

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Halal Foods Protection Act of 2005

I.D. No. AAM-18-06-00009-P

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

Proposed action: This is a consensus rule making to add Part 258 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18 subd. 6 and 201-g subds. 1 and 2

Subject: Implementation of the Halal Foods Protection Act of 2005.

Purpose: To implement legislative directive to adopt a rule regarding the filing by persons certifying food as halal of qualifications to provide halal certification.

Text of proposed rule: A new Part 258 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is adopted to read as follows:

PART 258

258.1 Statement of Qualifications of Persons Certifying Food as Halal. Every person (including an individual, partnership, corporation, and association) who certifies non-prepackaged food as halal shall file with the Department of Agriculture and Markets a statement, upon a form provided

by the Department, of that person's qualifications to certify food as halal. Such statement may include the certifier's background, training, education, experience and any other information that shows the certifier's qualifications. The form may be filed electronically on the Department's website at <http://www.agmkt.state.ny.us/> or by mail or fax to the New York State Department of Agriculture and Markets, Division of Food Safety and Inspection, 10B Airline Drive, Albany, New York 12235.

258.2 Registration of Persons Certifying Non-Prepackaged Food as Halal. Every person (including an individual, partnership, corporation and association) who manufactures, produces, processes, packs or sells non-prepackaged food represented or branded as halal shall file with the Department of Agriculture and Markets, upon a form provided by the Department, the name, address and telephone number of the person certifying the food as halal. The form may be filed electronically on the Department's website at <http://www.agmkt.state.ny.us/> or by mail or fax to the New York State Department of Agriculture and Markets, Division of Food Safety and Inspection, 10B Airline Drive, Albany, New York 12235.

Text of proposed rule and any required statements and analyses may be obtained from: J. Joseph Corby, Director, Division of Food Safety and Inspection, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-4492

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 Department has considered the proposed adoption of Part 258 of 1 NYCRR.

The Halal Foods Protection Act of 2005 (L. 2005, C. 529) directs that the Department make and complete on an emergency basis, a rule for the timely implementation of the Act. The rule is in place as an emergency measure. The proposed adoption of the rule on a permanent basis implements legislative directives by requiring that persons certifying non-prepackaged food as halal file with the Department a statement of their qualifications to provide such certification and by requiring persons who manufacture, process, sell or offer for sale non-prepackaged food represented as halal to file with the Department, the name, address and telephone number of the person certifying such food as halal (subdivisions (1) and (2) of section 201-g of the Agriculture and Markets Law).

In light of the foregoing, the Department has determined that the proposed adoption of Part 258 of 1 NYCRR is a consensus rule within the meaning of section 102(11)(b) of the State Administrative Procedure Act, in that no person is likely to object to the rule as written because it merely implements or conforms to non-discretionary statutory provisions.

Job Impact Statement

1. Nature of Impact:

The proposed rule will not adversely impact any existing or prospective employment opportunity because the rule only requires the filing with the Department of Agriculture and Markets of qualifications of persons certifying non-prepackaged food as halal and the identification of persons certifying such food as halal. The rule does not establish minimum standards, nor require specific qualifications.

2. Categories and Numbers Affected:

Persons providing such certification of non-prepackaged food as halal and persons manufacturing, producing, processing, packing and selling such food will be affected. The number is unknown.

3. Regions of Adverse Impact:

The proposed rule has uniform statewide impact.
4. Minimizing Adverse Impact:
There is no identifiable adverse impact.

Banking Department

NOTICE OF EXPIRATION

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

Mortgage Fraud Reporting

I.D. No.	Proposed	Expiration Date
BNK-15-05-00006-P	April 13, 2005	April 13, 2006

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-05-06-00008-A
Filing No. 466
Filing date: April 17, 2006
Effective date: May 3, 2006

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-05-06-00008-P, Issue of February 15, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-07-06-00002-A
Filing No. 467
Filing date: April 17, 2006
Effective date: May 3, 2006

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Transportation.

Text was published in the notice of proposed rule making, I.D. No. CVS-07-06-00002-P, Issue of February 15, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-07-06-00003-A
Filing No. 468
Filing date: April 17, 2006
Effective date: May 3, 2006

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of State.

Text was published in the notice of proposed rule making, I.D. No. CVS-07-06-00003-P, Issue of February 15, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Correctional Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mohawk Correctional Facility

I.D. No. COR-18-06-00001-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 100.100(d) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 70 and 89

Subject: Mohawk Correctional Facility.

Purpose: To rename the medical center at the facility.

Text of proposed rule: Subdivision (d) of section 100.100 of Title 7, NYCRR is hereby amended as follows:

(d) There shall be on the grounds of the institution a maximum security compound to enclose the Walsh *Regional Medical [Center] Unit*. [, a regional medical unit]

Text of proposed rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951

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

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

Consensus Rule Making Determination

The Department of Correctional Services has determined that no person is likely to object to the proposed rule as written as it merely changes the name of the Walsh Medical Center to the Walsh Regional Medical Unit. This change is to make the description consistent with other regional medical units throughout the State and is non-controversial.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely changes the name of the regional medical unit at Mohawk Correctional Facility.

Department of Economic Development

EMERGENCY RULE MAKING

Empire State Film Production Tax Credit Program

I.D. No. EDV-18-06-00003-E

Filing No. 469

Filing date: April 17, 2006

Effective date: April 17, 2006

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

Action taken: Addition of Part 170 to Title 5 NYCRR.

Statutory authority: L. 2004, ch. 60

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 has determined that a tax credit to eligible qualified film production companies would provide incentive for films to be produced in New York State and thereby help stimulate the State economy. The rule is necessary because section 7(c) of chapter 60 of the Laws of 2004 mandates the department to promulgate regulations for the program to establish procedures for the allocation of tax credits and describing the application process, the due dates for the applications, the standards used to evaluate the applications and any other provisions deemed necessary and appropriate by October 31, 2004. 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.

Subject: Empire State Film Production Tax Credit Program.

Purpose: To promulgate regulations for the program to establish procedures for the allocation of tax credits and describe the application process, the due dates for the applications, the standards used to evaluate the application and any other provisions deemed necessary and appropriate. In addition, the proposed regulations clarify necessary and pertinent definitions to the program.

Substance of emergency rule: The empire state film production tax credit program generally provides film production companies with a tax credit equal to ten percent of qualified production costs incurred within New York State. Under the program an applicant may be eligible for a full benefit or partial benefit. If an applicant has 75% or more of their total production costs occur at a qualified New York facility and the production spends at least \$3 million during production, then the production qualifies for the full benefit which is a 10% tax credit on all qualified production expenditures. If 75% or more of total production costs occur at a qualified New York facility but the production spends less than \$3 million at the qualified facility, it must then shoot 75% or more of its location days in New York to qualify for the full 10% tax credit.

If 75% or more of a production total facility expenditures occur at a qualified facility but the production spends less than \$3 million and less than 75% of its total location shooting days are in New York, then the production qualifies for the 10% tax credit for expenditures at the qualified facility only.

This rule implements Chapter 60 of the laws of 2004. Part 170 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 film production tax credit program. This proposed rule does not govern the New York city film 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 authorized applicant. In order to be eligible to apply for the program, a business must be a qualified film production company or sole proprietor thereof that is scheduled to begin principal photography on a qualified film within 180 days after submitting its initial application to the Office and it must intend to shoot a portion of that photography on a stage at a qualified film production facility on a set or sets.

Third, a two part application process is created. An authorized applicant must complete an initial application, a document created by the Office which asks the applicant to project/estimate various expenditures at qualified film production facilities and shooting days in and outside of New York. The applicant must also meet with the Office to discuss the details of the application. The Office then reviews the initial application based on criteria set out in the proposed rule, including, the completeness of the application, whether or not it is premature (*i.e.*, incapable of photography starting within 180 days of the date of the application), and whether or not it meets the statutory requirements for qualification, including whether its projected qualified productions costs equal or exceed 75% of its total productions costs.

If the initial application is approved, the applicant (now referred to as an approved applicant) receives a certificate of conditional eligibility. This certificate assures the applicant that, pending successful completion of a final application, they are in line (though not guaranteed) to receive a tax credit. The certificate also contains the applicants' priority number, a number used by the Office to place the applicant in line for allocation of the tax credit purposes. Priority number is based on the applicant's effective date. Effective date is defined in the rule to mean the date the certification of conditional eligibility becomes effective. It is derived from the date the initial application is received by the Office. In the event an applicant does not begin principal and ongoing photography within 180 days of the submission of their initial application, effective date may be recalculated to correspond to the date one hundred eighty days prior to the date the approved applicant submits a notification of commencement of principal and ongoing photography to the Office. If the application is disapproved, the applicant receives notice of its rejection from the program and may reapply at a later date.

Fourth, the rule requires the approved applicant notify the Office on the date principal and ongoing photography begins on their production and supply a sign-off budget at this point. This additional budget data helps the Office get a better sense of the production expenses the applicant has and ultimately helps the Office estimate the potential credit the applicant may later be entitled to.

Fifth, within 60 days after the completion of production of their qualified film, the approved applicant must submit a final application to the Office. The final application is similar to the initial application, though it now contains actual expenditure data as opposed to expenditure projections. The Office then considers certain criteria in its review to determine whether the final application should be approved. Much like the criteria used for the initial application, this includes analysis of whether the application is complete, whether applicant actually shot principal photography on stage at a qualified film production facility on a set or sets, whether a qualified film was completed, and whether the actual qualified production costs equal or exceed 75% of the actual production costs on the film, etc... The proposed rule allows the Office to request additional documentation, including receipts of qualified productions costs, to help the Office determine if the applicant meets the criteria. At this point, the applicant is either approved and issued a certificate of tax credit (stating the amount of tax credit they will be receiving) or provided a notice of disapproval.

Sixth, the proposed rule addresses the issue of the allocation of the empire state film production tax credits. The allocation is made in the order of priority based on the applicant's effective date. If an approved applicant's tax credit exceeds the amount of credits allowed in a given year, their credit will be allocated on a priority basis in the immediately succeeding calendar year. Also, the proposed rule makes explicit the fact that allocation and receipt of the tax credit are subject to availability of state funds for the program.

Seventh, 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 initial or final 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 July 15, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Thomas P. Regan, Department of Economic Development, Counsel's Office, 30 S. Pearl St., Albany, NY 12245, (518) 292-5120, e-mail: tregan@empire.state.ny.us

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section (7)(c) of Part P of Chapter 60 of the laws of 2004 requires the Commissioner of Economic Development to promulgate rules and regulations by October 31, 2004 to establish procedures for the allocation of the empire state film 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 emergency rule is in accord with the public policy objectives the Legislature sought to advance by creating a tax credit program for the film industry. This program is an attempt to create an incentive for film industry to bring productions to New York State as opposed to other competitive markets, such as Toronto. It is the public policy of the State to offer a tax credit that will help provide incentive for the film 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 emergency rule is required to be promulgated by October 31, 2004 (see section 7(c) of Chapter 60 of the laws of 2004). It is necessary to properly administer 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 emergency rule making. First, the emergency 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 emergency rule describes in detail the standards to be used to evaluate the initial and final 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 film 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 may need an additional employee to help with the program's new created administrative process. Such costs are estimated to be \$40,000 to \$50,000 in annual salary for an employee's with a background in production accounting.

III. Costs to the State government: The program shall not allocate more than \$25 million in any calendar year. The program sunsets on January 1, 2008 so the overall cost to the State is \$100 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 emergency rule creates an application process for eligible applicants, including the creation of an initial and final application, certain tax certificates and forms relating to film 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 emergency rule. For example, the Department met with seven representatives from episodic television, seven representatives from the independent film industry and seven representatives from large studio films to seek industry input. In addition, the Department met with three film industry accountants, five industry tax attorneys and approximately seven studio representatives to solicit their comments. Furthermore, the Department was in close contact with representatives from the State Tax and Finance Department and the New York City Office for Motion Pictures to coordinate the details of the emergency rule.

FEDERAL STANDARDS:

There are no federal standards in regard to the empire state film 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 emergency regulation as soon as it is implemented. In terms of compliance schedule, the statute (Chapter 60 of the laws of 2004) was signed into law on August 20, 2004. All film production expenditures that date back to this date will be eligible for inclusion in the tax credit calculation. The statute gave the Department until October 31, 2004 to promulgate regulations to implement the program. The program applies to taxable years beginning on or after January 1, 2004 and expires on January 1, 2008.

Regulatory Flexibility Analysis

Participation in the empire state film production tax credit program is entirely at the discretion of qualified film production companies. Neither Chapter 60 of the laws of 2004 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 their 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 film 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 film production companies, which is defined by statute to include a corporation, partnership or sole proprietorship making and controlling a qualified film in New York. The location of the companies is irrelevant, so long as they meet the necessary qualifications of the definition. This program may impose responsibility on statewide businesses that are qualified film production companies, in that they must undertake an application process to receive the empire state film production tax 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 film production tax credit program. As a tax credit program, it is designed to positively impact the film 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.

Department of Environmental Conservation

NOTICE OF ADOPTION

Sportfishing Regulations

I.D. No. ENV-52-05-00027-A

Filing No. 465

Filing date: April 14, 2006

Effective date: October 1, 2006

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

Action taken: Amendment of Parts 10, 35 and 36 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0305, 11-0317, 11-0319, 11-1301, 11-1303 and 11-1316

Subject: Sportfishing regulations.

Purpose: To revise regulations governing sportfishing and associated activities, and gear license requirements.

Substance of final rule: The purpose of this rulemaking is to amend the Department of Environmental Conservation's (Department) general regulations governing sportfishing (6 NYCRR Part 10), licenses (6 NYCRR Part 35) and gear and operation of gear (6 NYCRR Part 36). Following biennial review of the Department's fishing regulations, Department staff have determined that the proposed amendments are necessary to maintain or improve the quality of the State's fisheries resources. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The following is a summary of the amendments that the Department is proposing:

Statewide sportfishing regulations:

1. Create a statewide year round season for black bass by adding a catch and release only, artificial lures only, season from December 1 through the Friday preceding the third Saturday in June (hereinafter referred to as "catch and release only season"), except for waters governed by special regulations. This season would be in addition to the current open season for black bass which runs from the third Saturday in June through November 30 (hereinafter referred to as "current open season").

Special sportfishing regulations:

2. Add the catch and release only season referred to in item 1 above, while retaining the existing 10" minimum size limit during the current open season (third Saturday in June through November 30) on rivers and streams in the following counties: Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester and on the following stream segments:

(a) Normans Kill from mouth to Watervliet Reservoir (Albany County);

(b) Schoharie Creek from Route 20 bridge downstream (Montgomery, Schenectady and Schoharie Counties);

(c) Black River, Deer River, West Branch Deer River and Beaver River in Lewis County;

(d) Black River, Oneida County;

(e) Chemung River and tributaries upstream of Rt. 17 west of Corning.

3. Add the catch and release only season referred to in item 1 above, while retaining the existing minimum size limit during the current open season on Schoharie Creek from Schoharie Reservoir downstream to Rt. 20 bridge.

4. Add the catch and release only season referred to in item 1 above on the Otselic River, Tioughnioga River and the East and West Branches of the Tioughnioga River, Cortland County.

5. Add the catch and release only season referred to in item 1 above to the existing slot limit on Cassadaga Lakes, Chautauqua County.

6. Add the catch and release only season referred to in item 1 above to the existing 15" bass limit on Allen Lake, Allegany County.

7. Amend Lake Champlain black bass regulations to add a catch and release only, artificial lures only, season from December 1 through the Friday preceding the second Saturday in June.

8. Add a catch and release black bass season from December 1 through March 31 in Fall Creek above Ithaca Falls, Tompkins County.

9. Create a catch and release black bass season on border water sections of the Delaware River and West Branch Delaware River from the first

Saturday after June 11 through the first Saturday preceding the first Saturday in May.

10. Add a catch and release black bass season from the first Saturday in May through the Friday preceding the third Saturday in June to the traditional black bass season to Oneida Lake.

11. Add 12" minimum 5 black bass limit to the special regulations in Hamilton, Franklin, Jefferson and St. Lawrence Counties.

12. Increase the black bass minimum size limit from 15" to 20" during the first Saturday in May through the Friday preceding the third Saturday in June for Lake Erie.

13. Increase the size limit from 12" to 15" on black bass in the Hudson River from the Troy Dam downstream and all tributaries in this section upstream to the first barrier impassible by fish.

14. Extend the existing black bass regulation on Catatunk and Cayuga Creeks to all year, Tioga County.

15. Extend the trout season from September 30 to October 15 on the following stream segments:

(a) Border water sections of the Delaware River and the West Branch Delaware River;

(b) East Branch Delaware River tributaries between the villages of East Branch and Hancock;

(c) West Branch Delaware River from Cannonsville Dam downstream to the Rt. 17 overpass at Deposit;

(d) West Branch Delaware River from the lower limits of the catch and release only segment downstream to the NY/PA border;

(e) East Branch Delaware River from Pepacton Dam downstream to the Shinhopple bridge;

16. Extend the no-kill trout season from September 30 to October 15 on the catch and release only section of the West Branch Delaware River.

17. Allow a catch and release, artificial lures only season from October 16 through March 31 to the existing 5/2 trout regulation in the following stream segments:

(a) Cattaraugus Creek upstream of Springville Dam (Cattaraugus, Erie and Wyoming Counties);

(b) Elm Creek, Elton Creek, and Mansfield Creek, Cattaraugus County;

(c) East Koy Creek, Allegany and Wyoming Counties.

18. Allow a catch and release, artificial lures only trout season from October 16 through March 31 in the following stream segments:

(a) Salmon Creek upstream of Ludlowville Falls, Cayuga and Tompkins Counties;

(b) East Branch Owego Creek, West and East Branch Tioughnioga River, and the Otselic River, Cortland, Madison, and Otselic Counties;

(c) Owego Creek and the East and West Branches of Owego Creek, Tioga and Tompkins Counties.

19. Create a catch and release, artificial lures only season for trout and salmon in Fall Creek, Cayuga Lake tributary, from the downstream edge of the railroad bridge below Rt. 13 from January 1 through March 15.

20. Allow a year round trout season and ice fishing is permissible on Blue Lake, Orange County, and Loch Sheldrake, Sullivan County.

21. Allow ice fishing for lake trout and landlocked salmon in Sixberry Lake and Lake-of-the-Woods, Jefferson County.

22. Allow ice fishing for landlocked salmon in Lake Pleasant and Sacandaga Lake, Hamilton County.

23. Create a catch and release artificial lures only section of stream for all trout and salmon on 1.3 miles of Chautauqua Creek and 1.67 miles of the main branch of Eighteen Mile Creek (Erie County).

24. Increase the minimum length for all salmonids from 9" to 12" on Lake Erie and its tributaries and Upper Niagara River and its tributaries.

25. Amend Lake Ontario, St. Lawrence River and Lower Niagara River Trout and Salmon regulations to establish a 21" minimum size regulation for rainbow trout and establish a 2 fish daily lake trout limit with only 1 that may be between 25" and 30".

26. Reduce the lake trout daily possession limit to 1 fish for Sterling Lake, Orange County.

27. Reduce the size limit on lake trout from 21" to 18" on Kensico Reservoir, Westchester County.

28. Increase the size limit on Lake Trout in Otsego Lake, Otsego County, from 21" to 23" and change the 2 fish creel limit in combination for brown trout, lake trout and landlocked salmon to 1 fish each.

29. Create a 10" minimum and 3 trout limit on Holding Pond, Schoharie County.

30. Add a 10" minimum 3 trout limit from April 1 through October 15 and a catch and release only season from October 16 through March 31 on Wiscoy Creek, Allegany County.

31. Create an all year 12" minimum 3 trout limit ice fishing permitted special regulation on Colgate Lake, Greene County.

32. Amend Lake Ozonia trout to a 12" minimum 3 fish limit, St. Lawrence County.

33. Change the daily limit on trout to 5 with no more than 2 longer than 12" on the following waters:

(a) Moose River, Middle and South Branch of Moose River Downstream of Moose River Plains Recreation Area, and West Canada Creek from mouth upstream to Cincinnati Creek in Herkimer County;

(b) Black River, East Branch Fish Creek from Rome Reservoir Dam Downstream and Moose River in Lewis County;

(c) Mohawk River from Barge Canal Upstream to Delta Dam, Mohawk River from Bridge in Westernville Upstream to Lansing Kill, Moose River, Nine Mile Creek, Oneida Creek, Sauquoit Creek from Pinnacle Road in Sauquoit Downstream, and Black River in Oneida County;

(d) St. Regis River from Ft. Jackson to Franklin County line;

(e) Spafford Brook, Cortland County.

34. Amend walleye special fishing regulation on the Lower Niagara River to include a one fish 18" minimum length creel limit from January 1 through March 15.

35. Enact 18 inch minimum 3 fish limit for walleye on Redfield Reservoir, Oswego County.

36. Add Franklin Falls Flow to existing walleye special regulation in Essex County.

37. Eliminate special regulations and revert to statewide regulations for:

(a) Walleye in Lake Erie; Upper Niagara River; Dyken Pond, Rensselaer County; and Moon Lake, Jefferson County;

(b) Lake trout on Paradox Lake;

(c) Lake trout and landlocked salmon for the Indian River in Essex and Hamilton Counties;

(d) Landlocked salmon on Tupper Lake, St. Lawrence County; Abanakee Lake, Hamilton County; and Talyor Pond, Clinton County;

(e) Trout and kokanee on Polliwog Pond, Franklin County;

(f) Trout and lake trout on Grampus lake, Hamilton County;

(g) Black bass in Lower and Upper Niagara Rivers and tributaries; Schroon River, Warren County; Sacandaga River, Saratoga County; Chenango River, Madison County; Unadilla River, Otsego, Madison and Chenango Counties; and the Hudson River from Glens Falls Bridge upstream, Essex, Saratoga, Warren, and Hamilton Counties;

(h) Lake trout in West Pine Pond, Ledge Pond, and Deer Pond, Franklin County;

(i) Special regulations on Floodwood Pond and Lower Chateaugay Lake, Franklin County;

(j) Special regulations for Long Lake and West Canada Lake, Hamilton County;

(k) Black bass on Nicks Lake, Herkimer County;

(l) Black bass in the Finger Lakes.

38. Manage the Buffalo River and its tributaries as a portion of the Lake Erie tributary streams special fishing regulations.

39. Open Fall Creek in Ithaca to fishing for non-trout and salmon during the current closed season (January 1-March 31).

40. Eliminate the Great Lakes waters and tributaries restriction that prohibits use of "other than a conventional rod, reel and line."

41. Eliminate the addition of weight to the leader in the Salmon River special fly fishing area from May 1 through August 15.

42. General clarifications:

(a) Clarify dividing line of the bass regulations for Lake Ontario and the St. Lawrence River;

(b) Clarify where the special regulation for Saratoga Lake panfish applies;

(c) Clarify section of the Black River where special regulations for black bass and statewide regulations for walleye apply;

(d) Clarify geographical divide between where Great Lakes regulations and inland regulations begin for Cattaraugus Creek, Erie County;

(e) Clarify Finger Lake tributary regulations by substituting a table for existing text;

(f) Correct discrepancies between Part 10 and the Fishing Regulations Guide for Willowemoc Creek, South Branch Grass River, Middle and South Branch Moose River, and Mohawk River stream segments.

43. Remove prohibition that restricts dipnetting smelt in Tupper Lake to only the waters of the lake proper.

44. Close Blue Mountain Lake, Hamilton County, to dipnetting for smelt.

45. Regarding privately owned waters:

(a) Amend existing regulation to allow an all year ice fishing permitted season on salmonids in Brandreth Park, Hamilton County;

(b) Extend the lake trout season on Chatiemac Lake, Warren County, until November 30;

(c) Allow an all year any size 5 fish limit on trout on three trout ponds on the North Woods Club.

46. Remove baitfish prohibition on Basswood Pond, Otsego County.

47. Prohibit use of baitfish on:

(a) Alewife on Canadarago Lake (Otsego County);

(b) Upper Preston Pond, Town of North Elba;

(c) South Creek Lake, Towns of Diana and Fine.

48. Change name of a town from Altamont to Tupper Lake.

Commercial fishing regulations

49. Provisions for set lines and electrofishing gear are removed from Part 35 and Part 36.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 10.3(b).

Text of rule and any required statements and analyses may be obtained from: Shaun Keeler, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8920, sxkeeler@gw.dec.state.ny.us

Additional matter required by statute: A programmatic impact statement is on file with the Department of Environmental Conservation.

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

Because only non-substantive changes were made in the final rule, the originally published RIS, RFA, RAFA and JIS do not need to be revised.

Assessment of Public Comment

The Department received comments on the proposed rulemaking. The following is a summary of the comments received and the Department's response to those comments. Comments are organized according to the element of the proposal that they address.

Proposal: Create a statewide, year-round season for black bass (largemouth bass and smallmouth bass) by establishing a catch and release season from December 1 through the day preceding the 3rd Saturday in June.

Comment: Angling during this time period will adversely affect bass spawning and allow for predation of bass nests.

Response: While there will be increased mortality of black bass eggs and fry, black bass populations in NY (both smallmouth and largemouth) are largely stable and robust in waters across the state, and an increase in nest predation is not expected to increase mortality to the point of impairing populations. Other factors affect recruitment to the fishery. Healthy bass populations exist where restricted angling is currently permitted during the nest-guarding period (Lake Erie and western Finger Lakes), or where the season often opens prior to the end of nest-guarding (Lake George). It is unlikely that the current closed season in New York is protecting guarding male bass from angling pressure; other coolwater and warmwater species seasons are open, which allows active angling to take place in many waters during the bass spawning season.

Comment: The Department lacks information and data on the impacts that catch and release angling will have if allowed during the spawning and nesting season.

Response: An evaluation conducted by the Cornell Biological Field Station strongly suggests that in most New York waters, allowing catch and immediate release fishing will create additional recreational opportunities without jeopardizing the sustainability of bass populations.

Comment: Additional waters should be added (Hudson River).

Response: Some specific waters, such as the Hudson River, have not been included because available information or circumstances indicate that a catch and release season would not be appropriate (e.g. Hudson River - recruitment limited).

Comment: Some additional waters should be exempt (e.g. Lake Erie, and Oneida Lake).

Response: Potential significant risks to bass populations were not identified for other waters, including Lakes Erie and Oneida. However, the proposed catch and release season on Oneida Lake will be reduced by approximately five months due to concerns over the Oneida Lake walleye population.

Comment: The catch and release season should not be added for the northern portion of the state, particularly because of the cormorant predation.

Response: The impacts from cormorants is a principle reason why the Eastern Basin of Lake Ontario and St. Lawrence and Jefferson Counties

are exempt. Some additional northern New York counties are excluded because of marginal bass populations.

Comment: Other species will be negatively impacted through the incidental catch that will occur with the addition of a catch and release black bass season.

Response: Not all species have the same open season. Angling is currently allowed on almost all waters during the closed season for a species. To date, incidental catches of fish during the closed season have not been problematic.

Comment: Anglers do not necessarily release fish in an acceptable period of time and within the vicinity of the nest area the fish is protecting.

Response: "Catch and Release" requires immediate release of the fish.

Comment: Fish mortality from treble hooks is high.

Response: When handled properly, immediately released bass caught on artificial lures have a very high survival rate.

Proposal: Establish catch and release sections on Lake Erie tributaries for all trout and salmon, one on Chautauqua Creek and one on Eighteen Mile Creek.

Comment: This will prevent the opportunity for people to keep a fish, and will discourage youth and out of state angler participation.

Response: The catch and release regulation will apply to a small portion of each of these two streams, with the remainder available for harvesting fish. The majority of out-of-state anglers contacted favored the proposed C&R sections.

Comment: This regulation will hurt "fishing guides" as well as the Western NY economy.

Response: The proposal only encompass 3% of the total fishable steelhead waters. Ample opportunities exist outside these areas for harvesting a steelhead. Creel surveys indicate that the far majority of Lake Erie tributary anglers are local.

Comment: The "artificial lures only" part of the regulation is too restrictive.

Response: The prohibition on natural bait is a safeguard against an increase in mortality that is likely with the use of natural baits (i.e., where fish cannot be kept).

Comment: This will limit opportunity, which appears unwarranted by current high catch rates for these two streams.

Response: Catch rates on Chautauqua Creek are highly variable from year-to-year, angler effort is high on both of these streams, and this fishery may decline rapidly without some conservation measure. Ample opportunities exist outside these areas for anglers or guides to harvest steelhead.

Comment: I question the ability of Encon Officers to enforce the no kill regulations.

Response: The limited access in these areas will help Encon Officers enforce these regulations.

Comment: The only justification for making these tributaries catch and release is if there is documentation of successful natural reproduction.

Response: Natural reproduction of steelhead has been documented in Chautauqua Creek and is expected in 18-mile creek.

Comment: Due to the spawning related mortality, the big fish should be allowed to be harvested by the anglers.

Response: While there is some spawning related mortality, the majority of the fish do return to the lake to run the streams the following Fall.

Proposal: Establish a 21" minimum size regulation for rainbow trout in all Lake Ontario, St. Lawrence River and Lower Niagara River waters including tributaries.

Comment: The 21 inch minimum will not do enough to protect the declining rainbow trout population in Lake Ontario, is a compromise to appease the lake fishermen, and was adopted without any consideration of the tributary angler or the total fishery.

Response: The rainbow trout population in Lake Ontario has been in decline for approximately the last ten years. The Department is addressing this by investigating factors that will improve post-stocking survival of rainbow trout. After discussing a range of regulation options with both tributary and lake angler groups, an increase to 21" was determined to be the most appropriate response.

Proposal: Include the Buffalo River and its tributaries as a portion of our Lake Erie tributary streams which are subject to special fishing regulations.

Comment: This change will impact young anglers.

Response: This change is necessary to bring the Buffalo River system in line with the regulations for the Lake Erie steelhead tributaries. Young anglers should be able to comply with these regulations.

Proposal: Establish an open season for walleye in the Lower Niagara River from January 1 to March 15 with a 1 fish creel limit.

Comment: Breeder fish should not be allowed to be taken in this winter season as it will lower the population.

Response: Over harvest of mature adult fish is not expected as these regulations are more restrictive than the rest of Lake Ontario.

Proposal: Several proposals pertained to extending the trout fishing season to October 15 on waters in the Delaware River System.

Comment: Extending the season on the West Branch of the Delaware River to October 15th will cause undo stress on spawning trout and threaten spawning beds.

Response: The extension to October 15 on the tailwaters (East Branch, West Branch and mainstem of the Delaware) will not impact wild trout populations. Peak spawning occurs during the first week in November.

Comment: The season extension for trout in the Upper Delaware River System could expose prespawn wild brown trout to over harvesting as the water in the tributaries could be low and clear making wild browns susceptible to poaching.

Response: The expected harvest of pre-spawn trout in the main rivers during the 2 week extended season is expected to be minimal. Statewide regulations, including the October 15 trout season closure, have been in effect on some West Branch and East Branch tributaries since 1996 with no reported problems to the regional fisheries or law enforcement offices.

Comment: Extending the season in the tributaries of the Delaware River and the tributaries of the West Branch to October 15 may adversely affect the wild brown trout fall spawning. The Department lacks the enforcement capacity to prevent impacts to spawning.

Response: An October 15 closing date has been in effect on many trout streams in New York for nearly 10 years, with no apparent problems. Adopting this season is a low probable risk to the wild trout populations. However, the Department recognizes that these important wild populations depend on reproduction in the tributary system, and therefore the Department is not adopting the proposed extension of the trout season on the Delaware River tributaries in Sullivan and Delaware Counties.

Proposal: Increase size limit for largemouth and smallmouth bass to 15 inches in the Hudson River system, limit (retain) the open season to the third Saturday in June to November 30.

Comment: Factors other than sport fishing contribute to diminished black bass populations.

Response: Additional protection from sport fishing for spawning-size bass should bolster this recruitment-limited fishery. Water quality has improved.

Proposal: For select Western New York trout streams, include a five trout per day limit, with only 2 trout >12" for the April 1-October 15 season, and keep the stream open for fishing the remainder of the year under catch and release, artificial lures only restrictions.

Comment: Expanding catch and release on the Wiscoy Creek could jeopardize the wild trout population reproduction, as wading could damage/destroy roe and there may be injury to breeding-aged fish.

Response: The catch and reason season proposal is expected to have little or no impact to the wild brown trout population in Wiscoy Creek.

Comment: The year round artificial lures only, no-kill at Elm Creek is a moot point as the creek is generally too brushy to allow for effective use of artificial lures at any time of the year.

Response: Skilled anglers are expected to be able to fish with artificial lures in the creek.

Proposal: To reduce lake trout daily possession limit to one fish for Sterling Lake.

Comment: Reducing the daily take will not solve the problem of the size of the lake trout, but will result in a mass die-off (from overabundance) causing a remaining stunted trout population.

Response: The Department has not identified the size of trout as being a problem. The reduction in creel limit is not intended to result in a change in fish size; rather it is for offering greater protection for the self sustaining lake trout population.

Proposal: Increase the size limit on lake trout in Otsego Lake from 21 to 23 inches and change the two fish creel limit to one fish (in combination for brown trout, landlocked salmon, and lake trout).

Comment: This will result in more released fish, and no matter how carefully the fish are handled, a high mortality rate will result.

Response: The two inch difference in the size limit is not expected to result in an increase in the mortality rate in lake trout.

Proposal: Extend the season in the existing "no kill" section of Skaneateles Creek to All Year.

Comment: With not enough support from landowners, this will lead to more posted property.

Response: While landowners have not voiced such opposition to the Department, the Department will withdraw this proposal at this time, and will consult with landowners.

Department of Health

EMERGENCY RULE MAKING

New York State Prescription Form

I.D. No. HLT-18-06-00002-E

Filing No. 463

Filing date: April 12, 2006

Effective date: April 12, 2006

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

Action taken: Addition of a Part 910 and amendment of sections 85.21, 85.22, 85.23 and 85.25 of Title 10 NYCRR and amendment of sections 505.3, 528.1 and 528.2 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 21

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

Specific reasons underlying the finding of necessity: We are proposing that these regulations be adopted on an emergency basis because immediate adoption is necessary to protect the public health and safety and to meet statutory requirements. The budget proposal enacting Section 21 contains explicit authority for the Commissioner to promulgate emergency regulations. This was done recognizing the need to provide for a proper transition period for the use of statewide forged proof prescriptions, which under the regulations will be for a period of 18 months. Without the regulations the program is required to be enacted in 60 days which would be detrimental to both practitioners and the public.

Immediate adoption of these regulations is necessary to allow the gradual implementation of Section 21 of Public Health Law, achieve the health care cost savings and to enhance the quality of health care by preventing drug diversion resulting from forged or stolen prescriptions.

The practitioner groups affected by this proposal, PSSNY, MSSNY and the Health Plan Association of New York were consulted during budget negotiations. Their concerns are addressed in the statutory proposal set forth in the state budget and in these regulations.

Subject: Enactment of a serialized official New York State prescription form.

Purpose: To enact a serialized official New York State prescription form.

Substance of emergency rule: Part 910 (10 NYCRR)

These regulations are being proposed on an emergency basis to implement Section 21 of the Public Health Law. The purpose of the law is to combat and prevent prescription fraud by requiring the use of an official New York State prescription for all prescribing done in this state. Official prescriptions contain security features that will curtail alterations and forgeries that divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

The emergency regulations consist of a new Part 910 to Title 10 NYCRR. Section 910.1 defines terms used in the Part. Section 910.2 states requirements for practitioner prescribing, including that for the 18 month period stipulated in the law, either an official prescription or a practitioner's personal prescription is valid for prescribing. Section 910.3 covers registration with the Department, which practitioners and healthcare facilities are required to do to order official prescriptions. Section 910.4 states the manner in which official prescriptions will be issued by the Department, while section 910.5 lists the practitioner and facility requirements for safeguarding the official prescriptions against theft, loss or unauthorized use. Section 910.6 states pharmacy requirements for dispensing official prescriptions and out-of-state prescriptions, which may be dispensed in lieu of an official prescription. Section 910.6 also states pharmacy requirements for submission of official prescription data to the Department.

Both 10 NYCRR and 18 NYCRR have been revised to reflect the above regulations, update outdated/obsolete sections and to allow for

greater flexibility for changes in law. The following changes have been proposed:

Section 505.3 (18 NYCRR)

- Language included to reflect use of facsimile prescriptions.
- Language included to allow electronically transmitted prescriptions.
- Language included to mandate that all claims for payments of drugs or supplies under the MA program shall contain the serial number of the Official NYS Prescription Form.
- Delete language prohibiting telephone orders for OTCs.
- Language amended—telephone prescriptions for non-controlled substances WILL NOT require a follow-up hard copy prescription (even with refills).
- Delete Estimated Acquisition Cost—defined in Social Services Law 367-a(9)(b)(ii).
- Delete language referencing “triplicate” prescriptions and update to language consistent with Official NYS Prescription Form and Article 33 of the Public Health Law.
- Delete language referencing other Sections that have been deleted (i.e. 10 NYCRR 85.25).
- Delete language referencing dispensing fees—in Social Services Law 367-a(9)(d).
- Language is added to reference prescription drugs filled in compliance with 6810 of the Education Law, Article 33 of the Public Health Law and new 10 NYCRR Part 910.

A change has been made to the prior version of the emergency filing for 18 NYCRR 505.3(b)(7). The words “or supplies” has been deleted since the enacting legislation (Section 21 of the Public Health Law) only mandated that forged proof prescriptions be utilized for prescription drugs. This change conforms the regulations to the law.

Part 528 (18 NYCRR)

- Section 528.1 is deleted—obsolete listing of non-prescription drugs covered under the MA program. Listing of reimbursable drugs and rate is available on-line at the NYS eMedNY website.
- Section 528.2 is deleted—language regarding “dispensing fees include routine delivery charges” is moved to 18 NYCRR 505.3(f)(6). Compounding fee language in 18 NYCRR 505.3 [6] (3).

Part 85 (10 NYCRR)

- Section 85.21 amended—OTC List—quantities and dosage forms have been deleted to allow greater flexibility in coverage. Remove OTC categories that are no longer marketed.
- Section 85.22 amended—establishment of OTC prices amended to more accurately reflect OTC pricing (Ad Hoc Committee is obsolete) and removal of references to deleted Sections (i.e., 18 NYCRR 528.2 and 10 NYCRR 85.25)
- Section 85.23 deleted—Revisions to list of OTCs and Maximum Reimbursable Prices—in Social Services Law 365-a(4)(a).
- Section 85.25 deleted—Prescription drug list covered under MA—obsolete. Drug list available on line at NYS eMedNY website.

Part 80 (10 NYCRR)

- Section 80.84(b)(1) is amended to remove the requirement that a group practice of physicians providing treatment of opiate dependence with buprenorphine be limited to 30 patients at any one time. The amendment makes New York State regulations consistent with the federal Drug Addiction Treatment Act, which was amended on August 2, 2005 to remove the 30 patient limit for group practices treating opiate dependence with buprenorphine.

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 19, 2006.

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: regsna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

Section 3308(2) of the Public Health Law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provisions of Article 33 of the Public Health Law in order to effectuate its purpose and intent.

The state budget for SFY 2004-2005 enacted new Section 21 of the Public Health Law which mandates a statewide official prescription form for all prescriptions written in New York for the purpose of curtailing

prescription fraud and enhancing patient safety. The law permits the Commissioner to promulgate emergency regulations in furtherance of this new section of law.

Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administering and distribution of controlled substances within New York. New Section 21 of the Public Health law mandates a statewide official prescription, supports electronic prescribing and facilitates the dispensing process.

Needs and Benefits:

This regulation will support the enactment of an official New York State prescription form, which will deter fraud by curtailing theft or copying of prescriptions by individuals engaged in drug diversion. These regulations have been drafted after discussions with such provider groups as the State Health Plan Association, Medical Society of the State of New York and the Pharmacist Society of the State of New York. The simplification and provider beneficial provisions include:

- (1) Allowing electronic prescribing in the State Medical Assistance (Medicaid) program;
- (2) Eliminating the fee to practitioners and institutions for official prescriptions;
- (3) Eliminating the requirement that practitioners send written follow-up prescriptions to pharmacies for oral prescriptions in the Medicaid program;
- (4) Allowing oral prescribing of OTC medications in the Medicaid program and eliminating the requirement for hard copy orders for Medicaid OTC drugs;
- (5) Eliminating the requirement that pharmacists write the DEA number of the pharmacy on the official prescription;
- (6) Bar coding of the serial number on the official prescription to expedite the dispensing process; and
- (7) Eliminating multiple prescription forms practitioners currently use to prescribe drugs.

The regulations also define the requirements for using the official prescription and provide for an 18-month period where both existing prescription forms and the official prescription can be used. This will allow for a transition period for practitioners, institutions and pharmacists.

These regulations are found in amendments to 18 NYCRR Sections 505.3; 528.1; 528.2; and in the newly promulgated regulations in 10 NYCRR Part 910.

Technical amendments are also being made to 10 NYCRR Sections 85.21, 85.22, 85.23 and 85.25 to conform with the intent of Section 21 of the Public Health Law.

Costs:

Costs to Regulated Parties:

This program is being funded by an assessment on the State Insurance Department. The current fee to practitioners and institutions for the official prescription has been eliminated. Private insurers and the Medicaid program will realize millions of dollars in savings due to the reduction of fraudulent prescription claims.

The allowance for electronic prescribing in the Medicaid program and the expedition of the dispensing process through the use of bar coding will save valuable professional time for practitioners and pharmacists.

The slight expenditure to pharmacies for software adjustments, due to minor changes in reporting requirements, will be offset by funds through a grant administered by the Department.

Costs to State and Local Government:

There will be no costs to state or local government.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The proposed rule does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other specific district.

Paperwork:

No additional paperwork is required. The use of a single prescription form for controlled substances and non-controlled substances will simplify paperwork and record keeping for practitioners and institutions. Currently, practitioners use their own prescription form as well as the official prescription. The official prescription will replace existing prescriptions that are currently used in addition to the official prescription. Encouragement of electronic prescribing and dispensing as well as the elimination of the requirement for a written follow up prescription on oral prescriptions in the

Medicaid Program will significantly reduce paperwork requirements for practitioners, institutions and pharmacists.

Duplication:

The requirements of this proposed regulation do not duplicate any other state or federal requirement.

Alternatives:

There are no alternatives that would support the approach to be taken under the regulations. The limitation on reporting requirements by pharmacies (only for controlled substances and Medicaid prescriptions as opposed to requiring reporting on all prescriptions) was done after consultation with affected provider organizations.

Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government.

Compliance Schedule:

These regulations will become effective immediately upon filing a Notice of Emergency Adoption with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule on Small Business and Local Government:

This proposed rule will affect practitioners, pharmacists, retail pharmacies, hospitals and nursing homes.

According to the New York State Department of Education, Office of the Professions, as of April 2003, there were approximately 120,000 licensed and registered practitioners authorized to prescribe and order prescription drugs. According to the New York State Board of Pharmacy, there are a total of approximately 4,500 pharmacies in New York State. According to the New York State Education Department's Office of the Professions as of April 2003 there were approximately 18,000 licensed and registered pharmacists in New York.

Compliance Requirements:

The regulations follow the newly enacted Section 21 of the Public Health Law and require the use of the official New York State Prescription form. In addition to curtailing fraud and diversion, these regulations will expedite the prescribing and dispensing process. Practitioners, institutions and pharmacists will benefit from the following amendments;

- (1) Allowing electronic prescribing in the State Medical Assistance (Medicaid) program;
- (2) Eliminating the fee to practitioners and institutions for official prescriptions;
- (3) Eliminating the requirement that practitioners send written follow-up prescriptions to pharmacies for oral prescriptions in the Medicaid program;
- (4) Allowing oral prescribing of OTC medications in the Medicaid program and eliminating the requirement for hard copy orders for Medicaid OTC drugs;
- (5) Eliminating the requirement that pharmacists write the DEA number of the pharmacy on the official prescription;
- (6) Bar coding of the serial number on the official prescription to expedite the dispensing process; and
- (7) Eliminating multiple prescription forms practitioners currently use to prescribe drugs.

Currently, dispensing data is required from all Schedule II and benzodiazepines prescriptions. The only new requirement is the submission of dispensing data from the original dispensing of all controlled substances.

Professional Services:

No additional professional services are necessary.

Compliance Costs:

Pharmacies may require minor adjustments in computer software programming due to additional prescription data submission requirements; however, this cost will be offset through the distribution of grant funds awarded to the Department for the enhancement of its prescription monitoring program by the federal Bureau of Justice Assistance.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process utilizes existing electronic systems for reporting of dispensing by pharmacies. The regulations encourage the use of electronic prescribing by practitioners. Electronic prescribing is not only more efficient than the current paper process, it is also a secure procedure that will reduce prescription fraud. Electronic prescribing will protect the public health and result in substantial savings to the Medicaid program and private insurance as well as enhancing public safety.

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. These requirements were negotiated with organizations represent-

ing the affected groups. The use of bar coding, the elimination of written follow up prescriptions for oral prescriptions for the Medicaid program and the encouragement of electronic prescribing minimize any adverse impact.

Small Business and Local Government Participation:

During the drafting of the statute which is the basis of these regulations, the Department met with the Pharmacist Society of the State of New York (PSSNY), the Medical Society of the State of New York (MSSNY) and the Health Plan Association of New York. The regulations were drafted considering their comments. Local governments are not affected.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The proposed rule will apply to participating pharmacies, practitioners and institutions located in all rural areas of the state. Outside of major cities and metropolitan population centers, the majority of counties in New York contain rural areas. These can range in extent from small towns and villages and their surrounding areas, to locations that are sparsely populated.

Compliance Requirements:

The only compliance requirements are the use of the official prescription provided free of charge and additional minimal reporting requirements by pharmacies. The regulations are in furtherance of new Section 21 of the Public Health Law authorizing a statewide official prescription aimed at reducing fraud. Additionally, the regulations assist practitioners and pharmacies by making the prescribing and dispensing process more efficient through the use of electronic prescribing.

Professional Services:

None necessary.

Compliance Costs:

None.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process will utilize existing electronic systems for reporting of dispensing information by pharmacies. The regulations encourage the use of electronic prescribing, which is more efficient and more secure than a paper process. Electronic prescribing will also enhance patient safety through a reduction in medication error due to legibility issues.

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. This requirement is minimized by permitting pharmacies to scan the bar code of the prescription serial number onto the Medicaid claim form also through the allowance of electronic prescribing. Additionally, the benefits on regulated entities resulting from these regulations and described herein outweigh any adverse impact.

Rural Area Participation:

During the drafting of this regulation, the Agency met with and solicited comments from pharmacist, health plan and practitioner associations who represent these professions in rural areas. No particular issues relating to the effect of this program on rural areas was expressed.

Job Impact Statement

Nature of Impact:

This proposal will not have a negative impact on jobs and employment opportunities. In benefiting the public health by ensuring that drug diversion does not occur through the use of forged or stolen prescriptions, the proposed amendments are not expected to either increase or decrease jobs overall. The fiscal savings to public and private insurers will result in an economic benefit to these groups and could have a positive influence on jobs. Additionally, the anticipated time saved by practitioners and pharmacists will benefit all parties involved as well as patients.

EMERGENCY RULE MAKING

HIV Laboratory Test Reporting

I.D. No. HLT-18-06-00007-E

Filing No. 472

Filing date: April 18, 2006

Effective date: April 18, 2006

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

Action taken: Amendment of Part 63 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2130, 2139 and 2786(1)

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

Specific reasons underlying the finding of necessity: The specific reasons underlying the finding of necessity to adopt as an emergency rule are as follows:

Section 63.4(a)(4)(i).

On February 11, 2005, the Commissioner of New York City Department of Health and Mental Health (NYCDOHMH) announced that a highly drug resistant strain of human immunodeficiency virus (HIV) had been diagnosed in a NYC resident who had not previously undergone antiviral drug treatment. This patient, believed to be infected within the last 20 months, experienced a very rapid progression to AIDS, raising fears that a new highly drug resistant strain of rapidly progressive HIV is being transmitted in New York State (NYS).

This three drug-class resistant HIV strain may not respond to three of four classes of anti-retroviral medication, greatly limiting treatment options. This level of drug resistance is often seen in patients that have been on treatment for many years but is thought to be rare among patients who are newly diagnosed or who have never received antiretroviral therapy. Currently little information exists on a population basis regarding where and to what extent these drug resistance HIV strains are occurring among treated and untreated patients, and among patients newly diagnosed with HIV.

This event highlights the critical need for the HIV surveillance system of the NYS Department of Health (NYSDOH) to be strengthened in order to provide population-based information about emergent major threats to those with or at risk for HIV/AIDS. Specifically, information is needed on incidence and drug resistance in the population that will establish an early warning system for resistance to particular drugs, especially among newly infected individuals. Information on resistance in the population and sub-populations will also guide public health officials in 1) establishing and/or maintaining prevention efforts for groups at highest risk for acquisition of HIV that may be difficult to treat and 2) in maintaining sufficient resources for care of persons with AIDS that have a viral strain that is highly resistant to antiretroviral treatment. Aggregate information on resistance patterns in NYS is necessary to better inform physicians in clinical practice on how to manage patients in their community particularly when treating newly diagnosed, symptomatic patients and administering post exposure antiretroviral prophylaxis following possible exposure to HIV of unknown source.

To accomplish this, a comprehensive, population-based HIV surveillance system that incorporates surveillance for HIV incidence and HIV drug resistance must be established as soon as possible. The existing NYS HIV Reporting System provides a foundation for this system, but must be expanded to include: 1) the reporting of all nucleic acid (RNA or DNA) detection test results and all CD4 lymphocytes test results for more complete information on the magnitude of the HIV epidemic in NYS and the number and proportion of people with HIV in care for HIV infection; and 2) the results of HIV subtype and drug resistance testing.

Section 63.11

This is a critical time for all barriers to HIV testing and drug resistance testing to be eliminated. HIV testing must be encouraged and facilitated. The current informed consent and HIV release forms contained in Section 63.11 must be revised to accurately reflect changes in test technologies and advances in treatment that have occurred since the writing of the original regulations. Further, federal privacy regulations promulgated under the Health Insurance Portability and Accountability Act ("HIPAA") require changes in the HIV release form for all providers who are covered by the federal law. These forms will be removed from Section 63.11, revised and placed on the department's website, enabling prompt, convenient updating to keep pace with future changes in HIV testing and treatment. Removal of the text of these forms from Section 63.11 and use of web-based forms, which are current, clear and simplified, is necessary and urgent.

Specifically, a more accurate up-to-date consent form will facilitate HIV antibody testing and resistance testing as well as incidence testing to monitor the HIV epidemic. The new consent form also provides the opportunity for individuals to consent at one point in time to a course of medically recommended HIV testing (e.g., during pregnancy) for which they are being counseled. The language on the consent form has been greatly simplified to make it easier for individuals to understand and easier for providers to use. Its use will streamline counseling and thus reduce barriers to testing. The simplification of the form will be in conjunction with an education campaign aimed at providers to streamline counseling to the extent possible that is consistent with the law.

As noted, the authorization for release of confidential HIV related information must be up-dated to conform to federal privacy regulations.

Patients will be confused if they attempt to use the existing form to obtain the release of their records from HIPAA covered providers. All hospitals and the majority of providers are covered by HIPAA and can no longer honor the release form which now appears in Section 63.11.

Subject: HIV laboratory test reporting.

Purpose: To expand laboratory reporting to include Viral Load and CD4 test results and HIV drug resistance testing.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by Sections 2130, 2139 and 2786(1) of the Public Health Law, Subparagraph (i) of Section 63.4(a)(4) of Subchapter G of Chapter II of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, Section 63.11 of Part 63 is hereby repealed in its entirety and Section 63.12 is renumbered Section 63.11, on an emergency basis, to be effective upon filing with the Secretary of State, to read as follows:

Subparagraph (i) of Section 63.4(a)(4) is amended to read as follows:

(4)(i) Laboratories performing diagnostic tests shall report to the Commissioner cases of initial determinations or diagnoses of HIV infection, HIV-related illness and AIDS on a schedule to be specified by the Commissioner. Laboratories shall report the following: confirmed positive HIV antibody test results, [positive] HIV nucleic acid (RNA or DNA) detection test results, all CD4 lymphocyte counts [less than 500 cells per microliter or less than 29 percent of total lymphocytes] unless the test was known to be performed for reasons other than HIV infection or HIV-related illness, *HIV subtype and antiviral drug resistance testing in a format designated by the Commissioner*, and the results of other tests as may be determined by the Commissioner to indicate a diagnosis of HIV infection, HIV-related illness or AIDS.

Section 63.11 is hereby REPEALED and section 63.12 is renumbered section 63.11.

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 July 16, 2006.

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) Section 2139 requires the Commissioner to promulgate rules and regulations as shall be necessary and proper to effectuate the purposes of Article 21, Title III relating to the reporting and tracking of HIV/AIDS.

PHL Section 2130 requires that physicians and laboratories performing diagnostic tests or making a medical diagnosis immediately report determinations or diagnoses of HIV and AIDS. Such reports shall include information concerning the case "as shall be required by the Commissioner."

PHL Section 2786 authorizes the State Commissioner of Health to develop and/or approve forms for informed consent and for the release of confidential HIV-related information.

Legislative Objectives:

PHL Sections 2130 and 2139 were enacted to permit the Department of Health to conduct epidemiologic surveillance for HIV/AIDS: to record, monitor and evaluate the progression of the HIV/AIDS epidemic in the state. Confidential reporting allows the health department to assess the spread of the disease in various localities and among risk group, thereby enabling focused prevention efforts and the targeting of scarce health resources where they can be most effective.

The New York State Legislature mandated the Department's development of model forms and approval of forms in order to standardize and ensure compliance with elements of informed consent, set forth in Section 2781, and disclosure provisions outlined in Section 2782.

Needs and Benefits:

A decade ago, the course of the AIDS epidemic in New York State began to change dramatically due to the increasing use and effectiveness of highly active antiretroviral therapy (HAART), and use of viral load and HIV resistance laboratory tests to monitor the effectiveness of therapy. The decrease in AIDS diagnoses and deaths and the improving immunologic status of many persons living with HIV due to use of HAART has been accompanied by the development of mutations leading to anti-retroviral drug resistance. Although these mutations are commonly seen in persons who have received prior retroviral therapy without complete suppression

of HIV viral load, population-based data are not available on the extent of resistance in the treated population. It is also not known to what extent resistant mutations are transmitted from one person to another, leading to decreased treatment options in those newly infected and diagnosed with HIV.

With the recent documentation of a HIV strain with resistance to three drug classes and rapid progression to AIDS in a NYC man newly diagnosed with HIV, the need for a comprehensive surveillance system designed to provide this information on a population basis is pressing. Expanding the existing NYS population based HIV surveillance system to incorporate surveillance of both HIV incident infection and HIV drug resistance will provide data not only on the level of HIV drug resistance among the treated population but also on transmission of HIV strains that are highly drug resistant among the newly diagnosed population. It will allow the examination of geographic differences and trends overtime in resistance patterns. These aggregate data will be extremely valuable to physicians, providing them with information on the resistance patterns that will help guide HIV treatment practices. They will also help public health agencies charged with making the best use of resources to develop effective prevention and care programs.

HIV viral load suppression is necessary to prevent the development of HIV drug resistance. Since June 2000, laboratories have reported detectable viral load test results to the Department. The inclusion of non-detectable viral loads in the surveillance system offers a valuable population-based assessment of the suppression of viral load and therefore the risk for the development of drug resistance. If the goal to avoid drug resistance is not being met at a population level, then viral load information will allow interventions to be designed that target the problems that are allowing resistant strains to proliferate (i.e., direct transmission of resistant strains, lack of entry into medical care, and/or inadequate viral load suppression even with medical care).

One of the original intents of the legislature in passing PHL Article 21 was to provide more case information to better track the HIV epidemic in New York State. The "Memorandum in Support, the New York State Senate", Session Laws of 1998, Chapter 163, p. 1631 states: "This legislation has the potential to save countless lives while assuring that infected and exposed individuals are given a chance to get tested and treated at the earliest possible stage in the progression of disease. In addition, making HIV a reportable disease will enable public health officials to more accurately track the spread of the epidemic into different communities, thus allowing them to direct treatment, prevention and educational funding into those communities most affected by the disease."

The use of HAART has increased the percentage of HIV-infected patients with undetectable viral loads and high CD4 counts. Requiring the reporting of undetectable viral loads and all CD4 lymphocyte counts (the names of persons undergoing CD4 testing for non-HIV related reasons will be deleted from the HIV/AIDS Registry) will provide a more complete picture of the epidemic, including the proportion of infected persons whose HIV is optimally controlled (undetected viral load and high CD4 count) and who are in ongoing medical care in different regions of the state. This information will assist in defining the complete HIV spectrum of disease at the population level in New York State, identifying trends in control of disease across time, and evaluating areas of the state where access to care may be an issue.

With the availability of HAART, it is more important than ever that barriers to HIV diagnostic testing be reduced. The Department is undertaking a broad initiative to make HIV testing routine in medical settings and to streamline the counseling and consent process. With respect to the HIV test consent form, testing must be further encouraged and made a standard part of medical care in NYS. The current forms contained in Section 63.11 are no longer accurate due to changes and options in test technologies and advances in treatment. Further, the release form does not reflect the requirements of new federal privacy regulations.

Specifically, the need to repeal the existing HIV consent form results from the evolution of HIV testing technologies. Rapid HIV antibody tests now available can provide a negative or preliminary positive result during a single appointment, often in less than an hour. Other testing technologies involving various body fluids are now available. The current consent form is focused on the ELISA and Western Blot tests and needs to be streamlined. Further, with treatment advances, it is timely to update the consent form to emphasize routine testing for disease monitoring that occurs in medical care (e.g. viral load and resistance testing). Various testing protocols, consisting of one or more tests now exist and need to be accommodated by a consolidated informed consent form; for example, testing and follow-up testing during pregnancy as recommended by the NYSDOH and

the Center for Disease Control and Prevention (CDC). In 2004, the Department distributed a special version of the consent forms to permit a follow up test later in pregnancy, with a single consent form. Also, viral load and other tests to monitor HIV are now a routine part of HIV health care but are not addressed by the current consent form. The revised consent form will provide a single and comprehensive way to obtain this consent. Finally, CDC recommends that state health departments conduct incidence testing on all persons newly diagnosed. Such testing does not provide accurate information about individual patients, but in aggregate the result allow estimation of HIV incidence in the populations. Consent for this test is also part of the revised consent form.

The current HIV release form must be revised to ensure compliance with the new federal Health Insurance Portability and Accountability Act ("HIPAA") privacy regulations at 45 C.F.R. Part 164. The revised release will permit HIPAA covered providers to disclose information, including HIV information, without violating federal law.

Both forms will be available on the NYSDOH web site. There is no requirement in statute that such forms be promulgated as regulations. Web-based forms can be more conveniently up-dated and made readily available to providers. Removal of the text of these forms from Section 63.11 and use of web-based forms that are current, clearly worded and simplified are urgent needs and provide a service to the regulated parties.

Costs:

Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

There will be no additional costs for the laboratories associated with the reporting of all HIV nucleic acid (RNA or DNA) detection test results and all CD4 lymphocyte test results, as this can easily be incorporated with the existing reporting of positive HIV nucleic acid (RNA and DNA) detection tests. Approximately 25 laboratories conduct HIV drug resistance testing. Laboratories already reporting test results to the NYSDOH via the NYS Electronic Clinical Laboratory Reporting System (ECLRS) may require some one-time programming costs to set up the extraction of data from their testing systems and incorporating it with the ECLRS transfers. Laboratories not reporting through ECLRS will require a minimum commitment of additional staff time to establish an account on the NYS Department of Health's (NYSDOH) Health Provider Network (HPN) for highly secured transfer of data directly to the NYSDOH.

Updated and streamlined informed consent and release forms will be cost saving to regulated parties. They will save staff time in the informed consent process because the new form is a simplified and comprehensive, and is a more accurate reflection of existing testing protocols. The updated release form will facilitate a patient's right to authorize the exchange of HIV-related information. As persons with HIV/AIDS live longer, the authorized exchange of medical information is increasingly beneficial for coordination of medical care and other HIV-related services.

Costs to the Department of Health and other state and local governments:

The amendment to Section 63.4 will expand the current HIV reporting system requiring additional costs to the NYSDOH. Specifically, additional servers at a cost of approximately \$50,000 and 160 hours of contractual programming for a total cost of \$16,000 will be needed for implementation. The ECLRS modifications will require at least 80 hours of programming at \$8,000. Two additional staff persons will be required to 1) process the additional laboratory reports and 2) interpret, analyze and generate aggregate reports of the drug resistance data. These costs are based on the actual experience of the NYSDOH in developing the current ECLRS and the electronic HIV Surveillance systems.

There will be no costs to county health departments. The NYCDOHMH may require additional minor computer hardware and/or software to incorporate electronic drug resistance reporting into the NYC HIV Surveillance Program.

Agencies of state and local government that conduct HIV testing will incur no new costs as a result of these regulations deleting Section 63.11. As is the case with private regulated parties, costs associated with the time expended in obtaining informed consent for HIV testing and with release of HIV-related information should decrease as a result of these amendments.

Further, as of August 30, 2005, 62 of the 72 laboratories affected by this reporting requirement are reporting CD4 and viral loads as required. The resulting impact on the department's staff has been moderate and efficiencies are in place to minimize workloads.

The above assessment of the cost benefits of deleting Section 63.11 is based upon actual experience on the part of the NYSDOH and providers in

obtaining informed consent and securing authorization for the release of confidential HIV-related information.

Local Government Mandates:

There are no city or county laboratories conducting drug resistance testing. Therefore, the amendment of Section 63.4(a)(i) mandating the reporting of drug resistance testing does not impact any city or county government.

The proposed regulations concerning the repeal of Section 63.11 impose no new mandates on any county, city, town or village government, school district, fire district or other special district, unless a city, town or village government, school district, fire district or other special district offers HIV testing and is, therefore, subject to these regulations to the same extent as a private regulated party.

Paperwork:

There will be no additional paperwork required of the laboratories or NYCDOHMH. The majority of laboratories conducting HIV drug resistance testing for NYS residents are already reporting other required testing results through the NYSDOH's ECLRS system. These laboratories will be able to electronically report the results of their drug resistance testing through ECLRS as well. Laboratories not currently reporting through ECLRS will be required to report electronically to the NYSDOH via the file transfer utility over the highly secured Health Provider Network (HPN).

No new paperwork is required as a result of the deletion of Section 63.11. The proposed regulation deleting Section 63.11 would actually result in less paperwork since the release form is now inaccurate for use by HIPAA covered providers.

Duplication:

These rules, amendment of Section 63.4(a)(i) and repeal of Section 63.11 do not duplicate any other state law, rule or regulation. These regulations also do not duplicate any federal regulations, but rather the revised release form complies with recently enacted federal privacy regulations.

Alternatives:

The most effective and efficient way to monitor HIV drug resistance in a given population and to operate a system for enabling a clinical alert regarding the prevalence of drug resistance is to establish a comprehensive HIV Surveillance system that incorporates universal laboratory reporting of HIV drug resistance testing. Although research studies can provide valuable clinical information on HIV drug resistance, they are costly and only provide information specific to the study participants. The results of these studies cannot provide comprehensive information on the total NYS population of HIV infected people.

The Department of Health considered direct provider reporting in place of expanded laboratory electronic reporting. However, provider reporting on paper forms has been shown to be less reliable, less efficient and would prove to be more costly. Electronic clinical laboratory reporting for disease surveillance is universally promoted by public health authorities.

The alternative of retaining the existing informed consent form and release form was determined to be unacceptable. The informed consent form does not reflect current HIV testing technology or benefits of testing. The retention of a release form in Section 63.11 that is not compliant with federal regulations is not an acceptable alternative.

The Department of Health is sensitive to the possibility of additional non-HIV infected persons being reported to the department due to the expanded reporting of all CD4 test results. We note that no report is placed on the registry without confirmation (i.e. matching with other HIV related tests or verifying status with a person's provider). These procedures have been in place for over ten years without incident or problem which negatively affect privacy. Nevertheless, the Department of Health considered the possibility of adding a provider check off to laboratory slips to indicate that the laboratory test was unrelated to HIV. After consideration of the unlikelihood of full provider compliance, confidentiality concerns, the necessity for laboratory software reprogramming based on this change and the costs involved as weighed against the problem free procedures long in existence, the Department decided to continue the present system.

Federal Standards:

The National Centers for Disease Control and Prevention (CDC) is currently in the process of updating the HIV Surveillance Guidelines. It is anticipated that the new guidelines will incorporate recommendations from the Council of State and Territorial Epidemiologists (CSTE) that all states require the laboratory reporting of both detectable and non-detectable viral load tests and all CD4 lymphocytes tests to state public health departments.

Monitoring the epidemic through broad reporting is promoted by the Centers for Disease Control and is widely accepted across the country. All but two states require reporting of some level of CD4 lymphocytes and/or viral loads and fourteen states have similarly undertaken to require the reporting of all CD4 lymphocytes and viral load testing (Arizona, Arkansas, Florida, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, New Hampshire, North Dakota, South Carolina, Utah and Wyoming). Comprehensive reporting enables the identification of previously unreported HIV cases. It also enables comparisons across geographic areas and across similar population groupings. Epidemiological prediction is facilitated and appropriate health planning can occur.

There are currently no federal regulations governing informed consent for HIV testing. The federal government has provided recommendations that state review their current requirements to remove unnecessary obstacles and barriers to HIV testing. Recent federal regulations, 45 C.F.R. Part 164, require that certain language appear on all release forms covered by the federal privacy act.

Compliance Schedule:

The emergency regulations be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed changes to the regulations will affect approximately 24 laboratories that conduct HIV drug resistance testing. Of these 24 laboratories, only two are classified as small businesses and both of those laboratories are located out of state. The only local government that will be impacted by these proposed changes is the NYCDOHMH, which is responsible for conducting HIV Surveillance in NYC, under a deputization agreement with the NYSDOH.

The deletion of Section 63.11 has no impact on small businesses.

Compliance Requirements:

Under the proposed changes, the laboratories that are small businesses will be required to electronically report the results and date of HIV drug resistance testing to the NYSDOH, along with the names and addresses of the patients and providers and other demographic data as required by the Commissioner. In addition, laboratories will be required to report all viral load and CD4 lymphocyte test results. The HIV drug resistance records for NYC residents will be transferred by the NYSDOH to the NYCDOHMH where they will be incorporated with the NYC HIV Surveillance System.

With respect to the use of new consent forms and release forms, providers confront no additional compliance requirements. The forms can be mailed on request and also downloaded and substituted for old forms as needed.

Professional Services:

Laboratories may require minimal computer programming to meet the requirements of these proposed laboratory changes. Technical assistance will be available from the NYSDOH.

NYCDOHMH may require an additional research scientist to analyze the HIV drug resistance data if they chose to do so under the authority of the state.

Use of new consent forms and release forms will not involve any additional professional services.

Compliance Costs:

Compliance costs for the laboratories that are classified as small businesses will likely be minimal due to the low volume of case reports expected from these entities. Technical assistance from the NYSDOH will be available.

Providers using release forms and consent forms now copy such forms for their own use. Therefore, no extra cost is anticipated.

Economic and Technological Feasibility:

Laboratories classified as small businesses will receive detailed instructions on how to report. In addition, technical assistance will be available from the NYSDOH.

Having forms available and updated on the internet, suitable for downloading, is both economically and technically feasible.

Minimizing Adverse Impact:

The adverse impact on the laboratories classified as small businesses will be minimized by utilizing ECLRS, which is the existing mode of electronic reporting for the majority of laboratories. For those not choosing to report via ECLRS, an alternative electronic reporting mechanism will be available. Technical assistance will be available from the NYSDOH.

There is no adverse impact regarding use of the new forms located on the NYSDOH web site.

Small Business and Local Government Participation:

The NYCDOHMH are supportive of the reporting of non-detectable viral loads, all CD4 lymphocyte test results and HIV drug resistance testing. Plans have been made to consult directly with all laboratories.

With respect to the new forms, the NYSDOH has shared the consent form with a few health and human service providers and has received comments from them for consideration. Plans have been made to contact other health and human service providers and stakeholders regarding the new consent form.

Rural Area Flexibility Analysis

None of the laboratories conducting HIV drug resistance testing are located in rural counties.

The repeal of Section 63.11 has no unique impact on rural area providers or patients.

Job Impact Statement

The emergency amendment of Section 63.4(a) will have no impact on jobs and employment opportunities.

The repeal of Section 63.11 does not impact on rural areas in any unique way. In fact, having updated forms available on the intranet will be a convenient service to rural providers and patients.

EMERGENCY RULE MAKING

Recreational Aquatic Spray Ground

I.D. No. HLT-18-06-00008-E

Filing No. 473

Filing date: April 18, 2006

Effective date: April 18, 2006

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

Action taken: Addition of Subpart 6-3 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

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

Specific reasons underlying the finding of necessity: During the summer of 2005, approximately 4,000 patrons of the Seneca Lake State Park spray ground became ill with cryptosporidiosis as a result of exposure to the spray ground water.

This type of aquatic facility poses a significant risk of illness to the patrons due to the design which involves the collection and recirculation of the sprayed water. To prevent a similar illness outbreak involving this type of recreational aquatic activity, spray ground design and operation regulations are necessary.

Emergency adoption of the new regulation is necessary to provide the operators of existing facilities with adequate time to evaluate facilities, complete an engineering report and make modifications, as needed, prior to use. Proposed facilities will be able to utilize the design standards to ensure new facilities are in compliance.

Subject: Recreational aquatic spray ground.

Purpose: To establish standards for the safe and sanitary operation of recreational aquatic spray grounds that re-circulate water.

Substance of emergency rule: The proposed Subpart contains the following provisions:

Recreational aquatic spray grounds (spray ground) are defined and spray ground owners are required to obtain an annual permit to operate from the local health department (LHD) having jurisdiction in the county that the spray ground is located.

Design standards for new and existing spray grounds are established. The standards include requirements for disinfection (chemical and ultraviolet) and filtration equipment, as well as requirements for spray pad, spray pad treatment tank, decking and spray pad enclosure construction and design.

Existing spray ground operators must provide a report to the LHD which evaluates compliance with the design criteria contained in the regulation and needed improvements. The report must be prepared by a New York State licensed professional engineer and submitted to the LHD at least 90 days prior to operation.

LHDs must follow the recommendations of the State Health Department prior to accepting or denying alternative designs for new and existing spray grounds.

Operation and maintenance standards are established including daily start-up procedures, minimum disinfection levels, filtration rates, water quality standards and general safety provisions. The spray ground operator must maintain daily operation records.

On-site water supplies, toilet facilities, and sanitary wastewater treatment systems must comply with sanitary and operation standards.

Spray grounds must be supervised when open for use and must be maintained by a qualified swimming pool water treatment operator.

Spray ground operators must develop, update and implement a written safety plan consisting of procedures for patron supervision, injury prevention, reacting to emergencies, injuries and other incidents providing first aid and assistance.

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 July 16, 2006.

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

Regulatory Impact Statement

Statutory authority:

The Public Health Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL Sections 225(5)(a) and 201 (1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health. These provisions authorize the regulation of recreational aquatic spray grounds (spray grounds).

Legislative objectives:

In authorizing adoption of the SSC and in enacting PHL Section 225(5) and 201(1)(m), the legislative objective was to protect public health and safety. Establishing regulations for spray grounds assures sanitary and safe operation and furthers the legislative objective.

Needs and benefits:

During the summer of 2005, approximately 4,000 patrons of the Seneca Lake State Park spray ground became ill with cryptosporidiosis as a result of exposure to the spray ground water. This type of aquatic facility poses a significant risk of illness to the patrons due to the design, which involves the collection and recirculation of sprayed water. To prevent future illness outbreaks involving this type of aquatic activity, spray ground design and operation regulations are necessary.

Statewide in 2005, there were thirty-two seasonally operated spray grounds that use re-circulated water. Three additional spray grounds are under construction. Currently, spray ground operations are not regulated by the SSC. The proposed regulation contains the following requirements:

General Requirements:

Spray ground owners must obtain an annual permit to operate from the state or local health department (LHD) having jurisdiction. Design criteria for new and existing spray grounds is established to assure safe and sanitary spray ground operation.

(1) Water recirculation, filtration and disinfection (chemical and ultraviolet) standards are established to assure all water that is sprayed onto patrons is free of pathogens. Filtration is essential for effective disinfection. Both ultraviolet (UV) and chemical disinfection are required because UV is necessary to destroy cryptosporidium and chemical disinfection is effective for many other pathogens normally associated with swimming pools.

(2) Spray pad and spray pad treatment tank construction standards ensure that there is no standing water on the spray pad, the spray pad is slip resistant, and the spray pad and spray pad treatment tank do not promote bacterial growth or harbor pathogens.

(3) Electrical standards protect patrons from electrocution.

(4) Spray pad enclosure requirements prevent access to the pad by people and animals during non-supervised time periods reducing contaminants that can enter the recirculation system.

To ensure compliance with the regulation, existing spray grounds are required to submit an engineering report addressing the design criteria specified in the regulation. Reports must be prepared by a professional engineer and identify areas of non-compliance with the regulation and include recommendations for correcting the identified deficiencies.

Personnel:

Spray grounds must provide at least one supervisory staff to provide periodic supervision of the spray pad. Supervisory staff is necessary to control patron activities and respond to events that can affect patron health and safety.

Spray feature water treatment systems must be maintained by a qualified swimming pool water treatment operator to assure proper operation of water treatment equipment.

Safety:

Signs, which contain seven rules and warning statements, must be posted at the spray pad or enclosure/entrance and bathhouse/toilet facilities. The statements inform the patrons that the water is recirculated (not potable) and highlights the practices to reduce the potential for contamination of the spray ground water.

First aid equipment must be provided at the spray ground unless otherwise specified in the safety plan.

A written safety plan must be developed and implemented. The safety plan must contain procedures for patron supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first aid and summoning help. The safety plan must be approved by the permitting official and maintained at the spray ground.

Potable water supply and waste water disposal:

Potable water supplies serving the spray ground must comply with Subpart 5-1 of the State Sanitary Code. On-site water supplies that do not meet the definition of a public water supply must comply with the requirements in Subpart 5-1 for non-community water supplies.

Sewage and other wastewater must be disposed of in acceptable sanitary facilities.

Bathhouse and foot showers:

Adequate sanitary facilities are required including toilets, lavatories, refuse disposal, diaper changing areas and foot showers. The presence and maintenance of conveniently located toilet facilities, diaper changing areas and foot showers will help eliminate diaper changing on or near the spray pad and reduce the potential for spray pad contamination.

Costs:

Costs to regulated parties:

The proposed rule has cost impacts that affect thirty-two (32) existing seasonally operated recreational aquatic spray grounds and three spray grounds that are under construction.

Existing spray grounds must submit an engineering report that addresses the design criteria contained in the proposed Subpart. Some facilities may have existing reports that can be submitted; however, those that do not have an adequate existing report will need to hire a licensed professional engineer to prepare one. Cost estimates for the report range between \$2,000 and \$20,000. The cost is expected to be at the lower end of the range because spray ground operators will most likely utilize engineering firms that are already familiar with the facility and therefore require less time to prepare the report.

Spray grounds that require modifications to the existing equipment and plumbing incur additional cost. The estimated cost for engineering services related to design modification(s) range from 6% to 15% of the project cost.

The estimated cost for other modifications are as follows:

Spray Ground Feature Water Treatment:

Ultraviolet (UV) disinfection equipment cost will vary based on the spray ground feature flow rate. Costs are based on estimates provided by two leading UV reactor manufacturers.

Flow rate (gpm)	UV reactor cost	Installation ¹	Lamp replacement ²
50	\$6,585-\$12,000	\$1,930-\$4,000	\$240-\$500
100	\$9,000-\$17,500	\$2,050-\$4,000	\$480-\$500
140-150	\$13,800-\$19,000	\$2,290-\$4,500	\$600-\$720
250	\$20,965-\$23,000	\$2,650-\$5,000	\$600-\$840
500	\$29,355-\$31,000	\$3,068-\$5,500	\$700-\$1,680
1,000-1,300	\$34,000-\$42,225	\$3,712-\$6,000	\$700-\$2,320
2,000-2,300	\$40,000-\$50,000	\$4,100-\$7,000	\$800-\$3,480

1 UV reactor installation includes necessary labor and supplies for plumbing and electrical connection.

2 Lamp replacement is anticipated to be once every 4-5 years for seasonally operated facilities.

The cost to operate UV reactors ranges from \$30 to \$875 per season for electric and \$350 to \$450 for cleaning and other maintenance.

Spray grounds that do not have adequate treatment tank filtration will require an additional pump and filtration. The pump and filter costs are based on the volume of water to be filtered. Costs range between \$350 and \$620 for pumps and \$350 and \$850 for filters. The number of required filters varies for each facility and cannot be estimated.

The proposed regulation requires spray grounds to have an automatic chemical controller for monitoring and adjusting the disinfectant and pH

levels in the treatment tank. The cost for a chemical controller is between \$1800 and \$4,200 plus installation.

Each spray ground is required to have valves and piping in the spray pad drain system to allow for discharging water to waste prior entering the spray pad treatment tank. The cost of installing a water diversion valve will vary based on the accessibility of piping at the point where the valve must be installed. Cost estimates range between \$750 and \$6,400.

Bathhouse/foot shower:

Some spray grounds may need to replace or add bathhouse facilities and/or foot showers when insufficient facilities are provided. The need and cost for additional fixtures will vary greatly by facility and cannot be estimated.

Personnel:

Spray grounds must be provided with periodic supervision. Most spray grounds will have acceptable staff already on-site fulfilling this role and will incur no additional expense. Spray grounds that do not have staff to periodically supervise the facility will have a cost increase associated with hiring someone or reassigning staff to perform supervisory duties. Staff may perform other duties such as facility maintenance in addition to performing the supervisory responsibilities. The minimum wage is currently \$6.75 an hour.

A qualified swimming pool water treatment operator must maintain the spray pad water treatment system. Facilities that do not currently employ a qualified swimming pool water treatment operator must hire a company to provide the service or send a current employee to a course to become certified. Courses to become certified as a qualified swimming pool water treatment operator cost approximately \$280. The cost of hiring a company to provide the service is \$6,000 a season.

Miscellaneous expenses:

Spray grounds must be enclosed to prevent access by people and animals during non-supervised time periods. The cost of enclosures varies depending on the style. Fencing cost range from \$9.00 a lineal foot to \$23.00 per foot which includes installation. Some fence installation types include the cost of a gate while others have an additional gate charge.

Facilities must post signs stating seven rules/warning statements. The cost of a 2 feet by 3 feet commercially prepared sign ranges from \$85 to \$400. Two signs are required at each facility.

Spray grounds are required to have a 24-unit first aid kit or adequate first aid supplies. The cost of a 24-unit first aid kit is between \$25 and \$75. Purchasing first aid supplies to satisfy the requirement will cost less.

Costs to state government:

There will be no additional costs to the State other than costs associated with printing and distributing this rule and inspection reports.

Costs to local government:

There may be additional costs to city and county health departments that enforce the proposed rule, because the proposed rule will increase the number of facilities regulated by these agencies. LHD's are expected to utilize existing staff to for the workload because of the low number of spray grounds in each jurisdiction.

The costs to municipally operated spray grounds are described above in Costs to Regulated Parties.

Paperwork:

Spray ground operators must prepare a written safety plan. Safety plan guidelines and a fill-in-the-blank format sample plan will be provided to spray ground operator to assist with preparing the document.

Spray ground operators must obtain an annual permit. The local health department will provide application forms to operators.

A spray ground operator must maintain daily operation records of the spray ground including disinfection levels, bather usage and other maintenance. Facilities that are required to disinfect their potable water supply must maintain daily records of the potable water system disinfection. Forms will be provided by the permit-issuing official and may require monthly submittal to the permit-issuing official.

Local government mandates:

City and county health departments are required to enforce regulations governing recreational aquatic spray grounds.

Duplication:

The proposed rule does not duplicate any existing state or federal regulation.

Alternatives considered:

Because of the high risk of disease transmission at spray grounds, no alternatives were considered.

Federal standards:

No federal laws or regulations govern the operations of recreational aquatic spray grounds.

Compliance schedule:

The proposed rule will be effective upon filing with the Secretary of State. The written engineering report must be submitted to the permit-issuing official at least 90 days prior to operation. Installation of UV disinfection equipment and, where needed, pumps and filters for twenty-four hour filtration of the spray pad treatment tank water is required prior to the 2006 season. Additional time to comply may be granted for other items when patron safety is not jeopardized.

Regulatory Flexibility Analysis

Effect on small business and local government:

There are thirty-two (32) recreational aquatic spray grounds (spray grounds) in New York State and three that are under construction. Eighteen (18) of the thirty-five (35) are or will be operated by local governments.

Compliance requirements:

Reporting and Recordkeeping:

A spray ground operator must maintain daily operation records of the recreational aquatic spray ground including disinfection levels, bather usage and other maintenance. A copy of the records must be maintained at the facility for 12 months.

Facilities that are required to disinfect their potable water supply must maintain daily records of the potable water system disinfection. Forms will be provided by the permit-issuing official and require monthly submittal to the permit-issuing official.

Injury and illness that occur at a spray ground must be reported by the owner/operator to the permit-issuing official within 24 hours of its occurrence and recorded in a logbook.

A written safety plan must be developed and implemented. The safety plan must contain procedures for daily patron supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first aid and summoning help. The safety plan must be approved by the permit-issuing official and maintained at the spray ground.

Other affirmative acts:

Spray ground owners are required to obtain an annual permit to operate from the local health department (LHD) having jurisdiction in the county that the facility is located.

Design criteria for new and existing spray grounds is established to assure safe and sanitary spray ground operation.

1. Water recirculation, filtration and disinfection (chemical and ultraviolet) standards are established to assure all water that is sprayed onto patrons is free of pathogens. Filtration is essential for effective disinfection. Both ultraviolet (UV) and chemical disinfection are required because UV is necessary to destroy cryptosporidium and chemical disinfection is effective for many other pathogens normally associated with swimming pools.

2. Spray pad and spray pad treatment tank construction standards ensure that there is no standing water on the spray pad, the spray pad is slip resistant, and the spray pad and spray pad treatment tank do not promote bacterial growth or harbor pathogens.

3. Electrical standards protect patrons from electrocution.

4. Spray pad enclosure requirements prevent access to the pad by people and animals during non-supervised time periods. Preventing access will reduce contaminants that can enter the recirculation system.

To ensure compliance with the regulation, existing spray grounds are required to submit an engineering report addressing the design criteria specified in the regulation. Reports must be prepared by a professional engineer and identify areas of non-compliance with the regulation and include recommendations for correcting the identified deficiencies.

Personnel:

Spray grounds must provide at least one supervisory staff to provide periodic supervision of the spray pad. Supervisory staff is necessary to control patron activities and respond to events that can affect patron health and safety.

Spray feature water treatment systems must be maintained by a qualified swimming pool water treatment operator to assure continuous and proper operation of water treatment equipment.

Safety:

Signs, which contain seven rules and warning statements, must be posted at the spray pad or enclosure/entrance and bathhouse/toilet facilities. The statements inform the patrons that the water is recirculated (not potable) and highlights the practices to reduce the potential for the contamination of the spray ground water.

First aid equipment must be provided at the spray ground unless otherwise specified in the safety plan.

A written safety plan must be developed and implemented. The safety plan must contain procedures for daily patron supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first aid and summoning help. The safety plan must be approved by the permit-issuing official and maintained at the spray ground.

Potable water supply and waste water disposal:

Potable water supplies serving the spray ground must comply with Subpart 5-1 of the State Sanitary Code. On-site water supplies that do not meet the definition of a Public Water supply must comply with the requirements in Subpart 5-1 for non-community water supplies.

Sewage and other wastewater must be disposed of in acceptable sanitary facilities.

Bathroom and foot shower:

Adequate sanitary facilities are required including toilets, lavatories, refuse disposal, diaper changing areas and foot showers. The presence and maintenance of conveniently located toilet facilities, diaper changing areas and foot shower will help eliminate diaper changing on or near the spray pad and reduce the potential for spray pad contamination.

Professional services:

Operators of existing spray grounds must submit an engineering report that addresses the design criteria contained in the proposed Subpart. Reports must be prepared by a professional engineer and identify areas of non-compliance with the regulation and include recommendations for correcting the identified deficiencies. Spray grounds that require modifications to the existing equipment and plumbing will require additional engineering services related to design modification(s).

A qualified swimming pool water treatment operator must maintain the spray pad water treatment system. Facilities that do not currently employ such personnel may hire a company to provide the service or send a current employee to become certified.

Compliance cost:

The proposed rule has cost impacts that affect thirty-two (32) existing seasonally operated spray grounds and three spray grounds that are under construction.

Existing spray grounds must submit an engineering report that addresses the design criteria contained in the proposed Subpart. Some facilities may have existing reports that can be submitted; however, those that do not have an adequate existing report will need to hire a licensed professional engineer to prepare one. Cost estimates for the report range between \$2,000 and \$20,000. The cost is expected to be at the lower end of the range because spray ground operators will most likely utilize engineering firms that are already familiar with the facility and therefore require less time to prepare the report.

Spray grounds that require modifications to the existing equipment and plumbing incur additional cost. The estimated cost for engineering services related to design modification(s) range from 6% to 15% of the project cost.

The estimated cost for other modifications are as follows:

Spray Ground Feature Water Treatment:

Ultraviolet (UV) disinfection equipment cost will vary based on the spray ground feature flow rate. Costs are based on estimates provided by two leading UV reactor manufacturers.

Flow rate (gpm)	UV reactor cost	Installation ¹	Lamp replacement ²
50	\$6,585-\$12,000	\$1,930-\$4,000	\$240-\$500
100	\$9,000-\$17,500	\$2,050-\$4,000	\$480-\$500
140-150	\$13,800-\$19,000	\$2,290-\$4,500	\$600-\$720
250	\$20,965-\$23,000	\$2,650-\$5,000	\$600-\$840
500	\$29,355-\$31,000	\$3,068-\$5,500	\$700-\$1,680
1,000-1,300	\$34,000-\$42,225	\$3,712-\$6,000	\$700-\$2,320
2,000-2,300	\$40,000-\$50,000	\$4,100-\$7,000	\$800-\$3,480

1 UV reactor installation includes necessary labor and supplies for plumbing and electrical connection.

2 Lamp replacement is anticipated to be once every 4-5 years for seasonally operated facilities.

The cost to operate UV reactors ranges from \$30 to \$875 per season for electric and \$350 to \$450 for cleaning and other maintenance.

Spray grounds that do not have adequate treatment tank filtration will require an additional pump and filtration. The pump and filter costs are based on the volume of water to be filtered. Costs range between \$350 and \$620 for pumps and \$350 and \$850 for filters. The number of required filters varies for each facility and cannot be estimated.

The proposed regulation requires spray grounds to have an automatic chemical controller for monitoring and adjusting the disinfectant and pH

levels in the treatment tank. The cost for a chemical controller is between \$1800 and \$4,200 plus installation.

Each spray ground is required to have valves and piping in the spray pad drain system to allow for discharging water to waste prior entering the spray pad treatment tank. The cost of installing a water diversion valve will vary based on the accessibility of piping at the point where the valve must be installed. Cost estimates range between \$750 and \$6,400.

Bathroom/foot shower:

Some spray grounds may need to replace or add bathroom facilities and/or foot showers when insufficient facilities are provided. The need and cost for additional fixtures will vary greatly by facility and cannot be estimated.

Personnel:

Spray grounds must be provided with periodic supervision. Most spray grounds will have acceptable staff already on-site fulfilling this role and will incur no additional expense. Spray grounds that do not have staff to periodically supervise the facility will have a cost increase associated with hiring someone or reassigning staff to perform supervisory duties. Staff may perform other duties such as facility maintenance in addition to performing the supervisory responsibilities. The minimum wage is currently \$6.75 an hour.

A qualified swimming pool water treatment operator must maintain the spray pad water treatment system. Facilities that do not currently employ such personnel may hire a company to provide the service or send a current employee to a course to become certified. Courses to become certified as a qualified swimming pool water treatment operator cost approximately \$280. The cost of hiring a company to provide the service is \$6,000 a season.

Miscellaneous expenses:

Spray grounds must be enclosed to prevent access by people and animals during non-supervised time periods. The cost of enclosures varies depending on the style. Fencing cost range from \$9.00 a lineal foot to \$23.00 per foot which includes installation. Some fence installation types include the cost of a gate while others have an additional gate charge.

Facilities must post signs stating seven rules/warning statements. The cost of a 2 feet by 3 feet commercially prepared sign ranges from \$85 to \$400. Two signs are required at each facility.

Spray grounds are required to have a 24-unit first aid kit or adequate first aid supplies. The cost of a 24-unit first aid kit is between \$25 and \$75. Purchasing first aid supplies to satisfy the requirement will cost less.

Economic and technological feasibility:

The proposal is technologically feasible because it requires the use of existing technology. The overall economic feasibility cannot be predicted at this time because the economic feasibility for each regulated spray ground is dependent upon the financial condition of that spray ground and the extent to which that spray ground must undertake additional actions to comply with the requirements of this regulation.

Minimizing adverse economic impact:

The proposed rule establishes standards for recreational aquatic spray grounds to minimize risk to the public health. Should this rule have a substantial adverse impact on a particular facility, a waiver of one or more requirements, other than spray ground feature water disinfection (chemical and ultraviolet) and filtration, will be considered, so long as alternative arrangements protect public health and safety. Alternatively, a variance, allowing additional time to comply with one or more requirements, can be granted if the health and safety of the public is not prejudiced by the variance.

Small business participation:

During the development of the emergency regulation, the Department met with design professionals and industry representatives on one occasion and had numerous telephone conversations to develop a better understanding of spray ground operation, particularly concerning spray ground feature water recirculation and treatment, and incorporated the information into the proposed regulation.

Rural Area Flexibility Analysis

Types and estimated number of rural areas:

There are thirty-five (35) recreational aquatic spray grounds (spray grounds) in New York State grounds including three that are under construction. Approximately half are located in rural areas.

Reporting and recordkeeping and other compliance requirements:

A spray ground operator must maintain daily operation records of the recreational aquatic spray ground including disinfection levels, bather usage and other maintenance. A copy of the records must be maintained at the facility for 12 months.

Facilities that are required to disinfect their potable water supply must maintain daily records of the potable water system disinfection. Forms will be provided by the permit-issuing official and require monthly submittal to the permit-issuing official.

Injury and illness that occur at a spray ground must be reported by the owner/operator to the permit-issuing official within 24 hours of its occurrence and recorded in a logbook.

Spray ground owners are required to obtain an annual permit to operate from the local health department (LHD) having jurisdiction in the county that the facility is located.

Design criteria for new and existing spray grounds is established to assure safe and sanitary spray ground operation.

(1) Water recirculation, filtration and disinfection (chemical and ultraviolet) standards are established to assure all water that is sprayed onto patrons is free of pathogens. Filtration is essential for effective disinfection. Both ultraviolet (UV) and chemical disinfection are required because UV is necessary to destroy cryptosporidium and chemical disinfection is effective for many other pathogens normally associated with swimming pools.

(2) Spray pad and spray pad treatment tank construction standards ensure that there is no standing water on the spray pad, the spray pad is slip resistant, and the spray pad and spray pad treatment tank do not promote bacterial growth or harbor pathogens.

(3) Electrical standards protect patrons from electrocution.

(4) Spray pad enclosure requirements prevent access to the pad by people and animals during non-supervised time periods. Preventing access will reduce contaminants that can enter the recirculation system.

To ensure compliance with the regulation, existing spray grounds are required to submit an engineering report addressing the design criteria specified in the regulation. Reports must be prepared by a professional engineer and identify areas of non-compliance with the regulation and include recommendations for correcting the identified deficiencies.

Personnel:

Spray grounds must provide at least one supervisory staff to provide periodic supervision of the spray pad. Supervisory staff is necessary to control patron activities and respond to events that can affect patron health and safety.

Spray feature water treatment systems must be maintained by a qualified swimming pool water treatment operator to assure continuous and proper operation of water treatment equipment.

Safety:

Signs, which contain seven rules and warning statements, must be posted at the spray pad or enclosure/entrance and bathhouse/toilet facilities. The statements inform the patrons that the water is recirculated (not potable) and highlights the practices to reduce the potential for the contamination of the spray ground water.

First aid equipment must be provided at the spray ground unless otherwise specified in the safety plan.

A written safety plan must be developed and implemented. The safety plan must contain procedures for daily patron supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first aid and summoning help. The safety plan must be approved by the permit-issuing official and maintained at the spray ground.

Potable water supply and waste water disposal:

Potable water supplies serving the spray ground must comply with Subpart 5-1 of the State Sanitary Code. On-site water supplies that do not meet the definition of a Public Water supply must comply with the requirements in Subpart 5-1 for non-community water supplies.

Sewage and other wastewater must be disposed of in acceptable sanitary facilities.

Bathhouse and foot shower:

Adequate sanitary facilities are required including toilets, lavatories, refuse disposal, diaper changing areas and foot showers. The presence and maintenance of conveniently located toilet facilities, diaper changing areas and foot showers will help eliminate diaper changing on or near the spray pad and reduce the potential for spray pad contamination.

Professional services:

Operators of existing spray grounds must submit an engineering report that addresses the design criteria contained in the proposed Subpart. Reports must be prepared by a professional engineer and identify areas of non-compliance with the regulation and include recommendations for correcting the identified deficiencies. Spray grounds that require modifications to the existing equipment and plumbing will require additional engineering services related to design modification(s).

A qualified swimming pool water treatment operator must maintain the spray pad water treatment system. Facilities that do not currently employ such personnel may hire a company to provide the service or send a current employee to become certified.

Cost:

The proposed rule has cost impacts that affect thirty-two (32) existing seasonally operated spray grounds and three spray grounds that are under construction.

Existing spray grounds must submit an engineering report that addresses the design criteria contained in the proposed Subpart. Some facilities may have existing reports that can be submitted; however, those that do not have an adequate existing report will need to hire a licensed professional engineer to prepare one. Cost estimates for the report range between \$2,000 and \$20,000. The cost is expected to be at the lower end of the range because spray ground operators will most likely utilize engineering firms that are already familiar with the facility and therefore require less time to prepare the report.

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\$280. The cost of hiring a company to provide the service is \$6,000 a season.

Miscellaneous expenses:

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Spray grounds are required to have a 24-unit first aid kit or adequate first aid supplies. The cost of a 24-unit first aid kit is between \$25 and \$75. Purchasing first aid supplies to satisfy the requirement will cost less.

Minimizing adverse economic impact on rural areas:

The proposed rule establishes standards for recreational aquatic spray grounds to minimize risk to the public health. Should this rule have a substantial adverse impact on a particular facility, a waiver of one or more requirements, other than spray ground feature water disinfection (chemical and ultraviolet) and filtration, will be considered, so long as alternative arrangements protect public health and safety. Alternatively, a variance, allowing additional time to comply with one or more requirements, can be granted if the health and safety of the public is not prejudiced by the variance.

Rural area participation:

During the development of the emergency regulation, the Department met with design professionals and industry representatives on one occasion and had numerous telephone conversations to develop a better understanding of spray ground operation, particularly concerning spray ground feature water recirculation and treatment, and incorporated the information into the proposed regulation.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Statewide Perinatal Data System

I.D. No. HLT-46-05-00001-C

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

The notice of proposed rule making, I.D. No. HLT-46-05-00001-P was published in the *State Register* on November 16, 2005.

Subject: Statewide perinatal data system.

Purpose: To provide useful data on births and the maternal health for perinatal care providers and the Department of Health. It will also promote expedited Medicaid eligibility determinations for newborns.

Substance of rule: This regulation will enable the Department to establish a Statewide Perinatal Data System. The system will consolidate collection, reporting, and analysis of birth-related data in a single internet-based, statewide system, streamlining data functions for hospitals and providing the Department and hospitals statewide with timely data for public health promotion and health care quality improvement. The SPDS will also facilitate expedited Medicaid enrollment of eligible newborns, ensuring that they have immediate access to needed health services.

SPDS will improve the Department's access to timely data about birth outcomes. The SPDS will provide the Department with vitally needed data, enabling the Commissioner to fulfill her statutory duties to identify and address public health matters related to perinatal care and to ensure the quality of care provided to mothers and infants. It will provide the Department with essential data for addressing problems such as infant and maternal mortality, low birth weight, and teen pregnancy – problems that disproportionately affect certain subpopulations in New York.

Lacking timely perinatal data, evaluation of adverse perinatal events reported by hospitals or the media is impossible. The SPDS is designed to address this inadequacy, enabling the Department to identify and respond proactively to poor birth outcomes.

The SPDS will provide invaluable data to hospitals statewide to support quality improvement efforts, preventing poor outcomes before they become public health crises. In addition to providing data about their patients, SPDS will give them data analysis tools to track quality indica-

tors, such as outcomes of care. In New York City, where hospitals have a later implementation date than upstate hospitals, the existing vital records system will provide a potential interim means of providing access to comparable data for quality improvement purposes until this date.

Lack of timely statewide data seriously hampers the Department's ability to improve the quality of perinatal care. The state's perinatal regionalization system requires every maternity hospital to be affiliated with a Regional Perinatal Center (RPC) that will work with them to improve their quality of care. Most RPCs, including those in New York City where the majority of high-risk births occur, currently have no data about their affiliate hospitals, severely hampering their ability to address quality concerns. The SPDS will give RPCs essential data to support quality improvement efforts and allow RPCs to review birth information from all affiliate hospitals in a timely fashion, identify emerging issues and potential quality of care concerns, and to take appropriate action within a clinically meaningful timeframe.

Other than in New York City, the SPDS is the mechanism for electronic collection of birth certificate data. The SPDS streamlines hospital data collection and minimizes the burden of duplicative reporting by serving multiple data requirements: collecting data for vital records, enrolling eligible newborns in Medicaid in a timely fashion, providing the ability to prepopulate the immunization registry; and generating statistics for accreditation. The regulations will ensure confidentiality of data by permitting only authorized individuals to access data that includes patient identifiers.

Data will be analyzed and reported to the public to help consumers learn about perinatal services. For example, hospital performance reports will be developed for high-risk neonatal care, modeled after reports that have significantly improved quality of cardiac surgery.

The Medicaid enrollment benefit of the regulation will improve department operations under section 366-g of the Social Services Law. That law requires DOH to enroll eligible newborns in Medicaid as soon after their birth as possible, specifying that an expedited system for determining newborns' eligibility should be in place by July 1, 2000. An interim system was implemented to meet the deadline; however, with the implementation of SPDS hospitals will have the ability to send newborn data to Medicaid through SPDS. SPDS provides an efficient long-term solution by collecting data needed for this purpose in conjunction with other perinatal data. The SPDS database will be matched daily with Medicaid eligibility files to identify and enroll eligible newborns.

The benefits of SPDS are significant, and confidentiality will be protected as required by PHL 2805-m, providing access to affiliate hospitals and their Regional Perinatal Centers only in the context of their quality improvement role.

Changes to rule: No substantive changes.

Expiration date: November 16, 2006.

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

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

Division of Housing and Community Renewal

EMERGENCY RULE MAKING

Assessment of Real Property Used for Residential Rental Purposes

I.D. No. HCR-18-06-00004-E

Filing No. 470

Filing date: April 17, 2006

Effective date: April 17, 2006

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

Action taken: Addition of Part 2656 to Title 9 NYCRR.

Statutory authority: Real Property Tax Law, section 581-a

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

Specific reasons underlying the finding of necessity: Assessors must file their tentative assessment roll by May 1, 2006. It is imperative to adopt this rule immediately to provide the necessary guidance to ensure properties are properly assessed.

Subject: Assessment of real property used for residential rental purposes.

Purpose: To set forth regulations governing the assessment of real property used for residential rental purposes.

Text of emergency rule: A new Part 2656 is added to Title 9 NYCRR as follows:

ASSESSMENT OF RESIDENTIAL REAL PROPERTY

Section 2656.1 Statutory authority.

This Part is adopted and promulgated pursuant to the powers granted to the New York State Division of Housing and Community Renewal by Real Property Tax Law section 581-a.

Section 2656.2 Definitions.

As used in this Part:

(a) Residential rental purposes shall mean all permitted uses on residential real property which has the same owner.

(b) Regulatory agreement shall mean any agreement, including but not limited to a contract or covenant, between a property owner and the municipal, state or federal government, or an instrumentality thereof, which requires the property owner to rent at least twenty percent of the residential units to tenants who qualify in accordance with an income test.

(c) Income documentation shall mean the most recent financial statement, independent auditor's report and rent roll for the residential real property or, if the most recent financial statement does not reflect twelve (12) months of occupancy, the most recent operating budget approved by the municipal, state, or federal government, or instrumentality thereof, that is party to the regulatory agreement.

Section 2656.3 Submission requirements.

The property owner shall provide the local assessing unit with a copy of all applicable regulatory agreements and, on an annual basis, income documentation prior to the taxable status date.

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 July 15, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Brian P. McCartney, Division of Housing and Community Renewal, 38-40 State St., Albany, NY 12207, (518) 473-5439, e-mail: bmccartney@dchr.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Real Property Tax Law section 581-a authorizes the Division of Housing and Community Renewal ("DHCR") to promulgate regulations concerning the assessment of real property used for residential rental purposes.

2. Legislative objectives:

Real Property Tax Law section 581-a was enacted to encourage the construction of affordable housing by providing for more realistic assessment rates on residential rental property subject to rent restrictions. The proposed rule will assist in the orderly implementation of this statute.

3. Needs and benefits:

Prior to drafting the proposed rule, DHCR held several round table discussions with representatives of organizations that are representative of the regulated community. DHCR representatives met with the New York State Association for Affordable Housing (owners of properties impacted by Real Property Tax Law section 581-a), the New York State Assessor's Association (local assessors) and the New York State Office of Real Property Services ("ORPS"). The participants concluded that the implementation of Real Property Tax Law section 581-a would be enhanced by the adoption of a rule that provided for the following clarifications:

a) Definition of the term "residential rental purposes". Real Property Tax Law section 581-a defines residential real property as property used for "residential rental purposes". The statute does not define the term "residential rental purposes". During the round table discussions, it was agreed that the statute was not explicit as to how it applied to mixed use buildings or parcels comprised of multiple buildings. It was further agreed that a reasonable interpretation of the statute and its stated legislative intent is that if property subject to a regulatory agreement had a single owner, then all income, from whatever source, should be considered in arriving at a single valuation of the property. The proposed rule defines "residential rental purposes" to clarify that if the property meets the requirements of

Real Property Tax Law section 581-a, all income should be considered in determining the property's assessed valuation.

b) Definition of the term "agreement". Real Property Tax Law section 581-a applies to residential rental property that is subject to an agreement with a municipality, the state, the federal government, or an instrumentality thereof. The statute does not define the term "agreement". The proposed rule introduces and defines the term "regulatory agreement" in order to identify, with more specificity, the various forms that may be used by governmental entities to enforce occupancy restrictions.

c) Enumeration of documentation used to determine operating income. The proposed rule introduces and defines the term "income documentation" to specify those documents which are available for assessors to refer to in order to calculate a property's operating income.

d) Assignment of responsibility for providing income documentation. The proposed rule clarifies that it is the obligation of the property owner seeking reassessment under Real Property Tax Law section 581-a to furnish the local assessing unit with the necessary income documentation.

4. Costs:

a) Costs to State government: None.

b) Costs to private regulated parties: None. The proposed rule merely requires property owners to provide assessors with copies of preexisting income documentation.

c) Costs to local government: None.

5. Local government mandates:

None.

6. Paperwork:

None.

7. Duplication:

None.

8. Alternatives:

There were no significant alternatives to be considered.

9. Federal standards:

Not applicable.

10. Compliance schedule:

Not applicable.

Regulatory Flexibility Analysis

It is the finding of DHCR that the proposed rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Prior to drafting the proposed rule, DHCR held several round table discussions with representatives of the New York State Association for Affordable Housing, the New York State Assessor's Association and the New York State Office of Real Property Services ("ORPS"). None of the participants expressed an opinion indicating that the proposed rule would have any adverse economic impact on small businesses or local governments.

Regarding compliance requirements, the proposed rule was specifically designed to minimize its impact by requiring property owners to furnish copies of preexisting documentation only. The idea of requiring certified financial statements was discussed and dismissed due to the consensus that such a requirement would cause some property owners to incur the additional expense of obtaining such certification.

Rural Area Flexibility Analysis

It is the finding of DHCR that the proposed rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Prior to drafting the proposed rule, DHCR held several round table discussions with representatives of the New York State Association for Affordable Housing, the New York State Assessor's Association and the New York State Office of Real Property Services ("ORPS"). None of the participants expressed an opinion indicating that the proposed rule would have any adverse impact on rural areas.

Regarding compliance requirements, the proposed rule was specifically designed to minimize its impact by requiring property owners to furnish copies of preexisting documentation only. The idea of requiring certified financial statements was discussed and dismissed due to the consensus that such a requirement would cause some property owners to incur the additional expense of obtaining such certification.

Job Impact Statement

It is the finding of DHCR that the nature and purpose of the proposed rule is such that it will have no impact on jobs and employment opportunities.

Prior to drafting the proposed rule, DHCR held several round table discussions with representatives of the New York State Association for Affordable Housing, the New York State Assessor's Association and the

New York State Office of Real Property Services (“ORPS”). None of the participants expressed an opinion indicating that the proposed rule would have any impact on jobs or employment opportunities.

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.

Power Authority of the State of New York

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

Rates for the Sale of Power and Energy

I.D. No. PAS-18-06-00006-P

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

Proposed action: Revision in rates for Delaware County Electric Cooperative.

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. This increase in rates is not the result of a Power Authority rate increase to the Cooperative.

Text of proposed rule:

DELAWARE COUNTY ELECTRIC COOPERATIVE

Proposed Rates

Proposed¹ Rates

Residential SC1	
Customer Charge	\$12.50
Energy Charge, per kWh	\$.0909
Seasonal SC2	
Customer Charge	\$17.50
Energy Charge, per kWh	\$.0998
Small Commercial- 1 Phase SC3	
Customer Charge	\$12.50
Energy Charge, per kWh	\$.0910
Large Commercial 3 Phase SC4-Part A	
Demand Charge, per kW	\$7.00
Energy Charge, per kWh	\$.0633
Large Commercial 1 Phase SC4-Part B	
Demand Charge, per kW	\$2.00
Energy Charge, per kWh	\$.0863

1 Purchase Power Adjustment reflected in proposed rates.

DELAWARE COUNTY ELECTRIC COOPERATIVE

Proposed Rates

Proposed¹ Rates

Public Buildings 1 Phase SC5	
Customer Charge	\$12.50
Energy Charge, per kWh	\$.0902
Security Lighting SC6 (Charge per lamp, per month)	
175 Watts Metered	\$9.50
175 Watts Unmetered	\$13.39
175 Watts Unmetered, Pole & Transformer	\$16.23
255 Watts Unmetered	\$14.64
400 Watts Unmetered	\$19.12
100 Watts Unmetered	\$13.39

1 Purchase Power Adjustment reflected in proposed rates.

Text of proposed rule and any required statements and analyses may be obtained from: Angela D. Graves, Power Authority of the State of New York, 123 Main Street, 15-M, White Plains, NY 10601, (914) 287-3093, e-mail:angela.graves@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.

Division of Probation and Correctional Alternatives

**EMERGENCY
RULE MAKING**

Case Record Management and Supervision

I.D. No. PRO-18-06-00005-E

Filing No. 471

Filing date: April 18, 2006

Effective date: April 18, 2006

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

Action taken: Amendment of Parts 348 and 351 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1)

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

Specific reasons underlying the finding of necessity: To promote public/victim safety, increase offender accountability, facilitate appropriate communication and/or sharing by probation of certain case record information where deemed necessary.

Subject: Case record management and supervision of those under probation supervision.

Purpose: To clarify existing laws governing access and confidentiality or probation case records, provide greater flexibility in certain instances.

Text of emergency rule: Text Amendments to Part 348 and 351 of Title 9 NYCRR:

Section 348.4, Accessibility of case records, is amended to read as follows:

(a) *General.* Case records shall be accessible, in whole or in part, only by those authorized by law, court order and/or the Division of Probation and Correctional Alternatives (DPCA). DPCA has access to all case records and probation departments shall provide copies of any case records to DPCA upon request.

(b) *Mandatory Sharing of Case Record Information.*

(1) A probation director, or his/her designee, must make available a copy of its pre-plea/pre-sentence report and any medical, psychiatric or social agency report submitted in connection with its pre-sentence investigation or its supervision of a defendant, to any court or to the probation department of any court within the state, that subsequently has jurisdiction over such defendant for the purpose of pronouncing or reviewing sentence and to any state agency to which the defendant is subsequently committed or certified or under whose care and custody or jurisdiction the defendant subsequently is placed upon the official written request of the court or agency. In any such case, the court or agency receiving such material must retain it under the same conditions of confidentiality as apply to the probation department that made it available.

(2) A probation director, or his/her designee, must provide a copy of a pre-plea/pre-sentence report prepared in the case of an individual, other than a youthful offender, who is known to be licensed pursuant to title 8 of the education law to the state department of health if the licensee is a physician, a specialist’s assistant or a physician assistant and to the state education department with respect to all such other licensees. Such reports must be in writing and shall be accumulated and forwarded every 3 months. They shall contain the following information:

- (i) the name of the licensee and the profession in which the license is held,
- (ii) the date of the conviction and the nature thereof,
- (iii) the index or other identifying file number.

In any such case, the state department receiving such material must retain it under the same conditions of confidentiality as apply to the probation department that made it available.

(3) Upon a determination by a probation director, or his/her designee, that probation records regarding an individual presently under the supervision of the department are relevant to an investigation of child abuse or maltreatment conducted by a child protective service pursuant to title 6 of article 6 of the social services law, he/she shall provide the records, or portions thereof, determined to be relevant to the child protective service conducting the investigation. Each probation director, or his/her designee, shall make provisions for the transmission of those required records.

(4) A probation director, or his/her designee, must provide all requisite case record information with respect to interstate or intrastate transfer of any probationer or former conditional releasee and, upon official written request, forward any additional case record information to the agency to which supervision has been transferred. In any such case, the court or agency receiving such material must retain it under the same conditions of confidentiality as apply to the probation department that made it available.

(c) Discretionary Sharing of Case Record Information.

(1) Public agencies outside this state. A probation director, or his/her designee, may disclose any information in its file as to an adult probationer, including youthful offender information, to any probation, parole, or public institutional agency outside this state, upon official written request. Any release of information shall be conditioned upon the agreement of the receiving agency to retain it under the same conditions of confidentiality as apply to the probation department that made it available. "Public institutional agency" shall mean any governmental entity which has the legal authority to detain and/or obtain custody over an individual charged or previously convicted of a criminal offense or adjudicated a youthful offender, or which has the responsibility to make a legal determination with respect to sex offender registration and/or DNA compliance.

(2) A probation director, or his/her designee, may disclose relevant case record information, other than the pre-plea/pre-sentence/pre-dispositional report, not otherwise sealed or specifically restricted in terms of access by state or federal law, from its files concerning any adult offender (other than a youthful offender) or fingerprintable juvenile delinquent currently or previously under probation supervision or formerly under local conditional release supervision, to appropriate law enforcement authorities, school authorities, child protective services, public and/or treatment agencies, the judiciary, and victim(s)/victim(s) family member(s), for public safety and/or case management purposes, including, but not limited to the following:

- (i) national and homeland security;
- (ii) criminal investigations and/or execution of warrants;
- (iii) sex offender registration and/or DNA compliance;
- (iv) victim safety, including matters pertaining to domestic violence, child protection, and sexual offense;
- (v) national instant criminal background check system (NICS)/weapons permits;
- (vi) military eligibility;
- (vii) professional licensing/certification;
- (viii) monitoring of conditions of probation or conditional release;
- (ix) risks and needs assessment;
- (x) treatment or counseling services to a licensed or certified provider; and
- (xi) probation or conditional release investigations;

In all such instances, those to whom access has been granted shall not secondarily redisclose such information without the express written permission of the probation director, or his/her designee, who authorized access.

(3) Potential or Existing Employee/Volunteer. A probation director or his/her designee may disclose to an existing or potential employer that an individual who is or may become an employee or a volunteer has been convicted of a crime or adjudicated a juvenile delinquent for a fingerprintable offense, the nature thereof, the terms and conditions of his/her release, and compliance under supervision, unless the records are otherwise sealed or restricted by federal or state law. In all such instances, those to whom access has been granted shall not secondarily redisclose such information without the express written permission of the probation director or his/her designee who authorized access.

(4) Public Information. A probation director, or his/her designee, may disclose relevant case record information (not including the Division of Criminal Justice Services criminal history record or any portion

thereof) relative to an adult probationer (other than a youthful offender) or former conditional releasee, not otherwise sealed or restricted by state or federal law, for the purpose of apprehending a wanted person in connection with a crime, a violation of probation or conditional release, a probation or conditional release warrant, a violation of an order of protection, or in response to an incident wherein the department's, or any individual under probation supervision actions, are the subject of a media or news story. A probation director or his/her designee may disclose the name, gender, race, date of birth/age, height, weight, eye color, hair color, conviction offense, probation term, warrant/absconder status, and photograph of an adult probationer (other than a youthful offender).

(5) Research. Case records may be accessible, in whole or in part, for bona fide research conducted by a governmental entity or educational institution, where the probation director, or his/her designee, has made a bona fide research determination and approved of the research project. In such instance, the probation director, or his/her designee, shall enter into a written agreement as to terms and conditions of the research, and keep a log of any research project, its purpose, and dates of research conducted and/or completed. The following confidentiality safeguards shall be observed:

(i) coding is required to ensure that any youth or adult receiving, or previously having received, probation services are not identified by name;

(ii) access is restricted to only those involved in the research whose responsibilities cannot be accomplished without such access and to secure written confidentiality agreements from any research project staff to adhere to all terms and conditions of the research, including confidentiality provisions herein stated;

(iii) researchers are not permitted to copy any case records in any manner with identifying information and each probation director shall take such precautionary departmental security measures to guarantee compliance;

(iv) that any project records copied shall be maintained in secure locked files;

(v) to retain any data received or copied only so long as necessary to effectuate the purposes of the research project and to return or destroy the data in such a way as to prevent their unauthorized use;

(vi) to guarantee that research performed or information accessed will not result in adverse action against the subject of the research;

(vii) the probation department has advance access to any preliminary findings and/or draft report prior to finalization, publication, or distribution and to furnish the probation director with any final project report or findings in a timely manner; and

(viii) no assignment of research shall occur without the written consent of the probation director or his/her designee.

The probation director, or his/her designee, shall promptly provide the State Director of Probation and Correctional Alternatives with a copy of the final project report from any bona fide research project for which a written agreement is entered into.

(6) Data sharing. A probation director, or his/her designee, may voluntarily submit data in its files to the Division of Criminal Justice Services (DCJS).

(7) Freedom of Information Law. A probation director, or his/her designee, may deny access to case records or portions thereof sought pursuant to article 6 of the public officers law (the freedom of information law) which meet the enumerated criteria established by subdivision two of section 87 of the public officers law. Criteria includes (a) records or portions that are specifically exempted by state or federal statute, (b) if disclosed would constitute an unwarranted invasion of personal privacy, (c) are compiled for law enforcement purposes and which if disclosed would (i) interfere with law enforcement investigations or judicial proceedings, (ii) deprive a person of a right to a fair trial or impartial adjudication, (iii) identify a confidential source or disclose confidential information relating to a criminal investigation, or (iv) reveal criminal investigative techniques or procedures, (d) are inter-agency or intra-agency materials (i) which are not statistical or factual tabulations or data, (ii) instructions to staff that affect the public, or (iii) final agency policy or determinations. Case records or portions thereof which are exempt from disclosure and not accessible include, but are not limited to pre-plea/pre-sentence/pre-dispositional reports, medical records, confidential HIV-related information, victim's name and address, youthful offender records, juvenile delinquency adjustment records, sex offender registration information, and DCJS criminal history records.

(d) Policies and Procedures. A local probation director shall establish written policies and procedures governing release of case records consis-

tent with laws governing access and confidentiality and disseminate such policies and procedures to their agency staff.

Section 351.7 of 9 NYCRR is repealed. A new Section 351.7 is added to read as follows:

351.7 Supervisory Directives/Instructions. Courts are required to impose specific conditions relating to supervision and other conditions required by law, and may impose other conditions of probation relative to conduct, rehabilitation, movement, and controls, so as to ensure that the individual being supervised will lead a law abiding life or assist him/her in doing so, or to ameliorate the conduct which gave rise to the offense/petition or prevent incarceration/ placement. Every probation director may establish written policies providing that additional supervisory directives and/or instructions required for the individual to follow as part of his/her respective supervision plan. Any directives and/or instructions shall be reviewed and approved by a supervisor within the department. Such directives or instructions shall relate to and clarify any general or specific conditions of probation imposed by the court relative to conduct, rehabilitation, movement, controls, assessment, needs, or classification relevant to the supervision plan of the individual. He/she shall be given written documentation of any such directives or instructions and the probation officer shall review its content with the individual being supervised to ensure that he/she is aware of and understands these supervisory requirements. The individual being supervised shall sign an acknowledgement that it has been provided and explained.

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 July 16, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Linda J. Valenti, Counsel, Division of Probation and Correctional Alternatives, 80 Wolf Rd., Suite 501, Albany, NY 12205, (518) 485-2394

Regulatory Impact Statement

1. Statutory authority:

Executive Law Section 243(1) empowers the State Director of Probation and Correctional Alternatives to promulgate rules "which shall regulate methods and procedure in the administration of probation services", including but not limited to "supervision, case work, recordkeeping and research so as to secure the most effective application of the probation system and the most efficient enforcement of the probation laws throughout the state."

Executive Law Section 257(4) establishes that it is "the duty of every probation officer to furnish to each of his probationers a statement of the conditions of probation, and to instruct him with regard thereto; to keep informed concerning his conduct habits, associates, employment, recreation and whereabouts; to aid and encourage him by friendly advice and admonition; and by such other measures as may seem most suitable to bring about improvement in his conduct, condition and general attitude toward society." Further, Executive Law Section 257(5) recognizes that "[P]robation officers may require such reports by probationers as are reasonable or necessary."

2. Legislative objectives:

These regulatory amendments are consistent with legislative intent that the State Director adopt regulations in areas relating to critical probation functions. It is in keeping with legislative intent to promote professional standards governing the administration and delivery of probation services in the area of case records management and enhance supervisory controls with respect to probationer's conduct, as well as enhance numerous legislative measures which have been enacted into law to promote greater offender accountability and safeguard the public and victims.

There exists various state and federal laws governing confidentiality, access and release of information which are typically contained in probation case records. Additionally there exists specific state laws and existing rules and regulations, having the force and effect of law, relative to conditions of release and delivery of supervision services. These emergency regulatory amendments in this area conform with existing laws governing confidentiality of certain case record information and conditions of release, and provide probation departments with the necessary means and flexibility to communicate more effectively and better manage those under their supervision. Public safety and the general welfare of the public are served by emergency adoption of these regulatory amendments.

3. Needs and benefits:

These regulatory amendments clarify rule language governing mandatory sharing of probation case record information in an effort to assist practitioners in fulfilling their responsibilities under law. Further,

additional rule language clarify discretionary sharing of probation case record information authorized in existing law and also expands upon probation's ability to share and/or otherwise disclose certain case record information to particular individuals or entities for public safety and/or case management purposes. Specific parameters are established as to disclosure regarding a potential or existing employee/volunteer, as well as with respect to public information and research. Lastly, reinforced are the limitations which prevent disclosure of records sealed or otherwise restricted in terms of access by state and/or federal law.

More comprehensive provisions in the area of case record management, including establishment and dissemination to staff as to local policies and procedures will prove beneficial in terms of compliance with existing laws, improving professional communication for public safety and/or case management purposes, facilitating probation research, and addressing other areas of public concern.

Additionally, the regulatory language recognizing the ability of probation to require any individual under supervision to follow supervisory directives/instructions which relate to and clarify any general or specific conditions of probation imposed by the court relative to conduct, rehabilitation, movement, controls, assessment, needs or classification relevant to the supervision plan of the individual, reinforces laws governing conditions of release, and provides probation with a mechanism to better ensure those under supervision will lead a law abiding life and adhere to court conditions imposed. Requiring interested probation departments to establish written policies in this area, ensure supervisor approval, and require review of any such directives/instructions with the probationer coupled with their signature and receipt of such material strikes a fair balance to guard against arbitrary and indiscriminate application and foster better understanding by the individual under supervision.

Moreover, these regulatory amendments address a need to strengthen community corrections by affording greater flexibility in handling certain functions consistent with good professional practice. It is in the best interests of the state and local government that these regulatory amendments be adopted. These amendments will better address and optimize public and victim safety, promote greater offender accountability, facilitate better communication by probation departments, clarify certain constraints in law and establish appropriate safeguards to guarantee more uniform application.

4. Costs:

These changes are procedural in nature and may require some additional training. However, we do not foresee these regulatory reforms leading to significant additional costs to probation departments. Clearly, any minimal costs are significantly outweighed by increased public safety interests and offender accountability provided by these new provisions.

5. Local government mandates:

These emergency regulatory amendments establishes that every local probation director must establish written policies and procedures governing release of case records consistent with laws governing access and confidentiality and disseminate such policies and procedures to their agency staff. Additional regulatory language provides that interested probation departments enter into a research agreement as to any bona fide research which they approve, and establish written policies if requiring any additional supervisory directives/instructions as part of an individual's supervision plan. While not expressly required before, it is consistent with routine business operations that state and local government agencies have established procedures governing key activities to ensure consistency in application and foster better understanding among staff. Accordingly, we do not anticipate these new requirements will be burdensome or costly.

The Division circulated two earlier drafts of these regulatory amendments to the Council of Probation Administrators, (the statewide professional association of probation administrators) who assigned it to a specific committee for review and the State Probation Commission, the state advisory body to the Division. All probation directors received the most recent prior draft language. We incorporated in these amendments certain verbal and written suggestions earlier raised by probation professionals to address problems which they previously experienced and to clarify certain provisions in law.

Overall, the Division has received favorable support from probation agencies that these new regulatory amendments are manageable and consistent with good professional practice.

6. Paperwork:

The proposed rule will potentially lead to additional paperwork, although minimal in content with respect to establishing or expanding local procedures to address new regulatory language.

7. Duplication:

This proposed rule does not duplicate any State or Federal law or regulation. It clarifies and reinforces certain laws with respect to confidentiality and access to probation case record and terms and conditions of release and supervision and helps achieve greater flexibility where necessitated.

8. Alternatives:

In view of the need to establish stronger minimum standards relative to case records and strengthen probation management of those under supervision in order to achieve greater offender accountability, protect public and victim safety, and facilitate better case management, regulatory amendments in these two areas are critical and no other alternatives were determined appropriate.

9. Federal standards:

There are certain federal standards governing confidentiality and access of certain documents contained in case records and these regulatory amendments are consistent with these requirements.

10. Compliance schedule:

Through prompt dissemination and because amendments are not unduly burdensome, local departments should be able to promptly implement these amendments.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses is not required by Section 202-a of the State Administrative Procedure Act, no small business recordkeeping requirements, needed professional services, or compliance requirements will be imposed on small businesses.

Any impact a local government is addressed in both the Regulatory Impact Statement and the Rural Area Flexibility Analysis.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Forty-four local probation departments are located in rural areas and will be affected by the emergency rule amendments.

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

These regulatory amendments strengthen procedural requirements and improves probation practice, yet should not impose significant additional local probation costs. There are no professional services likely to be needed in any rural area to comply with these regulatory changes. These regulatory amendments only refer to one reporting requirement with respect to a probation department approving a bona fide research project. Where this occurs, which we anticipate as infrequent, a copy of the final research project must be submitted to the Division. This requirement is not onerous. Specific written policies and procedures governing release of case records and a written policy as to any supervisory directives/instruction which a probation department may require are normal business activities and in keeping with good professional practice. While the former is mandatory and the latter conditioned only where a policy is instituted, the Division does not anticipate these requirements as costly or burdensome.

Moreover case record and supervision rule amendments will improve compliance with state laws governing access to records and conditions of release, enhance probation communications, achieve greater offender accountability, and enhance public and victim safety.

3. Costs:

There are no significant additional costs or new annual costs required to comply with these emergency regulatory changes. Clearly, any minimal costs, are significantly outweighed by increased public and victim safety interests and offender accountability provided by these new provisions.

4. Minimizing adverse impact:

These regulatory amendments will have no adverse impact on rural areas.

5. Rural area participation:

DPCA has discussed earlier proposed regulatory changes with the Executive Committee of the Council of Probation Administrators, which include a cross-section of urban, rural, and suburban jurisdictions, and we have circulated and submitted comments on a prior draft of this regulatory reform to all probation directors and the State Probation Commission. The current emergency regulatory amendments incorporate many verbal and written suggestions from probation professionals, including rural entities, across the state to address problems which probation departments experience in the area of case records and supervision and to clarify certain procedural provisions and existing laws governing confidentiality and access to probation case records. More flexibility in disclosing certain case record information was sought and clearer explanation as to under what circumstances case record information must and in other instances can be disclosed. Brief details of some of these changes are highlighted in the regulatory impact statement. Moreover, DPCA did not find significant

differences between urban, rural, and suburban jurisdictions as to issues raised or suggestions for change.

Job Impact Statement

A job impact statement is not being submitted with these emergency regulations because it will have no adverse effect on private or public jobs or employment opportunities. The revisions are procedural in nature and clarify laws governing confidentiality and case records and provide for establishment of supervisory directives. These changes are not onerous in nature and can be implemented through correspondence and training of probation staff.

Public Service Commission

NOTICE OF ADOPTION

Transfer of Water Plant Assets between Valley Water Works Company, Inc. and the Town of Hunter

I.D. No. PSC-17-05-00016-A

Filing date: April 14, 2006

Effective date: April 14, 2006

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

Action taken: The commission, on April 11, 2006, adopted an order approving the request of Valley Water Works Company, Inc. and the Village of Hunter, Greene County, for the sale of the company's assets to the Village of Hunter.

Statutory authority: Public Service Law, section 89-h

Subject: Transfer of water plant assets.

Purpose: To transfer the water plant assets.

Substance of final rule: The Commission adopted an order approving the joint petition of Valley Water Works Company, Inc. and the Village of Hunter, Greene County, for the sale of the company's assets to the Village of Hunter, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-W-0379SA1)

NOTICE OF ADOPTION

Approval of New Types of Electric Meters

I.D. No. PSC-01-06-00008-A

Filing date: April 14, 2006

Effective date: April 14, 2006

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

Action taken: The commission, on April 11, 2006, adopted an order in case 05-E-1520, approving Hunt Technologies Incorporated's petition for the use of the Hunt Technologies TS1 and TS2 power line carrier automatic meter reading equipment for revenue billing applications for residential and commercial installations in New York State.

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

Subject: Approval of new types of electric meters.

Purpose: To approve the use of the Hunt Technologies TS1 and TS2 power line carrier automatic meter reading equipment.

Substance of final rule: The Commission adopted an order approving Hunt Technologies, Incorporated's request to use Hunt Technologies TS1 and TS2 power line carrier automatic meter reading equipment for revenue

billing applications for residential and commercial installations in New York State.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-E-1520SA1)

NOTICE OF ADOPTION

Economic Development Programs by Niagara Mohawk Power Corporation

I.D. No. PSC-04-06-00022-A

Filing date: April 14, 2006

Effective date: April 14, 2006

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

Action taken: The commission, on April 11, 2006, adopted an order regarding Niagara Mohawk Power Corporation's request to make changes to its economic development plan, including increasing plan funding to meet increased costs.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10) and (12-b)

Subject: Economic development programs.

Purpose: To approve changes to economic development programs.

Substance of final rule: The Commission adopted an order regarding a request approving and modifying, in part, Economic Development Program Proposals by Niagara Mohawk Power Corporation d/b/a National Grid, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (01-M-0075SA28)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval of Loans by ALLTEL New York, Inc.

I.D. No. PSC-18-06-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve short term loans by ALLTEL New York, Inc. to its parent holding company, ALLTEL Communications, Inc., or any of its affiliates in the implementation of a cash management system.

Statutory authority: Public Service Law, section 106

Subject: Approval of loans.

Purpose: To allow short term loans by ALLTEL New York, Inc. to its parent holding company, ALLTEL Communications, Inc., or any of its affiliates in the implementation of a cash management system.

Substance of proposed rule: The Commission is considering whether to approve short term loans by ALLTEL New York, Inc. to its parent holding company, ALLTEL Communications, Inc., or any of its affiliates in the implementation of a cash management system.

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.

(05-C-1631SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Issuance of Debt by Southside Water Inc.

I.D. No. PSC-18-06-00011-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, or modify, a request filed by Southside Water Inc. to issue debt in order to purchase and install water meters and related software, and recover the associated costs from its customers.

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

Subject: Issuance of debt and water rates and charges.

Purpose: To approve the issuance of debt in order to purchase and install water meters and related software and recover the associated costs from customers.

Substance of proposed rule: On March 24, 2006, Southside Water Inc. (Southside or the company) filed a letter requesting Public Service Commission approval to finance up to \$15,000 to replace its existing meters. The company plans to enter into a construction loan with the Redwood Bank of Clayton, New York. During the meter replacement phase, payments to the bank will be interest only. After the project is completed the loan will become a 48 month term loan at the prevailing interest rate. The company proposes to surcharge each customer \$10.68 for 16 billing quarters to recover the meter replacement costs. Southside claims that its existing meters are old and unreliable, and that it has experienced difficulty accessing customers' homes to read the inside meters. The company intends to replace its manual read meters with new touch-paid remote read meters. Southside provides metered water service to approximately 103 customers in a development known as Lettiere Tract, located in the Town of Watertown, Jefferson County. 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. 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-W-0429SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges by Fishers Island Water Works Corporation

I.D. No. PSC-18-06-00012-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 tariff revisions filed by Fishers Island Water Works Corporation to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 2—Water, to become effective Jan. 1, 2007.

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

Subject: Water rates and charges.

Purpose: To increase annual revenues by about \$91,169 or 17.7 percent.

Substance of proposed rule: On April 6, 2006, Fishers Island Water Works Corporation (Fishers Island or the company) filed to become effective January 1, 2007, revisions to its electronic tariff schedule, P.S.C. No. 2—Water. Fishers Island is requesting to increase its annual operating revenues by \$91,169 or 17.7%. Fishers Island’s tariff, along with its proposed changes, is available on the Commission’s Home Page on the World Wide Web (www.dps.state.ny.us located under Commission Documents). The company provides metered water service to approximately 629 customers (408 customers are seasonal) in Fishers Island, Suffolk County, New York. 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. Brilling, 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-W-0446SA1)

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-0421SA1)

Office of Temporary and Disability Assistance

ERRATUM

A Notice of Adoption, I.D. No. TDA-36-05-00003-A, pertaining to Enforcement of Support Obligations and Issuance of Income Executions, published in the April 12, 2006 issue of the *State Register* contained an incorrect effective date. The effective date of the rule is April 12, 2006.

The Department of State apologizes for any confusion this may have caused.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval of a New Electricity Meter by Itron Incorporated

I.D. No. PSC-18-06-00013-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 is considering whether to approve or reject, in whole or in part, a petition filed by Itron Incorporated for the approval of the Centron Polyphase solid-state commercial and industrial metering line.

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

Subject: Approval of new types of electricity meters, transformers, and auxiliary devices—Case 279.

Purpose: To permit electric utilities in New York State to use the Centron Polyphase solid-state meter in commercial and industrial metering applications.

Substance of proposed rule: The Commission will consider a request from Itron Incorporated (Itron) for the approval to use the Centron Polyphase solid-state commercial and industrial meter line in New York State. According to Itron, the Centron Polyphase commercial and industrial meter line is capable of providing ANSI 0.5% revenue metering class accuracy, and has been tested to meet the compliance accuracy requirements as stated in ANSI C12.1 and ANSI C12.20 test specifications. In accordance with 16 NYCRR Part 93, Consolidated Edison Company of New York, Inc. has submitted a letter of intent to use the Centron Polyphase commercial and industrial meter line in its customer billing and metering applications, if approved.

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. Brilling, 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.