

# RULE MAKING ACTIVITIES

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

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

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

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## Department of Agriculture and Markets

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### EMERGENCY RULE MAKING

#### Captive Cervids

**I.D. No.** AAM-41-06-00025-E  
**Filing No.** 134  
**Filing date:** Jan. 25, 2007  
**Effective date:** Jan. 25, 2007

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," "Commingling," "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 emergency/proposed rule making, I.D. No. AAM-41-06-00025-EP, Issue of October 11, 2006. The emergency rule will expire March 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

Public Comment: Comment was received expressing support of the regulations and the chronic wasting disease program it establishes.

Agency Response: The Department agrees with this comment.

Public Comment: Comment was received questioning whether section 68.1(h) of the regulation applies to all permits issued by the Department of Environmental Conservation under Environmental Conservation Law (ECL) § 1105.15.

Agency Response: Section 68.1(h) of the regulation applies to all permits issued under ECL § 1105.15.

Public Comment: Comment was received concerning the length of time between the emergency adoption of the regulations and the opportunity to submit public comment.

Agency Response: The Department published a notice of proposed rule making, notice of hearing and opportunity to submit comments in the State Register after the approval required to do so was received. In the interim it discussed the proposed regulations with representatives of the State's captive cervid industry and with officials of the New York State Department of Environmental Conservation, which also has promulgated regulations concerning chronic wasting disease.

Public Comment: Comment was received questioning the notice of public hearing that was given to those affected by the regulation.

Agency Response: The Department mailed notice of public hearing to the captive cervid farmers known to it and published a notice of proposed rule making in the State Register.

Public Comment: Comment was received indicating that some regulated parties do not understand the regulations and that there are no uniform methods and rules.

Agency Response: The Department has endeavored to draft the regulations using language that clearly sets forth the requirements that regulated parties are required to meet. The Department's Division of Animal Industry will continue to work with captive cervid farmers to help them understand and comply with the regulations. Farms are visited on an annual basis and the regulations that apply to each farm are explained to the deer owner. The regulations have been drafted to comply with proposed federal requirements and to ensure that New York certified herds will be accepted as such by other states and the federal government.

Public Comment: Comment was received indicating that the regulations have had a detrimental effect on the deer industry in New York State.

Agency Response: The Department believes that chronic wasting disease poses a serious threat to the continued viability of the captive cervid industry in New York State. The regulations are designed to prevent the introduction and spread of the disease and to do so in a way that minimizes,

to the extent possible, the burden on regulated parties. In doing so, the regulations will help to ensure the continued viability of New York's captive cervid industry.

**Public Comment:** Comment was received noting that although the rule making indicates that a white-tail deer is worth between fifty and fifteen hundred dollars, the person submitting the comment had paid more than thirty thousand dollars for six animals.

**Agency Response:** The Department recognizes that individual animals can be worth more than the average prices set forth in the rule making documents.

**Public Comment:** Comment was received questioning the use of plastic fence in the cost estimate regarding compliance with the fencing requirement of the regulation.

**Agency Response:** The Department believes that the use of plastic fence provides a reasonable and cost effective means of complying with the fencing requirement. Plastic fence can be used as a visual barrier above woven wire to discourage deer from attempting to jump over the fence.

**Public Comment:** Comment was received regarding the lack of indemnity for the loss of animals associated with compliance with the regulations and contrasted that with the indemnity provided for tuberculosis.

**Agency Response:** The indemnity provided under the State and Federal tuberculosis programs is statutory in nature and does not provide indemnity for animals lost during testing.

**Public Comment:** Comment was received questioning the herd inventory requirements of the regulations.

**Agency Response:** The Department recognizes the difficulties and expense associated with conducting inventories of captive cervids, but believes that such inventories are an essential component of an effective disease control program.

**Public Comment:** Comment was received questioning the requirement that breaks in fences be promptly identified and repaired.

**Agency Response:** The Department believes that maintaining adequate fencing is essential to preventing the escape of captive cervids and the commingling of such cervids with wild deer. The separation of wild and captive deer is an important element of the CWD program implemented by the regulations.

**Public Comment:** Comment was received questioning exceptions made for scientific and breeding purposes.

**Agency Response:** The regulations have been drafted to allow reasonable movement of captive cervids in a manner consistent with preventing the introduction and spread of chronic wasting disease.

**Public Comment:** Comment was received asking that the regulations be revisited if it is determined that deer farms do not harbor chronic wasting disease.

**Agency Response:** The Department agrees that as more information about chronic wasting disease becomes available the regulations should be reviewed and, if necessary, revised to provide the best protection against the introduction and spread of CWD while minimizing, to the extent possible, the impact on regulated parties.

**Public Comment:** Comment was received suggesting that there should be no licensing of rehabilitators of animals in New York State.

**Agency Response:** The rehabilitation of wild animals falls under the jurisdiction of the New York State Department of Environmental Conservation. Certain wild deer, held in captivity for short periods of time, pursuant to DEC licenses have been exempted from the regulations. DEC has a surveillance program for wild deer in New York. The exempted wild deer are considered part of the wild population although temporarily captive and are monitored by DEC.

**Public Comment:** Comment was received questioning the cost to the State of the testing of animals by veterinarians.

**Agency Response:** The Department believes that the costs associated with this regulatory program are reasonable given the importance of preventing the introduction and spread of Chronic Wasting Disease within the State.

**Public Comment:** Comment was received suggesting that information should be available indicating the length of time farmers have been enrolled in the Chronic Wasting Disease Program.

**Agency Response:** The Department is in the process of evaluating past inventories of farms for purposes of providing their CWD certification status. It is developing a database to facilitate this process.

**Public Comment:** Comment was received inquiring whether the requirement in the regulations that an official test is a test approved by USDA APHIS and performed by a USDA approved laboratory applies to tests other than that for Chronic Wasting Disease.

**Agency Response:** This requirement in the regulation applies only to the test for Chronic Wasting Disease. Other tests are governed by the regulations relating to those tests.

**Public Comment:** Comment was received inquiring as to where a listing of USDA approved laboratories could be obtained.

**Agency Response:** The Department and the USDA can provide a list of laboratories approved by the USDA.

**Public Comment:** Comment was received asking what additional testing is available in the event of a false positive is detected.

**Agency Response:** In the case of any positive, all relevant samples are retested at the National Veterinary Services Laboratory at Ames, Iowa which is the national reference laboratory for all transmissible spongiform encephalities.

**Public Comment:** Comment was received questioning the requirement that records relating to purchases, sales, inter-state shipments, escaped cervids and deaths be kept for at least seventy-two months.

**Agency Response:** The keeping of these records is necessary in order to do trace backs and trace forwards in the event Chronic Wasting Disease is detected in a New York State captive cervid herd.

**Public Comment:** Comment was received suggesting that the testing of all animals that die a natural death should not be required.

**Agency Response:** The Department believes that the testing of captive cervids that die a natural death is an important component of a program to detect Chronic Wasting Disease.

**Public Comment:** Comment was received as to whether the identification second tag required by the regulations can be affixed at the time of the next annual inventory.

**Agency Response:** At each inventory, an animal must be identified with two tags. If an animal loses a tag, it does not have to be replaced until the next inventory or until the animal leaves the premises, whichever is earlier. The purpose of the second tag requirement is to avoid having to retag the animal immediately after it loses a tag.

**Public Comment:** Comment was received as to whether samples from a decomposed deer are appropriate Chronic Wasting Disease test samples.

**Agency Response:** An owner is required to notify the Department of the death of any susceptible animal over 16 months of age. The length of time after death that samples remain suitable for testing depends on environmental conditions. The Department and the laboratory will ascertain which samples remain suitable for testing.

**Public Comment:** Comment was received questioning whether the sixteen month requirement for the testing of susceptible cervids that die natural deaths is based on that age as the youngest age an animal has tested positive for Chronic Wasting Disease.

**Agency Response:** The longer that an animal has Chronic Wasting Disease the more likely it will test positive for the disease. Although the disease has been detected in younger animals, the sixteen month requirement was established several years ago as the most productive age at which to detect the disease.

**Public Comment:** Comment was received questioning the requirement that ten percent or thirty animals in special purpose herds must be tested.

**Agency Response:** The Department believes that the testing is necessary to detect Chronic Wasting Disease in New York State's captive cervid population. The testing protocol has been designed to provide a reasonable probability of detecting the disease without unduly disrupting captive cervid operations.

**Public Comment:** Comment was received indicating that it is an undue burden to prohibit, as of July 14, 2007, the sale of animals that do not have four year status.

**Agency Response:** The certification program was established in 2004. Herds without prior status that complied with the program achieved first year status that year, second year status in 2005, third year status in 2006 and fourth year status in 2007.

**Public Comment:** Comment was received indicating that the quarantining of land and animals in a containment area resulting from the detection of Chronic Wasting Disease places an undue constraint on farmers.

**Agency Response:** The Department believes that the quarantining of premises and animals in an area in which Chronic Wasting Disease has been detected is necessary in order to prevent the spread of Chronic Wasting Disease in the event of an outbreak.

**Public Comment:** Comment was received questioning whether Chronic Wasting Disease poses a serious enough threat to warrant the imposition of special requirements, such as additional fences, in the event of a Chronic Wasting Disease outbreak.

**Agency Response:** The Department believes that Chronic Wasting Disease poses a sufficient threat to the captive cervid industry, as well as to

the wild white tail deer population, to warrant the preventative measures contained in the regulations.

**Public Comment:** Comment was received questioning the prohibition against the sale of captive cervid carcasses until they have tested negative for Chronic Wasting Disease.

**Agency Response:** The Department believes that it is important to ascertain the Chronic Wasting Disease status of susceptible captive cervids that have been sampled and tested before the carcasses of such animals are sold or donated.

**Public Comment:** Comment was received suggesting that to conform with USDA/APHIS testing protocol the term "not detected" be used rather than "not detected or negative" in referring to test results in which Chronic Wasting Disease is not detected.

**Agency Response:** The Department will consider making the technical change suggested.

**Public Comment:** Comment was received suggesting that a tonsil biopsy be used to detect Chronic Wasting Disease in place of the testing protocol provided for in the regulations.

**Agency Response:** The testing protocol provided for in the regulations is the protocol currently approved by the federal government to detect Chronic Wasting Disease. The tonsil biopsy is currently being evaluated on an experimental basis.

**Public Comment:** Comment was received suggesting that the cost of handling captive cervids will be much more than the \$250.00 stated.

**Agency Response:** The cost estimates given are averages. The labor costs associated with handling captive cervids will vary depending upon the number of deer, how much they are accustomed to human contact and the design and construction of handling facilities.

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

#### National Institute of Standards and Technology Handbook 44, 2007 Edition

I.D. No. AAM-07-07-00002-P

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

**Proposed action:** This is a consensus rule making to amend section 220.2(a) of Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 16, 18 and 179

**Subject:** 2007 edition of National Institute of Standards and Technology (NIST) Handbook 44.

**Purpose:** To incorporate by reference the 2007 edition of NIST Handbook 44.

**Text of proposed rule:** Subdivision (a) of section 220.2 of 1 NYCRR is amended to read as follows:

(a) Except as otherwise provided in this Part, the specifications, tolerances and regulations for commercial weighing and measuring devices shall be those adopted by the [90th] 91st National Conference on Weights and Measures [2005] 2006 as published in the National Institute of Standards and Technology Handbook 44, [2006] 2007 edition. This document is available from the National Conference on Weights and Measures, 15245 Shady Grove Road, Rockville, MD 20850, or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is available for public inspection and copying in the office of the Director of Weights and Measures, Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, or in the office of the Department of State, 41 State Street, Albany, NY 12231.

**Text of proposed rule and any required statements and analyses may be obtained from:** Ross Andersen, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-3146, e-mail: ross.andersen@agmkt.state.ny.us

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

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

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

#### Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR section 220.2 to incorporate by reference the 2007 edition of National Institute of Standards and Technology Handbook 44 in place of the 2006 edition which is presently incorporated by reference.

The proposed rule is non-controversial. The 2007 edition of Handbook 44 has been adopted by or is in use in every state other than New York; the State's manufacturers of weighing and measuring devices already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce. Furthermore, the State's users of commercial weighing and measuring devices also already use devices that conform to the provisions of this document due to its nearly-nation-wide applicability. The proposed rule will not, therefore, have any adverse impact upon regulated businesses and is, therefore, non-controversial.

#### Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will incorporate by reference in 1 NYCRR section 220.2 the 2007 edition of National Institute of Standards and Technology Handbook 44 (henceforth, "Handbook 44 (2007 edition)") which contains specifications, tolerances and regulations for commercial measuring devices. The 2006 edition of Handbook 44 is presently incorporated by reference. Handbook 44 (2007 edition) differs from the 2006 edition in that it amends several requirements for scales, so that such requirements are consistent with international standards; changes requirements for retail motor fuel dispensers; and revises vapor elimination procedures for metering systems mounted on vehicles. Handbook 44 (2007 edition) has been adopted by or is in use in every state other than New York; the State's manufacturers and users of weighing and measuring devices already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce.

The proposed rule will not, therefore, have any adverse impact upon jobs or employment opportunities.

## Department of Audit and Control

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

#### Required Training for Commissioners of Fire Districts

I.D. No. AAC-07-07-00001-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 153 to Title 2 NYCRR.

**Statutory authority:** Town Law, section 176-e; L. 2006, ch. 242, section 2; State Finance Law, section 8(14)

**Subject:** Required training for commissioners of fire districts.

**Purpose:** To prescribe a training course for commissioners of fire districts, and the manner, frequency and the duration of the course.

**Substance of proposed rule (Full text is posted at the following State website: [www.osc.state.ny.us/localgov/fdreform](http://www.osc.state.ny.us/localgov/fdreform)):** Section 153.1 would describe the scope of Part 153 by discussing the provisions of section 176-e of the Town Law, as added by chapter 242 of the Laws of 2006, which impose a training requirement on fire district commissioners and require the State Comptroller to promulgate rules relating to that training.

Section 153.2 would define terms used in Part 153.

Section 153.3 would clarify the statutory training requirement by providing that every "fire commissioner" who is elected, reelected, appointed or reappointed shall attend and successfully complete an "approved training course" within two hundred seventy days of taking office on or after January 22, 2007. A fire commissioner would be able to fulfill the training requirement by attending and successfully completing "course modules" offered by different persons and organizations. In general, a fire commissioner receiving documentation evidencing attendance and successful completion of an approved training course or a course module would be required to retain the documentation for the duration of his or her current term of office.

Section 153.4 would prescribe the content of an approved training course. An approved training course would consist of instruction in six course modules: fire district management, financial administration, travel procedures and policies, procurements and disposition of fire district as-

sets, internal controls and detection of fraud and abuse, and conflicts of interest and ethics. The proposed rule would prescribe the subjects and topics to be covered in each course module.

Section 153.5 would prescribe requirements relating to the manner of providing an approved training course or course module. An approved training course or course module could be provided through live instruction in a classroom or similar setting, or by means of teleconferencing, interactive web-based training, self-paced on-line training, or any other method designed to address the learning needs of fire commissioners that is approved by the State Comptroller. All methods of providing an approved training course or course module would have to be interactive. An approved training course could be offered in one or more sessions conducted over one or more days. The instructor presenting a course module would be required to verify attendance during, and successful completion of, the course module. When an approved training course or course module is offered at a specific location or facility, the location or facility would be required to comply with all legal requirements relating to physical access by persons with disabilities. Upon request, study and reference materials, and delivery of the training course or module, would have to be accessible and usable by persons with disabilities through the use of means such as aides, auxiliary materials and services, and written materials in accessible formats. Person or organizations offering an approved training course or a course module would be required to issue to fire commissioners documentation evidencing successful completion of the training course or course module, and maintain for a period of at least six years a record thereof.

Section 153.6 would prescribe requirements relating to the duration of an approved training course or course module. As a rule, the duration of an approved training course would have to be at least six hours, with at least one hour of instruction in each course module. In the case of self-paced on-line training, an approved training course or course module would have to be designed to enable verification that the training course or course module is completed.

Section 153.7 would prescribe requirements relating to the frequency of an approved training course or course module. In general, each person or organization that has received certification of an approved training course would be required to offer each course module at least once a year and, on or before January 15, annually, establish a schedule for offering the course modules. Each such person or organization would then be required to take timely and reasonable steps to announce the schedule to the fire commissioners serving fire districts in the vicinity of the location that the course modules will be offered.

Section 153.8 would prescribe the process for obtaining from the State Comptroller certification of a training course as an approved training course. Application for certification would be made on a form prescribed by the Comptroller containing certain information, including a detailed outline of each course module and the amount of time to be devoted to each subject and topic included within the module. If an application is approved, the Comptroller would issue to the applicant documentation evidencing certification which, generally, would be valid for five years. If an application is disapproved, the Comptroller would issue to the applicant a statement indicating the reason or reasons for the disapproval and, following receipt of that statement, the applicant could submit a new application. The Comptroller would be authorized to revoke certification as an approved training course in the event that the Comptroller determines that there has been a material departure from the requirements of the rules, or a material departure from the representations made in the application for certification, following notice and an opportunity to submit a written reply. The Comptroller would be required to maintain a record of all persons and organizations which have received certification of an approved training course, the dates on which such certifications expire and, if a certification has been revoked, the date of the revocation.

**Text of proposed rule and any required statements and analyses may be obtained from:** Michael Kupferman, Assistant Counsel, Office of the State Comptroller, 110 State St., 14th Fl., Albany, NY 12236-0001, (518) 474-6191, e-mail: localgov@osc.state.ny.us

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

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

#### Regulatory Impact Statement

##### 1. Statutory Authority:

Section 176-e of the Town Law, as added by chapter 242 of the Laws of 2006, requires each commissioner of a fire district to attend and successfully complete a State-approved training course within two hundred seventy days of taking office. Section 176-e requires the training course to contain instruction relating to such fire commissioners' legal, fiduciary,

financial, procurement, and ethical responsibilities, and such other disciplines as may be prescribed by the State Comptroller. That section also requires the training course to be prescribed and certified in rules promulgated by the State Comptroller, and requires such rules to establish the manner, frequency and duration of the training course. Section 2 of chapter 242 provides that the State Comptroller may promulgate any rules and regulations necessary to implement section 176-e prior to the effective date of chapter 242 on January 22, 2007. Section 8(14) of the State Finance Law authorizes the State Comptroller to make, amend and repeal rules and regulations as he may deem necessary in the performance of the duties imposed upon him by law.

##### 2. Legislative Objectives:

The proposed rule would accomplish the legislative objectives of prescribing, and establishing a procedure for certifying, the content, manner of providing, and duration of the training course for fire district commissioners.

##### 3. Needs and Benefits:

The purpose of the proposed rule is to prescribe, and establish a procedure for certifying, the content, manner of providing, frequency, and duration of the training course for fire district commissioners. The rule is necessary because section 176-e of the Town Law requires the State Comptroller to promulgate rules addressing these issues. The benefit of the proposed rule is that it would make possible the training required by section 176-e.

##### 4. Costs:

a. The costs to regulated parties for the implementation of, and continuing compliance with, the proposed rule are indeterminate, but likely to be small.

The proposed rule would require persons and organizations seeking to develop an approved training course for fire district commissioners to comply with certain provisions relating to the content, manner of providing, duration and frequency of the course. These provisions may impose implementation and compliance costs on such persons or organizations, but these costs are apt to vary greatly based on a number of factors, the most important of which are the course developer's familiarity with the content of the course, that person's rate of compensation, and the choices made by the course provider with respect to the manner in which the course is to be provided. Nonetheless, it is estimated that the cost to develop a training course that complies with the proposed rule is approximately \$3,600. The cost of an instructor to provide the course in a classroom or similar setting with course materials is estimated to be \$2,100.

The proposed rule would also require persons and organizations that develop a training course to apply to the State Comptroller for certification of the course as an approved training course. The principal information that would be required by the application is a description of how the applicant intends to comply with the provisions in the proposed rule relating to the content, manner of providing, duration, and frequency of the course, as well as a detailed outline of the training course. Because an applicant must have the information and outline required by the application before it is submitted to the Comptroller, the additional cost of preparing an application form and submitting it to the Comptroller would be minimal.

In addition, the proposed rule would require persons or organizations providing an approved training course to issue to fire district commissioners documentation evidencing successful completion of the course, and to maintain, for six years, a record of the fire district commissioners who successfully complete the course. These requirements would impose only minimal costs because the documentation evidencing successful completion of the course can take the form of a letter, or even an e-mail, and the amount of information that must be maintained as a record is small and readily available from the commissioners who take the course.

b. The costs of the proposed rule to the agency are indeterminate. The proposed rule would require the State Comptroller to evaluate applications for certification of training courses for fire district commissioners as approved training courses. The cost of performing this function will depend on the number of applications received by the agency, and there is no way to predict how many applications the agency is likely to receive. Nonetheless, the agency expects that performance of the function would require the full time equivalent (FTE) of two people – one and half FTE of an SG-18 professional and one-half FTE of an SG-11 administrative assistant, but would not require hiring additional personnel. The proposed rule would impose no other costs on the State, and no costs on local governments.

c. The basis for the foregoing cost estimates is the above analysis of the requirements of the proposed rule, and an estimate of professional course

development and teaching costs based on the agency's knowledge of such costs.

5. Local Government Mandates:

The proposed rule would impose no requirements on any local governments.

6. Paperwork:

The proposed rule would require persons or organizations that develop a training course for fire district commissioners to file an application with the State Comptroller for certification of the course as an approved training course. Course providers would be required to issue documentation evidencing successful completion of the course, and maintain records thereof for at least six years.

7. Duplication:

None.

8. Alternatives:

No significant alternatives were considered.

9. Federal Standards:

None.

10. Compliance Schedule:

It is estimated that the time to develop a training course that complies with the proposed rule would be eighteen hours. Completion of an application to have the course certified as an approved training course is estimated to take less than an hour. The agency's evaluation of such an application is expected to take no more than forty-five days. Persons or organizations receiving certification of an approved training course would be required to offer the course at least once a year. Except in the case of self-paced on-line training, the duration of an approved training course must be at least six hours. Within forty-five days of a fire commissioner successfully completing an approved training course or course module, the person or organization offering the training course or course module would be required to issue to the fire commissioner documentation evidencing the date on which the fire commissioner successfully completed the training course or course module.

**Regulatory Flexibility Analysis**

1. Effect of rule:

The proposed rule would affect every small business that intends to provide an approved training course to fire district commissioners. The types of small businesses most likely to be affected are state-wide fire service organizations, law firms, accounting firms, financial advisers, and professional trainers. It is not anticipated that the proposed rule would affect local governments because it is not expected that local governments will provide the training.

2. Compliance requirements:

The proposed rule would require small businesses intending to develop an approved training course for fire district commissioners to comply with certain provisions relating to the content, manner of providing, duration, and frequency of the course. These small businesses would also be required to apply to the State Comptroller for certification of the course as an approved training course. In addition, the proposed rule would require small businesses providing an approved training course to issue to fire district commissioners documentation evidencing successful completion of the course, and to maintain, for six years, a record of the fire district commissioners who successfully complete the course.

3. Professional services:

Implementation of the proposed rule would require small businesses to have access to one or more persons who are familiar with the content of an approved training course in order to develop and present the course. The persons who would most likely meet these requirements include, but are not limited to, attorneys, accountants, financial advisers, and professional trainers.

4. Compliance costs:

The initial capital costs that would be incurred by small businesses to comply with the proposed rule are indeterminate, but likely to be small.

The proposed rule would require persons and organizations seeking to develop an approved training course for fire district commissioners to comply with certain provisions relating to the content, manner of providing, duration, and frequency of the course. The cost of complying with these provisions is apt to vary greatly based on a number of factors, the most important of which are the course developer's familiarity with the content of the course, that person's rate of compensation, and the choices made by the course provider with respect to the manner in which the course is to be provided. Nonetheless, it is estimated that the cost to develop a classroom training course that complies with the proposed rule is approximately \$3,600.

The proposed rule would also require a person or organization that develops a training course to apply to the State Comptroller for certification of the course as an approved training course. Because the information required for the application is essentially a description of the training course that an applicant would have already developed, the additional cost of applying to the Comptroller for certification of the course as an approved training course is expected to be minimal.

The annual cost for continuing compliance with the proposed rule by small businesses is indeterminate, but likely to be small.

The proposed rule would require persons or organizations to provide an approved training course to fire district commissioners through live instruction in a classroom or similar setting, or by means of teleconferencing, interactive web-based training, self-paced on-line training, or any other method designed to address the learning needs of fire commissioners that is approved by the State Comptroller. Thus, the annual cost of providing the course will vary depending on which of these methods the course provider chooses to utilize. The cost of an instructor to provide the course in a classroom or similar setting with course materials is estimated to be \$2,100.

The proposed rule would require persons or organizations providing an approved training course to issue to fire district commissioners documentation evidencing successful completion of the course, and to maintain, for six years, a record of the fire district commissioners who successfully complete the course. These requirements would impose minimal annual compliance costs because the documentation evidencing successful completion of the course can take the form of a letter, or even an e-mail, and the amount of information that must be maintained as a record is small and readily available from the commissioners who take the course.

Neither the initial compliance costs, nor the continuing compliance costs will vary depending on the size or type of a small business.

5. Economic and technological feasibility:

The proposed rule is economically feasible for small businesses because the compliance costs are likely to be small. The proposed rule is technologically feasible for small business because the proposed rule authorizes an approved training course for fire district commissioners to be provided through live instruction in a classroom or similar setting, or by means of teleconferencing, interactive web-based courses, self-paced on-line training, or any other method designed to address the learning needs of fire commissioners that is approved by the State Comptroller.

6. Minimizing adverse impact:

Because the costs of complying with the proposed rule are likely to be small, the proposed rule does not impose an adverse economic impact on small businesses and, therefore, no approaches for minimizing such impact were considered.

7. Small business and local government participation:

Notice of the proposed rule has been disseminated to state-wide fire service organizations and posted on the agency's website.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

The proposed rule will apply to every rural area in the State.

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

The proposed rule would require persons or organizations intending to develop an approved training course for fire district commissioners to comply with certain provisions relating to the content, manner of providing, duration, and frequency of the course. The proposed rule would also require persons and organizations that develop a training course to apply to the State Comptroller for certification of the course as an approved training course. In addition, the proposed rule would also require persons or organizations providing an approved training course to issue to fire district commissioners documentation evidencing successful completion of the course, and to maintain, for six years, a record of the fire district commissioners who successfully complete the course.

Implementation of the proposed rule would require access to one or more persons who are familiar with the content of an approved training course in order to develop and present the course to fire district commissioners. The persons who would most likely meet these requirements include, but are not limited to, attorneys, accountants, financial advisers, and professional trainers.

3. Costs:

The initial capital costs that will be incurred by persons or organizations to comply with the proposed rule are indeterminate, but likely to be small.

The proposed rule would require persons and organizations seeking to develop an approved training course for fire district commissioners to

comply with certain provisions relating to the content, manner of providing, duration, and frequency of the course. The cost of complying with these provisions is apt to vary greatly based on a number of factors, the most important of which are the course developer's familiarity with the content of the course, that person's rate of compensation, and the choices made by the course provider with respect to the manner in which the course is to be provided. Nonetheless, it is estimated that the cost to develop a classroom training course that complies with the proposed rule is approximately \$3,600.

The proposed rule would also require a person or organization that develops a training course to apply to the State Comptroller for certification of the course as an approved training course. Because the information required for the application is essentially a description of the training course that an applicant would have already developed, the additional cost of applying to the Comptroller for certification of the course as an approved training course is expected to be minimal.

The annual cost for continuing compliance with the proposed rule is indeterminate, but likely to be small.

The proposed rule would require persons or organizations to provide an approved training course to fire district commissioners through live instruction in a classroom or similar setting, or by means of teleconferencing, inter-active web-based training, self-paced on-line training, or any other method designed to address the learning needs of fire commissioners that is approved by the State Comptroller. Thus, the annual cost of providing the course will vary depending on which of these methods the course provider chooses to utilize. The cost of an instructor to provide the course in a classroom or similar setting with course materials is estimated to be \$2,100.

The proposed rule would require persons or organizations providing an approved training course to issue to fire district commissioners documentation evidencing successful completion of the course, and to maintain, for six years, a record of the fire district commissioners who successfully complete the course. These requirements would impose minimal annual compliance costs because the documentation evidencing successful completion of the course can take the form of a letter, or even an e-mail, and the amount of information that must be maintained as a record is small and readily available from the commissioners who take the course.

Neither the initial compliance costs, nor the continuing compliance costs will vary for different types of public and private entities in rural areas.

#### 4. Minimizing adverse impact:

Because the costs of complying with the proposed rule are likely to be small, the proposed rule does not impose an adverse impact on rural areas and no approaches for minimizing such impact were considered.

#### 5. Rural area participation:

Notice of the proposed rule has been disseminated to state-wide fire service organizations and posted on the agency's website.

qualified commercial production companies would provide incentive for commercials to be made in NY.

**Subject:** Empire State Commercial Production Tax Credit Program.

**Purpose:** L. 2006, ch. 62 mandates the department to promulgate regulations for the program to establish procedures for the allocation of commercial tax credits.

**Substance of emergency rule:** The Empire State commercial production tax credit program provides a three component tax credit program for eligible qualified commercial production companies. First, under the growth credit program, an eligible company may receive a 20% credit on qualified production costs provided the applicant has met the threshold test and shown that the total qualified production costs are greater in the calendar year for which they are applying than in the average of the three previous years. Assuming this test is met, the 20% credit is applied to the amount of total qualified production costs in the calendar year the applicant is applying that are greater than the total costs of the preceding year. There is a \$300,000 tax credit cap per applicant annually.

The second component program is referred to as the downstate credit program. This credit is 5% of the qualified production costs paid or incurred in the production of a qualified commercial within the metropolitan commuter transportation district. In order to be eligible for such credit, a qualified commercial production company must have qualified production costs in excess of \$500,000 in the metropolitan commuter transportation district during the calendar year and the credit shall be applied to only those costs exceeding such amount.

The third component program is referred to as the upstate credit program. This credit is 5% of the qualified production costs paid or incurred in the production of a qualified commercial outside of the metropolitan commuter transportation district. In order to be eligible for such credit, a qualified commercial production company must have qualified production costs in excess of \$200,000 outside of the metropolitan commuter transportation district during the calendar year and the credit shall be applied to only those costs exceeding such amount.

This rule implements Chapter 62 of the laws of 2006. Part 180 of Title 5 NYCRR is hereby created and is summarized as follows:

First, the rule makes clear that the Governor's Office for Motion Picture and Television development shall administer the Empire State commercial production tax credit program. This proposed rule does not govern the New York City commercial production tax credit program – eligibility in either the state or city program does not guarantee eligibility or receipt of a credit in the other.

Second, eligibility in the program is established through the definition of applicant. In order to be eligible to apply for the program, a business must be a qualified commercial production company or sole proprietor thereof that submits an application to the Office after it has completed a calendar year's worth of qualified commercials.

Third, an application process is created. An applicant must complete an application between the first day of business in January and April 1 of the year succeeding the year in which the commercial work was performed. The Office then reviews the application based on criteria set out in the proposed rule, including the completeness of the application and whether or not it meets the statutory requirements for qualification, including whether at least 75% of its production costs (excluding post-production) paid or incurred directly and predominantly in the actual filming or recording of each qualified commercial are qualified production costs, and whether its qualified production costs correspond to one or more of the three component tax credit programs.

Fourth, if the application is approved, the Office shall issue a certificate of tax credit to the applicant. If the application is disapproved, the applicant receives notice of its rejection from the program and may reapply at a later date.

Fifth, the proposed rule requires applicants to maintain records of qualified production costs used to calculate their potential or actual benefit under the program for a period of 3 years. Such records may be requested by the Office upon reasonable notice.

Finally, the proposed rule creates an appeal process. Applicants who have had their applications disapproved, or who have a disagreement over the dollar amount of their tax credit, have the right to appeal.

**This notice is intended** to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire April 27, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** Thomas Regan, Department of Economic Development, 30 South Pearl St., Albany, NY 12245, (518) 292-5123, e-mail: tregan@empire.state.ny.us

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## Department of Economic Development

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### EMERGENCY RULE MAKING

#### Empire State Commercial Production Tax Credit Program

**I.D. No.** EDV-07-07-00003-E

**Filing No.** 136

**Filing date:** Jan. 29, 2007

**Effective date:** Jan. 29, 2007

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

**Action taken:** Addition of Part 180 to Title 5 NYCRR.

**Statutory authority:** L. 2006, chs. 62 and 440

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

**Specific reasons underlying the finding of necessity:** As a matter of public policy, the Legislature determined that a tax credit to eligible

**Regulatory Impact Statement****STATUTORY AUTHORITY:**

Section (8)(e) of Part V of Chapter 62 of the laws of 2006 which creates a new section 28 of the tax law as well as amends sections 210, 606, and 1310 thereof as well as Chapter 440 of the laws of 2006 which amends sections 28, 1201-a and 1310 require the Commissioner of Economic Development to promulgate rules and regulations by October 31, 2006 to establish procedures for the allocation of the Empire State commercial production tax credit, including provisions describing the application process, the due dates for such applications, the standards used to evaluate the applications, and the documentation provided to taxpayers to substantiate to the State Department of Taxation and Finance the amount of the tax credit for the program itself. Such legislation provides that, notwithstanding any other provisions to the contrary in the State Administrative Procedure Act, the rules and regulations may be adopted on an emergency basis.

**LEGISLATIVE OBJECTIVES:**

The proposed rule is in accord with the public policy objectives the Legislature sought to advance by creating a tax credit program for the commercial industry. This program is an attempt to create an incentive for commercial industry to bring productions to New York State as opposed to other competitive markets, such as California and overseas. It is the public policy of the State to offer a tax credit that will help provide incentive for the commercial industry to bring productions to the State. The proposed rule helps to further such objectives by establishing an application process for the program, clarifying portions of the Program through the creation of various definitions and describing the credit allocation process itself.

**NEEDS AND BENEFITS:**

The proposed rule is required to be promulgated by October 31, 2006 (see section 8(e) of Part V of Chapter 62 of the laws of 2006). It is necessary to administer properly the tax credit program. The statute itself does not set out the specifics of the program; rather, it deals primarily with its creation and calculation of the actual tax credit. There are several administrative benefits that would be derived from this proposed rulemaking. First, the proposed rule establishes a clear and precise application process, complete with due process as there is an opportunity for applicants to appeal from denials of applications or a disagreement regarding the actual amount of the tax credit. Second, the proposed rule describes in detail the standards to be used to evaluate applications created under this program. Third, it describes the documentation that will be provided to taxpayers to substantiate to the State Tax and Finance Department the amount of the tax credits allocation. Finally, it clarifies some existing definitions and creates several new definitions in order to help facilitate an effective and efficient administration of the program.

**COSTS:**

I. Costs to private regulated parties (the Business applicants): None. The proposed regulation will not impose any additional costs to the commercial industry.

II. Costs to the regulating agency for the implementation and continued administration of the rule: There could be additional costs to the Department of Economic Development associated with the proposed rule making as the Office will need two additional employees to help with the program's newly created administrative process. Such costs are estimated to be \$120,000 in annual salary for both employees.

III. Costs to the State government: The program shall not allocate more than \$7 million in any calendar year. The program sunsets on December 31, 2011 so the overall cost to the State would not exceed \$35 million.

IV. Costs to local governments: None. The proposed regulation will not impose any additional costs to local government

**LOCAL GOVERNMENT MANDATES:**

None.

**PAPERWORK:**

The proposed rule creates an application process for eligible applicants, including the creation of an application, certain tax certificates and forms relating to commercial expenditures.

**DUPLICATION:**

The proposed rule will not duplicate or exceed any other existing Federal or State statute or regulation.

**ALTERNATIVES:**

No alternatives were considered in regard to creating a new regulation in response to the statutory requirement. The Department of Economic Development, through its Governor's Office for Motion Picture and Television Development, did an extraordinary amount of outreach to various interested parties before submitting this proposed rule. For example, the Department met with seven commercial industry producers to seek industry input. In addition, the Department met with both the CEO and the CFO of the Association of Independent Commercial Producers to solicit their comments. Furthermore, the Department was in close contact with representatives from the State Tax and Finance Department and the Mayor's Office of Film, Theatre and Broadcasting to coordinate the details of the proposed rule.

**FEDERAL STANDARDS:**

There are no federal standards in regard to the Empire State commercial production tax credit program; it is purely a state program that offers a state tax credit to eligible applicants. Therefore, the proposed rule does not exceed any federal standard.

**COMPLIANCE SCHEDULE:**

The effected State agencies (Economic Development) and the business applicants will be able to achieve compliance with the proposed regulation as soon as it is implemented. In terms of compliance schedule, the statute (Chapter 62 of the laws of 2006) was signed into law on June 6, 2006. The statute gave the Department until October 31, 2006 to promulgate regulations to implement the program. The program applies to taxable years beginning on or after January 1, 2007 and expires on December 31, 2011.

**Regulatory Flexibility Analysis**

Participation in the Empire State commercial production credit program is entirely at the discretion of qualified commercial production companies. Neither Chapter 62 of the laws of 2006 nor the proposed regulations impose any obligation on any local government or business entity to participate in the program. The proposed regulation does not impose any adverse economic impact or compliance requirements on small businesses or local governments. In fact, the proposed regulation may have a positive economic impact on small businesses due to the possibility that these businesses may enjoy a commercial production tax credit if they qualify for the program's tax credit.

Because it is evident from the nature of the proposed rule that it will have either no impact or a positive impact on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small business and local government is not required and one has not been prepared.

**Rural Area Flexibility Analysis**

This program is open to participation from all qualified commercial production companies, defined by statute to include a corporation, partnership or sole proprietorship making and controlling a qualified commercial in New York. The locations of the companies are irrelevant, so long as they meet the necessary qualifications of the definition. This program may impose responsibility on statewide businesses that are qualified commercial production companies, in that they must undertake an application process to receive the Empire State commercial production credit. However, the proposed regulation will not have a substantial adverse economic impact on rural areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

**Job Impact Statement**

The proposed regulation creates the application process for the Empire State commercial production credit program. As a tax credit program, it is designed to impact positively the commercial industry doing business in New York State and have a positive impact on job creation. The proposed regulation will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rulemaking that it will have either no impact, or a positive impact, on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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## Office of General Services

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### NOTICE OF ADOPTION

#### Preferred Source Vendors

**I.D. No.** GNS-49-06-00001-A

**Filing No.** 135

**Filing date:** Jan. 25, 2007

**Effective date:** Feb. 14, 2007

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

**Action taken:** Amendment of Part 250 of Title 9 NYCRR.

**Statutory authority:** Executive Law, section 200; State Finance Law, section 162; and Labor Law, section 349

**Subject:** Preferred source vendors.

**Purpose:** To add to the list of preferred source vendors those apparel manufacturers and contractors who are included in the special September 11th bidders registry, as added by section 349 of the Labor Law, approved for such purposes by the Commissioner of Labor.

**Text or summary was published** in the notice of proposed rule making, I.D. No. GNS-49-06-00001-P, Issue of December 6, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Paula B. Hanlon, Office of General Services, Corning Tower, 41st Fl., Empire State Plaza, Albany, NY 12242, (518) 474-0571, e-mail: paula.hanlon@ogs.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

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## Department of Health

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### EMERGENCY RULE MAKING

#### Expansion of the New York State Newborn Screening Panel

**I.D. No.** HLT-49-06-00005-E

**Filing No.** 145

**Filing date:** Jan. 30, 2007

**Effective date:** Jan. 30, 2007

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

**Action taken:** Amendment of sections 69-1.2 and 69-1.3 of Title 10 NYCRR.

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

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

**Specific reasons underlying the finding of necessity:** New York State Public Health Law Section 2500-a authorizes the Commissioner of Health to designate additional diseases or conditions for inclusion in the Newborn Screening Program test panel by regulation. This regulatory amendment adds one condition—galactosylceramidase deficiency, or Krabbe disease, a lipid storage disorder—to the 43 genetic/congenital disorders and one infectious disease that comprise New York State's newborn screening test panel, pursuant to existing 10 NYCRR Section 69-1.2. The Department of Health finds that immediate adoption of this rule is necessary to preserve the public health, safety and general welfare, and that compliance with State Administrative Procedure Act (SAPA) Section 202(1) requirements for this rulemaking would be contrary to the public interest and welfare.

Immediate implementation of the proposed screening for Krabbe disease is both feasible and obligatory at this time. A laboratory test method was recently reported in the medical literature as being capable of detecting Krabbe disease using a dried blood spot specimen (i.e., the typical newborn screening sample). Through pilot testing using residual newborn screening specimens stripped of all identifiers, the Department's Wad-

sworth Center Newborn Screening Program has determined that a scaled-up version of the recently developed test method could reproducibly generate reliable results for the large number of newborn specimens accepted by the Program. The required instrumentation (i.e., tandem mass spectrometers) is already in operation at the Department's Wadsworth Center laboratory dedicated to newborn screening. A system for follow-up and ensuring access to necessary treatment for identified infants is fully established and adequately staffed. Now that the Program is technically proficient in tandem mass spectrometry testing, experienced in spectrometric data collection and interpretation, and has demonstrated proficiency in triage and referral procedures, failure to include Krabbe disease testing immediately would mean infants would go untested, undetected, and may thus suffer irreversible nerve damage and an early death.

Affected infants typically succumb to Krabbe disease by two to five years of age after an agonizing clinical course. Newborns with Krabbe disease appear normal for the first few months of life, but manifest extreme irritability, spasticity, and developmental delay before six months of age. Without newborn screening, a child may not be recognized with Krabbe disease until he/she develops clinical signs and symptoms. Early detection through screening is critical to successful treatment of Krabbe disease with transplanted donor stem cells. The urgency of the Department's decision to avoid further delays in screening for Krabbe disease was underscored by recent clinical trial findings, published in the *New England Journal of Medicine* in May 2005, which concluded, "Transplantation of umbilical cord-blood from unrelated donors in newborns with infantile Krabbe's disease favorably altered the natural history of the disease. Transplantation in babies after symptoms had developed did not result in substantive neurologic improvement."

To avoid unnecessary and potential medically detrimental delays in screening newborns for Krabbe disease, the amended regulatory language in 10 NYCRR Section 69-1.2 is hereby adopted by emergency promulgation.

**Subject:** Expansion of the New York State Newborn Screening Panel.

**Purpose:** To add Krabbe disease to the New York State Newborn Screening Panel and clarify the requirement for timely specimen transfer.

**Text of emergency rule:** Section 69-1.2 of Subpart 69-1 is amended as follows:

Section 69-1.2 Diseases and conditions tested. (a) Unless a specific exemption is granted by the State Commissioner of Health, the testing required by section 2500-a and section 2500-f of the Public Health Law shall be performed by the testing laboratory according to recognized clinical laboratory procedures.

(b) Diseases and conditions to be tested for shall include:

- argininemia (ARG);
- argininosuccinic acidemia (ASA);
- biotinidase deficiency;
- branched-chain ketonuria, also known as maple syrup urine disease (MSUD);
- carnitine palmitoyl transferase Ia deficiency (CPT-IA);
- carnitine palmitoyl transferase II deficiency (CPT-II);
- carnitine-acylcarnitine translocase deficiency (CAT);
- carnitine uptake defect (CUD);
- citrullinemia (CIT);
- cobalamin A,B cofactor deficiency (Cbl A,B);
- congenital adrenal hyperplasia (CAH);
- cystic fibrosis (CF);
- dienoyl-CoA reductase deficiency (DE REDUCT);
- galactosemia;
- galactosylceramidase deficiency (Krabbe disease);
- glutaric acidemia type I (GA-I);
- hemoglobinopathies, including homozygous sickle cell disease;
- homocystinuria;
- human immunodeficiency virus (HIV) exposure and infection;
- 3-hydroxy-3-methylglutaryl-CoA lyase deficiency (HMG);
- hyperammonemia/ornithinemia/citrullinemia (HHH);
- hypermethioninemia (HMET);
- hypothyroidism;
- isobutyryl-CoA dehydrogenase deficiency (IBG or IBCD);
- isovaleric acidemia (IVA);
- long-chain 3-hydroxyacyl-CoA dehydrogenase deficiency (LCHADD);
- malonic aciduria (MAL);
- medium-chain acyl-CoA dehydrogenase deficiency (MCADD);
- medium-chain ketoacyl-CoA thiolase deficiency (MCKAT);

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

2-methylbutyryl-CoA dehydrogenase deficiency (2MBG);  
 3-methylcrotonyl-CoA carboxylase deficiency (3-MCC);  
 3-methylglutaconic aciduria (3MGA);  
 2-methyl 3-hydroxy butyryl-CoA dehydrogenase deficiency (2M3HBA);

methylmalonic acidemia (Cbl C,D);  
 methylmalonyl-CoA mutase deficiency (MUT);  
 mitochondrial acetoacetyl-CoA thiolase deficiency (BKT);  
 mitochondrial trifunctional protein deficiency (TFP);  
 multiple acyl-CoA dehydrogenase deficiency (MADD, also known as GA-II);

multiple carboxylase deficiency (MCD);  
 phenylketonuria (PKU);  
 propionic acidemia (PA);  
 short-chain acyl-CoA dehydrogenase deficiency (SCADD);  
 tyrosinemia (TYR); and  
 very long-chain acyl-CoA dehydrogenase deficiency (VLCADD).

Subdivisions (a) and (g) of Section 69-1.3 are amended as follows:

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

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

\* \* \*

(g) All specimens shall be allowed to air dry thoroughly on a flat nonabsorbent surface for a minimum of four (4) hours prior to [transmittal] forwarding to the testing laboratory. All specimens shall be forwarded to the testing laboratory within twenty-four (24) hours of collection [by first class mail] using the testing laboratory’s delivery service or [its] an equivalent arrangement designed to ensure delivery of specimens to the testing laboratory no later than forty-eight (48) hours after collection.

**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-49-06-00005-P, Issue of December 6, 2006. The emergency rule will expire March 30, 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: regsqna@health.state.ny.us

**Summary of Regulatory Impact Statement**

**Statutory Authority:**  
 Public Health Law (PHL) Section 2500-a (a) provides statutory authority for the Commissioner of Health to designate in regulation diseases or conditions for newborn testing, in accordance to the Department’s mandate to prevent infant and child mortality, morbidity, and diseases and disorders of childhood.

**Legislative Objectives:**  
 This proposal, which would add one condition—galactosylceramidase deficiency, or Krabbe disease—to the list of 43 genetic/congenital disorders and one infectious disease currently in regulation, is in keeping with the Legislature’s public health aims of early identification and timely medical intervention for all the State’s youngest citizens.

**Needs and Benefits:**  
 Data compiled from New York State’s Newborn Screening Program (“Program”) and other states’ programs have shown that timely intervention and treatment for metabolic disorders can drastically improve affected infants’ survival chances and quality of life. For Krabbe disease, early detection through screening is critical to successful treatment.

Krabbe disease is a lipid storage disorder caused by a deficiency of the enzyme galactosylceramidase; it occurs with an incidence of approximately one in 100,000 births.

Affected infants typically succumb to Krabbe disease by two to five years of age after an agonizing clinical course. Newborns appear normal for the first few months of life but manifest extreme irritability, spasticity, and developmental delay before six months of age. Regression in psychomotor development results in feeding difficulties and marked hypertonicity, and eventually progresses to loss of voluntary movement. The infants

become deaf and blind, and are prone to pneumonia and other infections; death from infection is common. However, Krabbe disease can be treated if detected early. Treatment is primarily by hematopoietic stem cell transplant using donor cord blood samples. Without newborn screening, a child may not be recognized as having Krabbe disease until he/she develops clinical signs and symptoms.

**Costs:**  
 Costs to Private Regulated Parties:

Birthing facilities will incur no new costs related to collection and submission of newborn blood specimens to the Program, since the same dried blood spot specimens now collected and forwarded to the Program for other currently available testing would also be tested for Krabbe disease. Starting in 2005, the Department began to offer free-of-cost delivery services to deter birthing facilities from bundling specimens to save postage costs, and encourage timely shipment of individual newborn specimens; birthing facilities do not incur postage or other delivery costs for the pre-paid delivery service.

The Program estimates that 150 to 200 newborns would screen positive for the new condition annually. Since timing is crucial, i.e., treatment must be started early to be effective, newborns that screen positive—those with low activity of the affected enzyme, galactosylceramidase, as measured in the dried blood spot specimen—will undergo DNA-based molecular analysis, using the same specimen submitted for the initial enzyme test. Infants determined to carry mutations associated with Krabbe disease will require a confirmatory test that measures enzyme activity using a liquid blood specimen. Positive screening results are expected to be confirmed in an estimated 10 to 50 percent of infants who undergo the confirmatory enzyme activity testing. These 15 to 100 infants will be referred for additional diagnostic workup, including: a measurement of protein in spinal fluid; a brain stem evoked auditory response (BAER) test; and magnetic resonance imaging (MRI) to assess white matter in the brain. Results from the entire battery of tests will be reviewed by an advisory committee to the Department, comprised of experts in metabolic disorders and Krabbe disease detection and treatment, and representing facilities with a role in ensuring successful implementation of this proposal. If an infant is determined to be afflicted with Krabbe disease, a pre-established communications system will be activated, and plans for treatment begun immediately. The Department anticipates that more than 95 percent of referred infants will ultimately be found not to be afflicted with Krabbe disease, based on laboratory test and clinical assessment data.

Specialized care centers (i.e., medical centers with facilities for, and staff expert in, diagnosis and treatment of inherited metabolic diseases), local hospitals designated by such centers, and pediatricians in private practice would likely incur minimal costs related to fulfilling their responsibilities for specimen collection to perform additional laboratory testing and referral of screening-positive infants for diagnostic services; such costs would be limited to human resources costs of approximately 0.5 person-hour. Specialized care centers, and to a lesser extent local hospitals and independent providers, will incur additional human resources costs for supplying diagnostic and treatment services, and ongoing medical management to the approximately two to ten infants per year whose disorder is confirmed. Costs of laboratory testing for infants who screen positive for Krabbe disease include an estimated \$200 for confirmatory enzyme analysis; and, for infants whose results are confirmed, another \$50 for measurement of protein in the infant’s spinal fluid, as well as the provider’s charge for a lumbar puncture.

For infants with a confirmed diagnosis of Krabbe disease, costs would also be incurred for required clinical services and procedures, including: medical and consultative services rendered by a neurologist, a developmental pediatrician and a hematologist with expertise in stem cell transplantation; HLA typing and chemotherapy; MRI testing to monitor the affected infant’s brain post-transplant; and genetic counseling for the family. The actual total cost of all requisite services and procedures to evaluate and treat a newborn with Krabbe disease cannot be assessed more exactly due to the large variations in charges for the professional component of specialists’ and ancillary providers’ services, and the scope of required services, including the length of time required for hospitalization.

The Department expects that costs of medical services and supplies will be reimbursed by all payor mechanisms now covering the care of children identified with conditions in the current newborn screening panel. The Department also expects that medical care providers will claim reimbursement from payors at a rate equal to the usual and customary charge, thereby recouping costs.

**Costs for Implementation and Administration of the Rule:**  
 Costs to State Government:

Although funding for the State's Newborn Screening Program requires State expenditures, proactively treating congenital abnormalities ultimately may result in savings by precluding the need for more financially burdensome medical and institutional services.

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

#### Costs to the Department:

Costs incurred by the Department's Wadsworth Center for performing newborn screening tests, providing short- and long-term follow-up, and supporting continuing research in neonatal and genetic diseases are covered by State budget appropriations recently augmented by dedicated line-item funding for Program expansion. Starting in 2005, the Department assumed the costs of specimen submission by making a pre-paid delivery service available to birthing facilities. The Program's budget includes \$90,000 for specimen delivery services; however, no part of the expenditure for these services is a direct result of this amendment.

The Program expects to sustain minimal to no additional laboratory instrumentation costs related to this proposal, since the necessary technology is already in place. A system for follow-up and assured access to necessary treatment for identified infants is fully established. No additional staff would be required as a result of this proposal.

The Department will incur costs, estimated at from \$3,800 to \$4,000 annually, to provide specimen collection kits, including materials and postage, to pediatricians for collecting liquid blood specimens from an estimated 200 presumptive-positive infants, and forwarding the specimens by overnight courier for confirmatory testing at one or more laboratories approved by the Department.

#### Costs to Local Government:

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

#### Local Government Mandates:

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

#### Paperwork:

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

#### Duplication:

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

#### Alternatives:

Potential delays in detection of Krabbe disease until onset of clinical signs and symptoms would result in increased infant morbidity and mortality, and are therefore unacceptable. Given the strong indications that treatment is available to ameliorate adverse clinical outcomes in affected infants, the Department has determined that there are no alternatives to mandating newborn screening for this condition.

#### Federal Standards:

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

#### Compliance Schedule:

The director of the Newborn Screening Program has participated in discussions with representatives of the Governor's Office, the Health Commissioner's Office and the Department's Public Affairs Group to optimize coordinated notification of affected parties and implementation of this single additional test into the newborn screening program. Educational materials for parents and health care professionals have been updated with information on the expanded screening panel. The Program is collaborating with various Department offices, including the Office of

Medicaid Management and the Office of Managed Care, to ensure adequate reimbursement and coverage inclusiveness for required follow-up services, including confirmatory and diagnostic testing, treatment and monitoring.

The Department is continuing to work with the State Newborn Screening Task Force members, directors of specialty care centers, national experts in Krabbe disease diagnosis and treatment, health care professionals, and payors on ongoing assessment of the scope of needed follow-up services and their availability. On January 13, 2006, the director of the Newborn Screening Program gave an invited presentation to the North-eastern New York Organization of Nurse Executives, regarding the Department's plans for including Krabbe disease in the screening panel and the expected impact of such plans on hospitals. On January 30, 2006, participants in a conference on Krabbe disease in New York City reviewed this State's Krabbe disease testing algorithm and plans to ensure the health care infrastructure's readiness to implement this proposal. In addition to staff from several Department offices with a role in the algorithm's implementation, representatives from specialty care centers, transplant facilities, advocacy organizations, a confirmatory testing laboratory, and other interested parties also attended the conference.

Strong support for the amendment is expected from patient advocacy organizations representing affected individuals and families, as well as the medical community at large. The Commissioner of Health is expected to notify all New York State-licensed physicians of this newborn screening panel expansion. The letter will also be distributed to hospital chief executive officers (CEOs) and their designees responsible for newborn screening, as well as other affected parties. There appears to be no potential for organized opposition. Consequently, regulated parties should be able to comply with these regulations as of their effective date, upon filing a Notice of Emergency Adoption with the Secretary of State.

#### Regulatory Flexibility Analysis

##### Effect of Rule:

This proposed amendment to add one new condition—a lipid storage disorder known as galactosylceramidase deficiency, or Krabbe disease—to the list of 43 genetic/congenital disorders and one infectious disease for which every newborn in New York State must be tested, will affect hospitals; alternative birthing centers; and physician and midwifery practices operating as small businesses, or operated by local government, provided such facilities care for infants 28 days of age or under, or are required to register the birth of a child. The Department estimates that ten hospitals and one birthing center in the State meet the definition of a small business. No facility recognized as having medical expertise in clinical assessment and treatment of Krabbe disease is operated as a small business. Local government, including the New York City Health and Hospitals Corporation, operates 21 hospitals. New York State licenses 67,790 physicians and certifies 350 licensed midwives, some of whom, specifically those in private practice, operate as small businesses. It is not possible, however, to estimate the number of these medical professionals operating an affected small business, primarily because the actual number of physicians involved in delivering infants cannot be ascertained.

##### Compliance Requirements:

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

##### Professional Services:

No need for additional professional services is anticipated. Birthing facilities' existing professional staffs are expected to be able to assume any increase in workload resulting from the Program's newborn screening for

Krabbe disease and identification of screening-positive infants. Infants with positive screening tests for Krabbe disease would be referred to a facility employing a physician and other medical professionals with expertise in Krabbe disease.

#### Compliance Costs:

Birth facilities operated as small businesses and by local governments, and practitioners who are small business owners (e.g., private-practicing licensed midwives who assist with at-home births) will incur no new costs related to collection and submission of blood specimens to the State Newborn Screening Program, since the same dried blood spot specimens now collected and mailed to the Program for other currently available testing would also be used for the additional test proposed by this amendment. However, such facilities, and, to a lesser extent, at-home birth attendants, would likely incur minimal costs related to following up infants screening positive for Krabbe disease, primarily because the testing proposed under this regulation is expected to result in, on average, fewer than one screening-positive infant per week at each of the 11 birthing facilities that are small businesses. Communicating the need and/or arranging referral for medical evaluation of one additional identified infant would require 0.5 person-hour, and these tasks are expected to be able to be accomplished with existing staff.

Affected small business, and government-operated hospitals and independent providers operating as a small business, such as primary and ancillary care providers (i.e., pediatricians, neurologists and hematologists), may incur additional human resources costs for supplying post-evaluation and treatment services, and ongoing medical management services to the approximately two to three screening-positive infants whose disorder is confirmed. Clinical services and procedures required for an affected infant could include: medical and consultative services rendered by a neurologist, a developmental pediatrician, and a hematologist with expertise in stem cell transplantation; a spinal tap for spinal fluid specimen collection; and genetic counseling for the family. It is unlikely that practitioners and facilities that are small businesses would incur costs related to treatment, such as costs for chemotherapy to depress the immune system prior to transplant; the transplantation procedure itself; laboratory testing; magnetic resonance imaging (MRI) to monitor the affected infant's brain post-transplant; and costs related to the infant's occupying a bed in the neonatal intensive care unit. The cost of all required services and procedures to evaluate and treat newborns with Krabbe disease born annually in New York State cannot be estimated due to large variations in charges for the professional component of specialists' and ancillary providers' services, and the scope of required services. The Department provides the following prevailing rates, so that small businesses that may become involved in treatment and ongoing care of affected infants may be better able to estimate costs: \$300 for a comprehensive-level office visit; \$150 for genetic counseling visits; \$2,500 for imaging services; and \$250 for confirmatory laboratory testing.

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

#### Economic and Technological Feasibility:

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

#### Minimizing Adverse Impact:

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

#### Small Business and Local Government Participation:

The feasibility of adding Krabbe disease to the State's newborn screening panel has been discussed with affected parties ever since the Department began testing for a number of new conditions using tandem mass spectrometry technology. Therefore, regulated parties that are small businesses and local governments have been aware of the Department's intention to include Krabbe disease in the panel for some time.

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

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

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

This proposed amendment to add one new condition—galactosylceramidase deficiency or Krabbe disease, a lipid storage disorder—to the list of 43 genetic/congenital disorders and one infectious disease for which every newborn in the State must be tested, will affect hospitals, alternative birthing centers, and physician and midwifery practices located in rural areas, provided such facilities care for infants 28 days of age or under, or are required to register the birth of a child. The Department estimates that 54 hospitals and birthing centers operate in rural areas, and another 30 birthing facilities are located in counties with low-population density townships. No facility recognized as having medical expertise in clinical assessment and treatment of Krabbe disease operates in a rural area. New York State licenses 67,790 physicians and certifies 350 licensed midwives, some of whom are engaged in private practice in areas designated as rural; however, the number of professionals practicing in rural areas cannot be estimated because licensing agencies do not maintain records of licensees' employment addresses.

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

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

#### Professional Services:

No need for additional professional services is anticipated. Birthing facilities' existing professional staff are expected to be able to assume any increase in workload resulting from the Program's newborn screening for Krabbe disease and identification of screening-positive infants. Infants with a positive screening test for Krabbe disease will be referred to a facility employing a physician and other medical professionals with expertise in Krabbe disease.

#### Costs:

Birthing facilities operating in rural areas and practitioners in private practice in rural areas (i.e., licensed midwives who assist with at-home births) will incur no new costs related to collection and submission of blood specimens to the State's Newborn Screening Program, since the same dried blood spot specimens now collected and mailed to the Program for other currently available testing would also be used for the additional test proposed by this amendment. However, such facilities and, to a lesser extent, at-home birth attendants would likely incur minimal costs related to follow-up of infants screening positive, since the proposed added testing is expected to result in no more than one additional referral per month. Communicating the need and/or arranging referral for medical evaluation of one additional identified infant would require 0.5 person-hour, and these tasks are expected to be able to be accomplished with existing staff. The Department estimates that more than 95 percent of infants will be ultimately found not to be afflicted with the target condition, based on clinical assessment and confirmatory testing data.

Rural providers, including clinical specialists (i.e., medical geneticists) and primary and ancillary care providers (i.e., pediatricians, neurologists and hematologists), may incur additional human resources costs for providing post-evaluation and treatment services, and ongoing medical management to the approximately two to three infants per year whose disorder is confirmed. Clinical services and procedures required for an affected

infant could include: medical and consultative services rendered by a neurologist, a developmental pediatrician, and a hematologist with expertise in stem cell transplantation; a spinal tap procedure for spinal fluid specimen collection; laboratory testing; and genetic counseling for the family. It is unlikely that facilities in rural areas would incur costs related to treatment, such as costs for chemotherapy to depress the immune system prior to transplant; the transplantation procedure itself; magnetic resonance imaging (MRI) to monitor the affected infant's brain post-transplant; and costs related to the infant's occupying a bed in the neonatal intensive care unit. The cost of all requisite services and procedures to evaluate and treat infants with Krabbe disease born annually in New York State cannot be estimated due to large variations in charges for the professional component of specialists' and ancillary providers' services, and the scope of requisite services, including the length of time required for hospitalization. To the extent specialized services would be delivered in a rural area, the Department provides the following prevailing rates, so that rural providers who may become involved in treatment and ongoing care of affected infants may be better able to estimate costs: \$300 for a comprehensive-level office visit; \$150 for genetic counseling visits; \$2,500 for imaging services; and \$250 for confirmatory laboratory testing.

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

#### Minimizing Adverse Impact:

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

#### Rural Area Participation:

The feasibility of adding Krabbe disease to the newborn screening panel has been discussed with affected parties ever since the Department began testing for a number of new conditions using tandem mass spectrometry technology. Therefore, regulated parties located in rural areas have been aware of the Department's intention to include Krabbe disease in the panel for some time.

#### Job Impact Statement

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities. The amendment proposes the addition of one condition—a lipid storage disorder known as Krabbe disease—to the scope of newborn screening services already provided by the Department. It is expected that no regulated parties will experience other than minimal impact on their workload, and therefore none will need to hire new personnel. Therefore, this proposed amendment carries no adverse implications for job opportunities.

## NOTICE OF ADOPTION

### Neonatal Herpes Reporting and Laboratory Specimen Submission

**I.D. No.** HLT-39-06-00006-A

**Filing No.** 143

**Filing date:** Jan. 30, 2007

**Effective date:** Feb. 14, 2007

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)

**Subject:** Neonatal Herpes infection reporting and laboratory specimen submission.

**Purpose:** To assist in the diagnosis, prevention and effective management and call public attention to this disease.

**Text or summary was published** in the notice of proposed rule making, I.D. No. HLT-39-06-00006-P, Issue of September 27, 2006.

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

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

#### Assessment of Public Comment

The agency received no public comment.

## NOTICE OF ADOPTION

### Opioid Overdose Prevention Programs

**I.D. No.** HLT-44-06-00005-A

**Filing No.** 144

**Filing date:** Jan. 30, 2007

**Effective date:** Feb. 14, 2007

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

**Action taken:** Addition of section 80.138 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 3309(1)

**Subject:** Opioid overdose prevention program.

**Purpose:** To implement L. 2005, ch. 413, which calls for the establishment of opioid overdose prevention programs to prevent fatalities due to overdose.

**Text or summary was published** in the notice of proposed rule making, I.D. No. HLT-44-06-00005-P, Issue of November 1, 2006.

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

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

#### Assessment of Public Comment

One written comment was received during the 45-day public comment period, which expired on December 18, 2006, from an organization dedicated to reducing drug-related harm. The letter raised two issues for the Department's consideration. The issues and responses to those issues follows.

#### Issue:

The cost of required supplies (i.e., latex gloves, mask or other barrier for use during rescue breathing, agent to prepare the skin before injection) may discourage prospective providers from participating.

#### Response:

The Department believes that the required supplies are necessary and is taking steps to make these available at no charge to Opioid Overdose Prevention Programs that have obtained a certificate of approval from the Department, subject to availability of funds and the satisfactory performance of agencies requesting supplies.

#### Issue:

The requirement to establish and maintain a log of opioid overdose prevention trainings conducted is duplicative of the requirement for maintaining a list of Trained Overdose Responders, including the date trained.

#### Response:

Opioid Overdose Prevention Programs may maintain a single list or log containing both the names of those trained and the dates of trainings. The Department will clarify that a single list or log fulfilling both requirements will suffice with existing and prospective providers.

## Higher Education Services Corporation

### EMERGENCY RULE MAKING

#### New York State Math and Science Teaching Incentive Program

**I.D. No.** ESC-07-07-00006-E

**Filing No.** 139

**Filing date:** Jan. 30, 2007

**Effective date:** Jan. 30, 2007

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

**Action taken:** Addition of section 2201.10 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 653, 655 and 669-d

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

**Specific reasons underlying the finding of necessity:** Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible applicants.

**Subject:** New York State Math and Science Teaching Incentive Program.

**Purpose:** To implement the program.

**Text of emergency rule:** New section 2201.10 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.10 *New York State Math and Science Teaching Incentive Program*

(a) *Definitions.*

(1) "Academic Year" shall mean one calendar year beginning July 1st and ending on June 30th.

(2) "Corporation" shall mean the New York State Higher Education Services Corporation.

(3) "Program" shall mean the New York State Math and Science Teaching Incentive Program codified in section 669-d of the education law.

(4) "Rank" shall mean the sum of an applicant's cumulative undergraduate and graduate grade point average ("GPA") plus total undergraduate and graduate credit hours successfully completed.

(5) "Secondary education" shall mean grades 7 through 12.

(6) "Successful completion of an academic year" shall mean that at the end of any academic year, the applicant: maintained full-time status; completed at least 27 credit hours or its equivalent in a course of study leading to a teaching degree in the fields of math or science; with a minimum GPA of 2.5; and possesses a cumulative GPA of 2.5 or higher for all academic years of undergraduate and graduate study. Applicants may complete less than 27 credit hours if they are in their last year and fewer than 27 credit hours are necessary to complete their course of study. In this case, the award amount shall be pro-rated by credit hour.

(7) "Teach in the classroom on a full-time basis" shall mean a New York State certified teacher, teaching a math or science curriculum in secondary education, providing classroom instruction for 10 continuous months, each school year, for a number of hours to be determined by either the school district, school board or school, the by-laws thereof, the labor contract between the teacher and employer, or if none of the above apply, the chief administrator of the school. Verification may be requested by the Corporation and may consist of a written, signed certification from the school board, superintendent or principal.

(b) *Eligibility:* In addition to the requirements of section 669-d of the education law, these additional requirements shall apply in the selection of the Program recipients:

(1) Applications for the Program shall be postmarked or electronically transmitted to the Corporation no later than February 1st of each year, provided that this deadline may be extended at the discretion of the Corporation.

(2) Applications shall be filed on forms prescribed by the Corporation.

(3) The pool of applicants shall be those who have successfully met the filing deadline.

(4) The applicant shall have a cumulative GPA of 2.5 or higher for all undergraduate and graduate study at the time of the application.

(5) Successful applicants shall execute a service contract prescribed by the Corporation.

(6) Successful applicants, who have executed a service contract, shall apply for payment each year on forms specified by the Corporation.

(c) *Priorities:* If there are more applicants than available funds, the following provisions shall apply:

(1) First priority shall be given to applicants who have received payment of an award pursuant to section 669-d of the education law for the academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic year for which payment is sought.

(2) Second priority shall be given to applicants who have received payment of an award pursuant to section 669-d of the education law in any prior academic year and have successfully completed the academic year for which payment is sought.

(3) Third priority shall be given to applicants, including re-applicants, who have never received an award, and have successfully completed the academic year for which payment is sought, according to rank and who otherwise meet the minimum eligibility requirements.

(4) In the event of a tie within any given priority, recipients shall be chosen by random selection. Random selection shall be conducted by lottery.

(d) *Disqualifications:* In addition to the provisions of section 669-d, as well as the restrictions of section 661(6) of the education law, the applicant shall be disqualified from receiving an award for any of the following conditions:

(1) The applicant fails to meet any statutory or regulatory requirement necessary to obtain a teaching certificate in math or science, or necessary to become a math or science teacher in secondary education.

(2) The applicant breaches the terms of the written service contract with the Corporation and fails to remedy such breach in a timely manner consistent with the terms and conditions of such contract.

(3) The award is duplicative of another state and/or federal award that the applicant currently receives.

(4) The applicant has a service obligation owed to any other state and/or federal program.

The applicant is in default on a federally guaranteed student loan.

(e) *Disbursements:* Payment shall be made directly to the eligible institutions, on behalf of applicants, within a reasonable time upon the successful completion of the academic year subject to the verification and certification by the institution of the applicant's GPA and other eligibility requirements.

(f) *Penalty:* In addition to the requirements of section 669-d(5) of the education law, the following requirements shall apply in converting the award to a loan:

(1) All award monies received shall convert to a 10-year student loan plus interest for recipients who fail to meet the statutory, regulatory, contractual, administrative or other requirements of this Program.

(2) Interest for the life of the loan shall be fixed and equal to that published annually by the U.S. Department of Education for FFELP PLUS parent loans pursuant to the terms of the service contract.

(3) Interest accrues from the day each award payment is disbursed.

(4) Interest shall be capitalized on the day the award recipient violates the service contract or on the date the Corporation deems the recipient was no longer able or willing to perform the terms of the service contract.

**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 April 29, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** Cheryl B. Fisher, Associate Attorney, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 473-1581, e-mail: cfisher@hesc.com

#### **Regulatory Impact Statement**

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Math and Science Teaching Incentive Program ("Program") is codified within Article 14 of the Education Law. In particular, Chapter 58 of the Laws of 2006 created the Program by adding new subdivision 7-a to Education Law section 605, and new section 669-d to the Education Law. Subdivision 6 of section 669-d of the Education Law authorizes HESC to promulgate regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

#### Legislative objectives:

The Education Law was amended to add a new section 669-d to create the "New York State Math and Science Teaching Incentive Program" (Program). This is a competitive award Program aimed at increasing the number of secondary school math and science teachers in New York State.

The near term objective of the Program is to increase the number of math and science teachers working in secondary education in New York State. Such an increase should result in an overall increase and interest by students in secondary education in the fields of math and science. It is anticipated that such efforts will result in an increase in the number of mathematicians, engineers and scientists necessary to meet the increasing, critical need for those skills in New York State's economy. Ultimately, a pipeline will be created that will feed engineers, mathematicians and scientists into New York State's economy.

#### Needs and benefits:

According to recent trends, foreign countries are graduating far more engineers, mathematicians and scientists than the United States. New York State is falling even further behind by graduating fewer than 4,000 new engineers each year. In order for New York State to compete in the global, high-tech economy, more emphasis must be placed in promoting math and science. Studies have shown that student interest in math and science drops sharply during secondary education. To achieve an increase in the number of graduates with these critical skills, more math and science teachers will be required in order to meet the increasing needs of New York State. However, these efforts face stiff competition from the private sector for graduates with a degree in math and science.

The Program is aimed at increasing the number of secondary math and science teachers in New York State. Eligible recipients may receive annual awards for not more than four academic years of undergraduate and one academic year of graduate full-time study while matriculated in an approved program leading to permanent certification as a secondary education teacher in mathematics or science in New York State.

The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending an undergraduate program at the State University of New York (SUNY) or actual tuition, whichever is less. However, the award may be used to pay for tuition, cost of attendance or both. The current maximum annual award for the 2006-07 academic year is \$4,350. Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic year for which the student seeks payment.

Students receiving a New York State Math and Science Teaching Incentive award must sign a service agreement and agree to teach math or science for five years on a full-time basis at a secondary school located within New York State. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

#### Costs:

a. It is anticipated that there will be no costs to the agency for the implementation of, or continuing compliance with this rule, except for programmatic administration costs.

b. The maximum cost of the program to the State is \$2.175 million in the first year based upon an average 2006-07 SUNY tuition of \$4,350.00 awarded to the statutory number of recipients which is five hundred (500). This maximum projection will be mitigated by the fact that the award is

limited to the SUNY average or actual tuition, whichever is less. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

c. The source of the cost data in (b) above is derived from statutory language limiting the amount of the award to the cost of SUNY tuition and limiting the number of awards to no more than 500. As set forth in Education Law § 669-d(2), up to five hundred awards may be made to new recipients annually.

#### Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

#### Paperwork:

This proposal will require applicants to file an application for each year they wish to receive an award up to and including five years of eligibility. However, electronic application processing may be available for the 2007-08 academic year, at which time paper applications may not be necessary. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

#### Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

#### Alternatives:

The proposed regulation is the result of HESC's outreach efforts. Since the enactment of section 669-d of the Education Law, HESC has discussed the Program with the New York State Business Council who had advocated for the legislation that establishes the Program. In preparing this regulation, HESC discussed implementation issues with the Business Council and provided them with an opportunity to review and comment on the regulation.

In addition, HESC provided outreach to financial aid professionals with regard to this Program via workshops held across New York State. Workshops were held in Buffalo, Syracuse, Long Island, New York City and other locations throughout New York State. Fact sheets and Q&A's are available on HESC's website. Additionally, HESC's website encourages people to email any comments or questions.

Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms/phrases used in the regulation such as, "teach in the classroom on a full-time basis." This term is not standard for all teachers and, in most instances, the full-time status of a teacher is determined by a collective bargaining agreement and include normal summer breaks as well. The proposed definition attempts to balance the realities of the workplace with the desired result and intent of the legislation.

Given the statutory language as set forth in section 669-d of the Education Law, a "no action" alternative was not an option.

#### Federal standards:

This proposal does not exceed any minimum standards of the Federal Government, and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal PLUS Parent loan rate in the event that the award reverts into a student loan.

#### Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

#### Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add new section 2201.10 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. This agency finds that this rule will not impose any compliance requirements or adverse economic impact on small businesses or local governments. Rather, it may have a positive effect inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who promise to teach math and science in secondary schools anywhere in New York state for at least five years.

#### Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add new section 2201.10 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who promise to teach math or science anywhere within New York state, including rural areas. Rural economies could realize short term benefits from the incentive program if teachers decide to work in those areas, and possible long term benefits when the rural schools start to graduate the math and science majors that are needed by the United States and New York State.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

#### **Job Impact Statement**

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.10 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who promise to teach math or science in New York state. Teachers will be rewarded for remaining and working in New York, while the long term impact of their work could produce engineers and scientists to meet the needs of the United States and the State of New York for those skilled workers.

### **NOTICE OF ADOPTION**

#### **New York State Licensed Social Worker Loan Forgiveness Program**

**I.D. No.** ESC-49-06-00004-A

**Filing No.** 142

**Filing date:** Jan. 30, 2007

**Effective date:** Feb. 14, 2007

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

**Action taken:** Addition of section 2201.8 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 653, 655 and 679-a

**Subject:** New York State Licensed Social Worker Loan Forgiveness Program.

**Purpose:** To implement the program.

**Text or summary was published** in the notice of emergency/proposed rule making, I.D. No. ESC-49-06-00004-EP, Issue of December 6, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Cheryl B. Fisher, Associate Attorney, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 473-1581, e-mail: cfisher@hesc.com

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

The agency received no public comment.

**Action taken:** Amendment of section 52.16(c)(5) (Regulation 62) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305 and 4802; and art. 49

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

**Specific reasons underlying the finding of necessity:** Insurance Law and regulations require certain health insurance policies to provide coverage for surgical services. 11 NYCRR 52.16(c)(5) permits insurers to exclude coverage for surgery that is considered to be cosmetic. Articles 49 of the Insurance Law and Public Health Law, enacted after Section 52.16, provide for internal and external appeal when services are denied as not medically necessary.

It is the Insurance Department's position that whenever surgery is a covered benefit under a policy, a determination that the surgery is cosmetic is a medical necessity determination subject to the utilization review and external review requirements of Title I and Title II of Article 49 of the Insurance Law or Public Health Law. It has come to the Department's attention that insurers and health maintenance organizations (HMOs) have been inconsistent as to what they consider to be medically necessary surgery or cosmetic surgery and some insureds have not been provided with the right to utilization review and external appeal for denials of surgical services. If the appropriate appeal rights are not given, an insured may be unable to obtain medically necessary health care services, adversely affecting the health of the insured.

To establish uniformity, ensure that consumers are protected, and address concerns of health plans, a new part 56 is added to 11 NYCRR and the cosmetic surgery exclusion in Part 52.16(c)(5) is amended. These two regulations clarify that denials for the reason that services are considered cosmetic are subject to the utilization review and external appeal requirements of Article 49 of the Insurance Law or Public Health Law. Part 56 further provides that a request for coverage of surgery, other than a request for pre-authorization, that is solely identified by a code on a designated list, and is submitted without medical information, may be denied by a health plan without subjecting the request to Title I and Title II of Article 49 of the Insurance Law or Public Health Law if certain conditions are met.

The requirements established in these regulations are the result of a collaborative effort among the New York Health Plan Association, the New York State Conference of Blue Cross and Blue Shield Plans, the New York State Department of Health and the New York State Insurance Department. Health plans are aware of the requirements in these regulations and have advised the Insurance Department that they would like to begin implementation through revised subscriber contracts. The Insurance Department has already received and approved subscriber contracts from health plans that include the process outlined in Part 56 and the amended Part 52. Promulgating Part 56 and the amended Part 52 on an emergency basis will ensure that all subscriber contracts that are being filed and approved are consistent with regulatory requirements and will enable health plans to make all contract changes in one filing.

Moreover, these amendments will ensure that all health plans are following the same requirements and that access to utilization review and external appeal by insureds will not be dependent on the particular health insurance policy the insured may have. These amendments will further ensure that insureds will be able to obtain medically necessary surgical services so that the health of insureds is not compromised.

For the reasons stated above, the immediate adoption of this regulation is necessary for the preservation of the general welfare.

**Subject:** Minimum standards for the form, content, and sale of health insurance.

**Purpose:** To clarify when plans may exclude coverage for cosmetic surgery.

**Text of emergency rule:** Paragraph (5) of subdivision (c) of Section 52.16 of Part 52 of Title 11 of the Official Compilation of Codes, Rules and Regulations is amended to read as follows:

(5) cosmetic surgery, except that cosmetic surgery shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part, and reconstructive surgery because of congenital disease or anomaly of a covered dependent child which has resulted in a functional defect. *However, if the policy provides hospital, surgical or medical expense coverage, including a policy issued by a health maintenance organization, then coverage and determinations with respect to cosmetic surgery must be provided pursuant to Part 56 of this Title (Regulation 183);*

**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

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## **Insurance Department**

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### **EMERGENCY RULE MAKING**

#### **Minimum Standards for the Form, Content, and Sale of Health Insurance**

**I.D. No.** INS-07-07-00004-E

**Filing No.** 137

**Filing date:** Jan. 30, 2007

**Effective date:** Jan. 30, 2007

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

will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 29, 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:** The Superintendent's authority for the addition of Part 56 to Title 11 of NYCRR (Regulation 183) and for the Thirty-fifth Amendment to Part 52 of Title 11 NYCRR (Regulation 62) is derived from Sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305 and 4802 and Article 49 of the Insurance Law.

Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations.

Section 1109 authorizes the Superintendent to promulgate regulations affecting HMOs and effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law.

Section 3201 authorizes the Superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state.

Sections 3216 and 3217 authorize the Superintendent to issue regulations to establish minimum standards for the form, content and sale of health insurance. Section 3221 sets forth standard health insurance policy provisions.

Section 4235 establishes requirements for group accident and health insurance.

Article 43 of the Insurance Law sets forth requirements for non-profit medical and dental indemnity corporations and non-profit health or hospital corporations, including requirements pertaining to minimum benefits of individual and small group contracts. Sections 4303, 4304 and 4305 set forth required benefits and standard provisions in group, blanket and group remittance contracts.

Section 4802 establishes the grievance procedures for all insurers which offer a managed care product.

Article 49 establishes the utilization review and external review requirements for all insurers subject to Article 32 or 43 of the Insurance Law or any organization licensed under Article 43 of the Insurance Law.

2. **Legislative Objectives:** The statutory sections mentioned above contain standard provisions for accident and health insurance coverage and set forth the Superintendent's power to promulgate regulations governing minimum standards for the form, content and sale of such coverage. The promulgation of Regulation 183 and the amendment to Section 52.16(c)(5) of Regulation 62 further the legislative goal of having meaningful health insurance coverage available to the insurance-buying public in this state while at the same time providing reasonable regulation to ensure consistency in the application of permissible exclusions in such coverage.

The cosmetic surgery exclusion set forth in Regulation 62 predates Article 49 of the Insurance Law and Article 49 of the Public Health Law which provide for internal and external appeal of medical necessity denials. Subsequent to the promulgation of Article 49, the Insurance Department has found inconsistencies among health maintenance organizations (HMOs) and insurers as to what they consider to be medically necessary surgery and what they consider to be cosmetic. The Insurance Department and Health Department have advised health plans that cosmetic surgery denials must be subject to the utilization review and external review requirements. However, some health plans have questioned the Department's position in cases involving procedures usually considered to be cosmetic when medical information is not submitted.

By clarifying the requirements relating to the cosmetic surgery exclusion, the Superintendent is furthering the legislative intent set forth in Article 49 of the Insurance Law and Article 49 of the Public Health Law which require health plans to conduct utilization reviews to determine if services are medically necessary, and then provide external appeal rights if services are denied. The amendment of Regulation 62, and the addition of new Regulation 183, is necessary to establish uniformity among health plans and ensure that cosmetic surgery denials are given the appropriate review.

3. **Needs and Benefits:** The Insurance Law and corresponding regulations require most insurers to provide coverage for surgical services. 11 NYCRR 52.16(c)(5) permits plans to exclude coverage for cosmetic surgery but provides an exception to the cosmetic surgery exclusion for reconstructive surgery. However, the reconstructive surgery exception is not the only type of surgery that would not be cosmetic. The amendment to

Regulation 62 and the new Regulation 183 clarify that whenever surgery is a covered benefit, a determination that the surgery is cosmetic is a medical necessity determination that must be subject to the utilization review and external appeal requirements of Article 49 of the Insurance Law or Public Health Law. This amendment to Regulation 62 and the new Regulation 183 codifies existing Department policy that cosmetic denials, with the small exception in the regulation, are medical necessity denials subject to Article 49 of the Insurance Law. Health plans should currently be following the standard that this amendment and new regulation establish.

To address the concerns of health plans that certain procedures usually considered cosmetic would be subject to the utilization review and external review requirements when medical information is not submitted, Part 56 further provides that a request for coverage of surgery, other than a request for preauthorization, that is solely identified by a code on a designated list, and is submitted without medical information, may be denied by a health plan without subjecting the request to Title I and Title II of Article 49 of the Insurance Law and Public Health Law. However, if a request for surgery identified by a code on the designated list is submitted with medical information, or as a preauthorization request, then the Article 49 utilization review process must be followed to adjudicate the claim. In addition, if the automatic denial process is used for the designated codes, the denial must explain that the insured may request a medical necessity review and submit medical information, in which case the plan must review as a utilization review appeal and provide external appeal rights.

The requirements established in these regulations, and the list of procedures set forth in Table 1 of the new Regulation 183, are the result of a collaborative effort among the New York Health Plan Association, the New York State Conference of Blue Cross and Blue Shield Plans, the New York State Department of Health and the New York State Insurance Department. Interested parties agreed that it is in the best interest of both health plans and consumers for there to be uniformity among the plans when making coverage decisions, and these regulations are intended to establish such uniformity. Representatives of insurers and HMOs also expressed concern about the cost of a clinical peer review when services usually considered to be cosmetic are reviewed retrospectively and medical information has not been submitted. The list of procedures in Regulation 183 that may be denied without such review addresses this concern while still ensuring that consumer utilization review and external appeal rights are not compromised. Striving to minimize the costs of health insurance and protecting the interests of consumers who purchase health insurance and are important functions of the Superintendent. These regulations accomplish both and ensure that there is uniformity among health plans when making coverage determinations.

4. **Costs:** The regulations apply only to insurers and HMOs issuing insurance policies that exclude cosmetic surgery. Any costs imposed on regulated parties as a result of the regulations will be minimal as they involve only clarification of existing optional insurance policy provisions. Actual costs to insurers and HMOs will be limited to the time that product compliance personnel will spend in implementing any accompanying changes to their claims procedure or making any filings.

The regulations may indirectly affect health care providers since the regulations clarify that medical information must be submitted by providers or their patients for certain health care procedures usually considered to be cosmetic. However, current law permits insurers and HMOs to request medical information in order to make a claim determination.

The costs to the Insurance Department will be limited to the time spent by existing staff to review products submitted by insurers for compliance.

There should be no costs associated with these regulations to state or local government.

5. **Local Government Mandates:** The regulations impose no new programs, services, duties or responsibilities on any county, city, town, village, school district or fire district.

6. **Paperwork:** The regulations do not impose any additional paperwork requirements on insurers or HMOs. Insurers and HMOs are currently required by law to make form and utilization review report filings with the Department. HMOs and insurers are also currently permitted to request medical information from providers and consumers and therefore it is unlikely that any greater burden would be imposed on providers or consumers.

The regulations may indirectly affect health care providers since they clarify that medical information must be submitted by providers or their patients for certain health care procedures usually considered to be cosmetic. However, current law permits insurers and HMOs to request medical information in order to make a claim determination.

7. Duplication: The regulations do not duplicate standards of either the federal or other state governments. The regulations set standards applicable to health insurance coverage for New York State.

8. Alternatives: The regulations were developed through meetings with interested parties. Alternatives such as precluding plans from denying procedures when medical information is not submitted, or including an expanded list of procedures, were both discussed but the Insurance Department and Health Department determined that the list of procedures included in the regulation is the most appropriate to meet the needs of health plans and protect consumers. The Department also considered whether these requirements could be established through guidelines, and determined that regulations would be needed to integrate the new requirements with existing requirements and to ensure uniformity and consistency in application.

9. Federal Standards: The U.S. Department of Labor Claims Payment Regulation, 29 C.F.R. 2560.503 issued pursuant to the Employee Retirement Income Security Act (ERISA) creates federal standards for the treatment of medical necessity denials and the processing of such claims. However, the federal regulation does not include standards for surgical services. Therefore, these regulatory actions do not effect, modify, or duplicate any existing federal standards.

10. Compliance Schedule: Regulated parties should be able comply with the regulations immediately. Insurers and HMOs have been made aware of the requirements in the regulations through meetings and Department correspondence. In addition, the Insurance Department has always instructed insurers and HMOs that they must treat cosmetic surgery denials as medical necessity denials. The regulations merely clarify this instruction and provide an option for claims processing when medical information is not submitted.

#### **Consolidated Regulatory Flexibility Analysis**

1. Effect of rule: These regulations will affect all health maintenance organizations (HMOs) and insurers licensed to do business in New York State. Based upon information provided by these companies in annual statements filed with the Insurance Department, HMOs and insurers licensed to do business in New York do not fall within the definition of small business found in Section 102(8) of the State Administrative Procedures Act because none of them are both independently owned and have under 100 employees. These regulations may indirectly affect health care providers since the regulations clarify that medical information must be submitted by providers or their patients for certain health care procedures usually considered to be cosmetic. These regulations do not apply to or affect local governments.

2. Compliance requirements: These regulations will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. Health care providers and consumers requesting coverage of certain procedures usually considered to be cosmetic, other than for requests involving preauthorization, will need to submit medical information, if not previously submitted. However, current law permits insurers and HMOs to request information from providers and consumers in order to make coverage determinations.

3. Professional services: Small businesses or local governments will not need professional services to comply with the regulations.

4. Compliance costs: These regulations will not impose any compliance costs upon small businesses or local governments. The Insurance Law and Public Health Law currently permit health plans to request medical information from providers and their patients in order to make coverage determinations.

5. Economic and technological feasibility: Small businesses or local governments will not incur an economic or technological impact as a result of the regulations.

6. Minimizing adverse impact: These regulations apply to the insurance market throughout New York State. The same requirements will apply uniformly, and do not impose any adverse or disparate impact on HMOs, insurers, health care providers or consumers.

7. Small business and local government participation: These regulations are directed at HMOs and insurers licensed to do business in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Act. Notice of the proposal was previously published in the Insurance Department's Regulatory Agenda. This notice was intended to provide small businesses with the opportunity to participate in the rule making process, but no input was received. Interested parties were also consulted through direct meetings during the development of the proposed regulations.

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

1. Types and Estimated Number of Rural Areas: Insurance companies and health maintenance organizations (HMOs) to which these regulations apply do business in every county in this state, including rural areas as defined under State Administrative Procedure Act Section 102(13). Some of the home offices of these companies lie within rural areas. These regulations may also indirectly affect health care providers, including providers located in rural areas; since the regulations clarify that medical information must be submitted by providers or their patients for certain health care procedures usually considered to be cosmetic.

2. Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services: Insurance companies and HMOs may have to modify their claim processing procedures and/or make new filings to the Insurance Department to conform to the regulations. No professional services will be necessary to comply with the proposed rule. Health care providers and consumers requesting coverage of certain procedures usually considered to be cosmetic, other than for requests involving preauthorization, will need to submit medical information, if not previously submitted. However, current law permits insurers and HMOs to request information from providers and consumers in order to make coverage determinations.

3. Costs: The costs to regulated parties as a result of the regulations will be limited to the costs associated with the time that product compliance personnel will spend in implementing any modified claims procedures, or making any necessary filings.

4. Minimizing Adverse Impact: These regulations apply uniformly to entities that do business in both rural and nonrural areas of New York State. These regulations do not impose any additional burden on persons located in rural areas and the Insurance Department does not believe that the regulations will have an adverse impact on rural areas.

5. Rural Area Participation: Notice of the regulations was published in the Insurance Department's Regulatory Agenda. Although there was no specific effort to obtain rural area input during the development of the regulations, interested parties, including health plan representatives, were consulted through direct meetings during the development of the regulations.

#### **Consolidated Job Impact Statement**

This proposed addition of a new Part 56 and the Thirty-fifth Amendment to Part 52 of 11 NYCRR will not adversely impact job or employment opportunities in New York. It will have no impact as it merely involves a slight modification to existing health insurance policy provisions and the associated claims processing procedures.

## **EMERGENCY RULE MAKING**

### **Rules Relating to Processing of Claims**

**I.D. No.** INS-07-07-00005-E

**Filing No.** 138

**Filing date:** Jan. 30, 2007

**Effective date:** Jan. 30, 2007

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

**Action taken:** Addition of Part 56 (Regulation 183) to Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4802; and art. 49

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

**Specific reasons underlying the finding of necessity:** Insurance Law and regulations require certain health insurance policies to provide coverage for surgical services. 11 NYCRR 52.16(c)(5) permits insurers to exclude coverage for surgery that is considered to be cosmetic. Articles 49 of the Insurance Law and Public Health Law, enacted after Section 52.16, provide for internal and external appeal when services are denied as not medically necessary.

It is the Insurance Department's position that whenever surgery is a covered benefit under a policy, a determination that the surgery is cosmetic is a medical necessity determination subject to the utilization review and external review requirements of Title I and Title II of Article 49 of the Insurance Law or Public Health Law. It has come to the Department's attention that insurers and health maintenance organizations (HMOs) have been inconsistent as to what they consider to be medically necessary surgery or cosmetic surgery and some insureds have not been provided with the right to utilization review and external appeal for denials of surgical services. If the appropriate appeal rights are not given, an insured

may be unable to obtain medically necessary health care services, adversely affecting the health of the insured.

To establish uniformity, ensure that consumers are protected, and address concerns of health plans, a new part 56 is added to 11 NYCRR and the cosmetic surgery exclusion in Part 52.16(c)(5) is amended. These two regulations clarify that denials for the reason that services are considered cosmetic are subject to the utilization review and external appeal requirements of Article 49 of the Insurance Law or Public Health Law. Part 56 further provides that a request for coverage of surgery, other than a request for pre-authorization, that is solely identified by a code on a designated list, and is submitted without medical information, may be denied by a health plan without subjecting the request to Title I and Title II of Article 49 of the Insurance Law or Public Health Law if certain conditions are met.

The requirements established in these regulations are the result of a collaborative effort among the New York Health Plan Association, the New York State Conference of Blue Cross and Blue Shield Plans, the New York State Department of Health and the New York State Insurance Department. Health plans are aware of the requirements in these regulations and have advised the Insurance Department that they would like to begin implementation through revised subscriber contracts. The Insurance Department has already received and approved subscriber contracts from health plans that include the process outlined in Part 56 and the amended Part 52. Promulgating Part 56 and the amended Part 52 on an emergency basis will ensure that all subscriber contracts that are being filed and approved are consistent with regulatory requirements and will enable health plans to make all contract changes in one filing.

Moreover, these amendments will ensure that all health plans are following the same requirements and that access to utilization review and external appeal by insureds will not be dependent on the particular health insurance policy the insured may have. These amendments will further ensure that insureds will be able to obtain medically necessary surgical services so that the health of insureds is not compromised.

For the reasons stated above, the immediate adoption of this regulation is necessary for the preservation of the general welfare.

**Subject:** Rules relating to processing of claims.

**Purpose:** To clarify when plans may exclude coverage for cosmetic surgery.

**Text of emergency rule:** A new Part 56 is added to read as follows:

*Section 56.0 Preamble. Section 52.16(c)(5) of Part 52 of this Title (Regulation 62), permits insurers and health maintenance organizations (HMOs) that are required to provide coverage for surgical services, to exclude coverage of cosmetic surgery. Part 52 does not define cosmetic surgery, but does provide examples of two types of reconstructive surgeries that may never be considered cosmetic. Subsequent to the promulgation of Part 52, Title I and Title II of Article 49 of the Insurance Law and Public Health Law were enacted that require medical necessity denials to be subject to utilization review and external appeal. The Insurance Department has found inconsistencies among insurers and HMOs as to when denials of surgery are considered medical necessity denials and subject to utilization review and external appeal. Section 56.3 of this Part and an amended section 52.16(c)(5) of Part 52 of this Title clarify that, whenever surgery is a covered benefit under certain policies, a determination that the surgery is cosmetic is a medical necessity determination subject to the utilization review and external review requirements of Titles I and II of Article 49 of the Insurance Law and Public Health Law, except in certain cases when the claim or request for surgery is identified by one of the codes in subdivision (f) of section 56.3 of this Part and is submitted without medical information.*

*Section 56.1 Applicability. This Part shall be applicable to policies that provide hospital, surgical or medical expense coverage.*

*Section 56.2 Definitions. The following words or terms shall have the following meanings when used in this Part:*

*(a) Health care professional means an appropriately licensed, registered or certified health care professional pursuant to title eight of the education law or a health care professional comparably licensed, registered or certified by another state.*

*(b) Health care provider means a health care professional or a facility licensed pursuant to article 28, 36, 44 or 47 of the public health law or a facility licensed pursuant to article 19, 23, 31 or 32 of the mental hygiene law.*

*(c) Health plan means an insurer or health maintenance organization (HMO) that has issued a policy that provides hospital, surgical or medical expense coverage.*

*(d) Medical information means any medical data, written explanation from a health care professional, or medical record.*

*Section 56.3 Claim review requirements for surgical services.*

*(a) A claim or request for coverage of reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part, and reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect shall not be considered by a health plan to be cosmetic. Reconstructive surgery may however be reviewed for medical necessity subject to the requirements of Title I and Title II of Article 49 of the Insurance Law or Public Health Law.*

*(b) A claim or request for coverage of surgery other than for the surgical services described in subdivision (a) or (c) of this section that is considered by a health plan to be cosmetic shall be reviewed for medical necessity subject to the requirements of Title I and Title II of Article 49 of the Insurance Law or Public Health Law.*

*(c) A claim or request for coverage of surgery, other than a request for pre-authorization, that is solely identified by one of the codes in subdivision (f) of this section and is submitted to a health plan without any accompanying medical information, may be denied by a health plan as cosmetic without subjecting the request to the requirements of Title I and Title II of Article 49 of the Insurance Law or Public Health Law, provided that:*

*(1) notice of the denial includes a clear statement describing the basis for the denial;*

*(2) notice of the denial includes a statement that the insured has a right to a medical necessity review if the insured or the insured's health care provider believes the claim or request involves issues of medical necessity and submits medical information;*

*(3) if a medical necessity review is requested and medical information is submitted, the health plan treats the request as a utilization review appeal pursuant to section 4904 of the Insurance Law or Public Health Law; and*

*(4) if the health plan denies coverage of the procedure after receipt of medical information, the health plan issues a final adverse determination in compliance with section 4904(c) of the Insurance Law and section 410.9(e) of Part 410 of this Title (Regulation 166) or section 4904(3) of the Public Health Law and 10 NYCRR 98-2.9(e), as applicable.*

*(d) If an initial claim or request for a procedure listed in subdivision (f) of this section is submitted to a health plan with accompanying medical information, the claim or request shall be reviewed in compliance with Title I and Title II of Article 49 of the Insurance Law or Public Health Law.*

*(e) If an initial claim or request for a procedure listed in subdivision (f) of this section is submitted to a health plan as a pre-authorization request without accompanying medical information, the necessary information shall be requested as required by section 4905(k) of the Insurance Law or section 4905(11) of the Public Health Law and the claim or request shall be reviewed in compliance with Title I and Title II of Article 49 of the Insurance Law or Public Health Law.*

*(f) Common Procedural Terminology (CPT code[`copyright`]) and Description*

11200	Removal of skin tags, multiple fibrocuteaneous tags, any area; up to and including 15 lesions
11201	Removal of skin tags; each additional 10 lesions
11950	Subcutaneous injection of filling material (eg, collagen); 1 cc or less
11951	Subcutaneous injection of filling material (eg, collagen); 1.1 to 5.0 cc
11952	Subcutaneous injection of filling material (eg, collagen); 5.1 to 10.0 cc
11954	Subcutaneous injection of filling material (eg, collagen); over 10.0 cc
15775	Punch graft for hair transplant; 1 to 15 punch grafts
15776	Punch graft for hair transplant; more than 15 punch grafts
15780	Dermabrasion; total face (e.g. for acne scarring, fine wrinkling, rhytids, general keratosis)
15781	Dermabrasion, segmental, face
15782	Dermabrasion, regional, other than face
15783	Dermabrasion, superficial, any site, (eg, tattoo removal)
15786	Abrasion; single lesion (eg, keratosis, scar)
15787	Abrasion; each additional four lesions or less
15788	Chemical peel, facial; epidermal
15789	Chemical peel, facial; dermal
15790	Chemical peel; total face
15791	Chemical peel; face, hand or elsewhere
15792	Chemical peel, nonfacial; epidermal
15793	Chemical peel, nonfacial; dermal

- 15810 Salabrasion; 20 sq cm or less
- 15811 Salabrasion; over 20 sq cm
- 15819 Cervicoplasty
- 15820 Blepharoplasty, lower eyelid;
- 15821 Blepharoplasty, lower eyelid; with extensive herniated fat pad
- 15824 Rhytidectomy; forehead
- 15825 Rhytidectomy; neck with platysmal tightening (platysmal flap, P-flap)
- 15826 Rhytidectomy; glabellar frown lines
- 15828 Rhytidectomy; cheek, chin, and neck
- 15829 Rhytidectomy; superficial musculoaponeurotic system (SMAS) flap
- 15832 Excision, excessive skin and subcutaneous tissue (including lipectomy); thigh
- 15833 Excision, excessive skin and subcutaneous tissue (including lipectomy); leg
- 15834 Excision, excessive skin and subcutaneous tissue (including lipectomy); hip
- 15835 Excision, excessive skin and subcutaneous tissue (including lipectomy); buttock
- 15836 Excision, excessive skin and subcutaneous tissue (including lipectomy); arm
- 15837 Excision, excessive skin and subcutaneous tissue (including lipectomy); forearm or hand
- 15838 Excision, excessive skin and subcutaneous tissue (including lipectomy); submental fat pad
- 15839 Excision, excessive skin and subcutaneous tissue (including lipectomy); other area
- 15876 Suction assisted lipectomy; head and neck
- 15877 Suction assisted lipectomy; trunk
- 15878 Suction assisted lipectomy; upper extremity
- 15879 Suction assisted lipectomy; lower extremity
- 17340 Cryotherapy (CO<sub>2</sub> slush, liquid N<sub>2</sub>) for acne
- 17360 Chemical exfoliation for acne (eg, acne paste, acid)
- 17380 Electrolysis epilation, each 1/2 hour
- 19316 Mastopexy
- 19355 Correction of inverted nipples
- 21120 Genioplasty; augmentation (autograft, allograft, prosthetic material)
- 30430 Rhinoplasty, secondary; minor revision (small amount of nasal tip work)
- 36468 Single or multiple injections of sclerosing solutions, spider veins (telangiectasia); limb or trunk
- 36469 Single or multiple injections of sclerosing solutions, spider veins (telangiectasia); face
- 36470 Injection of sclerosing solution; single vein
- 36471 Injection of sclerosing solution; multiple veins, same leg
- 69090 Ear piercing
- 69300 Otoplasty, protruding ear, with or without size reduction
- S0500 Laser in situ keratomileusis
- S0810 Photorefractive keratectomy
- S0812 Phototherapeutic keratectomy
- 65760 Keratomileusis
- 65765 Keratophakia
- 65767 Epikeratoplasty
- 65771 Radial keratotomy

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**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 April 29, 2006.

**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-07-07-00004-E, Issue of February 14, 2007.

**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-07-07-00004-E, Issue of February 14, 2007.

**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-07-07-00004-E, Issue of February 14, 2007.

**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-07-07-00004-E, Issue of February 14, 2007.

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## Department of Motor Vehicles

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### EMERGENCY RULE MAKING

**Drinking Driver Program**

**I.D. No.** MTV-07-07-00007-E

**Filing No.** 140

**Filing date:** Jan. 30, 2007

**Effective date:** Jan. 30, 2007

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

**Action taken:** Amendment of Parts 134 and 136 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 510(6)(a), 1192(10)(a) and (d), 1193(2)(c)(1), 1196(4) and (7)(a)

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

**Specific reasons underlying the finding of necessity:** Precludes multiple DWI offenders from obtaining a conditional license and from being prematurely re-licensed under certain circumstances.

**Subject:** Drinking driver program and conditional license eligibility and re-licensure requirements.

**Purpose:** To set forth drinking driver program and conditional license eligibility criteria for multiple DWI offenders and establish re-licensure requirements for such offenders.

**Text of emergency rule:** Section 134.2 is amended to read as follows:

134.2 Persons eligible for program. Any person who is convicted of a violation of any subdivision of section 1192 of the Vehicle and Traffic Law, or is found to have been operating a motor vehicle after having consumed alcohol in violation of section 1192-a of this article, or of an alcohol or drug related traffic offense in another state, shall be eligible for enrollment in an alcohol and drug rehabilitation program unless: such person has participated in a program established pursuant to article 31 of the Vehicle and Traffic Law within the five years immediately preceding the date of commission of the alcohol or drug-related offense or such person has been convicted of a violation of any subdivision of section 1192 of such law [other than a violation committed prior to November 1, 1988] during the five years immediately preceding commission of an alcohol or drug-related offense; with respect to persons convicted of a violation of section 1192 of the Vehicle and Traffic Law, is prohibited from enrolling in a program by the judge who imposes sentence upon the conviction; or the commissioner is prohibited from issuing such new license to a person because of two convictions of a violation of section 1192 of the Vehicle and Traffic Law where physical injury, as defined in section 10.00 of the Penal Law, has resulted in both instances. *Notwithstanding the provisions of this section, a person shall be eligible for enrollment in the alcohol and drug rehabilitation program if such person is sentenced pursuant to the plea bargaining provisions set forth in Vehicle and Traffic Law section 1192(10)(a)(ii) and 1192(10)(d).*

Paragraph (8) of subdivision (a) of section 134.7 is amended to read as follows:

(8) The person has been penalized under section 1193(1)(d)(1) of the Vehicle and Traffic Law for any violation of subdivision 2, 2-a, 3, [or] 4, or 4-a of [such] section 1192 of such law.

Subdivision (a) of section 134.7 is amended by adding a new paragraph (13) to read as follows:

(13) The person, during the five years preceding the commission of the alcohol or drug-related offense or a finding of a violation of section 1192-a of the Vehicle and Traffic Law, participated in the alcohol and drug rehabilitation program or has been convicted of a violation of any subdivision of section 1192 of such law.

Subdivision (b) of section 134.10 is amended to read as follows:

(b) Results of satisfactory completion of a rehabilitation program. Upon satisfactory completion of a program, any unexpired suspension or revocation which was issued as a result of the conviction for which the person was eligible for enrollment in the program may be terminated by the commissioner unless the termination is prohibited under section 1193 of the Vehicle and Traffic Law or this Subchapter or if the termination is based upon enrollment in the program pursuant to the plea bargaining provisions of Vehicle and Traffic Law section 1192(10)(a)(ii) and 1192(10)(d), if such person would not otherwise be eligible for enrollment in the program pursuant to section 1196(4) of such law.

Section 134.11 is amended to read as follows:

134.11 Issuance of unconditional driver's license. Satisfactory completion of a rehabilitation program or expiration of the term of suspension, whichever occurs first, will initiate the necessary action to provide for the termination of the suspension or revocation which was the basis for entry into the rehabilitation program. Upon a determination of satisfactory completion of the rehabilitation program or the term of suspension, and unless otherwise determined by the commissioner, as provided for in subdivision (b) of section 134.10 of this Part, a notice of termination of the suspension or revocation and an unconditional license will be issued. However, no such license will be issued until all civil penalties due the department are paid or if there are any outstanding suspensions, revocations, or bars against such license until such suspensions, revocations, or bars are satisfactorily disposed of by the applicant. Any conditional license which is still valid will be terminated concurrently with the return of the unconditional driver's license and must be returned to the department. A conditional license shall not be renewed more than one year after the issuance of the conditional license if a revocation is issued for a chemical test refusal and the holder of the conditional license has not paid the civil penalty required by section 1194 of the Vehicle and Traffic Law.

Subdivision (a) of Section 136.6 is amended to read as follows:

(a) There shall be assigned to each safety factor a negative unit as follows:

Safety Factor	Assigned Negative Units	
	Over one year to three years of application	Within one year of application
(1) for each reportable accident of record with a finding by the referee of gross negligence in the operation of a motor vehicle in a manner showing a reckless disregard for the life and property of others.	-5	-8
(2) for each reportable accident of record with conviction involvement or with a finding by the referee of a violation of the Vehicle and Traffic Law	-3	-4
(3) for the first and second speeding conviction of record*	-3	-4
(4) for the third and subsequent speeding conviction*	-5	-8
(5) for reckless driving	-5	-8
(6) for each conviction of record for leaving the scene of a personal injury accident of record	-8	-11
(7) for each alcohol related offense of record as follows:		
(i) conviction for violation of subdivision (1) of section 1192 of the Vehicle and Traffic Law:	1st offense	-5
	-8	
	2nd offense	-8
	3rd offense	-11

(ii) conviction for violation of subdivision (2), (2-a), (3), [or] (4), or (4-a) of section 1192 of the Vehicle and Traffic Law:		
	1st offense	-8
	2nd or subsequent offense	-11
(iii) chemical test refusal	6	-11
(8) for each conviction of homicide, criminally negligent homicide, or assault arising out of the operation of a motor vehicle	-11	-14
(9) (i) for each incident of driving during a period of alcohol-related license suspension or revocation	-10	-12
(ii) for each other incident of driving during a period of license suspension or revocation	-8	-10
(10) for each conviction or finding by the Commissioner's referee of a violation of section 392 of the Vehicle and Traffic Law	-3	-4
(11) for each other conviction of record for a moving violation	-2	-3
*For each speeding violation of 25 miles per hour or more over the posted speed limit, add one point.		

Paragraph (2) of subdivision (d) of Section 136.6 is amended to read as follows:

(2) Where a first conviction of any subdivision [(2)] of section 1192 of the Vehicle and Traffic Law and a finding of a chemical test refusal arise out of the same incident, only one of these two safety factors having equal weight is considered in a review of the total record because these safety factors are not independent of each other.

Section 136.9 is amended to read as follows:

136.9 Effect of completion of the alcohol and drug rehabilitation program. The successful completion of the article 21 alcohol and drug rehabilitation program, where no intervening safety factors occurred between the date such person entered the program and the date the application for a license is made and with no subsequent incidents of operating a motor vehicle while under the influence of alcoholic beverages or drugs, shall be considered evidence of rehabilitative effort satisfactory for the purposes of this Part. *Provided, however, if enrollment in the program based upon the plea bargaining provisions of Vehicle and Traffic Law section 1192(10)(a)(ii) and 1192(10)(d), and if such person would not otherwise have been eligible for enrollment in the program pursuant to section 1196(4) of such law, then completion of the program, may not, in the commissioner's discretion, be deemed evidence of rehabilitative effort.*

**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 April 29, 2007.

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

**Regulatory Impact Statement**

1. Statutory authority: Section 215(a) of the Vehicle and Traffic Law authorizes the Commissioner to enact regulations to control the exercise of the powers of the Department of Motor Vehicles. Section 510(6)(a) of such law provides that where a license revocation is mandatory, no new license shall be issued except in the discretion of the Commissioner. Section 1193(2)(c)(1) of such law provides that where a license is revoked pursuant to an alcohol-related conviction, no new license shall be issued after the expiration of the minimum revocation period, except in the discretion of the Commissioner. Section 1192(10)(a) and (d) of such law relate to plea bargaining provisions in driving while intoxicated prosecutions and the requirement to attend the Drinking Driver Program. Section 1196(4) of such law relates to eligibility to enroll in the Drinking Driver Program. Section 1196(5) of such law provides that completion of the Drinking Driver Program may, in the discretion of the Commissioner, serve to terminate the suspension or revocation arising out of the alcohol-related conviction. Section 1196(7)(a) of such law relates to conditional license eligibility for those persons convicted of alcohol-related offenses.

2. Legislative objectives: This proposal is consistent with legislative objectives that grant the Commissioner of Motor Vehicles broad discretion

in establishing criteria for the restoration of driver's licenses and the re-licensing of individuals whose licenses have been suspended or revoked for alcohol-related offenses. It is also in accord with legislative objectives that afford the Commissioner discretion in determining eligibility for a conditional license, a limited use license issued to persons convicted of alcohol-related offenses. Currently, a person convicted of alcohol-related offenses may enroll in the Drinking Driver Program (DDP), as set forth in section 1196 of the Vehicle and Traffic Law, if such person has not, within the preceding five years, been convicted of an alcohol related offense or participated in the DDP. Under Chapter 732 of the Laws of 2006, section 1192(10) of such law is amended to provide that under certain plea bargaining provisions involving alcohol-related offenses, the court must require the defendant to enroll in the DDP even if such person is not otherwise eligible. Under current law, when a person successfully completes DDP, the suspension or revocation arising out of the alcohol conviction is terminated. Under this proposal, DDP completion would not serve to terminate the suspension or revocation for individuals who are not otherwise DDP eligible. This accords with the Legislature's intent, and DMV's current policy, that multiple alcohol offenders must show proof of rehabilitation in order to have their licenses restored.

3. Needs and benefits: These regulations are necessary to put the public on notice that multiple alcohol-related offenders who are not otherwise eligible for the DDP, pursuant to Vehicle and Traffic Law section 1196(4), shall not have their licenses restored upon completion of DDP, if enrollment for DDP is mandated by a court pursuant to the plea bargaining provision in Vehicle and Traffic Law section 1192(10). Currently, a person convicted of alcohol-related offenses may enroll in the Drinking Driver Program (DDP), as set forth in section 1196 of the Vehicle and Traffic Law, if such person has not, within the preceding five years, been convicted of an alcohol related offense or participated in the DDP. Under Chapter 732 of the Laws of 2006, section 1192(10) of such law is amended to provide that under certain plea bargaining provisions involving alcohol-related offenses, the court must require the defendant to enroll in the DDP even if such person is not otherwise eligible under section 1196(4). Under current law, when a person successfully completes DDP, the suspension or revocation arising out of the alcohol conviction is terminated. Under this proposal, DDP completion would not serve to terminate the suspension or revocation for individuals who are not otherwise DDP eligible. In addition, under this proposal, and consistent with current law, a person not eligible for the DDP would not be eligible for a conditional license.

This regulation is important because it provides, in accordance with current DMV policies and reapplication procedures, as set forth in Parts 134 and 136, that a recidivist DWI offender who is not eligible for the DDP must show proof of rehabilitation from an approved treatment provider prior to re-licensure. It would be contrary to public safety if a multiple DWI offender who completed DDP twice within five years is permitted to be re-licensed without having been evaluated by a treatment provider with expertise in alcohol counseling. In addition, under Part 136, applicants for re-licensure are denied a license if they have 25 or more negative units accumulated within a specified time period. Negative units are assigned for various violations of the Vehicle and Traffic Law. This amendment adds the two new alcohol offenses, Vehicle and Traffic Law 1192(2-a) and (4-a), to the offenses that trigger negative units. Thus, these amendments are necessary to protect the public from drivers who pose a significant high-way risk.

4. Costs: There are no costs to the public, local government or to this agency. The Department already has staff and procedures in place to process multiple offenders applying for re-licensure.

Source: DMV's Driver Improvement Bureau.

5. Local government mandates: This proposal does not impose any mandates upon local governments.

6. Paperwork: This proposal does not impose any additional paperwork requirements on the Department.

7. Duplication: This proposal does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: No significant alternatives were considered. A no action alternative was not considered.

9. Federal standards: The proposal does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: Immediate with adoption of this rule.

#### **Regulatory Flexibility Analysis**

A RFA is not attached because this rule will not have a disproportionate impact on small businesses or local governments, nor will it impose any

adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

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

A Rural Area Flexibility Analysis is not submitted with this proposal because it will have no adverse or disproportionate impact on the rural areas of the State.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this statement because it will not have an adverse impact on job creation or development in New York State.

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## Power Authority of the State of New York

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### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### **Rates for the Sale of Power and Energy**

**I.D. No.** PAS-07-07-00008-P

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

**Proposed action:** Increase in hydroelectric preference power rates.

**Statutory authority:** Public Authorities Law, section 1005(5)

**Subject:** Rates for the sale of power and energy.

**Purpose:** To maintain the system's fiscal integrity.

**Public hearing(s) will be held at:** 11:00 a.m., March 22, 2007 at Power Authority of the State of New York, 30 S. Pearl St., Board Room, 10th Fl., 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 not posted on a State website):** Pursuant to the New York Public Authorities Law, Section 1005, the Power Authority of the State of New York (the "Authority") proposes to increase its rates for hydroelectric preference power supplied by the Niagara and St. Lawrence-FDR hydroelectric projects, effective May 1, 2007. Preference power is sold primarily to municipal and rural electric cooperative customers, the neighboring state customers and the upstate utilities for resale to their residential customers.

The Authority proposal would increase rates for a typical preference power customer by 7.1% in the first year (May 1, 2007 to April 30, 2008) and by 5.8% in the second year (May 1, 2008 to April 30, 2009).

Written comments on the proposed increase will be accepted through Monday, April 2, 2007, at the address below.

For further information, contact: POWER AUTHORITY OF THE STATE OF NEW YORK, Anne B. Cahill, Corporate Secretary, 123 Main Street, 15-M, White Plains, NY 10601, (914) 390-8036, (914) 681-6949 (fax), anne.cahill@nypa.gov

**Text of proposed rule and any required statements and analyses may be obtained from:** Anne B. Cahill, New York Power Authority, 123 Main St., 15-M, White Plains, NY 10601, (914) 390-8036, e-mail: anne.cahill@nypa.gov

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

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

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

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

## Public Service Commission

### NOTICE OF ADOPTION

#### Submetering of Electricity by Orsid Realty Corporation on behalf of Master Apts., Inc.

**I.D. No.** PSC-36-06-00013-A

**Filing date:** Jan. 25, 2007

**Effective date:** Jan. 25, 2007

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

**Action taken:** The commission, on Jan. 17, 2007, adopted an order in Case 06-E-0995 approving the petition filed by Orsid Realty Corporation, on behalf of Master Apts., Inc., to submeter electricity at 310 Riverside Dr., New York, NY.

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

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

**Purpose:** To grant the request of Orsid Realty Corporation, on behalf of Master Apts., Inc., to submeter electricity at 310 Riverside Dr., New York, NY.

**Substance of final rule:** The Commission approved a request by Orsid Realty Corporation, on behalf of Master Apts., Inc. to submeter electricity at 310 Riverside Drive, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

#### Assessment of Public Comment

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

(09-E-0995SA1)

### NOTICE OF ADOPTION

#### Submetering of Electricity by Bay City Metering Company, Inc.

**I.D. No.** PSC-37-06-00016-A

**Filing date:** Jan. 24, 2007

**Effective date:** Jan. 24, 2007

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

**Proposed action:** The commission, on Jan. 17, 2007, adopted an order in Case 06-E-1015 approving the petition filed by Bay City Metering Company, Inc. on behalf of 301 East 69th Street Tenants Corporation to submeter electricity at 301 E. 69th St., New York, NY.

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

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

**Purpose:** To grant the request of Bay City Metering Company, Inc. on behalf of 301 East 69th Tenants Corporation, to submeter electricity at 301 E. 69th St., New York, NY.

**Substance of proposed rule:** The Commission approved a request by Bay City Metering Company, Inc. on behalf of 301 East 69th Tenants Corporation to submeter electricity at 301 East 69th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

**Data, views or arguments may be submitted to:** Jaclyn A. Brillings, 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-1015SA1)

### NOTICE OF ADOPTION

#### Submetering of Electricity by ADD Development & Management

**I.D. No.** PSC-38-06-00011-A

**Filing date:** Jan. 24, 2007

**Effective date:** Jan. 24, 2007

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

**Proposed action:** The commission, on Jan. 17, 2007, adopted an order in Case 06-E-1048 approving the petition filed by ADD Development & Management to submeter electricity at 3 Care Lane, Saratoga Springs, NY.

**Statutory authority:** Public Service Law, sections 2, 4(1), 65(1), 66(1), and 67(1)

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

**Purpose:** To grant the request of ADD Development & Management to submeter electricity at 3 Care Lane, Saratoga Springs, NY.

**Substance of proposed rule:** The Commission approved a request by ADD Development & Management, to submeter electricity at 3 Care Lane, Saratoga Springs, New York, located in the territory of National Grid Corporation.

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

**Data, views or arguments may be submitted to:** Jaclyn A. Brillings, 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-1048SA1)

### NOTICE OF ADOPTION

#### Submetering of Electricity by Bay City Metering Company, Inc.

**I.D. No.** PSC-44-06-00019-A

**Filing date:** Jan. 25, 2007

**Effective date:** Jan. 25, 2007

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

**Proposed action:** The commission, on Jan. 17, 2007, adopted an order in Case 06-E-1184 approving the petition filed by Bay City Metering Company, Inc. on behalf of 201 East 17th Street Tenants Corporation to submeter electricity at 201 E. 17th St., New York, NY.

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

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

**Purpose:** To grant the request of Bay City Metering Company, Inc. on behalf of 201 East 17th Street Tenants Corporation to submeter electricity at 201 E. 17th St., New York, NY.

**Substance of proposed rule:** The Commission approved a request by Bay City Metering Company, Inc. on behalf of 201 East 17th Street Tenants Corporation to submeter electricity at 201 East 17th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:**

Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**Data, views or arguments may be submitted to:** Jaclyn A. Brillig, 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-1184SA1)

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

**Targeted Accessibility Fund**

**I.D. No.** PSC-07-07-00009-P

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

**Proposed action:** The commission is considering whether to require all telecommunications carriers to contribute to the targeted accessibility fund (TAF).

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

**Subject:** Contributions to the targeted accessibility fund.

**Purpose:** To consider requiring all telecommunications carriers to contribute to the TAF.

**Substance of proposed rule:** The Commission is considering whether to require all telecommunications carriers to contribute to the Targeted Accessibility Fund (TAF).

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

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

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

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

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

(05-C-0616SA3)

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

**Order Resolving Complaint by Transbeam, Inc.**

**I.D. No.** PSC-07-07-00010-P

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

**Proposed action:** The commission is considering whether to grant or deny in whole or in part, the petition for rehearing, filed by Transbeam, Inc. of the Dec. 18, 2006 order resolving complaint.

**Statutory authority:** Public Service Law, section 22

**Subject:** Petition for rehearing of order resolving complaint regarding billing dispute.

**Purpose:** To consider the petition for rehearing.

**Substance of proposed rule:** The Commission is considering whether to grant or deny, in whole or part, the Petition for Rehearing, filed by Transbeam, Inc. of the December 18, 2006 Order Resolving Complaint.

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

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

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

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

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

(05-C-1354SA1)

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

**Installation of Electric Facilities by Orange and Rockland Utilities, Inc.**

**I.D. No.** PSC-07-07-00011-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 Orange and Rockland Utilities, Inc. (O&R) to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 2, to become effective April 20, 2007.

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

**Subject:** Installation of electric facilities.

**Purpose:** To provide builders/applicants with a cost effective alternate to upgrading services in place.

**Substance of proposed rule:** The Commission is considering Orange and Rockland Utilities, Inc.'s (O&R's) request to provide builders/applicants requesting facilities in excess of those normally provided by O&R with the option to pay O&R to construct such excess facilities rather than installing themselves the internal wiring and/or equipment in the premises to accomplish the same objective. The proposed filing will provide builders/applicants with a cost effective alternative to upgrading services in place and to ensure that the costs associated with requests for additional services are allocated to and recovered from those customers that are causing O&R to incur such costs. O&R's filing has a proposed effective date of April 20, 2007. The Commission may approve, reject or modify, in whole or in part, O&R's request.

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

**Data, views or arguments may be submitted to:** Jaclyn A. Brillig, 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.

(07-E-0134SA1)

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

**Customer Charge by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-07-07-00012-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson) to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 15, to become effective May 1, 2007.

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

**Subject:** Customer charge—advanced metering.

**Purpose:** To increase the customer charge for those customers with access to Central Hudson's energy manager advanced metering software.

**Substance of proposed rule:** The Commission is considering Central Hudson Gas & Electric Corporation's (Central Hudson's) request to increase the customer charge provided in Service Classifications (SC) No. 3 - Large Power Primary Service, No. 13 - Large Power Substation and Transmission Service, as well as SC No. 2 - General Service customers with an interval meter, with access to Central Hudson's Energy Manager advanced metering software. The cost of the software was paid for through the competitive metering fund, for a two-year period, as a result of the Joint Proposal in Case 00-E-01273. This contract has been renewed for an additional year. Central Hudson proposes to recover these costs no longer covered by the competitive metering fund by increasing the customer charge for SC Nos. 3 and 13 as well as any SC No. 2 customers who are provided the software. Central Hudson also proposes to clarify metering requirements for customers taking service under SC No. 2 who wish to upgrade to interval metering. Central Hudson's filing has a proposed effective date of May 1, 2007. The Commission may approve, reject or modify, in whole or in part, Central Hudson's request.

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

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

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

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

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

(07-E-0135SA1)

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

**Uniform System of Accounts by Corning Natural Gas Corporation**

**I.D. No.** PSC-07-07-00013-P

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

**Proposed action:** The Public Service Commission will review a request from Corning Natural Gas Corporation (Corning) for deferred accounting treatment of miscellaneous deferred debits, the incremental interest expense on short-term debt incurred over and above the level last established in rates. These incremental costs incurred over and above the amounts authorized in the company's previously approved rate Case 02-G-0003 effective Jan. 11, 2003.

**Statutory authority:** Public Service Law, sections 65(1), 66(4) and (9)

**Subject:** Uniform system of accounts—request for accounting authorization.

**Purpose:** To allow the company deferred accounting treatment for expenses beyond the end of the year in which it occurred.

**Substance of proposed rule:** The Public Service Commission is considering a request from Corning Natural Gas Corporation (Corning) for the deferral of Miscellaneous Deferred Debts, the incremental interest expense on short-term debt incurred over and above the level last established in rates. These incremental costs incurred over and above the amounts authorized in the Company's previously approved Rate Case 02-G-0003 effective January 11, 2003. The Commission may approve, reject or modify, in whole or in part, the relief requested by Corning.

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

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

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

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

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

(07-G-0064SA1)

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

**New Types of Gas Meters and Accessories by KeySpan Energy Delivery**

**I.D. No.** PSC-07-07-00014-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by KeySpan Energy Delivery for the approval of the ROOTS MicroCorrector, Model IMCW2 gas volume corrector manufactured by Dresser Incorporated.

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

**Subject:** Approval of new types of gas meters and accessories.

**Purpose:** To permit gas utilities in New York State to use ROOTS MicroCorrector, Model IMCW2.

**Substance of proposed rule:** The Public Service Commission will consider a request from KeySpan Energy Delivery for the approval to use the ROOTS MicroCorrector Model IMCW2 gas volume corrector manufactured by Dresser Incorporated. The IMCW2 is a solid-state device that connects directly to ROOTS rotary meters used in commercial and industrial accounts. According to KeySpan, the IMCW2 can correct for differences in gas temperature, pressure and super compressibility factors.

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

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

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

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

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

(07-G-0115SA1)

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

**Customer Charge by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-07-07-00015-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 (Central Hudson) 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 May 1, 2007.

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

**Subject:** Customer charge—advanced metering.

**Purpose:** To increase the customer charge for those customers with access to Central Hudson's energy manager advanced metering software.

**Substance of proposed rule:** The Commission is considering Central Hudson Gas & Electric Corporation's (Central Hudson's) request to increase the customer charge provided in Service Classifications No. 9 - Interruptible Transportation/Standby Sales Service and No. 11 - Firm Transportation - Core, for those customers with access to Central Hudson's Energy Manager advanced metering software. The renewal of Central

Hudson's current contract with the software provider to provide usage data has resulted in an increase in the monthly meter subscription fee. The revised customer charge is designed to recover costs associated with this increase. Central Hudson's filing has a proposed effective date of May 1, 2007. The Commission may approve, reject or modify, in whole or in part, Central Hudson's request.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-G-0133SA1)

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

**Water Rates and Charges by Groman Shores LLC**

**I.D. No.** PSC-07-07-00016-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, tariff revisions filed by Groman Shores LLC to make various changes in the rates, charges, rules and regulations in its tariff schedule to become effective July 1, 2007, and approval of its electronic tariff schedule, P.S.C. No. 1—Water.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10)

**Subject:** Water rates and charges and electronic tariff filing.

**Purpose:** To increase Groman Shores LLC's annual revenues by about \$8,098 or 170 percent, and approve an electronic tariff schedule, P.S.C. No. 1—Water.

**Substance of proposed rule:** On January 29, 2007, Groman Shores LLC (Groman or the company) filed, to become effective on July 1, 2007, new rates to produce additional annual revenues of about \$8,098 or 170%. The filing would implement bi-annual billing, April 1st and October 1st, in advance and establish an increase in rates from \$66 to \$171 annually. Also, the company proposes an increase in its restoration of service charges from a flat rate of \$10 to \$50 during normal business hours (8:00 a.m. to 4:00 p.m. Monday through Friday), \$75 outside of normal business hours Monday through Friday, and \$100 during weekends and public holidays. The company provides unmetered water service to 75 seasonal customers in the Town of Sandy Creek, Oswego County. The company has also filed an electronic tariff schedule, P.S.C. No. 1—Water, which sets forth the rates, charges, rules and regulations under which Groman will provide water service to become effective July 1, 2007. The company's tariff, along with its proposed changes, will be available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us) located under the Commission Documents). The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-W-0139SA1)

**State University of New York**

**NOTICE OF ADOPTION**

**Traffic and Parking Regulations**

**I.D. No.** SUN-16-06-00015-A

**Filing No.** 141

**Filing date:** Jan. 30, 2007

**Effective date:** Feb. 14, 2007

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

**Action taken:** Amendment of sections 568.3 and 568.7 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 360(1)

**Subject:** Traffic and parking regulations of the State University of New York College at Purchase.

**Purpose:** To increase the allowable amount for some parking fines, to list specific fines for specific offenses, and bring the parking and traffic regulations into conformity with L. 2005, ch. 699, by authorizing the exemption of veterans attending the State University of New York College at Purchase from parking and registration fees.

**Text or summary was published** in the notice of proposed rule making, I.D. No. SUN-16-06-00015-P, Issue of April 19, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Carolyn J. Pasley, Associate Counsel, State University of New York, State University Plaza, S321, Albany, NY 12246, (518) 443-5400, e-mail: [carolyn.pasley@suny.edu](mailto:carolyn.pasley@suny.edu)

**Assessment of Public Comment**

The agency received no public comment.

**Urban Development Corporation**

**NOTICE OF EXPIRATION**

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

**Economic Development and Job Creation Throughout New York State**

I.D. No.	Proposed	Expiration Date
UDC-04-06-00006-EP	January 25, 2006	January 25, 2007