites (e.g. breast, herpetic whitlow).

Based on national estimates, neonatal herpes is one of the most common of all congenital and perinatal infections in the United States, infecting approximately 1/1,500 to 1/3,200 live births each year. Based on these estimates, it can be estimated that of the 133,532 births in New York State in 2003, exclusive of New York City, there could have been approximately 40 neonatal herpes cases. Another 40 cases could be estimated to have occurred among the 119,469 births in New York City.

Diagnostic tests and therapies exist to properly identify and treat infected mothers and detect early cases of neonatal herpes. Type-specific serologic tests for herpes are commercially available and amplification tests such as polymerase chain reaction (PCR) have increased the sensitivity of diagnostic testing. Antiviral therapy can be used to reduce viral shedding of an infected pregnant woman and to treat an infected neonate. Cesarean delivery of infants born to mothers presenting with genital lesions can also reduce the likelihood of perinatal transmission.

Making neonatal herpes a reportable disease will assist in the diagnosis, prevention and effective management of neonatal herpes and call public attention to this disease. Multi-center studies of neonatal herpes show that delays in instituting appropriate therapies persist. Clinicians need to be educated to include neonatal herpes in the differential diagnosis for a febrile neonate, and recognize clinical signs. Educating expecting parents with known genital herpes about risks to the newborn can also promote early intervention. New York State reporting of neonatal herpes is needed to:

- Accurately measure the incidence of this disease by transmission category;
- Increase awareness of the disease by providers and the public;
- Investigate cases of neonatal herpes to systematically assess and address gaps in provider knowledge of prevention and treatment strategies;
- Identify outbreaks of postnatally-acquired neonatal herpes in a timely fashion, identify the source, and intervene to prevent subsequent infection.

Neonatal herpes is currently a reportable condition in seven states (Connecticut, Florida, Louisiana, Massachusetts, Nebraska, South Dakota and Washington). The New York City Department of Health and Mental Hygiene recently amended the New York City Health Code to require reporting of neonatal herpes.

Costs:

Costs to Regulated Parties:

The costs associated with implementing the reporting of this disease are minimal as reporting processes and forms already exist. Hospitals, practitioners and clinical laboratories are accustomed to reporting communicable disease to public health authorities.

In the event of post-partum cases of neonatal herpes, it is imperative to the public health that suspect cases be reported immediately and investigated thoroughly to curtail additional exposure and potential morbidity and mortality.

Costs to Local and State Governments:

The staff who will be involved in reporting and tracking neonatal herpes at the State and local health departments are the same as those currently involved with other communicable diseases listed in 10 NYCRR Section 2.1 and existing disease reporting processes will be used. Therefore, minimal incremental cost is expected. The time expended by a local health department to report a neonatal herpes case is estimated to be low to receive the report, obtain any missing information, and enter the report into the surveillance data system.

The additional cost to local or state governments associated with investigating and implementing control strategies to curtail the spread of neonatal herpes, particularly post-partum cases of neonatal herpes, could become significant depending upon the extent of any outbreak. Suspect cases are to be reported to the local health department, who should immediately notify the Regional Epidemiologist or the New York State Department of Health (NYSDOH) after-hours duty officer.

By monitoring and preventing the spread of neonatal herpes, savings may include reducing costs associated with public health control activities, morbidity, treatment and premature death.

Costs to the Department of Health:

The NYSDOH already collects communicable disease reports from local health departments, checks the reports for accuracy and transmits them to the federal Centers for Disease Control and Prevention. The addition of neonatal herpes to the list of communicable diseases should lead to slight to moderate additional costs, mostly related to investigating cases. Existing staff should be able to handle the incremental increase in workload.

Paperwork:

The existing general communicable disease reporting form (DOH-389) will be revised. This form is familiar to and is already used by regulated parties.

Local Government Mandates:

Under Part 2 of the State Sanitary Code (10 NYCRR Part 2), the city, county or district health officer receiving reports of neonatal herpes will be required to immediately forward such reports to the State Health Commissioner.

Duplication:

There is no duplication of this initiative in existing State or federal law.

Alternatives:

No other alternatives are available. Reporting of cases of neonatal herpes is of critical importance to public health. There is an urgent need to conduct surveillance, identify cases in a timely manner, and reduce the potential for further exposure to contacts.

Federal Standards:

Currently there are no federal standards requiring the reporting of neonatal herpes.

Compliance Schedule:

Reporting of neonatal herpes is currently mandated, pursuant to the authority vested in the Commissioner of Health by 10 NYCRR Section 2.1(a). This mandate will be extended upon emergency adoption of this regulation by the Public Health Council, and filing of a Notice of Emergency Adoption of this regulation with the Secretary of State and made permanent by publication of a Notice of Adoption of this regulation in the New York State Register.

Regulatory Flexibility Analysis

Effect on Small Business and Local Government:

This proposed rule will apply to physicians, hospitals, nursing homes, diagnostic and treatment centers and clinical laboratories. There are approximately 65,000 licensed and registered physicians in New York State; it is not known how many of them practice in small businesses. Three hospitals, 100 nursing homes, 237 diagnostic and treatment centers, and 1,000 clinical laboratories employ less than 100 persons and qualify as small businesses.

Implementation will require reporting of neonatal herpes in all 57 counties of the State outside of New York City. New York City has already passed regulations making neonatal herpes a reportable disease.

Compliance Requirements:

Existing reporting forms will be revised. Clinical laboratories that are small businesses will utilize the revised NYSDOH electronic reporting format.

Professional Services:

No additional professional staff will be needed to complete the required forms manually and mail to the county health department.

Compliance Costs:

No initial capital costs of compliance are anticipated. The reporting of neonatal herpes should have a negligible to modest effect on the estimated cost of disease reporting. The cost of complying with required reporting includes staff time to complete the necessary forms and mail to the respective local health department. The cost of reporting neonatal herpes by laboratories should be modest given the estimated small number of cases.

Minimizing Adverse Impact:

There are no alternatives to the reporting or laboratory testing requirements. Adverse impacts have been minimized since revised forms and reporting staff will be utilized by regulated parties. Electronic reporting will save time and expense. The approaches suggested in the State Administrative Procedure Act Section 202-b(1) were rejected as inconsistent with the purpose of the regulation.

Feasibility Assessment:

The NYSDOH estimates minimal increases in workload and costs associated with the requirement to report neonatal herpes.

Small Business and Local Government Participation:

Local governments have been consulted in the process through ongoing communication on this issue with local health departments and the New York State Association of County Health Officers (NYSACHO).

Rural Area Flexibility Analysis

Effect on Rural Areas:

The proposed rule will apply statewide. It is assumed that the distribution of neonatal herpes will be less in rural counties than in more urban or metropolitan areas similar to the population distribution.

Compliance Requirements:

Compliance requirements are the same in rural areas as those in all other areas of the state. Existing reporting forms will be revised. Clinical laboratories will use the revised NYSDOH electronic reporting format.

Professional Services:

No additional professional staff should need to be hired to complete the required forms and mail to the county health department. Rural providers are expected to use existing staff to comply with the requirements of this regulation.

Compliance Costs:

No initial capital costs of compliance are anticipated. See cost statement in Regulatory Impact Statement for additional information.

Minimizing Adverse Impact:

There are no alternatives to the reporting requirements. Adverse impacts have been minimized since familiar forms and existing staff will be utilized by regulated parties. The approaches suggested in State Administrative Procedure Act Section 202-b (2) were rejected as inconsistent with the purpose of the regulation.

Rural Area Input:

The New York State Association of County Health Officers (NYSACHO), including representatives of rural counties, has been informed about this change and has voiced no objections.

Job Impact Statement

This regulation adds neonatal herpes to the list of diseases that clinical laboratories, clinicians, and hospitals must report to public health authorities and for which clinicians must submit laboratory specimens. The staff who are involved in reporting neonatal herpes at the local and State health departments are the same as those currently involved with reporting, monitoring and investigating other communicable diseases. Implementation should not significantly increase the demands on existing staff nor increase the need to hire additional staff for laboratories, hospitals, and providers. The NYSDOH has determined that this regulatory change will not have a substantial adverse impact on jobs and employment.

Assessment of Public Comment

The agency received no public comment.

Insurance Department

EMERGENCY RULE MAKING

Claims for Personal Injury Protection Benefits

I.D. No. INS-50-06-00002-E

Filing No. 1409

Filing date: Nov. 28, 2006

Effective date: Nov. 28, 2006

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

Action taken: Amendment of sections 65-3.12 and 65-3.13 of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2601, 5106 and 5221; and Vehicle and Traffic Law, section 2407

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

Specific reasons underlying the finding of necessity: Section 11 of Chapter 452 of the Laws of 2005 amended Section 5106(b) and added a new subsection (d) to Section 5106 of the Insurance Law. These sections relate to the eligible insurer's liability to pay first party benefits. Section 11 codifies the rules contained within Insurance Department Regulation No. 68 that are applicable when multiple insurers may be responsible to the claimant for the processing of first party benefits. It also enhances the current arbitration procedures to provide an expedited eligibility hearing option, when required, to designate an insurer responsible for processing the first party benefits. The amendment uses the terms "special expedited

arbitration” and “applicant” when referring to the “expedited eligibility hearing” and “claimant”.

Chapter 452 of the Laws of 2005 becomes effective on September 8, 2005 and it is essential that this amendment be promulgated on an emergency basis in order to have the procedures in place to implement the provisions in the law. The amendment provides the mechanism for informing applicants of the availability of the special expedited arbitration option.

For the reasons cited above, this amendment is being promulgated on an emergency basis for the preservation of the general welfare.

Subject: Claims for personal injury protection benefits.

Purpose: To require insurers to issue no-fault denials with specific wording so that the applicants will be aware that they can apply for special expedited arbitration to resolve the issue of which eligible insurer is designated for first party benefits.

Text of emergency rule: Subdivisions (b) and (c) of Section 65-3.12 is amended to read as follows:

(b) If a dispute regarding priority of payment arises among insurers who otherwise are liable for the payment of first-party benefits, then the first insurer to whom notice of claim is given pursuant to section 65-3.3 or 65-3.4(a) of this Subpart, by or on behalf of an eligible injured person, shall be responsible for payment to such person. Any such dispute shall be resolved in accordance with the arbitration procedures established pursuant to section 5105 of the Insurance Law and section 65-4.11 of this Part. *Each insurer that concludes that it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

(c) If the source of first-party benefits is at issue because the status of the injured person as a pedestrian or an occupant of a motor vehicle is in dispute, the insurer to whom notice of claim was given or if such notice was given to more than one insurer, the first insurer to whom notice was given shall, within 15 calendar days after receipt of notice, obtain an agreement with the other insurer or insurers as to which insurer will furnish no-fault benefits. If such an agreement is not reached within the aforementioned 15 days, then the insurer to whom such notice was first given shall process the claim and pay first-party benefits and resolve the dispute in accordance with the arbitration procedures established pursuant to section 5105 of the Insurance Law and section 65-4.11 of this Part. *Each insurer that concludes that it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

Paragraphs (2), (3) and (4) of Section 65-3.13(a) are amended to read as follows:

(2) An applicant who is a named insured or a relative of a named insured covered by additional personal injury protection benefits, and who, while an operator or occupant of a motor vehicle, sustains a personal injury arising out of the use or operation of such motor vehicle outside of New York State, shall institute the claim against the insurer of the named insured or the relative. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim, unless the insurers agree among themselves that another such insurer will accept and pay the claim initially. (See subdivision (b) of this section.) *If the insurers do not reach an agreement, then each insurer that concludes it was not the first insurer contacted to provide first party*

benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

(3) An applicant who is a named insured or a relative of a named insured covered for additional personal injury protection benefits, and who is neither an operator nor an occupant of a motor vehicle or a motorcycle, and who sustains a personal injury through the use or operation of a motor vehicle or a motorcycle shall institute the claim against the insurer of the named insured or the relative. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim, unless the insurers agree among themselves that another such insurer will accept and pay the claim initially. (See subdivision (b) of this section.) *If the insurers do not reach an agreement, then each insurer that concludes it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

(4) An applicant who is not a named insured or a relative of a named insured covered for additional personal injury protection benefits, and who is an occupant of an insured motor vehicle covered for additional personal injury protection benefits or a motor vehicle operated by a person covered for additional personal injury protection benefits, and who sustains a personal injury through the use or operation of the insured motor vehicle outside of New York State, shall institute the claim against the insurer of the owner or operator of the insured motor vehicle. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim unless the insurers agree among themselves that another such insurer will accept and pay the claim initially. (See subdivision (b) of this section.) *If the insurers do not reach an agreement, then each insurer that concludes it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 25, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Consolidated Regulatory Impact Statement

1. Statutory authority: Sections 201, 301, 2601, 5221 and 5106 of the Insurance Law and Section 2407 of the Vehicle and Traffic Law. Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the

Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations. Section 2601 prohibits insurers from engaging in unfair claim settlement practices and requires insurers to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies. Section 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation (MVAIC) in the payment of no-fault benefits to qualified persons. Section 5106 of the Insurance Law sets forth an expedited eligibility hearing option and authorizes the superintendent to promulgate procedures to resolve disputes among eligible insurers using the expedited arbitration process that will designate the insurer responsible for the payment of first party benefits.

2. Legislative objectives: Regulation 68 contains provisions implementing Article 51 of the Insurance Law, known as the Comprehensive Motor Vehicles Insurance Reparations Act, popularly referred to as the No-Fault Law. No-fault insurance was introduced to rectify many problems that were inherent in the existing tort system utilized to settle claims, and to provide for prompt payment of health care and loss of earnings benefits. Chapter 452 of the Laws of 2005 which amends Section 5106 of the Insurance Law codifies the rules contained within Insurance Department Regulation No. 68 that are applicable when multiple insurers may be responsible to the claimant for the processing of the claim for first party benefits. It also enhances the current arbitration procedures to include an expedited eligibility hearing option, when required, to designate the insurer for first party benefits.

3. Needs and benefits: When there was a dispute regarding which insurer, among two or more responsible insurers regarding who would be responsible for the payment of the claim for first party benefits to the applicant (injured party or health care provider per assignment of benefits from the injured party), generally the insurer that received notice of the claim first was required by regulation to furnish the benefits. When an insurer failed to comply with this regulatory requirement, the applicant's recourse was to seek resolution of the dispute in arbitration or a court of competent jurisdiction. Because of the inherent delays in the resolution of cases in arbitration and court, a faster recourse was needed to assure accident victims that the failure of one or more insurers to meet their regulatory responsibility would not result in the failure of accident victims to be swiftly compensated for their economic losses. Chapter 452 of the Laws of 2005 provides for an expedited eligibility hearing option. These rules implement the law and require an insurer to issue a denial with specific language advising the applicant of the availability of special expedited arbitration to resolve the issue of which insurer is to be designated to process the claim for first party benefits.

The rules also provide the procedures for administration of the special expedited arbitration for disputes regarding the designation of the insurer for first party benefits. By providing notification of, and procedures for, administration of the special expedited arbitration, an applicant can utilize the special expedited arbitration to expeditiously resolve all disputes regarding which insurer should be liable for the payment of the claim for first party benefits.

4. Costs: The arbitration alternative is mandated by Chapter 452 of the Laws of 2005, but it is anticipated that the increase in cases utilizing the special expedited arbitration to resolve priority of payments disputes will be minimal, because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes. [Circular Letter No. 16 (2005) was issued to remind insurers that they should be in compliance with the aforementioned subdivisions and paragraphs].

Any additional costs associated with these rules for insurers or self-insurers would be the result of claims for which insurers or self-insurers do not comply with the procedures outlined in subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a) thus causing the applicant to go to arbitration to resolve the "priority of payment" dispute. The additional costs would include: the costs of defending cases, the reimbursement of the filing fee by the insurer determined to be responsible for processing the claim and paying applicants' attorney fees. These additional cases will increase the insurers' and self-insurers' share of costs from the American Arbitration Association. However, all these costs should be offset by savings as the use of the special expedited arbitration will be in lieu of regular arbitration or a court of competent jurisdiction.

A cost associated with the rules for the applicant is the \$40 filing fee. However, this fee will be reimbursed by the insurer determined to be responsible for processing the claim.

Health care providers that may be considered small businesses and that accept assignments should not experience any adverse effects as a result of these amendments since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Since these procedures are intended to expedite no-fault payments in the rare cases where there is unresolved conflict between insurers, providers should find that the procedure will save them money.

5. Local government mandates: Some local governments are self-insured for no-fault benefits and those entities will have to comply with the requirements of these rules. The Department has not been able to determine the number of local governments that are self-insured. However, we did outreach by contacting a large local government that is self-insured to determine the impact this change would have on them. It was determined that there would be a very minimal impact since almost all injuries are work related and therefore covered by workers compensation rather than no-fault law.

6. Paperwork: To the extent that additional applicants have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on insurers and self-insurers associated with defending cases in special expedited arbitration and submitting legal briefs and documentary evidence. However, under most circumstances, the submission of the paperwork will eliminate the requirement of the attendance of the applicant (unless the arbitrator determines that a hearing is necessary) thus saving the applicant the time and expense of attending the special expedited arbitration. Since the special expedited arbitration option is being utilized to resolve "priority of payment" disputes, the applicant does not have to submit bills for this arbitration and the specific notification language for the special expedited arbitration required by this rule has been amended to specifically inform the applicant that bills do not have to be submitted. Insurers and self-insurers will have additional paperwork related to typing or printing the language onto the NF-10 form since it is not preprinted on the form. There will also be paperwork associated with reimbursing filing fees and paying applicants their attorney fees.

The insurers and self-insurers will also incur additional paperwork to comply with record retention requirements. However, it is anticipated that there will be few requests for the special expedited arbitration because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes and therefore paperwork should be minimal.

7. Duplication: None.

8. Alternatives: The Department considered changing the NF-10 form to include the specific notification language for the special expedited arbitration pre-printed on it. However, because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes, it is anticipated that there will be few requests for the special expedited arbitration and the specific notification language would be rarely used. Therefore, the Department decided against changing the form since the costs involved, i.e., insurers and self-insurers would have to discard the current forms in use and print new forms, far outweigh the benefits of having pre-printed language. It was deemed preferable, for those rare instances where the language is needed, to have the affected entities write the prescribed language in space provided on the current form.

The Department considered using a shorter specific notification language for the special expedited arbitration. However, after receiving comments, and based on the Department's evaluation of these comments including assessment of the needs and benefits as well as any potential negative consequences that would result from making the change, it was determined that it would be appropriate to expand the specific notification language to provide further clarification.

It was also suggested that any filing fee be initially financed by the Department. The Department does not have the legislative authorization to fund an arbitration between private parties; therefore, the filing fee cannot be waived. However, in accordance with the regulation's existing provision that the filing fee will be refunded to the applicant by the insurer determined to be responsible for processing the claim, the Department has revised the required specific notification language to advise applicants of this provision.

9. Federal standards: None.

10. Compliance schedule: These rules have an immediate effective date because of the effective date of Chapter 452 of the Laws of 2005. The AAA, insurers, and self-insurers will be able to implement these rules immediately upon the regulation taking affect.

Consolidated Regulatory Flexibility Analysis

1. Effect of the rule: The Insurance Department finds that these rules will generally not impose reporting, recordkeeping or other requirements on small businesses or local governments except as noted below. The basis for this finding is that these rules are primarily directed to property/casualty insurance companies authorized to do business in New York State and self-insurers, none of which fall within the definition of "small business". The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized property/casualty insurers and determined that none of them would fall within the definition of "small business", because there are none which are both independently owned and have less than one hundred employees. Self-insurers are typically large enough to have the financial ability to self-insure losses and the Department has no information to indicate that any self-insurers are small businesses.

A health care provider and eligible injured person may agree to an assignment of benefits, which effectively transfers both the right to receive benefits and the responsibility for pursuing available remedies when claims are denied from the eligible injured person to the health care provider. Some health care providers may be considered small businesses.

Some local governments are self-insured for no-fault benefits. The Department has not been able to determine the number of local governments that are self-insured. However, we did outreach by contacting a large local government that is self-insured to determine the impact this change would have on them. It was determined that there would be a very minimal impact since almost all injuries are work related and therefore covered by workers compensation rather than no-fault law.

2. Compliance requirements: To the extent that additional applicants have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on health care providers in filing for special expedited arbitration and providing documentary evidence. There will be additional paperwork requirements imposed on local governments that are self-insured for no-fault benefits associated with defending cases in special expedited arbitration and submitting legal briefs and documentary evidence. There will also be paperwork associated with the reimbursement of the filing fee by the insurer determined to be responsible for processing the claim and paying applicants their attorney fees. The local governments will have additional paperwork related to typing or printing the language onto the NF-10 form since it is not preprinted on the form.

The local governments will also incur additional paperwork to comply with record retention requirements. However, the arbitration alternative is mandated by Chapter 452 of the Laws of 2005. It is anticipated that there will be few requests for the special expedited arbitration because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes [Circular Letter No. 16 (2005) was issued to remind insurers that they should be in compliance with the aforementioned subdivisions and paragraphs] and therefore paperwork should be minimal and the procedures established by this regulation should minimize adverse impact on the parties.

3. Professional services: The health care provider and local government are not required to use professional services to comply with the rules. However, it is at their option if they wish to use attorneys for the special expedited arbitration.

4. Compliance costs: Health care providers that may be considered small businesses and that accept assignments should not experience any adverse effects as a result of these amendments since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Since these procedures are intended to expedite no-fault payments in the rare cases where there is unresolved conflict between insurers, providers should find that the procedure will save them money.

A cost associated with the rules for the applicant is the \$40 filing fee. However, this fee will be reimbursed by the insurer determined to be responsible for processing the claim.

Additional arbitration requests may be filed against local governments who are self insured for no-fault benefits because applicants can seek the resolution of priority of payments disputes in special expedited arbitration. Such disputes will require the self-insurers to incur the costs of defending cases, the reimbursement of the filing fee by the insurer determined to be responsible for processing the claim and paying applicants their attorney fees. The additional cases will increase the self insured local government's costs from the American Arbitration Association. However, all these costs

should be offset by savings as the use of the special expedited arbitration will be in lieu of regular arbitration or a court of competent jurisdiction. The arbitration alternative is mandated by Chapter 452 but it is anticipated that the increase in cases utilizing the special expedited arbitration to resolve priority of payments disputes will be minimal, because self-insurers are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a). As such, it is also anticipated that the additional aforementioned costs to self-insurers should be minimal.

5. Economic and technological feasibility: Compliance with the rules should be economically and technologically feasible for health care providers since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Compliance with the rules by self insured local governments should be economically and technologically feasible since the rules are using the procedures already in place for disputes involving late notices to now also apply to disputes involving which insurer is to be designated to process the claim for first party benefits. In addition, the notice requirements are using a form already in use by the companies.

6. Minimizing adverse impact: This rule applies uniformly to regulated parties and is mandated by statute. This rule does not impose any additional burden on small businesses and local governments. It is anticipated that there will be few requests for the special expedited arbitration because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes and therefore paperwork should be minimal and the procedures established by this regulation should minimize adverse impact on the parties.

7. Small business and local government participation: This agency action appeared as a proposal in the Insurance Department's current Regulatory Agenda.

Consolidated Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers and self-insurers covered by this regulation do business in every county in this state, including rural areas as defined under Section 102 (10) of the State Administrative Procedure Act. Some of the home offices of these insurers and self-insurers lie within rural areas. Some government entities that are self-insurers for no-fault benefits may be located in rural areas.

A health care provider and eligible injured person may agree to an assignment of benefits, which effectively transfers both the right to receive benefits and the responsibility for pursuing available remedies when claims are denied from the eligible injured person to the health care provider. Some health care providers are in rural areas.

2. Reporting, recordkeeping and other compliance requirements: To the extent that additional applicants (injured party or health care provider per assignment of benefits from the injured party) have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on insurers and self-insurers (including local governments self-insured for no-fault benefits) associated with defending cases in special expedited arbitration and submitting legal briefs and documentary evidence. There will also be paperwork associated with the reimbursement of the filing fee by the insurer determined to be responsible for processing the claim and paying applicants their attorney fees. The insurers and self-insurers will also incur additional paperwork to comply with record retention requirements. Insurers and self-insurers will have additional paperwork related to typing or printing the language onto the form since the NF-10 form does not have the required language preprinted on the form.

To the extent that additional applicants will also have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on health care providers in filing for special expedited arbitration and providing documentary evidence. However, under most circumstances, the submission of the paperwork will negate the requirement of the attendance of the applicant (unless the arbitrator determines that a hearing is necessary). Since the special expedited arbitration option is being utilized to resolve "priority of payment" disputes, the applicant does not have to submit bills for this arbitration and the specific notification language for the special expedited arbitration required by this rule has been amended to specifically inform the applicant that bills do not have to be submitted. In addition, the arbitration alternative is mandated by Chapter 452 of the Laws of 2005. It is anticipated that there will be few requests for the special expedited arbitration and therefore paperwork should be minimal and the procedures established by this regulation should minimize adverse impact on the parties because insurers

and self-insurers are already required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes. [Circular Letter No. 16 (2005) was issued to remind insurers that they should be in compliance with the aforementioned subdivisions and paragraphs].

3. Costs: The arbitration alternative is mandated by Chapter 452 of the Laws of 2005 but it is anticipated that the increase in cases utilizing the special expedited arbitration to resolve priority of payments disputes will be minimal, because insurers and self-insurers (including local governments self insured for no-fault benefits) already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of most "priority of payment" disputes. Any additional costs associated with these rules would be the result of claims for which insurers or self-insurers do not comply with the procedures outlined in subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a) thus causing the applicant to go to arbitration to resolve the "priority of payment" dispute. The additional costs would include: the costs of defending cases, the reimbursement of the filing fee by the insurer determined to be responsible for processing the claim and paying applicants' attorney fees. These additional cases will increase the insurers' and self-insurers' share of costs from the American Arbitration Association. However, all these costs should be offset by savings as the use of the special expedited arbitration will be in lieu of regular arbitration or a court of competent jurisdiction.

A cost associated with the rules for the applicant is the \$40 filing fee. However, this fee will be reimbursed by the insurer determined to be responsible for processing the claim.

Health care providers that may be considered small businesses and that accept assignments should not experience any adverse effects as a result of these amendments since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Since these procedures are intended to expedite no-fault payments in the rare cases where there is unresolved conflict between insurers, providers should find that the procedure will save them money.

4. Minimizing adverse impact: This rule applies uniformly to regulated parties that do business in both rural and nonrural areas of New York State and is mandated by statute. The Insurance Department does not believe that it will have an adverse impact on rural areas. Any additional costs associated with these rule would be the result of claims for which insurers or self-insurers do not comply with the procedures outlined in subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a) thus causing the applicant to go to arbitration to resolve the "priority of payment" dispute.

5. Rural area participation: This agency action appeared as a proposal in the Insurance Department's current Regulatory Agenda.

Consolidated Job Impact Statement

These rules will not have any adverse impact on jobs and employment opportunities in this State since the changes made only require insurers to issue no-fault denials with specific wording so that the applicants will be aware that they can apply for special expedited arbitration to resolve the issue of which eligible insurer is designated for first party benefits and provide the procedures for administration of the special expedited arbitration for disputes regarding the designation of the insurer for first party benefits.

EMERGENCY RULE MAKING

Arbitration

I.D. No. INS-50-06-00003-E

Filing No. 1410

Filing date: Nov. 28, 2006

Effective date: Nov. 28, 2006

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

Action taken: Amendment of section 65-4.5 (Regulation 68-D) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2601, 5106, and 5221; and Vehicle and Traffic Law, section 2407

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

Specific reasons underlying the finding of necessity: Section 11 of Chapter 452 of the Laws of 2005 amended Section 5106(b) and added a new subsection (d) to Section 5106 of the Insurance Law. These sections relate to the insurer's liability to pay first party benefits. Section 11 codifies the resolution process when multiple insurers may be responsible to the claimant for the processing of first party benefits. It also enhances the current arbitration procedures to provide an expedited eligibility hearing option, when required, to designate an insurer responsible for processing the first party benefits. The amendment uses the term "special expedited arbitration" and "applicant" when referring to the "expedited eligibility hearing" and "claimant".

Chapter 452 of the Laws of 2005 becomes effective on September 8, 2005 and it is essential that this amendment be promulgated on an emergency basis in order to have the procedures in place to implement the provisions in the law. The amendment provides the procedures for administration of the special expedited arbitration for disputes regarding the designation of an insurer for the processing of first party benefits. By making the insurers and applicants aware of these procedures, applicants will be able to utilize special expedited arbitration when there is a dispute between multiple eligible insurers over which carrier has primary responsibility for the payment of first party benefits.

For the reasons cited above, this amendment is being promulgated on an emergency basis for the preservation of the general welfare.

Subject: Arbitration.

Purpose: To provide the procedures for administration of the special expedited arbitration for disputes regarding the designation of the insurer for first party benefits.

Text of emergency rule: Subdivision (b) of Section 65-4.5 is amended to read as follows:

(b) Special expedited arbitration.

(1) Special expedited arbitration shall be available for disputes involving [the]:

(i) The failure to submit notice of claim within 30 calendar days after the accident and where it has been determined by the insurer that reasonable justification for late notice has not been established; and

(ii) The proper application of subdivisions (b) and (c) of Section 65-3.12 of this Part and of paragraphs (2), (3) and (4) of Section 65-3.13(a) of this Part.

(2)(i) An applicant may request special expedited arbitration for resolution of the dispute involving late notice within 30 calendar days after mailing of the denial of claim by the insurer stating that reasonable justification for late notice has not been established.

(ii)(a) In regard to disputes related to subdivisions (b) and (c) of Section 65-3.12 or paragraphs (2), (3) and (4) of section 65-3.13(a) of this Part, an applicant may request special expedited arbitration to designate an insurer that is responsible for processing first-party benefits and additional first party benefits, after each insurer has issued a Denial of Claim form (NF-10) stating that the insurer is not the insurer eligible to process the first-party benefits claimed.

(ii)(b) Special expedited arbitration required by clause (a) of this subparagraph shall only designate an insurer to commence processing the claim based upon the first insurer notified that is otherwise liable for the payment of first party benefits. The insurer designated by the arbitration shall retain all rights of investigation afforded under statute and regulation, and the ultimate liability for payment of benefits shall be resolved in accordance with section 65-4.11 of this Subpart.

(3) At the time of [such] a request for special expedited arbitration, the applicant shall make a complete written submission supporting his or her position. [No] Any further written submissions shall be accepted [unless requested by] into evidence at the discretion of the arbitrator.

[(3)] (4) Applications for special expedited arbitration shall be submitted to the conciliation center of the designated organization and shall comply with the requirements for initiation of arbitration contained in [paragraph 65-4.2(b)(1)] subparagraph 65.4.2(b)(1)(iii) of this Subpart.

[(4)] (5) The applicant's submission shall be forwarded by the conciliation center to the insurer within 3 business days of receipt. The insurer may provide the center with reasonable special mailing or transmittal instructions to facilitate the processing of these arbitration requests.

[(5)] (6) The insurer shall respond in writing to the applicant's submission within 10 business days after the mailing by the center. No further submissions shall be accepted unless requested by the arbitrator.

[(6)] (7) The dispute shall be resolved solely upon the basis of written submissions unless the arbitrator concludes that the issues in dispute require an oral hearing.

[(7)] (8) The arbitrator shall issue a written decision within 10 business days after receipt of all written submissions from the parties or at the conclusion of an oral hearing.

[(8)] (9) For the purpose of special expedited arbitration, the superintendent may appoint arbitrators, qualified in accordance with the provisions of this section, to serve on a per diem basis. Such arbitrators shall contract with the designated organization. The rate of per diem compensation shall be determined by the designated organization, after consultation with the no-fault arbitrator screening committee subject to the approval of the superintendent. Such arbitrators shall be independent contractors, and shall not be employees or agents of the designated organization or the Insurance Department.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 25, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of emergency rule making, I.D. No. INS-50-06-00002-E, Issue of December 13, 2006.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of emergency rule making, I.D. No. INS-50-06-00002-E, Issue of December 13, 2006.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of emergency rule making, I.D. No. INS-50-06-00002-E, Issue of December 13, 2006.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of emergency rule making, I.D. No. INS-50-06-00002-E, Issue of December 13, 2006.

The regulations begin by setting forth the general provisions, construction, and application of the rules. This section contains the definitions for key terms that are used throughout the body of the document.

Many of the regulations set forth the licensing procedures for the various participants needed to bring video lottery gaming into operation. Licensees include the racetracks that are eligible under the enabling legislation to operate video lottery gaming, and their employees, as well as gaming and non-gaming vendors that will supply goods and services to both the Division and the racetracks. Licensing procedures include financial disclosure and, in some instances, background investigations for principles and key employees. Non-gaming vendors supplying goods and services below a certain threshold will not be required to undergo the licensing process, but will have to register as suppliers.

The racetracks, referred to in the regulations as video lottery gaming agents, will be required to submit business plans for approval by the Division prior to licensing, and to establish a set of internal control procedures pursuant to guidelines provided by the Division. The agents will be required to submit periodic financial reports and undertake other financial controls. Annually, the agents will be required to submit a marketing plan for approval by the Division. The marketing plan will identify those marketing or promotion costs which may be reimbursed from the marketing allowance permitted by § 1612 of the Tax Law. The regulations set forth the continuing obligations of video lottery gaming agents following licensure, and identify penalties that may be imposed on licensees for violation of the regulations. Since issuing the Emergency Regulations in September, 2005, the Division has met and discussed the marketing procedures with each of the existing and pending vendors and operators. Formal comments have been submitted by those facilities. The Division is in the process of responding to these comments and expects to commence the formal rule making within sixty (60) days.

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

Text of proposed rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, Acting General Counsel, Division of the Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: jrbarker@lottery.state.ny.us

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

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

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

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

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

While video lottery gaming has been held to be similar to other lottery games that the Division has successfully conducted for over thirty years, some components set it apart from those more traditional games. For

Division of the Lottery

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Video Lottery Gaming

I.D. No. LTR-50-06-00004-P

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

Proposed action: Addition of Part 2836 to Title 21 NYCRR.

Statutory authority: Tax Law, section 1617-a

Subject: Video lottery gaming.

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

Substance of proposed rule (Full text is not posted on a State website): Chapter 383 of the Laws of 2001, as amended by Chapter 85 of the Laws of 2002, as amended further by Chapters 62 and 63 of the Laws of 2003, and as amended further by Chapter 61 of the Laws of 2005, codified as §§ 1612 and 1617-a of the New York State Tax Law, authorized the Division of the Lottery to license the operation of video lottery gaming at eligible racetracks in New York State. That legislation directed the Division to promulgate rules and regulations for the licensing and operation of those games.

In April, 2005, Chapter 61 of the Laws of 2005 amended § 1612 of the Tax Law to provide an increase to the vendor fee to be paid to each video lottery terminal operator and also permits a marketing allowance for each such facility. These changes have necessitated a revision to the Emergency Regulations. Regulations were initially adopted on an Emergency basis in 2003. Since that date, the regulations have been renewed every 90 days.

example, most of the Division's current licensed agents are food and beverage retailers. Video lottery gaming requires the Division to license racetrack venues as video lottery gaming agents, in addition to licensing video lottery gaming and non-gaming suppliers, as well as principals, key and other employees.

A Notice of Proposed Rule Making was first published in July 2003. Since that time, the game design has continued to develop during the start up phase of the project. Based on comments received during the public comment period, it was necessary to revise the proposed regulations. Emergency regulations have been promulgated since early 2004. Subsequently, the Legislature made certain additional changes to the statute authorizing video lottery gaming. By way of example, Chapter 61 of the Laws of 2005 increases the vendors fee originally promulgated and adds a new marketing allowance subject to the supervision of the Lottery.

These regulations will assist the regulated parties to fully understand and comply with all the requirements of the operation of video lottery gaming, while generating sales and revenue to aid education in the State of New York. Since issuing the Emergency Regulations in September, 2005, the Division has met and discussed the marketing procedures with each of the existing and pending vendors and operators. Formal comments have been submitted by those facilities. The Division is in the process of responding to these comments and expects to commence the formal rule making within sixty (60) days.

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

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

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

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

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

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

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

voluntary for video gaming facilities as is participation in the video gaming program in general.

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

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

6. Paperwork: The regulations require that the regulated entities complete a licensing application, including fingerprints, and to update and renew the application periodically. The application will follow a standard multi-state format used by other states that license similar gaming activities. Completion of these applications will be a new responsibility for the video lottery gaming agents, their principals, and key employees. Agents, their principals and key employees will be required to provide more detailed disclosure than they have previously been required to provide for licensure. This level of disclosure is common in other gaming states. Provisional licenses will be granted under certain circumstances, so that the licensing review process is not expected to pose a barrier to immediate entry into the business.

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

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

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

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

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

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

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

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

8. Alternatives: The Division has conducted outreach sessions with each of the operating video lottery gaming facilities and believes that these regulations fulfill its statutory mandate while addressing those comments. While the majority of requests for revision were accommodated whenever feasible, the Division did not accept any requests for change that in its estimation would undermine the security and integrity of the game. All comments received are available for public review by contacting Julie B. Silverstein Barker, Acting General Counsel, New York State Division of the Lottery at One Broadway Center, P.O. Box 7500, Schenectady, New

York 12301 or by calling 518-388-3408 or e-mailing to jbarker@lottery.state.ny.us.

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

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

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

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

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

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

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

The gaming facilities throughout the state are expected to employ more than 4,000 people. Individual gaming agents will be employing between

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

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

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

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

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

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

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

Rural Area Flexibility Analysis

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

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

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

Job Impact Statement

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

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

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

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Red Hook Stores, LLC

I.D. No. PSC-50-06-00009-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Red Hook Stores, LLC, to submeter electricity at 500 Van Brunt St., Brooklyn, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Red Hook Stores, LLC, to submeter electricity at 500 Van Brunt St., Brooklyn, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Red Hook Stores, LLC, to submeter electricity at 500 Van Brunt St., Brooklyn, New York.

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

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

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

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

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

(06-E-1422SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Deliverability Demand Components

I.D. No. PSC-50-06-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service — P.S.C. No. 12 to become effective March 1, 2007.

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

Subject: Deliverability demand components.

Purpose: To update the determination of deliverability demand billing components applicable to customers taking transport service under the company's Gas Retail Access Program.

Substance of proposed rule: The Commission is considering Central Hudson Gas & Electric Corporation's (the company) request to update the determination of deliverability demand billing components applicable to customers taking transport service under the company's gas retail access program.

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

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

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

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

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

(06-G-1434SA1)

Department of State

EMERGENCY RULE MAKING

Registered Security Guards

I.D. No. DOS-50-06-00005-E

Filing No. 1411

Filing date: Nov. 28, 2006

Effective date: Nov. 28, 2006

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

Action taken: Amendment of section 400.4(a) of Title 19 NYCRR.

Statutory authority: General Business Law, section 89-o

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

Specific reasons underlying the finding of necessity: This rule was adopted on an emergency basis to preserve the public safety and welfare. Security guards are employed for the protection of individuals and property, as well as the prevention and reporting of unlawful or unauthorized activity. Adoption of this rule permits the Department of State to serve the notice of hearing and complaint in administrative proceedings on security guards by certified mail, rather than pursuant to the CPLR as currently provided by 19 NYCRR Part 400. Especially in cases where the department is seeking to revoke or suspend a guard registration where a security guard has been charged with, or convicted of, a serious crime, this expedited service, which is similar to that required by other regulatory statutes, provides a greater measure of safety to the general public.

Subject: Authorization of a method of service of a notice of hearing for disciplinary action against a registered security guard.

Purpose: To expedite hearings involving disciplinary action against registered security guards.

Text of emergency rule: An amendment to 19 NYCRR Section 400.4(a) is adopted to read as follows:

Section 400.4 Commencement of disciplinary proceedings.

(a) Every adjudicatory proceeding which may result in a determination to revoke or suspend a license or to fine or reprimand a licensee will be commenced by the service of a notice of hearing together with a statement of charges (also known as a complaint), which shall consist of plain and concise statement which shall sufficiently give the administrative law judge and the respondent notice of the alleged misconduct of incompetence. Notice of hearing and statement of charges (or complaint) shall be communicated in any manner permitted by the applicable regulatory statute, or if no specific manner is designated by the applicable statute, by certified mail, or by any manner authorized by the Civil Practice Law and Rules. Respondent may, at his option, serve an answer denying such charges and interposing affirmative defenses, if any. Absent an answer, all charges are deemed denied and all rights are reserved.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 25, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Whitney Clark, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740

Regulatory Impact Statement

1. Statutory authority:

Article 7-A (Security Guard Act) of the General Business Law was enacted as Chapter 336 of the Laws of 1992. Section 89-g(1)(a) of Article 7-A prohibits employment of security guards unless it is established that they have obtained a valid registration card issued by the Department of State. Registration cards are issued only after the applicant has undergone an investigation and background check by the Division of Criminal Justice Services. Applicants charged or convicted of crimes are disqualified from being issued a registration card where the crime “bears a direct relationship to their employment” as a security guard. Applicants are notified of the proposed denial of their application by regular mail, and may request a hearing challenging the Department’s determination. Notice of the hearing is served by registered mail or in any manner authorized by the Civil Practice Law and Rules in accordance with General Business Law §§ 89-k and 79(2).

General Business Law § 89-l provides that current holders of a registration card who are charged or convicted of a crime are subject to disciplinary action, such as revocation, suspension, or the imposition of a fine, but only after being afforded a hearing held pursuant to the State Administrative Procedure Act. In accordance with rules adopted by the Secretary of State for the adjudication of disciplinary hearings, notice of the hearing may be served “in any manner permitted by the applicable statute or the Civil Practice Law and Rules.” Since no specific method of service is provided by § 89-l of the General Business Law, service must be made pursuant to the methods provided by the Civil Practice Law and Rules, resulting in delay and/or additional costs. General Business Law § 89-o authorizes the Secretary of State in consultation with the security guard advisory council to adopt rules and regulations implementing the provisions of Article 7-A. Accordingly, the Secretary of State has express authority to adopt this rule.

2. Legislative objectives:

In enacting Article 7-A of the General Business Law, the legislature described the increasing role of security guards in protecting individuals and property from “harm, theft and/or unlawful activity,” and found that the “proper screening, hiring and training of security guards is a matter of state concern and compelling state interest . . . ,”¹ and in the aftermath of the events of September 11, 2001, reinstated a federal fingerprint check on registered security guards to provide an additional measure of protection against potential harm from registrants who may have committed federal crimes or crimes in other jurisdictions that did not appear on the New York State records.² As a result, background checks have revealed an even greater number of holders of security guard registration cards who may be subject to disciplinary action for crimes committed in other jurisdictions, and who are entitled to hearings to determine whether they should continue to perform security guard functions. This rule re-enforces the stated objectives of the Legislature when it enacted Article 7-A.

3. Needs and benefits:

General Business Law § 89-l provides that current holders of a registration card who are charged or convicted of a crime which “bears a direct relationship to their employment” are subject to disciplinary action, such as revocation, suspension, or the imposition of a fine, but only after being afforded a hearing held pursuant to the State Administrative Procedure Act. Notice of the hearing may be served “in any manner permitted by the applicable statute or the Civil Practice Law and rules.” Since no specific method of service is provided by § 89-l of the General Business Law, service must be made pursuant to the requirements of the Civil Practice Law and Rules, resulting in delay and/or additional costs. The public benefits from a timely and expedited determination of whether registered security guards charged or convicted of crimes pose an additional risk of harm to their safety or property.

4. Costs:

a. Costs to regulated parties:

The Department of State does not anticipate any additional costs to holders of registration cards by enactment of this rule.

b. Costs to the Department of State:

The Department of State anticipates that the cost and implementation and continued administration of this rule will be accomplished using existing resources.

c. Costs to State and local governments:

The rule does not otherwise impose any implementation or compliance costs on State or local governments.

5. Local government mandates:

The rule does not impose any program, service, duty or other responsibility on local governments.

6. Paperwork:

The rule does not require the securing, preparation, filing or maintenance of any additional papers or documents.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The current alternative to this rule requires that a holder of a registration card receive notice of a hearing seeking disciplinary action in any manner authorized by the Civil Practice Law and Rules. Those requirements necessitate either personal service or delivery and mailing of duplicate notices, which involves additional delays and costs in reaching a determination concerning the registrant’s fitness to continue performing the functions of a security guard. This rule expedites the procedure for reaching that determination while affording the registrant notice and an opportunity to be heard on any proposed disciplinary measures.

9. Federal standards:

This rule meets all federal and constitutional standards for due process.

10. Compliance schedule:

The Department of State anticipates that the Division of Licensing Services will be able to comply immediately with this rule.

¹ McKinney’s 1992 Session Laws of New York, Chapter 336, p. 1073.

² McKinney’s 2004 Session Laws of New York, Chapter 699, p. 2147.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule affects security guard companies, and those persons wishing to become registered as security guards, to the extent that they are subject to the enforcement provisions contained in Article 7-A of the General Business Law. However, it does not place any financial or additional burdens on such businesses who are already required to exercise “due diligence” in determining whether employees have been convicted of any offense that “bears such a relationship to the performance of the duties of a security guard, as to constitute a bar to employment . . . ”

The rule does not apply to local governments.

2. Compliance requirements:

The reporting and recordkeeping requirements are currently mandated by General Business Law § 89-g, and are not altered by this rule.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

Small businesses will not need professional services in order to comply with this rule.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

It is not anticipated that small businesses will incur any additional costs of compliance as a result of this rule.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

It is not anticipated that small businesses will incur any additional costs or require technical expertise as a result of implementation of this rule.

The rule does not affect local governments.

6. Minimizing adverse economic impact:

It is not anticipated that small businesses will incur any additional costs as a result of implementation of this rule, requiring the adoption of alternative practices.

The rule does not affect local governments.

7. Small business and local government participation:

Since the impact on small businesses will be minimal, and the rule would not affect local governments, the Department did not solicit comment prior to the adoption of this rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies equally to holders of security guard registration cards in all areas of the state—urban, suburban and rural.

2. Reporting, recordkeeping and other compliance requirements:

Reporting and recordkeeping requirements are set forth fully in Section 2 of the Regulatory Flexibility Analysis for Small Business and Local Governments.

Holders of security guard registration cards in rural areas will not need to employ any additional professional services in order to comply with this rule.

3. Costs:

It is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any additional costs of compliance as a result of this rule.

4. Minimizing adverse impact:

It is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any additional costs of compliance requiring the adoption of alternative practices, as a result of this rule.

5. Rural area participation:

Since the impact on small businesses will be minimal and will apply equally throughout all areas of the state, whether urban, suburban or rural, the Department did not solicit comment prior to adoption of this rule.

Job Impact Statement

This rule will not have any substantial adverse impact on jobs and employment opportunities. Under existing law, applicants and current holders of a registration card charged or convicted of crimes are disqualified from being employed as security guards, where the crime "bears a direct relationship to their employment" as a security guard, and continued employment constitutes a danger to the health, safety or well-being of the public. Inasmuch as this rule affects only the method of notification of persons disqualified from employment as a security guard, or subject to disciplinary action, it promotes employment opportunities by ensuring that only those qualified for registration are employed in the protection of persons and their property.

**EMERGENCY
RULE MAKING**

Statewide Wireless Network

I.D. No. DOS-50-06-00007-E

Filing No. 1412

Filing date: Nov. 27, 2006

Effective date: Nov. 27, 2006

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

Action taken: Amendment of sections 1201.2(d) and 1204.1; addition of section 1204.3(f)(4) and (h)(3); renumbering of section 1204.3(i) to section 1204.3(l); and addition of section 1204.3(i), (j) and (k) to Title 19 NYCRR.

Statutory authority: Executive Law, section 381

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

Specific reasons underlying the finding of necessity: This rule is adopted as an emergency measure to preserve the public safety and general welfare and because time is of the essence. This rule clarifies an existing rule, which provides that the State is accountable for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the "Uniform Code") with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority, by expressly providing that the State will be responsible for administration and enforcement of the Uniform Code with respect to facilities to be included in the Statewide Wireless Network to be established and implemented by the Office for Technology. Adoption of this rule on an emergency basis preserves the public safety and general welfare by clarifying the responsibility for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network, and thereby permitting the immediate commencement of the review and permitting process incidental to the construction and implementation of the Statewide Wireless Network.

Subject: Accountability for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code with respect to facilities to be included in the Statewide Wireless Network.

Purpose: To clarify that the State will be responsible for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code with respect to facilities to be included in the Statewide Wireless Network.

Text of emergency rule: Subdivision (d) of section 1201.2 of Title 19 NYCRR is amended to read as follows:

(d)(1) The State shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority.

(2) Without limiting the generality of the provisions of paragraph (1) of this subdivision, the State shall be accountable for administration and

enforcement of the Uniform Code with respect to all statewide wireless network facilities (as that term is defined in subdivision (j) of section 1204.3 of Part 1204 of this Title) and all activities related thereto undertaken by the Office for Technology; provided, however, that nothing in this paragraph shall be construed as subjecting to the provisions of the Uniform Code any statewide wireless network facility that would not otherwise be subject to the provisions of the Uniform Code.

(3) In the case of a statewide wireless network facility (as that term is defined in subdivision (j) of section 1204.3 of Part 1204 of this Title) which is constructed or installed on or in a statewide wireless network supporting building (as that term is defined in subdivision (k) of section 1204.3 of Part 1204 of this Title):

(i) the State shall be accountable for administration and enforcement of the Uniform Code with respect to such statewide wireless network facility and all activities related thereto undertaken by the Office for Technology, but the State shall not be accountable for administration and enforcement of the Uniform Code with respect to such statewide wireless network supporting building;

(ii) the governmental entity that would have been accountable for administration and enforcement of the Uniform Code with respect to such statewide wireless network supporting building if such statewide wireless network facility had not been constructed or installed thereon or therein shall remain accountable for administration and enforcement of the Uniform Code with respect to such statewide wireless network supporting building, but such governmental entity shall not be responsible for administration and enforcement of the Uniform Code with respect to such statewide wireless network facility; and

(iii) the State and such governmental entity shall consult with each other and fully cooperate with each other in connection with the performance of their respective administrative and enforcement obligations, and in particular, but not by way of limitation, the State shall make all records in its possession pertaining to such statewide wireless network facility available to such governmental entity upon request by such governmental entity, and such governmental entity shall make all records in its possession pertaining to such statewide wireless network supporting building available to the State upon request by the State. Nothing in this paragraph shall require the State to make available any record which, if disclosed, would jeopardize the capacity of the State, the Office for Technology, or any other State agency (as that term is defined in subdivision (h) of section 1204.3 of Part 1204 of this Part) to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures, or if access to such record could otherwise be denied under section 87 of the Public Officers Law.

Section 1204.1 Title 19 NYCRR is amended to read as follows:

Section 1204.1 Introduction. Section 381 of the Executive Law directs the Secretary of State to promulgate rules and regulations prescribing minimum standards for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (Uniform Code). Section 1201.2(d) of this Title provides that the State shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises, and equipment in the custody of, or activities related thereto undertaken by, a State agency and with respect to all statewide wireless network facilities and all activities related thereto undertaken by the Office for Technology. This Part establishes procedures for the administration and enforcement of the Uniform Code by state agencies. Buildings and structures exempted from the Uniform Code by other preclusive statutes or regulations are not subject to the requirements of this Part.

New paragraph (4) of subdivision (f) of section 1204.3 of Title 19 NYCRR is added to read as follows:

(4) Notwithstanding any other provision of this subdivision to the contrary and without regard to the criteria mentioned in paragraph (3) of this subdivision, for the purposes of this Part the Office for Technology shall be considered to have custody and effective control of all statewide wireless network facilities; provided, however, that nothing in this subdivision shall be construed as subjecting to the provisions of the Code any statewide wireless network facility that would not otherwise be subject to the provisions of the Code; and provided further that for the purposes of this Part, the Office for Technology shall not be considered to have custody or effective control of any statewide wireless network supporting building merely by reason of the construction or installation of any statewide wireless network facility thereon or therein.

New paragraph (3) of subdivision (h) of section 1204.3 of Title 19 of the NYCRR is added to read as follows:

(3) Without limiting the generality of paragraphs (1) and (2) of this subdivision, for the purposes of this Part and for the purposes of Part 1201

of this Title, the term “State agency” shall include the Office for Technology.

Subdivision (i) of section 1204.3 of Title 19 NYCRR is renumbered subdivision (l) and new subdivisions (i), (j), and (k) are added to read as follows:

(i) *Statewide wireless network. An integrated statewide communications system intended to link state and local first responders to each other and to allow state and local first responders to communicate reliably during emergency situations, as contemplated by section 402(1)(a) of the State Technology Law. The term “statewide wireless network” shall include such communications system as originally developed and constructed and as thereafter extended, improved, upgraded, or otherwise modified from time to time.*

(j) *Statewide wireless network facility. Any tower, antenna, or equipment which is used or intended to be used in the operation of the statewide wireless network, and any building or structure which is constructed specifically for the purpose of supporting or containing any such tower, antenna, or equipment.*

(k) *Statewide wireless network supporting building. A building or structure which is not a statewide wireless network facility (i.e., which was not constructed specifically for the purpose of supporting or containing a tower, antenna, or equipment which is used or intended to be used in the operation of the statewide wireless network), but which has a statewide wireless network facility constructed or installed thereon or therein. For example, if a tower, antenna, and equipment used or intended to be used in the operation of the statewide wireless network, and a building or structure which will contain such equipment or support such tower, are constructed on the top of an existing office building, then:*

(1) *such office building would be a statewide wireless network supporting building;*

(2) *such office building would not be a statewide wireless network facility; and*

(3) *the tower, antenna, equipment, and building or structure constructed on the top of such office building would be a statewide wireless network facility.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 24, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740, e-mail: jball@dos.state.ny.us

Regulatory Impact Statement

1. STATUTORY AUTHORITY.

The statutory authority for this rule is section Executive Law section 381(1), which provides that the Secretary of State shall promulgate rules and regulations prescribing minimum standards for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the “Uniform Code”), and Executive Law section 381(2), which provides that every local government shall administer and enforce the Uniform Code “(e)xcpt as may be provided in regulations of the secretary”

2. LEGISLATIVE OBJECTIVES.

“In general, section 381 of the Executive Law directs that the State’s cities, towns and villages administer and enforce the New York State Uniform Fire Prevention and Building Code (Uniform Code). However, the statute contemplates the need for alternative procedures for certain classes of buildings based upon their design, construction, ownership, occupancy or use, and authorizes the Secretary of State to establish those procedures. . . .” 19 NYCRR section 1201.1.

Rules and regulations previously adopted by the Secretary of State pursuant to Executive Law section 381(2) provide that the State shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority.

The rule now being adopted by the Secretary of State clarifies that the State will be accountable for administration and enforcement of the Uniform Code with respect to facilities in the Statewide Wireless Network to be constructed and implemented by the Office for Technology.

3. NEEDS AND BENEFITS.

The existing policy of this State, as reflected in the existing rules and regulations, is that the State shall be accountable for administration and enforcement of the Uniform Code with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a

State department, bureau, commission, board or authority. This rule will clarify that this policy shall apply to facilities in the Statewide Wireless Network to be constructed and implemented by the Office for Technology.

This rule will also address the situation that will arise when a governmental agency other than the State (a local government, in most cases) is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure, and a Statewide Wireless Network facility is to be constructed or installed in or on such building or structure. This rule will provide that in such a case: (1) the local government will continue to have responsibility for administration and enforcement of the Uniform Code with respect to the building or structure; (2) the State will be responsible for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network facility to be constructed on installed in or on the building or structure; and (3) the local government and the State must consult and cooperate with each other with respect to their respective administrative and enforcement responsibilities, and must make their records available to each other on request. The rule would provide that the State would not be required to make available any record which, if disclosed, would jeopardize the capacity of the State, the Office for Technology, or any other State agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures, or if access to such record could otherwise be denied under section 87 of the Public Officers Law.

It is appropriate that the State have the responsibility for administration and enforcement of the Uniform Code with respect to the facilities that will be part of the Statewide Wireless Network. This will simplify and streamline the permitting process for all Statewide Wireless Network facilities to be constructed throughout the State. However, it may not be clear that the Office for Technology is a “department, bureau, commission, board or authority,” as that phrase is currently used in 19 NYCRR section 1201.2(d), and it may not be clear that all facilities in the Statewide Wireless Network will be in the “custody” of the Office for Technology, as that term is currently used in 19 NYCRR section 1201.2(d). Since Statewide Wireless Network facilities will be constructed in numerous communities throughout the State, it is appropriate to provide those communities, as well as the Office for Technology, with a clear indication of the responsibility for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network facilities.

Adoption of this rule on an emergency basis preserves the public safety and general welfare by providing an immediately effective clarification of the responsibility for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network facilities. This will permit the immediate commencement of the review and permitting activities incidental to construction of the Statewide Wireless Network.

4. COSTS.

a. Cost to regulated parties for the implementation of and continuing compliance with this rule: This rule imposes no obligation on any private party.

b. Costs to the Department of State: The Department of State anticipates that it will incur no costs as a result of this rule.

c. Costs to other State agencies: This rule will clarify that the State will be responsible for administration and enforcement of the Uniform Code with respect to Statewide Wireless Network facilities. The Department of State anticipates that the Office of General Services (“OGS”) will be the construction-permitting agency for Statewide Wireless Network facilities. The Department of State views this aspect of this rule more as a clarification of existing rules and regulations, rather than the creation of a new obligation that OGS would not otherwise have.

The Office for Technology will be required to comply with the Uniform Code in constructing any Statewide Wireless Network facility that is subject to the Uniform Code. However, this obligation exists under existing law and regulation, and not by reason of this rule.

d. Cost to local governments:

This rule will require local governments having the responsibility for administration and enforcement of the Uniform Code with respect to buildings and structures to consult and cooperate with the State, and to make their records available to the State, when a Statewide Wireless Network facility is constructed or installed in or on any such building or structure. However, the Department of State anticipates that existing staff in the code enforcement offices of the affected local governments will be able to provide the required consultation and cooperation, and the Department of State anticipates that this part of this rule will impose little or no new costs on local governments.

5. PAPERWORK.

This rule will clarify that the State, rather than local governments, will be responsible for administration and enforcement of the Uniform Code with respect to Statewide Wireless Network facilities. The Department of State anticipates that the amount of paperwork that will be required if the State is responsible for administration and enforcement of the Uniform Code will be no greater than the paperwork that would be required if local governments were given that responsibility.

6. LOCAL GOVERNMENT MANDATES.

As stated in subparagraph 6(d) (Costs to local governments) of this Regulatory Impact Statement, this rule will require local governments having the responsibility for administration and enforcement of the Uniform Code with respect to buildings and structures to consult and cooperate with the State, and to make their records available to the State, when a Statewide Wireless Network facility is constructed or installed in or on any such building or structure. However, the Department of State anticipates that existing staff in the code enforcement offices of the affected local governments will be able to provide the required consultation and cooperation.

7. DUPLICATION.

The Department of State is not aware of any relevant rule or other legal requirement of the State or Federal government which duplicates, overlaps or conflicts with this rule.

8. ALTERNATIVES.

Making local governments, and not the State, responsible for administration and enforcement of the Uniform Code with respect to Statewide Wireless Network facilities was considered but rejected for the reasons set forth in the Regulatory Impact Statement. The Department of State has not considered any other alternative to this rule.

9. FEDERAL STANDARDS.

The Department of State is not aware of any instance in which this rule exceeds any minimum standards of the federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE.

This rule can be complied with immediately. The Office of General Services has the ability to act as the construction-permitting agency, and should be able to begin the required permitting process with little or no delay.

Regulatory Flexibility Analysis

1. EFFECT OF RULE.

This rule does not apply directly to any business. However, to the extent that any business becomes involved in the Uniform Code permitting process incidental to construction of any Statewide Wireless Network facility, such business will be indirectly affected by this rule, since this rule will provide that the State will be responsible for such permitting.

This rule will affect local governments in municipalities in which Statewide Wireless Network facilities are to be constructed, since this rule will clarify that the State, and not the local government, will be responsible for administration and enforcement of the Uniform Code with respect to such Statewide Wireless Network facilities.

This rule will provide that when a local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and a Statewide Wireless Network facility is constructed or installed in or on such building or structure: (1) the local government will retain the responsibility for administration and enforcement of the Uniform Code with respect to the building or structure, (2) the State will have responsibility for administration and enforcement of the Uniform Code with respect to the Statewide Wireless Network facility constructed on installed in or on such building or structure, and (3) the local government and the State will be required to consult and cooperate with each other in connection with the performance of their respective administrative and enforcement obligations, and to make records available to each other upon request. (The rule would provide that the State would not be required to make available any record which, if disclosed, would jeopardize the capacity of the State, the Office for Technology, or any other State agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures, or if access to such record could otherwise be denied under section 87 of the Public Officers Law.)

2. COMPLIANCE REQUIREMENTS.

Any business involved in the construction of any Statewide Wireless Network facility will be required to comply with the Uniform Code (to the extent that the Uniform Code applies to such facility). However, that requirement exists under current law, not by reason of this rule. This rule will clarify that the State will be responsible for administration and en-

forcement of the Uniform Code with respect to such facility; this rule will not impose any new compliance requirement on any business.

This rule will clarify that the State, and not local governments, will be responsible for administration and enforcement of the Uniform Code with respect to Statewide Wireless Network facilities. This part of the rule imposes no compliance requirements on local governments.

This rule will provide that a local government that is responsible for administration and enforcement of the Uniform Code with respect to a building or structure shall retain such responsibility even if a Statewide Wireless Network facility is constructed or installed in or on such building or structure. This part of the rule imposes no new compliance requirements on local governments.

This rule will require a local government to consult and cooperate with the State, and to make its records available to the State, when the local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and a Statewide Wireless Network facility is constructed or installed in or on such building or structure.

3. PROFESSIONAL SERVICES.

This rule imposes no new compliance requirements on businesses. Therefore this rule creates no new reporting, recordkeeping, or other requirements for business which would require professional services.

A local government will be required to consult and cooperate with the State, and to make its records available to the State, when (1) the local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and (2) a Statewide Wireless Network facility is constructed or installed in or on such building or structure. The Department of State anticipates that existing staff in the code enforcement office of the local government will be able to provide the necessary consultation and cooperation. Therefore, except for such professional services as may be provided by existing staff, the Department of State anticipates that local governments will not require professional services to comply with this rule.

4. COMPLIANCE COSTS.

This rule imposes no new compliance requirements on businesses. Therefore this rule creates no new compliance costs for businesses.

This rule requires a local government to consult and cooperate with the State, and to make records available to the State, when (1) the local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and (2) a Statewide Wireless Network facility is constructed or installed in or on such building or structure. The Department of State anticipates that existing staff in the code enforcement office of the local government will be able to provide the necessary consultation and cooperation. Therefore, the Department of State anticipates that local governments will incur little or no additional costs in complying with this consultation and cooperation requirement.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

The Department of State anticipates that the Office of General Services will serve as the construction-permitting agency in connection with the State's obligation to administer and enforce the Uniform Code with respect to Statewide Wireless Network facilities. The Department of State believes that the permitting process incidental to the construction of a Statewide Wireless Network will be facilitated and simplified if that process is centralized in a single State agency. Therefore, to the extent that any small business becomes involved in the permitting process, this rule should enhance the economic and technological feasibility of compliance with the permitting requirements by such business.

The Department of State anticipates that existing staff in the code enforcement offices of local governments will be able to provide the consultation and cooperation that this rule will require when (1) the local government is responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure and (2) a Statewide Wireless Network facility is constructed or installed in or on such building or structure. The Department of State anticipates that it will be economically and technologically feasible for local governments to comply with this rule.

6. MINIMIZING ADVERSE IMPACT.

This rule imposes no new obligation on businesses of any size. Accordingly, this rule makes no special provisions for small businesses.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

The Department of State will notify local governments and other interested parties throughout the State of the provisions of this rule by means of a notice in Building New York, a monthly electronic news bulletin cover-

ing topics related to the Uniform Code and the construction industry which is prepared by the Department of State and currently distributed to approximately 3,700 subscribers representing all aspects of the construction industry. In addition, when this rule is proposed for permanent adoption, whether as a stand-alone provision or as part of a revision of the entire Uniform Code, the Code Council and the Department of State will conduct hearings and will solicit comments from the general public on this matter prior to voting to propose the adoption of this rule on a permanent basis.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule clarifies that the State will be responsible for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the "Uniform Code") with respect to facilities to be included in the Statewide Wireless Network to be established by the Office for Technology. This rule will apply uniformly throughout the State, including all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

This rule creates no new reporting, recordkeeping, or compliance requirement for any business. In particular, this rule creates no new reporting, recordkeeping, or compliance requirement for businesses located in rural areas.

Local governments that are responsible for administration and enforcement of the Uniform Code with respect to a particular building or structure will be required to consult and cooperate with the State, and to make its records available to the State, when a Statewide Wireless Network facility is constructed in or on such building or structure. This requirement will apply to all local governments, including local governments located in rural areas.

3. COSTS.

The Department of State anticipates that this rule will impose no new cost on any business. In particular, the Department of State anticipates that this rule will impose no new cost on businesses located in rural areas.

The Department of State anticipates that local governments, including local governments located in rural areas, will be able to use existing staff in their code enforcement offices to fulfill the consulting and cooperation requirements described in Section 2 (Reporting, recordkeeping and other compliance requirements) of this Rural Area Flexibility Analysis. Therefore, the Department of State anticipates that local governments, including local governments located in rural areas, will incur little or no additional costs in complying with this rule.

4. MINIMIZING ADVERSE IMPACT.

For the reasons discussed in Section 3 (Costs) of this Rural Area Flexibility Analysis, the Department of State anticipates that this rule will have little or no adverse impact on any business or local government. In particular, the Department of State anticipates that this rule will have little or no adverse impact on businesses or local governments located in rural areas. Accordingly, this rule makes no special provisions for regulated parties located in rural areas.

5. RURAL AREA PARTICIPATION.

The Department of State will notify code enforcement officials throughout the State, including those in rural areas, and other interested parties of the provisions of this rule by means of a notice in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and currently distributed to approximately 3,700 subscribers representing all aspects of the construction industry. In addition, when this rule is proposed for permanent adoption, whether as a stand-alone provision or as part of a revision of the entire Uniform Code, the Code Council and the Department of State will conduct hearings and will solicit comments from the general public on this matter prior to voting to propose the adoption of this rule on a permanent basis.

Job Impact Statement

The Department of State has determined that this rule will not have a substantial adverse impact on jobs or employment opportunities.

This rule amends the existing regulation that provides that the State shall be accountable for administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) with respect to buildings, premises and equipment in the custody of, or activities related thereto undertaken by, a State department, bureau, commission, board or authority, and adds definitions of new terms. The purpose of this rule is to clarify that the State shall have responsibility for administration and enforcement of the Uniform Code with respect to facilities to be included in the statewide wireless network to be established by the Office for Technology.

This rule will simply clarify the responsibility for administration and enforcement of the Uniform Code with respect to the statewide wireless network. It is anticipated that rule will have no substantial adverse impact on jobs or employment opportunities related to the construction of the statewide wireless network. Rather, by providing that all review and permitting responsibilities will be vested in a single permitting agency, this rule should streamline the construction process, which may have a beneficial impact on jobs and employment opportunities related to the construction of the statewide wireless network.