

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; or EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

Office of Children and Family Services

EMERGENCY RULE MAKING

National Criminal History Record Checks

I.D. No. CFS-03-07-00001-E

Filing No. 1590

Filing date: Dec. 28, 2006

Effective date: Jan. 11, 2007

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

Action taken: Amendment of Parts 421 and 443 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 378-a(2); L. 2006, ch. 668, section 3

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

Specific reasons underlying the finding of necessity: Adoption of these regulations on an emergency basis is necessary for the preservation of the health, safety and welfare of foster children needing foster and adoptive placement. New Federal and State statutes require a national criminal history record check through the Federal Bureau of Investigation (FBI) of persons applying for certification or approval as foster or adoptive parents and new State statute requires a national criminal history record check

through the FBI of other persons over the age of 18 who reside in the home of such applicants.

The current criminal history record check authorized by section 378-a(2) of the Social Services Law (SSL) and Office of Children and Family Services (OCFS) regulations 18 NYCRR Parts 421 and 443 only authorize a check of the data base maintained by the Division of Criminal Justice Services (DCJS). The DCJS data base generally does not reflect crimes committed outside of the State of New York. Therefore, authorized agencies to which persons apply for certification or approval as a foster or adoptive parent would not be aware of whether an applicant or another person over the age of 18 residing in the home of an applicant has a criminal history in another state which could present a health and safety issue for foster children placed in the applicant's home. The regulations enable authorized agencies to conduct a national criminal history record check on such persons, thereby enhancing the safety of children placed in such foster or adoptive homes.

Subject: National criminal history record checks through the FBI of prospective foster or adoptive parents and persons over the age of 18 residing in the homes of such individuals.

Purpose: To implement the requirements of chapter 668 of the Laws of 2006 that amended section 378-a(2) of the SSL to require a national criminal history record check through the FBI of all persons applying for certification or approval as foster or adoptive parents and all other persons over the age of 18 who reside in the homes of such applicants. The regulations also implement the requirements of the Federal Adam Walsh Child Protection Act of 2006 (P.L. 109-248) that require states to conduct a national criminal history record check on all persons applying for certification or approval as foster or adoptive parents, irrespective of whether Federal title IV-E funding is being sought for the placement of a foster child in the home of such a person. Compliance with the Federal act is required for New York to have a compliant Title IV-E State Plan and to satisfy Federal safety requirements for individual foster care placements.

Substance of emergency rule: Section 421.11 (First Contact With Prospective Adoptive Parents)

The regulations require authorized agencies that operate an adoption program to inform a person applying to be an approved adoptive parent of the requirement that the applicant and each person over the age of 18 who resides in the home of the applicant be fingerprinted for the purpose of conducting a national criminal history record check through the Federal Bureau of Investigation (FBI).

In addition, the regulations require that a voluntary authorized agency must notify a person applying for approval as an adoptive parent that the applicant and each person over the age of 18 who resides in the home of the applicant will be asked to sign a consent for the release to the voluntary authorized agency of crime specific information provided to the Office of Children and Family Services (OCFS) by the FBI. The voluntary authorized agency must also advise the applicant that the refusal to sign the consent is a basis, in and of itself, to deny the person's application.

Section 421.15 (Adoption Study Process)

The regulations require authorized agencies that operate an adoption program to inform the applicant at the initial appointment or meeting with the authorized agency that a national criminal history record check through the FBI must be performed before the conclusion of the applicant's home study.

Section 421.19 (Foster Parents)

The regulations require voluntary authorized agencies to inform a person who is currently a certified or approved foster parent and who applies to such agency for approval as an adoptive parent that the applicant

and each person over the age of 18 who resides in the home of the applicant will be asked to sign a consent for the release of crime specific information received by OCFS from the FBI and that the refusal to provide such a consent is a basis, in and of itself, for denial of the person's application.

The regulations require authorized agencies that operate an adoption program to perform a national criminal history record check through the FBI of a foster parent seeking approval as an adoptive parent and each person over the age of 18 who resides in the home of such person.

Section 421.27 (Criminal History Record Review)

The regulations require that authorized agencies perform a national criminal history record check through the FBI for each person seeking approval as an adoptive parent and each person over the age of 18 who resides in the home of the applicant. The regulations set forth the process for collecting and processing fingerprints for the national criminal history record check and the standards for the review and dissemination to authorized agencies of criminal history record information received by OCFS from the FBI.

The regulations provide that a voluntary authorized agency must deny an application when the applicant or other person over the age of 18 who resides in the home of the applicant has a criminal conviction or open charge reported to OCFS by the FBI for a crime committed outside of New York State and such person thereafter refuses to consent to disclosure of the specific crime or crimes when requested to do so by the voluntary authorized agency.

In addition, the regulations provide that if an application for approval is denied, the authorized agency must include within its notice of denial a description of the record review process available through the FBI.

Section 443.2 (Authorized Agency Operating Requirements)

The regulations require authorized agencies that operate a foster boarding home program to inform a person applying for certification or approval as a foster parent of the requirement that the applicant and each person over the age of 18 who resides in the home of the applicant must be fingerprinted for the purpose of conducting a national criminal history record check through the FBI.

The regulations require that each applicant for certification or approval as a foster parent and each person over the age of 18 who resides in the home of the applicant must submit completed fingerprint cards for a national criminal history check performed by the FBI.

In addition, the regulations provide that if an application for certification or approval is denied, the authorized agency must include within its notice of denial a description of the record review process available through of the FBI.

The regulations clarify that the records maintained by the authorized agency must include such criminal history responses from OCFS to reflect that both FBI and DCJS checks have been completed.

Section 443.7 (Agency Procedures for Certification or Approval of Potential Emergency Foster Homes and Emergency Relative Foster Homes)

The regulations provide that when a foster child is placed in a foster home that is certified or approved on an emergency basis that the authorized agency placing the child must secure fingerprints from the foster parent and each person over the age of 18 who resides in the home of the foster parent for the purpose of conducting a national criminal history record check through the FBI.

Section 443.8 (Criminal History Record Review)

The regulations require that authorized agencies perform a national criminal history record check through the FBI for each person applying for certification or approval as a foster parent and each person over the age of 18 who resides in the home of the applicant. The regulations set forth the process for collecting and processing fingerprints for the national criminal history record check and the standards for the review and dissemination to authorized agencies of criminal record information received by OCFS from the FBI.

The regulations require that when a person applies for certification or approval to a voluntary authorized agency that the voluntary authorized agency must notify the applicant that the applicant and each person over the age of 18 who resides in the home of the applicant will be asked to sign a consent for the release of crime specific information provided to OCFS by the FBI and that the voluntary authorized agency must advise the applicant that the refusal to sign the consent is a basis, in and of itself, to deny the person's application.

The regulations provide that a voluntary authorized agency must deny an application when the applicant or other person over the age of 18 who resides in the home of the applicant has a criminal conviction or open charge reported to OCFS by the FBI for a crime committed outside of New

York State and such person thereafter refuses to consent to disclosure of the specific crime or crimes when requested to consent by the authorized agency.

Section 443.10 (Annual Renewal of Certified and Approved Foster Homes)

The regulations require that an authorized agency that operates a foster boarding home program must, at the time of renewal of the certification or approval of a foster home, conduct a national criminal history record check through the FBI of any person over the age of 18 who currently resides in such foster home, other than the foster parent, who has not previously had a national criminal record check completed pursuant to 18 NYCRR Part 443.

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 March 27, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its duties pursuant to the provisions of the SSL.

Section 378-a(2) of the SSL requires criminal history record checks be made on foster and adoptive parent applicants and other persons over the age of 18 who reside with such applicants.

2. Legislative objectives:

The regulations implement the requirements of Chapter 668 of the Laws of 2006 that amended section 378-a(2) of the SSL to require a national criminal history record check through the Federal Bureau of Investigation (FBI) for all persons applying for certification or approval as foster or adoptive parents and all other persons over the age of 18 who reside in the home of the applicants.

The regulations also implement the requirements of the Federal Adam Walsh Child Protection Act of 2006 (P. L. 109-248) that requires states to conduct a national criminal history record check on all persons applying for certification or approval as foster or adoptive parents, irrespective of whether or not the social services district seeks Federal Title IV-E funding for the placement. Compliance with the Federal act is required for the state to have a compliant Title IV-E State Plan and to satisfy Federal safety requirements for individual foster care placements.

The requirements for a national criminal history record check set forth in the regulations are in addition to the existing provisions in section 378-a(2) of the SSL that require a New York State criminal history record check to be conducted through the New York State Division of Criminal Justice Services (DCJS). In addition, the applicant must provide a sworn statement attesting to any criminal convictions of any applicable family member in New York State or any other jurisdiction.

By enacting Chapter 668 of the Laws of 2006, the legislature sought to enhance the scope of the criminal background checks performed by social services districts and voluntary authorized agencies by requiring that fingerprints also be checked through the FBI, thus allowing officials to corroborate information and gain a more accurate picture about any crimes committed nationally, including arrests and/or convictions.

3. Needs and benefits:

Both Federal and state lawmakers enacted new laws requiring national criminal background checks to determine the complete criminal history of applicants to be foster or adoptive parents and adults who reside in their households. It is important that foster and adoptive parents not be fully certified or approved without taking into account all applicable criminal records, and where such records are found, doing a safety assessment as prescribed by OCFS. These new requirements should afford a safer environment for foster children placed in foster homes or for the purpose of adoption.

4. Costs:

The Federal and State statutory provisions requiring national criminal history background checks, which are being implemented through these regulations, will result in increased costs to the State. Based on the current statistics for conducting State criminal history background checks, it is projected that 17,000 persons will be subject to the new required national criminal history records checks during the first year of implementation. Based on that projection, OCFS estimates that the total costs associated with the national criminal history database check process during the first

year of implementation will be approximately \$875,000. The estimate includes \$408,000 to cover the \$24 fee that must be paid to the FBI for processing each set of fingerprints, as well as \$467,000 for the costs to enhance OCFS' criminal history review administrative and legal units and the OCFS criminal history computer system to process the national criminal history database checks.

It is anticipated that approximately \$188,125 in Federal reimbursement under Title IV-E of the Federal Social Security Act will be available for the annual costs of conducting the national criminal history record checks. The remaining cost of \$686,875 will be State share.

5. Local government mandates:

The regulations require social services districts and voluntary authorized agencies that certify or approve foster and/or adoptive parents, to include as part of the licensing process conducting national criminal history background checks through the FBI in order to compile a complete criminal record on applicants and other adults residing in their household and take any such record into account by performing the OCFS prescribed safety assessment, prior to fully certifying or approving the home.

6. Paperwork:

Social services districts and voluntary authorized agencies will need to review all results of the national criminal background checks as they currently must review the results of the state criminal background checks. Where a criminal record exists, safety assessments must be documented. Pertinent information must be recorded on the State's SACWIS system, CONNECTIONS.

7. Duplication:

The regulations do not duplicate other State requirements.

8. Alternatives:

There are no alternatives to imposing these regulations, as they are required by both State and Federal statutes.

9. Federal standards:

The aforementioned Adam Walsh Child Protection Act of 2006, contains comparable standards and requirements to Chapter 668 of the Laws of 2006.

10. Compliance schedule:

Compliance with the regulations must begin upon the effective date of Chapter 668 of the Laws of 2006, January 11, 2007.

Regulatory Flexibility Analysis

1. Effect of Rule:

Social services districts will be affected by the regulations. There are 58 social services districts and the St. Regis Mohawk Tribe which is authorized by section 371(10)(b) of the Social Services Law to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Most voluntary foster care and adoption agencies also will be affected by the regulations. There are approximately 68 voluntary agencies operating foster care programs that include foster boarding home programs. There are 119 voluntary agencies authorized that operate adoption programs, including 19 agencies located out-of-state and approved to do adoptions in New York State pursuant to Article 13 of the Not-For-Profit Corporation Law.

2. Compliance Requirements:

The regulations require social services districts and voluntary authorized agencies that certify or approve foster and/or adoptive parents, to include as part of the licensing process conducting national criminal history background checks through the Federal Bureau of Investigation (FBI) in order to compile a complete criminal record on applicants and other adults residing in their household and take any such record into account by performing the OCFS prescribed safety assessment, prior to fully certifying or approving the home.

3. Professional Requirements:

The regulations would not require social services districts or voluntary agencies to hire additional staff in order to implement them. Existing staff will be able to procedurally accommodate the minimal changes on the business process these regulations entail.

4. Compliance Costs:

The Federal and State statutory provisions requiring national criminal history background checks, which are being implemented through these regulations, will result in increased costs to the State. Based on the current statistics for conducting State criminal history background checks, it is projected that 17,000 persons will be subject to the new required national criminal history records checks during the first year of implementation. Based on that projection, OCFS estimates that the total costs associated with the national criminal history database check process during the first year of implementation will be approximately \$875,000. The estimate includes \$408,000 to cover the \$24 fee that must be paid to the FBI for

processing each set of fingerprints, as well as \$467,000 for the costs to enhance OCFS' criminal history review administrative and legal units and the OCFS criminal history computer system to process the national criminal history database checks.

It is anticipated that approximately \$188,125 in Federal reimbursement under Title IV-E of the Federal Social Security Act will be available for the annual costs of conducting the national criminal history record checks. The remaining cost of \$686,875 will be State share.

5. Economic and Technological Feasibility:

The regulations will not impose additional economic or technological burdens on social services districts or voluntary authorized agencies.

6. Minimizing Adverse Impact:

OCFS will use card scan, which will enable social services districts and voluntary authorized agencies to continue to submit a single fingerprint card per person. Card scan allows OCFS to electronically send fingerprint cards to the Division of Criminal Justice Services (DCJS). DCJS then electronically sends the fingerprint cards to the FBI. This process reduces the timeframe for the receipt of results from weeks to days, consequently allowing for more timely approval or certification decisions.

7. Small Business and Local Government Participation:

The timeframes prescribed by the State and Federal legislation precluded the participation of small businesses and local governments in the development of these regulations. They are being filed on an emergency basis in order to meet the State and Federal timeframes; those affected will have an opportunity to comment upon publication of a Notice of Proposed Rule Making in the *State Register*.

Rural Area Flexibility Analysis

1. Effect on Rural Areas:

The regulations will affect the 44 social services districts that are in rural areas and the St. Regis Mohawk Tribe, which is authorized by section 371(10)(b) of the Social Services Law to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Those voluntary authorized agencies in rural areas contracting with social services districts to provide foster care and adoption services also will be affected by the proposed regulations. Currently, there are approximately 85 such agencies.

2. Compliance Requirements:

The regulations require social services districts and voluntary authorized agencies that certify or approve foster and/or adoptive parents, to include as part of the licensing process conducting national criminal history background checks through the Federal Bureau of Investigation (FBI) in order to compile a complete criminal record on applicants and other adults residing in their household and take any such record into account by performing the OCFS prescribed safety assessment, prior to fully certifying or approving the home.

3. Professional Services:

The regulations do not require social services districts or voluntary authorized agencies to hire additional staff in order to implement them. Existing staff will be able to procedurally accommodate the minimal changes to the business process these regulations entail.

4. Compliance Costs:

The Federal and State statutory provisions requiring national criminal history background checks, which are being implemented through these regulations, will result in increased costs to the State. Based on the current statistics for conducting State criminal history background checks, it is projected that 17,000 persons will be subject to the new required national criminal history records checks during the first year of implementation. Based on that projection, OCFS estimates that the total costs associated with the national criminal history database check process during the first year of implementation will be approximately \$875,000. The estimate includes \$408,000 to cover the \$24 fee that must be paid to the FBI for processing each set of fingerprints, as well as \$467,000 for the costs to enhance OCFS' criminal history review administrative and legal units and the OCFS criminal history computer system to process the national criminal history database checks.

It is anticipated that approximately \$188,125 in Federal reimbursement under Title IV-E of the Federal Social Security Act will be available for the annual costs of conducting the national criminal history record checks. The remaining cost of \$686,875 will be State share.

5. Minimizing Adverse Impact:

OCFS will utilize card scan which will enable social services districts and voluntary authorized agencies to continue to submit a single fingerprint card per person. Card scan allows OCFS to electronically send fingerprint cards to the Division of Criminal Justice Services (DCJS). DCJS in turn electronically sends then to the FBI. This process reduces the

timeframe for the receipt of results from weeks to days, consequently allowing for more timely licensing decisions.

6. Small Business Participation:

The timeframes prescribed by the State and Federal legislation precluded the participation of small businesses in the development of these regulations. They are being filed on an emergency basis in order to meet the State and Federal timeframes; those affected will have an opportunity to comment upon publication of a Notice of Proposed Rule Making in the *State Register*.

Job Impact Statement

A full job statement has not been prepared for the proposed regulation implementing portions of the Federal Adam Walsh Child Protection Act of 2006 and Chapter 668 of the Laws of 2006. The regulations will not have a substantial adverse impact on jobs or employment opportunities and in fact will not result in the loss of any jobs. This finding is based upon the fact that the regulations prescribe small additional duties for child welfare staff.

EMERGENCY RULE MAKING

Home Studies for Adoptive and Foster Placements for Out-of-State Children and for Inter-County Placements

I.D. No. CFS-03-07-00002-E

Filing No. 1591

Filing date: Dec. 28, 2006

Effective date: Dec. 28, 2006

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

Action taken: Amendment of Parts 357, 421, 428, 430, 441 and 443 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 374-a and 378(5)

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

Specific reasons underlying the finding of necessity: To enhance permanency for foster children by expediting the home study process and by requiring agencies to consider all viable placement options where a child may not return home, including out-of-state options. The regulations increase the frequency of caseworker visits of foster children placed outside of New York State and expands the options available for who may conduct such visits. The regulations will enhance the health and well-being of former foster children by providing them with relevant available health and education information where the child is discharged to his or her own care. The regulations will also enhance the safety of foster and adoptive children by broadening the scope of screening prospective foster and adoptive parents and other adults residing in the home of the prospective foster or adoptive parents. The regulations are also necessary to satisfy Federal Title IV-E State Plan requirements that impact the availability of Federal funding for foster care and adoption assistance.

Subject: Home studies for adoptive and foster placements for out-of-state children and for inter-county placements; child abuse and maltreatment screening for prospective adoptive and foster parents.

Purpose: To implement the requirements of the Federal Safe and Timely Interstate Placement of Foster Children Act of 2006 (Public Law 109-239) which establishes timeframes for the completion and submission of home studies of prospective foster or adoptive parents who are being considered as potential resources for foster children from other states and for the frequency of casework visits of foster children placed outside of New York State and provisions of the Federal Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248) which requires that whenever a person applies for certification or approval as a foster or adoptive parent, or any other person over the age of 18 who resides in the home of such applicant resided in another state or states in the five years preceding the application for certification or approval, be screened for request child abuse and maltreatment information maintained by the previous state(s) of residence. Both laws took effect on October 1, 2006.

Substance of emergency rule: Section 357.3 (Access to Medical and Education Records)

The amendment provides for access to education and medical information at no cost to a foster child who is discharged to his or her own care.

Part 421 (Standards of Practice for Adoption Services)

The amendment clarifies who may adopt a child. The amendment requires authorized agencies to seek child protective services information

from other states regarding a person applying for approval as an adoptive parent and any other person who resides with the applicant where such applicant or other person resided in the other state within 5 years of the application for approval. The amendment establishes timeframes for the completion of home studies for a person seeking to be approved as an adoptive parent to receive a child from another state or social services district. The amendment also sets forth who may perform such home studies. The amendment clarifies that a social services district or a voluntary authorized agency may not delay or deny an application or the conducting of a home study of a person seeking to adopt a child in the custody of another authorized agency.

Section 428.3 (Uniform Case Record Requirements) and Section 430.11 (Appropriateness of Placement)

The amendment increases the frequency of caseworker visits of foster children placed outside of New York State from every 12 months to every six months. The amendment also expands the entities that may conduct such visits to include a private agency under contract with either the authorized agency in New York or the state in which the foster child is placed.

Sections 428.5 and 428.6 (Standards for Uniform Case Recording)

The amendment clarifies that when reunification with the parent is not the child's permanency planning goal, the social services district or the voluntary authorized agency must document the reasonable efforts made to finalize the child's permanency plan, including the identification of both in-state and out-of-state placement options. The amendment provides that when concurrently planning for the permanency of a child in foster care, the social services district or the voluntary authorized agency must document the description of the alternative plan to achieve permanency for the child which must include identification of appropriate in-state and out-of-state placements, if the child can not be safely returned home to his or her parents.

Section 430.12 (Diligence of Effort)

The amendment clarifies that if the child's permanency planning goal is adoption or placement in a permanent home other than that of the child's parent, the social services district or the voluntary authorized agency must document the reasonable efforts made to place the child in-state or out-of-state in a timely and orderly manner.

Section 441.22 (Health and Medical Services)

The amendment provides for access to health information at no cost to a foster child who is discharged to his or her own care.

Part 443 (Certification, Approval and Supervision of Foster Boarding Homes)

The amendment requires authorized agencies to seek child protective services information from other states regarding a person applying for certification or approval as a foster parent and any other person over 18 years of age who resides with the applicant where the applicant or other person resided in another state within five years of the application for certification or approval. The amendment establishes timeframes for the completion of home studies for a person seeking to be certified or approved as a foster parent to receive a child from another state or social services district. The amendment also sets forth who may perform such home studies. The amendment clarifies that a social services district or a voluntary authorized agency may not delay or deny an application or the conducting of a home study of a person seeking to care for a foster child in the custody of another authorized agency.

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 March 27, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

Section 372-b(3) of the SSL requires OCFS to promulgate regulations to maintain enlightened adoption policies and to establish standards and criteria for adoption practices.

Section 374-a of the SSL sets forth the standards and procedures relating to the Interstate Compact on the Placement of Children (ICPC) that involve the placement of children from one state to another for the purpose of foster care or adoption.

Section 378(5) of the SSL authorizes OCFS to establish and amend regulations governing the issuance and revocation of a certificate to board foster children and to prescribe standards for the care of foster children.

Section 471(a) of the Social Security Act provides that in order for a state to be eligible for Federal Title IV-E funding for foster care and adoptions assistance, the state must have a State Plan approved by the Federal Department of Health and Human Services which reflects the standards set forth in such section.

2. Legislative objectives:

The regulations implement the requirements of the Federal Safe and Timely Interstate Placement of Foster Children Act of 2006 (Interstate Placement Act) that took effect on October 1, 2006. The Interstate Placement Act establishes timeframes for the completion and submission of home studies of prospective foster or adoptive parents who are being considered as potential resources for foster children from other states. The regulations impose standards on the content and timeframes for the completion of such home studies.

The regulations also implement Federal requirements for the dissemination of the foster child's health and education records at no cost when the child is being discharged from care. Furthermore, the regulations implement Federal requirements relating to the documentation of reasonable efforts to finalize a child's permanency plan, including consideration of both in-state and out-of-state placement options.

In addition, the regulations implement Federal requirements relating to case recording requirements for foster children placed outside of New York and the frequency of casework visits with such children. The frequency of such visits is increased from every 12 months to every six months. The regulations also add the option that such visits may be made by a private agency under contract with either the authorized agency in New York with custody of the child or the state in which the foster child is placed.

The regulations implement the requirements of the Federal Adam Walsh Child Protection Act of 2006 (Walsh Protection Act), parts of which also took effect on October 1, 2006. The Walsh Protection Act requires that whenever a person applies for certification or approval as a foster or adoptive parent, or any other person over the age of 18 who resides in the home of such applicant resided in another state or states in the five years preceding the application for certification or approval, the licensing or approving agency must request child abuse and maltreatment information maintained by the previous state(s) of residence.

3. Needs and benefits:

The regulations will enhance permanency for foster children by expediting the home study process and by requiring agencies to consider all viable placement options where a child may not return home. Currently, the ICPC does not set forth any timeframes for the conducting of home studies of persons seeking to be foster parents or adoptive parents of foster children. Regarding the consideration of out-of-state options for children in foster care, current regulatory standards do not expressly refer to out-of-state placement options.

The regulations establish that upon receipt of a referral, the social services district may conduct such home study directly or may use a voluntary authorized agency under contract with such district or a voluntary authorized agency under contract with the OCFS to conduct the home study, and that if the latter option is selected, the costs of the home study will be charged back to the district in which the prospective foster or adoptive parent(s) reside.

The regulations codify the policies regarding the time frames for completion of a home study and which entity is permitted to do a home study to apply to New York State inter-county placements, when an inter-county placement is sought for a foster child for the purposes of foster care in another county or to make an adoptive placement in another county.

The regulations will also enhance the safety and permanency of foster children placed outside of New York by increasing the frequency of caseworker visits of the child in the home or facility in which the child is placed.

The regulations will enhance the health and well-being of former foster children by providing them with relevant available health and education information where the child is discharged to his or her own care.

The regulations will also enhance the safety of foster and adoptive children by broadening the scope of screening prospective foster and adoptive parents and other adults residing in the home of the prospective

foster or adoptive parents. It is possible that such persons may have a child abuse or maltreatment history in their prior state of residence. Such information is highly relevant to whether a foster or adoptive child may be safely cared for in such home. The regulations are necessary to satisfy Federal Title IV-E State Plan requirements that impact the availability of Federal funding for foster care and adoption assistance.

4. Costs:

Local social services districts or voluntary authorized agency under contract with social services districts are already required to complete a home study; therefore, this does not represent an additional workload. It is unknown if social services districts or voluntary authorized agency under contract with social services districts are currently completing the home study within 60 days (or 75 days in certain circumstances) of the receipt of the request. Therefore, to facilitate compliance with the timeframes, OCFS will issue a request for applications in order to make available the services of one or more voluntary agencies to conduct the home study.

Minimal costs are expected related to the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states. It is expected that this activity will be completed through routine correspondence to such state(s).

The regulations also increase the frequency of caseworker visits and reports for foster children placed outside of New York State from every 12 months to every six months. In general, such visits and reports are already requested and conducted within these timeframes, and in many cases are done more frequently. To facilitate this activity, the regulations expand the entities that may conduct such visits to include a private agency under contract with either the authorized agency in New York or the state in which the foster child is placed. In accordance with the ICPC, such reports and visits often are done by the state where the child is placed and are typically completed within these timeframes. As a result, it is anticipated that there will be no significant cost impact on local social services districts for this activity.

There is no additional cost anticipated for the dissemination of health and education records when the child is being discharged from foster care since this activity is the current practice.

There is no cost related to any of the documentation requirements contained in these regulations since this information will be recorded in the CONNECTIONS where this functionality already exists or is under development.

5. Local government mandates:

When the ICPC office of OCFS receives a request from another state seeking to place a foster child from the other state with a person in New York State as a foster or adoptive parent, the social services district or voluntary authorized agency under contract with the social services district is required to commence and complete a home study within 60 days of the receipt of such request. An additional 15 days to complete the home study is allowed for circumstances outside of the control of the social services district or voluntary authorized agency if a timely request for such documentation was made by the district or agency.

Currently, social services districts and voluntary authorized agencies are required pursuant to 18 NYCRR 357.3 to provide a foster child with the child's comprehensive health history when the foster child is discharged to his or her own care. The regulations clarify that this history must be provided at no cost and include the child's current health providers. The regulations also require the provision of the child's education record at the time of the child's discharge to his or her own care, also at no cost to the child.

Social services districts are currently required to assess the appropriateness of placement of children in foster care pursuant to 18 NYCRR 430.11. Each foster child must have periodic assessments performed to address the issue of permanency. The regulations require the social services district to expressly document the consideration of out-of-state placement options if the child will not be returned to his or her parent.

Current law and regulations in section 424-a of the SSL and 18 NYCRR Parts 421 and 443 require data base checks of New York's Statewide Central Register of Child Abuse and Maltreatment for all persons applying for certification or approval as foster or adoptive parents and for any other persons over the age of 18 who reside in the home of such applicants. The regulations expand the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states.

6. Paperwork:

The regulations require the specific documentation of the consideration of out-of-state placement as an option for foster children who do not have the permanency goal of return to the parent. Such documentation will be recorded in the CONNECTIONS system.

Documentation relating to home studies for the certification or approval of a foster or adoptive parent will be maintained in the state's CONNECTIONS system. This reflects current standards.

Documentation of health information is already mandated by OCFS regulations 18 NYCRR 357.3 and 441.22. Documentation of educational information is already mandated by OCFS regulation 18 NYCRR 428.5.

The regulations require the documentation of requests to appropriate child welfare agencies in the prior state(s) of residence (5 years preceding the date of the application for certification or approval) of prospective foster or adoptive parents and/or any other persons over the age of 18 who resides in the home of the applicant and the results of such requests. As is currently required for in-State inquiries made pursuant to section 424-of the SSL, if the agency decides to certify or approve an applicant where there is a history of abuse or maltreatment, the agency must document the basis for making such decision.

7. Duplication:

The regulations do not duplicate other State requirements.

8. Alternatives:

These regulations are necessary to comply with Federal statutory mandates. Therefore, there are no alternatives to these regulations.

9. Federal standards:

The regulations are required to implement the Federal Safe and Timely Interstate Placement of Foster Children Act of 2006 and the Federal Adam Walsh Child Protection Act of 2006 and to maintain compliance with Federal Title IV-E State Plan requirements.

10. Compliance schedule:

Compliance with the regulations must begin immediately upon emergency filing.

Regulatory Flexibility Analysis

1. Effect of Rule:

Social services districts will be affected by the regulations. There are 58 social services districts and the St. Regis Mohawk Tribe which is authorized by section 371(10)(b) of the Social Services Law to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Most voluntary foster care and adoption agencies also will be affected by portions of the regulations. There are approximately 114 voluntary agencies operating foster care programs. Of those, 68 such agencies operate foster boarding home programs. There are 119 voluntary agencies authorized that operate adoption programs, including 19 agencies located out-of-state and approved to do adoptions in New York State pursuant to Article 13 of the Not-For-Profit Corporation Law.

2. Compliance Requirements:

When the Interstate Compact on the Placement of Children (ICPC) office of OCFS receives a request from another state seeking to place a foster child from the other state with a person in New York State as a foster or adoptive parent, the social services district or voluntary authorized agency under contract with the social services district or under contract with OCFS is required to commence and compete a home study within 60 days of the receipt of such request. An additional 15 days to compete the home study is allowed for circumstances outside of the control of the social services district or voluntary authorized agency if a timely request for such documentation was made by the district or agency.

Currently, social services districts and voluntary authorized agencies are required pursuant to 18 NYCRR 357.3 to provide a foster child with his or her comprehensive health history when the foster child is discharged to his or her own care. The regulations clarify that this history must include the child's current health providers and clarify that there is no cost to the child for these records. The regulations also require the provision of the child's education record at the time of the child's discharge to his or her own care, also at no cost to the child.

Social services districts are currently required to assess the appropriateness of placement of children in foster care pursuant to 18 NYCRR 430.11. Each foster child must have periodic assessments performed to address the issue of permanency, including whether the child will be returned home or to another placement resource (see section 409-e of the SSL and 18 NYCRR Part 428). The regulations require the social services district to expressly document the consideration of out of state placement options if the child will not be returned to his or her parent.

When a foster child is placed outside of New York State, the child must be visited periodically by a caseworker pursuant to 18 NYCRR 430.11(c)(2)(ix) and the visits must be recorded in the child's case record. The regulations increase the frequency of such visits from every 12 months to every six months. The regulations also authorize that such visits may be conducted by a private agency under contract with either the authorized agency in New York with custody of the child or the state in which the foster child is placed.

Current law and regulations in section 424-a of the SSL and 18 NYCRR Parts 421 and 443 require data base checks of New York's Statewide Central Register of Child Abuse and Maltreatment for all persons applying for certification or approval as foster or adoptive parents and for any other persons over the age of 18 who reside in the home of such applicants, irrespective of how long such persons resided in New York State. The regulations expand the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states.

3. Professional Requirements:

The regulations would not require social services districts or voluntary authorized agencies to hire additional staff in order to implement them. Current training programs will be enhanced to emphasize the casework support that these amendments bring. In addition, OCFS will issue a request for applications in order to make available the services of one or more voluntary authorized agencies to conduct home studies for out-of-state placements or inter-county placements, in accordance with these regulations.

4. Compliance Costs:

Local social services districts or voluntary authorized agency under contract with social services districts are already required to complete a home study; therefore, this does not represent an additional workload. It is unknown if social services districts or voluntary authorized agency under contract with social services districts are currently completing the home study within 60 days (or 75 days in certain circumstances) of the receipt of the request. Therefore, to facilitate compliance with the timeframes, OCFS will issue a request for applications in order to make available the services of one or more voluntary agencies to conduct the home study.

Minimal costs are expected related to the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states. It is expected that this activity will be completed through routine correspondence to such state(s).

The regulations also increase the frequency of caseworker visits and reports for foster children placed outside of New York State from every 12 months to every six months. In general, such visits and reports are already requested and conducted within these timeframes, and in many cases are done more frequently. To facilitate this activity, the regulations expand the entities that may conduct such visits to include a private agency under contract with either the authorized agency in New York or the state in which the foster child is placed. In accordance with the ICPC, such reports and visits often are done by the state where the child is placed and are typically completed within these timeframes. As a result, it is anticipated that there will be no significant cost impact on local social services districts for this activity.

There is no additional cost anticipated for the dissemination of health and education records when the child is being discharged from foster care since this activity is the current practice.

There is no cost related to any of the documentation requirements contained in these regulations since this information will be recorded in the CONNECTIONS where this functionality already exists or is under development.

5. Economic and Technological Feasibility:

The regulations will not impose additional economic or technological burdens on social services districts or voluntary authorized agencies.

6. Minimizing Adverse Impact:

The aforementioned request for applications will be issued by OCFS in order to provide an additional resource to the field for the purpose of conducting home studies in accordance with these regulations, including meeting the new timeframes prescribed by the Federal law.

7. Small Business and Local Government Participation:

The timeframes prescribed by the Federal legislation precluded the participation of small businesses in the development of these regulations. They are being filed on an emergency basis in order to meet the Federal

timeframes; those affected will have an opportunity to comment upon publication of a Notice of Proposed Rule Making in the *State Register*.

Rural Area Flexibility Analysis

1. Effect on Rural Areas:

The regulations will affect the 44 social services districts that are in rural areas and the St. Regis Mohawk Tribe, which is authorized by section 371(10)(b) of the Social Services Law to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Those voluntary authorized agencies in rural areas contracting with social services districts to provide foster care and adoption services also will be affected by the proposed regulations. Currently, there are approximately 85 such agencies.

2. Compliance Requirements:

When the Interstate Compact on the Placement of Children (ICPC) office of OCFS receives a request from another state seeking to place a foster child from the other state with a person in New York State as a foster or adoptive parent, the social services district or voluntary authorized agency under contract with the social services district or under contract with OCFS is required to commence and complete a home study within 60 days of the receipt of such request. An additional 15 days to complete the home study is allowed for circumstances outside of the control of the social services district or voluntary authorized agency if a timely request for such documentation was made by the district or agency.

Currently, social services districts and voluntary authorized agencies are required pursuant to 18 NYCRR 357.3 to provide a foster child with his or her comprehensive health history when the foster child is discharged to his or her own care. The regulations clarify that this history must include the child's current health providers and clarify that there is no cost to the child for these records. The regulations also require the provision of the child's education record at the time of the child's discharge to his or her own care, also at no cost to the child.

Social services districts are currently required to assess the appropriateness of placement of children in foster care pursuant to 18 NYCRR 430.11. Each foster child must have periodic assessments performed to address the issue of permanency, including whether the child will be returned home or to another placement resource (see section 409-e of the SSL and 18 NYCRR Part 428). The regulations require the social services district to expressly document the consideration of out-of-state placement options if the child will not be returned to his or her parent.

When a foster child is placed outside of New York State, the child must be visited periodically by a caseworker pursuant to 18 NYCRR 430.11(c)(2)(ix) and the visits must be recorded in the child's case record. The regulations increase the frequency of such visits from every 12 months to every six months. The regulations also authorize that the caseworker visit may be performed by a private agency under contract with either the authorized agency in New York with custody of the child or the state in which the foster child is placed.

Current law and regulations in section 424-a of the SSL and 18 NYCRR Parts 421 and 443 require data base checks of New York's Statewide Central Register of Child Abuse and Maltreatment for all persons applying for certification or approval as foster or adoptive parents and for any other persons over the age of 18 who reside in the home of such applicants, irrespective of how long such persons resided in New York State. The regulations expand the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states.

3. Professional Services:

The regulations would not require social services districts or voluntary authorized agencies to hire additional staff in order to implement them. Current training programs will be enhanced to emphasize the casework support that these amendments bring. In addition, OCFS will issue a request for applications in order to make available the services of one or more voluntary agencies to conduct home studies for out-of-state placements or inter-county placements, in accordance with these regulations.

4. Compliance Costs:

Local social services districts or voluntary authorized agency under contract with social services districts are already required to complete a home study; therefore, this does not represent an additional workload. It is unknown if social services districts or voluntary authorized agency under contract with social services districts are currently completing the home study within 60 days (or 75 days in certain circumstances) of the receipt of the request. Therefore, to facilitate compliance with the timeframes, OCFS will issue a request for applications in order to make available the services of one or more voluntary agencies to conduct the home study.

Minimal costs are expected related to the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states. It is expected that this activity will be completed through routine correspondence to such state(s).

The regulations also increase the frequency of caseworker visits and reports for foster children placed outside of New York State from every 12 months to every six months. In general, such visits and reports are already requested and conducted within these timeframes, and in many cases are done more frequently. To facilitate this activity, the regulations expand the entities that may conduct such visits to include a private agency under contract with either the authorized agency in New York or the state in which the foster child is placed. In accordance with the ICPC, such reports and visits often are done by the state where the child is placed and are typically completed within these timeframes. As a result, it is anticipated that there will be no significant cost impact on local social services districts for this activity.

There is no additional cost anticipated for the dissemination of health and education records when the child is being discharged from foster care since this activity is the current practice.

There is no cost related to any of the documentation requirements contained in these regulations since this information will be recorded in the CONNECTIONS where this functionality already exists or is under development.

5. Minimizing Adverse Impact:

The aforementioned request for applications will be issued by OCFS in order to provide an additional resource to the field for the purpose of conducting home studies in accordance with these regulations, including meeting the new timeframes prescribed by the Federal law.

6. Small Business Participation:

The timeframes prescribed by the Federal legislation precluded the participation of small businesses in the development of these regulations. They are being filed on an emergency basis in order to meet the Federal timeframes; those affected will have an opportunity to comment upon publication of a Notice of Proposed Rule Making in the *State Register*.

Job Impact Statement

A full job statement has not been prepared for the regulations implementing the Federal Safe and Timely Interstate Placement of Foster Children Act of 2006, and portions of the Federal Adam Walsh Child Protection Act of 2006. The regulations would not have a substantial adverse impact on jobs or employment opportunities and in fact would not result in the loss of any jobs. This finding is based upon the fact that the regulations prescribe additional duties for child welfare staff. In addition, these regulations allow for a potential increase in jobs based upon the contracting authority granted by these regulations, if the social services district so chooses to contract for certain activities.

State Commission of Correction

NOTICE OF ADOPTION

Reportable Incidents

I.D. No. CMC-42-06-00006-A
Filing No. 1587
Filing date: Dec. 27, 2006
Effective date: Jan. 17, 2007

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

Action taken: Amendment of sections 7022.3 and 7022.4 of Title 9 NYCRR.

Statutory authority: Correction Law, sections 45(6) and (15), 46(1) and 47(2)

Subject: Reportable incidents.

Purpose: To amend the manner in which county correctional facilities must report significant events and incidents.

Text or summary was published in the notice of proposed rule making, I.D. No. CMC-42-06-00006-P, Issue of October 18, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Brian M. Callahan, Senior Attorney, State Commission of Correction, 80 Wolf Rd., 4th Fl., Albany, NY 12205, (518) 485-2346, e-mail: Brian.Callahan@scoc.state.ny.us

Assessment of Public Comment

The State Commission of Correction (Commission) received formal comment from the Deputy Commissioner for Legal Matters/General Counsel for the New York City Department of Correction.

1.) The comment set forth that the New York City Department of Correction did not oppose the proposed amendment, provided such amendment did not affect the Department's current practice of reporting significant events to the Commission via the "24 Hour Reports."

Response: The proposed amendment will affect only the manner in which facilities are required to report certain incidents as mandated by the *Reportable Incident Guidelines for County Correctional Facilities*. As the Commission does not view such guidelines applicable to the Department, it will not affect the Department's current practice of reporting incidents to the Commission.

NOTICE OF ADOPTION

Disciplinary Sanctions

I.D. No. CMC-42-06-00007-A

Filing No. 1588

Filing date: Dec. 27, 2006

Effective date: Jan. 17, 2007

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

Action taken: Amendment of section 7006.9 of Title 9 NYCRR.

Statutory authority: Correction Law, section 45(6) and (15)

Subject: Disciplinary sanctions.

Purpose: To expand and augment the list of allowable sanctions of county jail inmates found guilty of violating disciplinary rules following a disciplinary hearing.

Text or summary was published in the notice of proposed rule making, I.D. No. CMC-42-06-00007-P, Issue of October 18, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Brian M. Callahan, Senior Attorney, State Commission of Correction, 80 Wolf Rd., 4th Fl., Albany, NY 12205, (518) 485-2346, e-mail: Brian.Callahan@scoc.state.ny.us

Assessment of Public Comment

The State Commission of Correction (Commission) received formal comment from the Deputy Commissioner for Legal Matters/General Counsel for the New York City Department of Correction.

1.) The comment indicated strong support for the proposed amendment, which would "strengthen the ability of local correctional facilities to impose meaningful disciplinary sanctions and deter rule infractions."

Response: The Commission agrees, as this is the main purpose of the proposed amendment.

State Board of Elections

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Contracts for Voting System

I.D. No. SBE-03-07-00004-P

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

Proposed action: This is a consensus rule making to amend section 6209.9(a)(4)(i) of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-100, 7-201, 7-203, 7-204 and L. 2005, ch. 181

Subject: Contracts for voting system.

Purpose: To repeal provisions which are overbearing and infringe unnecessarily on county boards of elections' discretion.

Text of proposed rule: Section 6209.9 Contracts

A. In addition to complying with all statutory requirements, all contracts for the purchase of voting systems by county boards, hereinafter to be designated 'purchaser', shall include the following requirements:

(4) Additional Requirements

(a) delivery [deadline] *schedule* [for a minimum of 10% (ten percent) of the systems or machines ordered by a county shall be not less than six months prior to the first election in which said units shall be used. The deadline for the delivery of the balance of systems or machines ordered shall not be less than three months prior to the first election in which said units shall they are to be used or, if the contract is for ten or less units, the delivery deadline is not less than one month prior to such election;]

Text of proposed rule and any required statements and analyses may be obtained from: Patricia L. Murray, State Board of Elections, 40 Steuben St., Albany, NY 12207, (518) 474-6367, e-mail: pmurray@elections.state.ny.us

Data, views or arguments may be submitted to: Patricia L. Murray, State Board of Elections, 40 Steuben St., Albany, NY 12207, (518) 474-6367, e-mail: pmurray@elections.state.ny.us

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

Consensus Rule Making Determination

These regulations are being submitted as a consensus rule based upon the agency's determination that no person is likely to object to the adoption of the rule as written as the amendment contains a change/clarity in language relating to Title 9 Subtitle V Part 6209.9A(4)(a).

Job Impact Statement

These regulations neither create nor eliminate employment positions and/or opportunities, and, therefore, have no adverse impact on employment opportunities in New York State. Amendments to the proposed regulations do not change this analysis.

Department of Environmental Conservation

NOTICE OF ADOPTION

Mercury Reduction Program for Coal-Fired Electric Utility Steam Generating Units

I.D. No. ENV-36-06-00011-A

Filing No. 1589

Filing date: Dec. 28, 2006

Effective date: 30 days after filing

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

Action taken: Amendment of Part 200 and addition of Part 246 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, and 19-0311

Subject: Under Clean Air Mercury Rule (CAMR), each state in the nation is required to submit a state plan to the US EPA Administrator by November 17, 2006. Under CAMR, all states are required to submit to the US EPA Administrator their designated mercury allowances for each coal-fired electric generating unit by November 17, 2006. Regardless of whether a state is adopting the Federal program or promulgating its own state regulation and control plan, the State must meet the allocations designated in 40 CFR 60.4140. For New York State, these allocations are 786 pounds per year of allowable mercury release in 2010-2017 and 310 pounds per year in 2018 and beyond.

Purpose: To reduce the emission and deposition of mercury pollution from the burning of coal in electric utility steam generating units. Part 200

was amended to include reference material incorporated with the Part 246 rule making.

Substance of final rule: On May 18, 2005, EPA promulgated Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units, 70 Fed. Reg. 28606-28700 (40 CFR Parts 60, 62, and 75). Under 40 CFR 60.24(h) each state identified in paragraph (h)(1) of the section, New York is one such state listed, is subject to the requirements in paragraphs (h)(2) through (7) of that section. State plans are allowed to be submitted to EPA through 40 CFR 60.24(h)(1) where, by November 17, 2006 through State Plan submittal each state can decide to adopt the federal model cap-and-trade rule or can identify another means to satisfy the requirements contained in 40 CFR 60.24(h)(2) through (7). New York State has opted to not accept the model cap-and-trade rule, but in its stead submit a State Plan containing a state specific strategy to reduce mercury emissions from coal-fired power plants. Through submittal of a state specific, alternate plan and subsequent approval by EPA the state trading budget for New York State of 0.393 tons mercury per year contained within 40 CFR 60.4140 becomes set as a hard state cap not to be exceeded. Regardless if a State is adopting the federal program or creating its own State control plan, all States must meet the allocations designated in section 60.4140. Additionally, under 40 CFR 60.4141 of this regulation, all States are required to submit to the Administrator their designated mercury allowances covering years 2010, 2011, 2012, 2013, and 2014 for each coal-fired electric generating unit by October 31, 2006. For New York State, these distributions equal 786 pounds (0.393 tons) per year of allowable mercury release in 2010-2017 and 310 pounds (0.155 tons) per year in 2018 and beyond.

The Division of Air Resources is proposing a hybrid of the US EPA's Clean Air Mercury Rule (CAMR) cap-and-trade program and a traditional emission limit based program. In 2010, Phase I, the proposed State regulation, 6 NYCRR Part 246, will accept the New York State cap but will not allow emission trading between applicable coal-fired utility units in New York and other units in the State or with units outside of New York State. The facility-wide cap will be in effect from 2010 to 2014. In 2015, Phase II, in conjunction with other electric sector regulations such as the Regional Greenhouse Gas Initiative (RGGI) and the second phase of the CAIR, the State mercury regulation will implement a facility-wide specific mercury emission limit. The proposed rule, Part 246, will be submitted to EPA in lieu of the CAMR, satisfying the federally mandated requirements. Part 200.9 was revised to incorporate all references to 40 CFR Part 75 Continuous Emission Monitoring program and especially, 40 CFR Part 75, Subpart I, Mercury Mass Emission Provisions.

The Regulation, 6 NYCRR Part 246 is divided into the following sections:

246.1 – Definitions

To the extent that the definitions are not inconsistent with the specific definitions in this Part, the general definitions of Part 200 apply. Part 246 adds definitions addressing the automatic data handling systems, the specific differences between a Part 246 facility and a Part 246 unit and time frames used to determine compliance.

246.2 – Applicability

Owners or operators of coal-fired steam generating units with nameplate capacity of more than 25 MWe producing electricity for sale firing coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year, including a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater.

246.3 – Standard Requirements

The Standard requirement section has the following subdivisions: (1) addresses the applicability dates between new and existing facilities; (2) sets the requirements for coal sampling for mercury and chlorine and two years of stack testing to determine speciated mercury compounds, such as elemental mercury, divalent mercury and particle mercury from existing sources; and (3) sets timelines for record keeping submittals.

246.4 – Permit Requirements

This section addresses the requirements of submitting a Title V operating program renewal or modification. The owner or operator of a MRP facility must have a permit issued by the department pursuant to Part 201 of this Title.

246.5 – Mercury Reduction Program Facility Wide Cap

In the first phase of the Mercury Reduction Program rule beginning in 2010 the Division of Air Resources proposes to accept the federal 786 pounds per year allowance and distribute emissions to New York's appli-

cable units but these emissions will be treated as facility-wide caps and not allowances for trading. The determination of facility-wide caps will be based upon the requirements in section 60.4142 of CAMR which state that allowances, or in our case caps, will be calculated from the average of the three highest heat input years from 2000 to 2004.

246.6 – Mercury Reduction Program Emission Unit Limits

For the second phase of the Mercury Reduction Program rule the Division of Air Resources will set a numerical limit for each applicable facility. This numerical limit will be 0.6 pounds per trillion Btu heat input and represents an overall statewide 90 percent mercury mass reduction from the 1999 Information Collection Request estimations.

246.7 – Monitoring and Reporting

The rule adopts the federal requirements of the Clean Air Mercury Rule (CAMR) for sources to install continuous emission monitors (CEMs) or sorbent traps for the measurement of total mercury by specific timelines and reporting deadlines. Any person who owns or operates a MRP facility must comply with the monitoring, record keeping, and reporting requirements as provided in this section, Part 201 of Title 6, and 40 CFR Part 75, Subpart I. Specifically, each facility must install all monitoring systems to monitor mercury mass emissions and individual unit heat input (including all systems required to monitor mercury concentration, stack gas moisture content, stack gas flow rate, and carbon dioxide or oxygen concentration, as applicable, in accordance with 40 CFR 75.81 and 75.82 of Subpart I and Performance Specification 12A, 40 CFR 60 Appendix B.

246.8 – Initial Monitoring Certification and Recertification

This section includes the mandated federal requirements for the certification of the continuous emission monitoring system and the approved alternative sorbent trap monitoring system. For continuous emission monitoring systems, the applicable quality-assurance and quality-control requirements in 40 CFR 75.21 and 40 CFR 75 Appendix B apply. For sorbent trap monitoring system, the applicable quality-assurance and quality-control requirements of 40 CFR 75.15 and 40 CFR 75 Appendix K and sections 1.5 and 2.3 of 40 CFR 75 Appendix B apply. The section also addresses the monitoring requirements of stack testing for low mass mercury emission units.

246.9 – Missing Data Procedures and Out of Control Periods for Continuous Monitoring Systems

Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of 40 CFR Part 75, data shall be substituted using the applicable missing data procedures in 40 CFR 75 Subpart D. Subpart D contains sections 40 CFR 75.30 through 75.39 and describes procedures for initial missing data periods, those occurring in the first 720 quality-assured monitor operating hours following initial certification, and standard missing data procedures for mercury CEMS and sorbent trap monitoring systems. Subpart D also deals with missing data for all other required monitoring including, but not limited to moisture, units with control devices, and missing data for heat input rate determinations. This section also covers out of control periods as described in 40 CFR 70.24 where the owner or operator shall take corrective action if an out-of-control period occurs to a monitor or continuous emission monitoring system and repeat the tests applicable to the "out-of-control parameter" as described in 40 CFR 75 Appendix B.

246.10 – Notifications

This is a federally mandated section requiring all Mercury Reduction Program units to notify the USEPA under 40 CFR 75.61. Notifications required include, but are not limited to: initial certification and recertification test notifications; new unit, newly affected unit, new stack, or new flue gas desulfurization system operation notification; unit shutdown and commencement of commercial operation; and periodic relative accuracy test audits, 40 CFR 75 Appendix E retests, and low mass emissions unit retests.

246.11 – Recordkeeping and Reporting

This section is a federally mandated section requiring all Mercury Reduction Program facilities to submit reports on monitoring plans, certification and recertification plans and quarterly reports to the Department and USEPA Administrator. Record keeping requirements include those required by this section in addition to those applicable requirements contained in 40 CFR 75.84(a) through (c). Reporting requirements include those required by this section in addition to those applicable requirements contained in 40 CFR 75.84(d) through (f).

246.12 – Petitions

The owner or operator of a MRP unit may submit a petition under section 40 CFR 75.66 to the USEPA Administrator requesting approval to apply an alternative to any requirement of 246.8 through 246.13. Application of an alternative to any requirement of 246.8 through 246.13 is in

accordance with this section and 246.8 through 246.12 only to the extent that the petition is approved in writing by the USEPA Administrator, in consultation with the Department.

246.13 – Additional Requirements to Provide Heat Input Data

The owner or operator of a MRP unit that monitors and reports Hg mass emissions using a Hg concentration monitoring system and a flow monitoring system shall also monitor and report heat input rate at the unit level using the procedures set forth in 40 CFR Part 75.

246.14 – Severability

Each section, or portion thereof, of this Part shall be deemed severable, and in the event that any section, or portion thereof, of this Part is held to be invalid, the remainder of this Part shall continue in full force and effect.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 200.9, 246.1, 246.1(b)(6), (9), (14), (17), (18), (19), 246.2, 246.3(b)(1), (c)(1), 246.4, 246.5(a), (b)(1), (2), (c), 246.6(a)(1), (2), (b), (c)(1), (2), 246.7, 246.7(a)(1), (2), (b)(3), (d)(1), (2), (3), (4), 246.8(a)(3), (c), (c)(2), (3), 246.9(b), 246.11(d)(1), (3), (e), (e)(1) and 246.12.

Text of rule and any required statements and analyses may be obtained from: David Gardner, Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, e-mail: 246camr@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file. This rule was approved by the Environmental Board.

Summary of Revised Regulatory Impact Statement

1. STATUTORY AUTHORITY

The statutory authority for this amendment is the Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, and 19-0311. Section 1-0101 outlines the policy declaration for the Department of Environmental Conservation (Department) regarding the protection of New York State's environment and natural resources.

2. LEGISLATIVE OBJECTIVES

Article 19 of the ECL was enacted for the purpose of safeguarding the air resources of New York from pollution, to ensure the protection of the public health and welfare, the natural resources of the State, physical property, and industrial development. It is the stated policy of the State to require the use of all available practical and reasonable methods to prevent and control air pollution in New York. To facilitate this policy objective, the Legislature bestowed specific powers and duties on the Department, including the power to adopt and promulgate regulations for preventing, controlling and prohibiting air pollution. This authority specifically includes promulgating standards for the coordination of State and Federal pollution reduction programs.

On March 15, 2005 EPA announced the final Clean Air Mercury Rule (CAMR). CAMR limits mercury emissions from new and existing coal-fired electric steam generating units, and creates a market-based cap-and-trade program that will permanently cap utility mercury emissions nationwide in two phases: the first phase cap is 38 tons beginning in 2010; the second phase cap set at 15 tons beginning in 2018. EPA believes these mandatory declining caps will ensure that mercury reduction requirements are achieved and sustained. On May 18, 2005, EPA promulgated Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units. (70FR 28606-28700) Pursuant to 40 CFR 60.4141, all States are required to submit to the Administrator their designated mercury allowances for each coal-fired electric steam generating unit by November 15, 2006. Regardless if a State is adopting the federal program or creating its own State control plan, all States must require applicable sources to limit mercury emissions at or below levels which meet the allocations designated in 40 CFR 60.4140. For New York State, these distributions equal 786 pounds per year of allowable mercury emissions in 2010-2017 and 310 pounds per year in 2018 and beyond.

The Department is proposing to adopt a mercury regulation which incorporates the Phase I emission cap established in the federal rule for the years 2010-2014 and beginning in 2015 establishes a facility wide average emission limit for each applicable unit. Phase I of the proposed State regulation, 6 NYCRR Part 246, will impose annual facility-wide mercury emission limitations, based upon the state mercury budget distributed to New York State by EPA. Applicable facilities will not be permitted to generate and trade mercury reductions with other facilities or other States. The annual facility-wide emission limitations will be in effect from 2010 to 2014. Starting in 2015, Phase II, in conjunction with other electric sector

regulations such as the Regional Greenhouse Gas Initiative (RGGI) and the second phase of the Clean Air Interstate Rule (CAIR), the State mercury regulation will establish a unit-based emission limit for each applicable unit. The Department will submit Part 246 to EPA for approval in lieu of New York State accepting the model rule requirements CAMR.

3. NEEDS AND BENEFITS

Mercury is a toxic metal that persists and cycles in the environment as a result of natural and human activities. When mercury is released into the air, it is transported and eventually deposited back onto the earth. The distance of this transport and eventual deposition depends on the chemical and physical form of the mercury emitted. In aquatic ecosystems, inorganic mercury is transformed into an extremely toxic organic form of mercury, methylmercury. Methylmercury bioaccumulates up the food chain as humans and animals consume mercury-contaminated organisms, particularly fish. Two conditions common in the Northeast, acidified water bodies and elevated ozone levels, are thought to promote the deposition of mercury into the environment.

The term "hot-spot" has been used by the EPA and environmental organizations to describe a particular area vulnerable to sustained mercury deposition based upon different regulatory scenarios. One of the shortcomings of CAMR is that the federal cap-and-trade strategy will not mitigate the current "hot-spots" created by localized deposition from coal-fired electric utilities who buy allowances rather than installing pollution control to reduce emissions. The Department believes,¹ that the Adirondacks or the Northeast region is a "hot-spot" due in part to persistent deposition of mercury from the coal-fired electric utility sector. Consequently, the Department has opposed the trading of mercury allowances. Recent research in Ohio and Massachusetts has addressed the issue of localized deposition at near-by receptors from coal-fired electric utilities and municipal waste combustors respectively. New York State has implemented regulations² that are stricter than the federal National Emission Standard for Hazardous Air Pollutants for Municipal Waste Combustors to minimize localized deposition impacts, and anticipates that reductions achieved from the proposed Part 246 will do the same for the coal-fired electric utilities located in New York State.

The electric utility industry, along with municipal solid waste combustors and the Portland cement manufacturing sector comprise the largest point source categories of mercury emissions in New York State. Since 1999, New York State has reduced emissions from the municipal solid waste combustor sector by approximately 90 percent. New York State is currently examining technology to reduce emissions in the Portland cement manufacturing sector following the EPA's promulgation of a National Emission Standard for Hazardous Air Pollutants (NESHAP) which did not control mercury from this source category.³ With the proposed reductions targeted for 2015, the statewide reduction in mercury from 1999 levels will equate to 75 percent⁴ statewide for all point sources comprising of fuel burning equipment, incineration and manufacturing.

The Department has determined that federal cap-and-trade program would prolong the existence of "hot spots" in the Catskill and Adirondack region until 2020 and beyond. Allowing the banking and sale of mercury emissions to be sold to New York applicable facilities or to facilities in regions where westward winds prevail would not reduce the unacceptable mercury concentrations in fish and wildlife in New York's lakes, streams and estuaries. Regional concentrations will be reduced sooner through implementation of a New York State rule which controls unit-level mercury emissions five years earlier and to a greater extent than the federal rule.

4. COSTS

a.) Costs to Regulated Utilities

New York currently has thirteen coal-fired electric utility steam generating stations, two of which, AES Hickling and AES Jennison, have been on cold standby since 2001. The thirteen stations have electric generation capacities per plant ranging from 50 MW to 800 MW. There are two cogeneration facilities, Trigen Energy-Syracuse and WPS Niagara Generating Facility, generating steam for both electric production and process use. At this time, only those units which meet the federal definition of electric utility steam generating unit, including the thirteen coal-fired steam generating stations and the two co-generation units, will be subject to Part 246.

The future actual costs of regulating mercury emissions from the electric utility steam generating sector are directly related to any additional control device(s) required on a plant-by-plant basis, in addition to the volume and cost of reagent required, which in most cases consists of a powdered activated carbon or a carbon enhanced with a halogen such as bromine. The incremental cost of generation for New York coal-fired units

implementing a standard or enhanced powdered activated carbon system will be in the range of 0.37 to 1.66 mills/kWh.^{5,6} A mill is defined as one-tenth of a cent. This is approximately a one to eight percent increase on the 20 to 30 mills/kWh (\$0.02/kWh to \$0.03/kWh) most coal-fired power plants currently incur to produce electricity. For comparison, in the day ahead market during a summer month a kWh is sold by a generator for approximately \$0.08 upstate and \$0.15 downstate⁷. Monitoring, record keeping and reporting are being incorporated into Part 246 from CAMR and regulated facilities will incur the same costs with the Department's program or the federal CAMR. Costs of monitoring, record keeping, and reporting are going to be fixed as adoption of EPA's model rule is required for national reporting. Currently, mercury CEMS cost in the range of \$130,000 to \$200,000 installed with an approximate testing, maintenance, and operation cost of \$89,500 per year⁸.

Most facilities in New York will need to install activated carbon injection systems to work in conjunction with existing cold-side ESPs, especially those facilities burning western sub-bituminous coals. Some facilities may need to install pulse jet fabric filter baghouse systems for particulate collection to achieve the higher rates of mercury capture proposed for 2015 than could be realized through operation of a cold-side ESP alone. For those facilities combusting sub-bituminous coals, high percentage sub-bituminous coal blends, or facilities with existing fabric filter baghouses, total capital requirements include the purchase and installation of dosing and storage equipment related to the powdered activated carbon injection (PACI) system. The PACI will be a nearly fixed cost of \$984,000 (year 2003 dollars). Annualized over 20 years at an interest rate of approximately 10 percent this translates to a cost of \$117,460 per year⁹.

A Department and the New York State Energy and Research Authority (NYSERDA) analysis compared a reference or business-as-usual case (absent either CAIR or mercury) to each of three policy cases: New York's proposed approach for implementing both CAIR and mercury, CAIR only, and mercury only. CAIR and Mercury policies (implemented together, as proposed) could increase wholesale electricity prices by an average of 1.7 percent or \$1.14 per MWh over the 2010 to 2020 timeframe. For a typical residential customer (using 750 Kwh per month), this translates into a monthly retail bill increase of \$0.86. Model runs assuming CAIR only (i.e., without a mercury control program) and mercury only control program (i.e., without CAIR) indicate that virtually the entire incremental electricity price impact of implementing CAIR and a mercury rule together is due to CAIR. There is virtually no incremental electricity price impact due to mercury control in conjunction with the sulfur and NOx CAIR program¹⁰.

b.) Costs to the State

The costs to the Department for promulgating Part 246 will include additional Central Office staff and Regional Office staff to modify permits and create monitoring conditions in the permitting database to assure uniformity from Region to Region. Approximately 15 Title V facility permits will have to be modified to incorporate Part 246 requirements. Department staff will be responsible to review stack test protocols, field witness the required stack tests, review final reports and CEM relative accuracy tests. Implementation of the federal or state rule requires quarterly submittals of compliance documentation which will need to be reviewed, tracked and acted upon if necessary.

The modification of a Title V permits require trained environmental engineers with knowledge of utility combustion systems, sulfur and particle control devices and knowledge of CEM documentation and stack testing. At the current staffing levels, the addition of new staff will be needed to continue some of the routine permitting and compliance work currently being performed by more experienced staff.

These costs however would be incurred whether the Department adopted Part 246 or implemented the federal rule as written. Indeed, the federal cap and trade program would likely entail more significant administrative costs since the Department would have to approve and keep track of trading allowances. Under Part 246, facilities in New York will not be allowed to trade mercury allowances.

c.) Source of Information upon which the cost analysis is based.

The information used to determine the costs to the affected industries is based upon the Department of Energy's National Energy Technology Laboratory (DOE/NETL). DOE/NETL continues to conduct pilot studies involving slip stream tests and full scale tests involving many innovative technologies to determine mercury control¹¹ from applicable CAMR facilities.

5. LOCAL GOVERNMENT MANDATES

The future actual costs of regulating mercury emissions from the electric generating utility sector are directly related to any additional control device required on a plant-by-plant basis. Jamestown Power's Samuel A.

Carlson Generating Station operates four boilers in total, which are divided into two emission units. The facility exhausts flue gas through one stack per generator for a total of two stacks. Taking into consideration the installation of an activated carbon injection system and use of an enhanced activated carbon at a rate of three lb carbon/MMACF; electric use to operate any additional pollution control equipment; and operating costs in addition to reagent materials and land filling of additional fly ash, the installation would have an associated incremental cost of generation (implementation cost) in the range of 0.23 to 0.63 mills/kWh. The facility would also be required to install, operate, and maintain a continuous emission monitoring system to measure and record mercury mass emissions. The installation of a mercury monitoring system is currently in the range of \$130,000 to \$200,000 per unit installed. An annualized cost per monitoring unit is predicted by EPA to be on the order of \$89,500 per year for testing, maintenance, and operation¹². Any estimated impact on wholesale electricity price based on the cost of mercury emission control equipment would not directly reflect the implementation costs incurred by the affected generator owners, because coal generators generally do not set the marginal market price of electricity. However, the on-site cost of installing, operating, and maintaining mercury emission control equipment directly reduces the operating margin (similar in concept to profit) of the Mercury Reduction Program units.

6. PAPERWORK

Part 246 adopts the federal requirements for monitoring, reporting, and record keeping thereby eliminating redundant or duplicative reporting. Facilities will not incur additional costs in this regard. In addition, Part 246 does not implement the labor intensive cap-and-trade-portion of the federally mandated model rule, which requires the tracking of emission credits, reducing the regulatory burden on facilities to track allowances. Facilities subject to Part 246 are required to submit quarterly reports electronically, in accordance with federal requirements, and along with their compliance reporting for under the Acid Rain and the Clean Air Interstate Rule. The coordination of reporting for these three regulatory programs will reduce paperwork requirements substantially.

7. DUPLICATION

The proposed rule does not duplicate or conflict with any other New York or federal rule. The federal model rule, Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units, is the first time the emission of a bio-persistent, bioaccumulating hazardous air pollutant has been controlled from an electric steam generating source. New York State has opted to not accept the model cap-and-trade rule, but in stead submit a State Plan containing an alternate strategy to reduce mercury emissions from coal-fired power plants in a shorter time frame requiring greater reductions.

8. ALTERNATIVES

The alternatives to adopting Part 246 are to: (1) take no action and submit a state regulation resembling the model rule, Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units; (2) allow the federal government to run the program under a Federal Implementation Plan (FIP); or (3) adopt the suggested model rule from STAPPA/ALAPCO; or (4) submit a state specific, alternate plan with subsequent approval by EPA.

9. FEDERAL STANDARDS

The proposed regulation, Part 246, exceeds the minimum standards of the federal government in the following ways. First, the proposed rule disallows trading of excess mercury emissions within or out of state because the cap-and-trade program would maintain existing local hot spots of mercury deposition and more importantly, continue to contribute to widespread regional concentrations of mercury. Regional concentrations could be reduced much sooner through implementation of a New York State rule which limits mercury emissions earlier and to a greater extent. Second, the Part 246 shortens the timeframe for final compliance from 2018 to 2015. Third, the Part 246 does not allow "banking" of excess emissions to be sold and/or kept for future use after 2018. These last two items highlight the Department's goal of adopting a mercury rule which will not exacerbate or contribute to widespread deposition of mercury in New York State's sensitive Adirondack and Catskill mountain lakes areas and coastal estuaries.

The Department, in cooperation with NYSERDA, has calculated the costs of the proposed mercury rule and the federal Clean Air Interstate Rule (CAIR) on the citizens of New York in the form of their monthly electric bill increase due to these regulatory actions. The estimated New York retail electricity price impact showed that the costs to the consumer of implementing Part 246 to be \$0.002 per month and for both regulations CAIR and Part 246 the cost will be \$0.86 per month equating to 0.8 percent

of their total monthly bill. For the industrial consumer, the cost increase for CAIR and Part 246 equals \$193 per month or 1.7 percent of their monthly bill, the mercury only portion for the industrial user is \$0.5 cents per month¹³. Thus the Department concluded costs associated with the adoption and implementation of Part 246 was reasonable given the significant benefits associated with reducing mercury deposition to the environment.

10. COMPLIANCE SCHEDULE

The compliance schedule for the proposed rule includes two Phases, Phase I, 2010 and Phase II, 2015. The first compliance date is mandated from the federal Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units, and all electric generating units in the nation will be on the same compliance schedule. In Phase II, the proposed rule coordinates the requirements of the Clean Air Interstate rule and the Regional Greenhouse Gas Initiative. The Department believes that the regulated sources will have ample time to comply with the Phase II portion of the rule three years earlier than federally required because of the advances in mercury pollution control demonstrated by the Department of Energy's National Energy Technology Laboratory.

¹ Docket letter - OAR-2002-0056-5458, Comments on the Proposed Clean Air Mercury Rule, June 2004

² 6 NYCRR Parts 219-2 and 219-7, Municipal and Private Solid Waste Incineration Facilities and Mercury Emission Limitation for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

³ NESHAP for Portland Cement Manufacturing, Subpart LLL, 6/14/99

⁴ NESCAUM inventory for 1998-2202 Mercury Study, A Framework for Action, February, 1998.

⁵ USDOE/NETL, *Preliminary Cost Estimate of Activated Carbon Injection for Controlling Mercury Emissions from a Un-Scrubbed 500 MW Coal-Fired Power Plant*, prepared by Science International Corporation, May 2003

⁶ Sorbent Technologies Corporation, Sid Nelson Jr. - Recipient Project Director, *Advanced Utility Mercury-Sorbent Field-Testing Program: Semi-Annual Technical Progress Report*

⁷ New York State Independent System Operator, July 26, 2005 - URL http://www.nyiso.com/public/market_data/zone_maps.jsp

⁸ Federal Register / Vol. 70, No. 95 / Wednesday, May 18, 2005 / Rules and Regulations / pp. 28634

⁹ USDOE/NETL, *Preliminary Cost Estimate of Activated Carbon Injection for Controlling Mercury Emissions from a Un-Scrubbed 500 MW Coal-Fired Power Plant*, prepared by Science International Corporation, May 2003

¹⁰ NYSDEC, NYSERDA, and ICF International, Modeling Results for CAIR and Mercury, May 18, 2006

¹¹ USDOE/NETL, *Preliminary Cost Estimate of Activated Carbon Injection for Controlling Mercury Emissions from a Un-Scrubbed 500 MW Coal-Fired Power Plant*, prepared by Science International Corporation, May 2003

¹² Federal Register / Vol. 70, No. 95 / Wednesday, May 18, 2005 / Rules and Regulations, pp 28634

¹³ NYSDEC, NYSERDA, and ICF International, Modeling Results for CAIR and Mercury, May 18, 2006

Revised Regulatory Flexibility Analysis

The Department is proposing to adopt 6 NYCRR Part 246 which will require coal-fired electric utility steam generating facilities above a certain size threshold to control emissions of mercury. New York currently has two cogeneration facilities and thirteen coal-fired electric utility steam generating facilities, two of which are on cold standby and have not operated since October 2000. The facilities have electric generation capacities per plant ranging from 50 MW to 800 MW. One of these coal-fired facilities is owned by a local government, the Samuel A. Carlson Generating Station owned by the Jamestown Board of Public Utilities. None of the facilities is owned or operated by a small business. As discussed in more detail below, and in the other rule making documents, the adoption of Part 246 is not expected to result in increases in electricity prices to consumers. The adoption of Part 246 will therefore not have an adverse impact on small businesses and/or local governments.

For the thirteen operating facilities to achieve compliance with the proposed regulation emission limits, the Department envisions two options for mercury control devices. The owner of a facility with an existing cold-side electrostatic precipitator (ESP) for particulate control may select the addition of a powdered activated carbon injection unit to work with the existing cold-side ESP or may choose to utilize a fabric filter baghouse to work in conjunction with a powdered activated carbon injection unit. Facilities installing control systems for the purpose of controlling SO₂ or

NO_x for the Clean Air Interstate Rule (CAIR) may realize mercury reductions at their facility as a co-benefit. Those co-benefit control systems may require some modification to achieve the year 2015, Phase II, level of control required in Part 246.

The Department will utilize the CAMR emission budgets to set facility-wide annual emission limitations in the first phase and a traditional unit level emission rate limit based program in the second phase. In 2010, Phase I, Part 246 establishes annual facility-wide emission limitations based on the New York State trading budget identified in 40 CFR 60.4140. Unlike CAMR, Part 246 will not allow mercury allowance trading between applicable coal-fired utility units in New York State or with units outside of New York State. The annual facility-wide emission limitation will be in effect from 2010 to 2014. In 2015 - Phase II, in conjunction with other electric sector regulations such as the Regional Greenhouse Gas Initiative (RGGI) and the second phase of the CAIR, establishes a facility average mercury emission rate at each facility representing a 90 percent overall State reduction of mercury emissions from 2005 levels. Part 246, will be submitted to EPA for approval as the State's mercury control plan in lieu of adopting CAMR.

1. EFFECT OF RULE:

Part 246 regulates private and public electric generating utilities and will not have any significant adverse impact on small businesses directly. The Department in coordination with the New York State Energy Research Authority (NYSERDA) estimates that the majority of cost passed on to the consumer in the form of electricity price increases, including small businesses, of the two rules, the federal Clean Air Interstate Rule (CAIR) and the New York State mercury rule, will be from CAIR. There is virtually no retail or wholesale electricity cost impact from the implementation of the proposed mercury rule. The modeled impact on the average New York wholesale electricity price resulting from the mercury proposal without CAIR is predicted to be \$0.003/MWh or about 0.01 percent. It is important to recognize that the estimated impacts on wholesale electricity prices are not directly related to the implementation costs incurred by the affected generator owners, because coal generators generally do not set the marginal market price of electricity. The day-ahead and hour-ahead marginal market prices are more commonly set by those facilities utilizing fuels other than coal to generate electricity. Electric generation at those facilities is more costly primarily because of fuel cost. NYSERDA estimates the Department's proposed Part 246 will not be more costly than the federally mandated CAMR.

The one municipally owned electric generating facility affected by Part 246 is the Samuel A. Carlson generating Station in Jamestown, NY, Chautauqua County. All electric generators, including Jamestown Power, will experience a small increase in the cost of electric generation due to the adoption of Part 246 which will directly reduce the operating margin of the affected units¹.

2. COMPLIANCE REQUIREMENTS:

Facilities subject to Part 246 will have to achieve compliance with the annual facility-wide emission limitations during Phase I and meet emission rate requirements in Phase II. In addition, Mercury Reduction Program facilities (facilities) will be subject to recordkeeping and reporting requirements. The recordkeeping and reporting requirements imposed by Part 246 are mandated under the federal Clean Air Mercury Rule and are necessary to receive approval from the Administrator. Thus, these requirements would apply whether the Department adopted CAMR or Part 246.

Section 246.8, "Monitoring and Reporting," requires facilities to install a continuous monitoring system, a continuous emission monitoring systems (CEMS) or sorbent trap monitoring system (STMS), to measure and record the mass of total mercury. This section also acknowledges an excepted monitoring methodology allowing facilities to deviate from continuous monitoring system requirement. This excepted monitoring methodology is available to those facilities that can qualify as low mercury mass emitters as identified in 40 CFR 75.81(b). EPA has adopted an annual mass of 464 ounces (29 lb) of mercury emitted per year as the qualifying low mass emission threshold. Section 246.9, "Initial Monitoring Certification and Recertification Procedures," requires facilities to certify continuous emissions monitoring systems and any excepted sorbent trap monitoring system. Section, 246.12, "Recordkeeping and Reporting," requires all facilities to submit reports detailing monitoring plans, certification and recertification plans, and quarterly reports to the Department and the Administrator.

3. PROFESSIONAL SERVICES:

Each coal-fired steam generating facility is unique in setup and site layout and requires site specific considerations in the planning, design, construction, and installation of an air pollution control device. The profes-

sional services that Jamestown Power will require will consist of engineering services from an environmental consulting firm and one or more vendors of pollution control equipment. In order to reduce the burden to the regulated community of complying with Part 246, CAIR, and RGGI, the department has coordinated the implementation of Part 246 with the other rules. All three rules have common implementation dates, enabling facilities to more effectively schedule construction timeframes and outage periods for the implementation of pollution control systems. Some control systems may provide a co-benefit control for emissions of sulfur dioxide, oxides of nitrogen, and mercury. Thus, mercury emissions can be reduced with the same pollution control technology that may be installed for the reduction of sulfur dioxide, particulate matter, and oxides of nitrogen.

4. COMPLIANCE COSTS:

The future actual costs of regulating mercury emissions from the electric generating utility sector are directly related to the costs of installing and operating additional pollution control devices, and are determined on a case-by-case basis. Jamestown Power's Samuel A. Carlson Generating Station, a municipally owned electric generating facility, operates four boilers in total, which are divided into two emission units; emission unit U-00003 contains boilers No. 9 and No. 12 (rated at 190 and 297 MMBtu/hr, respectively) exiting to a single stack, emission point 00003. U-00004 contains boilers No. 10 and No. 11 (each rated at 190 MMBtu/hr), exiting to a single stack, emission point 00004. The facility exhausts flue gas through one stack per generator for a total of two stacks. Taking for example the installation an activated carbon injection system and use of an enhanced activated carbon at an insufflation rate of three lb carbon/MMACF, electric use to operate any additional pollution control equipment and operating costs in addition to reagent materials and land filling of additional fly ash; the installation would have an associated incremental cost of generation (implementation cost) in the range of 0.23 to 0.63 mills/kWh. The facility would also be required to install, operate, and maintain a continuous monitoring system to measure and record mercury mass emissions, unless it qualifies as a low mass emitter and can implement an the excepted monitoring methodology as previously discussed. Based upon Staff discussions and interviews with mercury emissions monitoring companies, the Department estimates that the purchase and installation of a mercury monitoring system is currently in the range of \$130,000 to \$200,000 per unit. An annualized cost per monitoring unit is predicted by EPA to be on the order of \$89,500 per year for testing, maintenance, and operation². Although increases may be minimal, the on-site cost of installing, operating, and maintaining mercury emission control equipment would directly increase the cost of generation associated with the Mercury Reduction Program units³.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

For the Samuel A. Carlson Generating Station to achieve compliance with Part 246's emission limitations, the Department envisions two options for mercury emission control systems. Based on Staff research, a facility with an existing cold-side ESP for particulate control will select one of the following options: (1) the addition of a powdered activated carbon injection unit to work in series with an existing cold-side electrostatic precipitator; or (2) the installation of a fabric filter baghouse following the existing ESP, or a fabric filter baghouse replacing the existing cold-side ESP, working in conjunction with a powdered activated carbon injection unit. Facilities not requiring additional add-on control devices would be those already equipped with wet flue gas desulfurization systems (wet scrubbers), which in conjunction with the cold side ESPs, may demonstrate a near equivalent degree of control as a pulse jet fabric filter baghouse in combination with an activated carbon injection system. Jamestown may decide to install a wet scrubber or a dry lime injection system with fabric filtration for particulate capture for the control of sulfur dioxide to meet its obligations under CAIR and realize a co-benefit of mercury emission reductions. A future addition of an oxidizing catalyst or precipitant additive may be required if Jamestown installs wet scrubbers to promote further oxidation of elemental mercury with subsequent precipitation yielding greater capture and control.

The information used to determine costs to the affected industries is based upon the Department of Energy's National Energy Technology Laboratory (DOE/NETL). DOE/NETL have conducted over 20 pilot studies involving slip stream tests and full scale tests involving many innovative technologies to determine mercury control and have determined that mercury control⁴ is economically and technically feasible.

6. MINIMIZING ADVERSE IMPACTS:

Although the promulgation of Part 246 may result in a modest increase in the cost of electric generation, this cost is not expected to impact small business generators since none of the 13 facilities subject to the rule are

owned by small businesses. Only one local government owned facility is subject to the rule. Part 246 does offer options for regulatory flexibility which will minimize the impact of installing pollution control equipment. During Phase I of the rule, facilities can choose which units to control to meet the facility-wide cap, enabling them to target the most economically feasible units. Phase one also allows facilities to realize a mercury emission reduction co-benefit through the installation of control devices for CAIR. Although a cap-and-trade program structure is feasible for other pollutants with different transport qualities, that are emitted in great quantities (i.e. tons), and that are produced by many fuel burning facilities involving all fuels, mercury is emitted in pounds an often measured in increments as low as ounces. The Department believes that the administrative expenses associated with a mercury cap-and-trade program could result in increased costs to both electric generators and consumers of electricity beyond costs projected for the implementation of Part 246.

The Department and NYSERDA have conducted an electricity system modeling analysis to estimate the incremental cost on the price of electricity realized through the implementation of the Clean Air Interstate Rule (CAIR) and a mercury rule in New York. Inputs to the modeling analysis included capital costs per kilowatt produced (\$/kW), fixed operation and maintenance costs, and variable operation and maintenance costs. Model inputs were developed through use of the CUECost model⁵. The CUECost economic analysis workbook is a Y2K-compliant system designed to produce study level cost estimates (+30percent/-30percent accuracy) of the installed capital and annualized operating costs for air pollution control systems installed on coal-fired power plants to control sulfur dioxide, nitrogen oxides, and particulate matter. The workbook is capable of calculating estimates of an integrated air pollution control system or individual component costs for various air pollution control technologies currently used in the utility industry⁶.

The Department in coordination with NYSERDA compared a reference or business-as-usual case (absent either CAIR or a mercury control program) to each of three policy cases: New York's proposed approach for implementing both CAIR and a mercury control program, CAIR only, and mercury only. CAIR and Mercury policies (implemented together, as proposed) could increase wholesale electricity prices by an average of 1.7 percent or \$1.14 per MWh over the 2010 to 2020 timeframe. For a typical residential customer (using 750 kWh per month), this translates into a monthly retail bill increase of \$0.86. Model runs assuming CAIR only (i.e., without a mercury control program) and mercury only control program (i.e., without CAIR) indicate that virtually the entire incremental electricity price impact of implementing CAIR and a mercury rule together is due to CAIR. There is virtually no incremental electricity price impact due to mercury control in conjunction with the sulfur and NOx CAIR program⁷.

In satisfying the requirements of section 202-b for minimizing adverse impacts for small business, the requirements of the State Administrative Procedures Act (SAPA) require that each proposal address the following:

- 'Establishment of differing compliance or reporting times.' The compliance and reporting times are established in CAMR and States are required to implement CAMR or other mercury control programs which meet these requirements. Even if New York did not adopt Part 246, CAMR would apply and the facilities subject to part 246 would be subject to the requirements of CAMR.
- 'Use of performance rather than design standards.' Part 246 is based on performance standards. Part 246 requires a specific level of reduction in mercury emissions but does not dictate what control strategies facilities must implement to achieve those reductions. The Department ruled out the possibility of the federal cap-and-trade program as a performance option due to the public health consequences of allowing mercury pollution credits to be sold upwind of current ecological hotspots such as the Western Adirondacks.
- 'Exemption from coverage by the rule for small business and local governments.' CAMR dictates what facilities are subject to mercury control. The Department cannot alter the applicability of requirements found in CAMR without losing the parity required by the EPA Administrator.

7. SMALL BUSINESS AND LOCAL GOVERNMENT:

The Department will directly notify interested parties on the requirements of Part 246, including the City of Jamestown. By law, the public, including small business and local governments will be able to comment on the proposed rule under the mandatory 30-day noticing of all Department regulations.

¹ Modeling results for CAIR and Mercury, New York State Energy Research and Development Authority - NYSERDA, May 18, 2006

² Federal Register / Vol. 70, No. 95 / Wednesday, May 18, 2005 / Rules and Regulations, pp 28634

³ Modeling results for CAIR and Mercury, NYS DEC and the New York State Energy Research and Development Authority - NYSERDA, May 18, 2006

⁴ USDOE/NETL, *Preliminary Cost Estimate of Activated Carbon Injection for Controlling Mercury Emissions from a Un-Scrubbed 500 MW Coal-Fired Power Plant*, prepared by Science International Corporation, May 2003

⁵ CUECost – Coal Utility Environmental Cost Model, developed for EPA by Raytheon Engineers & Constructors and Eastern Research Group, Version 1, November 25, 1998 (revised 2-9-00 as CUECost 3.xls)

⁶ cuecost.txt, version 2-9-00

⁷ NYSDEC, NYSERDA, and ICF International, Modeling Results for CAIR and Mercury, May 18, 2006

Revised Rural Area Flexibility Analysis

On March 15, 2005 EPA announced the final Clean Air Mercury Rule (CAMR). CAMR limits mercury emissions from new and existing coal-fired electric steam generating units, and creates a market-based cap-and-trade program that will permanently cap utility mercury emissions nationwide in two phases: the first phase cap is 38 tons beginning in 2010; the second phase cap set at 15 tons beginning in 2018. EPA believes these mandatory declining caps will ensure that mercury reduction requirements are achieved and sustained. On May 18, 2005, EPA promulgated Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units. (70FR 28606-28700) Pursuant to 40 CFR 60.4141, all States are required to submit to the Administrator their designated mercury allowances for each coal-fired electric steam generating unit by October 31, 2006. Regardless if a State is adopting the federal program or creating its own State control plan, all States must require applicable sources to limit mercury emissions at or below levels which meet the allocations designated in 40 CFR 60.4140, the State trading budget. For New York State, the State trading budget equates to 786 pounds per year of allowable mercury emissions in 2010-2017 and 310 pounds per year in 2018 and beyond.

The Department is proposing to adopt 6 NYCRR Part 246 which utilizes the CAMR emission budgets to set facility-wide annual emission limitations in the first phase and a traditional unit level emission rate limit based program in the second phase. In 2010, Phase I, Part 246 establishes annual facility-wide emission limitations for subject facilities based on the New York State mercury budget. New York facilities will not be allowed to trade mercury emissions with other facilities. The annual facility-wide emission limitation will be in effect from 2010 through 2014. In 2015, Phase II, in conjunction with other electric sector regulations such as the Regional Greenhouse Gas Initiative (RGGI) and the second phase of the Clean Air Interstate Rule (CAIR), Part 246 establishes a facility-wide emission limit for each facility representing a 90 percent reduction of mercury emissions from 2005 levels. The Department will submit Part 246 to EPA for approval as New York's mercury state plan, in lieu of adopting CAMR.

TYPES AND ESTIMATED NUMBER OF RURAL AREAS AFFECTED

6 NYCRR Part 246 applies to coal-fired electric utility steam generating boilers or a coal-fired electric utility steam generating combustion turbines with nameplate capacity of more than 25 MWe (Megawatt electrical, or Megawatt produced as electricity) which produces or has produced electricity for sale firing coal or coal-derived fuel. In addition, Part 246 applies to cogeneration units which serve or have served a generator with a nameplate capacity of more than 25 MWe and supply in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. The Department has identified 13 facilities in New York which are subject to Part 246. These facilities are large industrial sources that produce electricity for commercial sale. These units are located in both rural and urban areas in western New York and the Hudson River Valley. Facilities subject to Part 246 may dispose of fly ash in lagoons or onsite landfills. Depending on the mercury control strategy implemented at the facility and the capacity of the generating units, the proposed regulation may negatively increase the volume of fly ash generated, resulting in up to an additional 500 tons per year of fly ash disposed of in landfills¹.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

CAMR imposes certain minimum requirements, requirements that states must include in a state plan to be approved by EPA, for reporting and recordkeeping and other compliance requirements such as the requirement

to meet the State mercury budget through facility-wide emission caps, and continuous emission monitors for mercury calculation. These requirements are not envisioned to affect local governments, except in the case of Jamestown which owns and operates an affected facility, or citizens of rural areas.

COSTS

Most facilities in New York will need to install activated carbon injection systems to work in conjunction with existing cold-side ESPs, especially those facilities burning western sub-bituminous coals. Some facilities may need to install pulse jet fabric filter baghouse systems for particulate collection to achieve the higher rates of mercury capture proposed for 2015 than could be realized through operation of a cold-side ESP alone. For those facilities combusting sub-bituminous coals, high percentage sub-bituminous coal blends, or facilities with existing fabric filter baghouses, total capital requirements include the purchase and installation of dosing and storage equipment related to the powdered activated carbon injection (PACI) system. The PACI will be a nearly fixed cost of \$984,000 (year 2003 dollars)². Annualized over 20 years at an interest rate of approximately 10 percent this translates to a cost of \$117,460 per year. Through research projects partially funded by DOE, it has been realized that mercury emissions from facilities burning sub-bituminous coals are more readily controlled than previously predicted through the use of an enhanced PACI system and brominated or treated carbons³.

The cost of land filling the additional carbon material can vary greatly, but can be approximated as \$17/ton of fly ash through a 2001 report from the American Coal Ash Association⁴, which translates to an additional \$2,000 to \$20,000 for year 2004 disposal costs. Numerous studies have shown that mercury captured on activated carbon surfaces will not leach into liquid collection systems in landfills after disposal. Those facilities that are currently selling collected ash may have problems associated with carbon content of ash and may find it difficult to continue sale of the product. Average sales are approximately \$18/ton of fly ash with 50 percent of the ash sold going to Portland cement companies as a kiln additive. An alternative control scheme would be to install activated carbon injection with a polishing baghouse after the primary particulate collection device, for example a cold-side ESP, so that fly ash composition and its sale would not be negatively affected.

The future actual costs of regulating mercury emissions from the electric utility steam generating sector are directly related to any additional control device(s) required on a plant-by-plant basis, in addition to the volume and cost of reagent required. With regards to costs to rural communities or rural entities it is not envisioned that Part 246 will affect these areas of the State.

MINIMIZING ADVERSE IMPACT

The objective of Part 246 is to reduce mercury emissions statewide. The Rural Area Flexibility Analysis (RAFA) under section 202-bb(2)(b) of the State Administrative Procedures Act requires State agencies to take into consideration issues which may impact the ability of regulated entities in rural areas to comply with regulatory requirements. The Legislature has stated that the ability of private and public sector interests in rural areas to respond to state agency regulations may be constrained by operating environments which are distinctly different from that found in suburban and urban areas, including, among other things, population sparsity, limited access to financial and technical resources, and lack of economies of scale. Agencies must assess the regulatory impact and alternatives for rural areas and whether alternative regulatory approaches such as differing compliance or reporting requirements, the use of performance or outcome standards, or exemptions from applicability are warranted.

The Department has considered these issues and determined that Part 246 will not have an adverse impact on rural areas. Notably, Part 246 affects large industrial electric generators who produce electricity for commercial sale, some of which are located in rural areas. The ability of a facility to meet the requirements of Part 246, which include the installation and operation of pollution control technologies and continuous emission monitors, and recordkeeping and reporting, will not be influenced by the location of the facility in a rural versus a suburban or urban area. Moreover, as a matter of federal law, the Department is constrained to adopt requirements no less stringent than CAMR, which include emission caps based on the New York State mercury budget and federal reporting requirements. Part 246 meets these minimum federal requirements.

Currently, mercury emissions continue to be a major threat to public health and natural resources in New York State's rural areas. Due to the high levels of mercury in freshwater fish, the Department and the New York State Department of Health have issued specific warnings advising that pregnant women and children should not consume any servings of

specific fish species that are caught in 93 lakes and more than 265 miles of rivers in the State. The New York State Department of Health publication, 'Chemicals in Game and Sportfish 2006-2007', identified fifty-two new areas with elevated mercury levels in fish since the 2003-2004 edition, bringing the number of lakes in New York State with specific fish advisories for mercury to ninety-three⁵. Many of the lakes sampled are in remote rural and mountainous areas of the State that do not have any known mercury inputs other than atmospheric deposition. With the proposed regulation, the current deposition rate of mercury in all areas of New York State, urban and rural will be reduced to a much greater degree than would be achieved by the emissions caps sought to be established by EPA as part of the federal proposed cap-and-trade program.

The Western Adirondacks is considered a "hotspot" due to its unique geology and acidified lakes. A significant inverse relationship is found in Adirondack lakes between lower pH levels and increasing fish mercury levels and adult and juvenile loons⁶. The Department implemented the Acid Deposition Reduction Programs for Sulfur Dioxide and Nitrogen Oxides in 2003 and the federal Clean Air Interstate Rule will add to these reductions in 2009 and 2015. Part 246 is designed to work in conjunction with these regulations and their timeframes. The recovery of New York's lakes and rivers will be a slow process and the Department needs to act sooner than the federal program prescribes to protect New York's rural areas.

CAMR's cap-and-trade provisions which allow for the banking of mercury allowances, and the potential for New York's emission reductions to be sold to facilities located in upwind states, will prolong the "hot spots" in the rural Catskill and Adirondack region until 2020 and beyond. Regional concentrations will be reduced sooner through implementation of Part 246 which controls unit-level mercury emissions at least three years earlier than the federal cap-and-trade program and to a greater extent. CAMR's cap and trade provisions jeopardize the public health of New Yorkers and the natural resources of the State.

RURAL AREA PARTICIPATION

The State Administrative Procedures Act requires agencies to provide public and private interests in rural areas the opportunity to participate in the rule making process and or public hearings. The Department will hold public hearings on Part 246 in upstate areas and will notify interested parties of this proposed rule making.

¹ EPA Office of Solid Waste and Emergency Response, EPA 530-S-99-010, March 1999, *Report to Congress: Waste from the Combustion of Fossil Fuels*

² USDOE/NETL, *Preliminary Cost Estimate of Activated Carbon Injection for Controlling Mercury Emissions from a Un-Scrubbed 500 MW Coal-Fired Power Plant*, prepared by Science International Corporation, May 2003

³ Sorbent Technologies Corporation, Sid Nelson Jr. – Recipient Project Director, *Advanced Utility Mercury-Sorbent Field-Testing Program: Semi-Annual Technical Progress Report*

⁴ American Coal Ash Association, 2001 coal combustion product (CCP) production and use statistics

⁵ New York State Department of Health. 2006-2007 Health Advisories: Chemicals in Sportfish and Game. 2006. URL <http://www.health.state.ny.us/nysdoh/fish/fish.htm>

⁶ Internal DEC work, Bureau of Habitat, Division of Fish and Wildlife, H. Simonim, J. Loukmas, paper to be published 2006

Job Impact Statement

The Job Impact Statement was not revised because the changes regarding the Phase II emission limitations from unit-wide emission limitations to facility-wide emission limitations was not part of the proposed Job Impact Statement.

Summary of Assessment of Public Comment

The Department has received thousands of comments concerning the regulatory schedule for implementing Part 246's emission limitations and standards for coal fired electric generating units (EGUs). Some commenters stated simply that the Department should finalize a regulation requiring power plants to reduce mercury emissions by 2010. Some commenters stated that the Department should reduce emissions 90 percent by 2010 to protect the general health and welfare of humans and the environment. Other commenters express the view that the Department should finalize a regulation requiring power plants to reduce their mercury emissions by 90 percent by 2010 due to the adverse impacts of mercury on public health and the contamination of fish and wildlife and water bodies. Some commenters have stated that the Department's docket letter submitted to the EPA for the proposed National Emission Standard for Hazardous

Air Pollutant (NESHAP) expressed the view that the NESHAP emission limits must be implemented within three years to comply with the Clean Air Act's Section 112 provisions for establishing Maximum Achievable Control Technology Standards (MACT). Other commenters have noted that some States are requiring 90 percent reductions in a timeframe more consistent with the MACT standard and so should New York.

The Department is anxious to reduce mercury emissions from coal-fired EGUs and believes a strict emission limit that will achieve an overall 90 percent reduction in mercury emissions is both necessary and feasible. The Department does not, however, believe this level of reduction can be achieved by 2010 for New York facilities. While the Department disagrees with the United States Environmental Protection Agency's (EPA) interpretation of Section 112 of the Clean Air Act (CAA), and the State is challenging that interpretation in federal court, the intent of Section 112 of the CAA is irrelevant to this rulemaking. The responsibility to establish appropriate National Emission Standards for Hazardous Air Pollutants (NESHAP) and/or standards of performance for new sources rests squarely with EPA, not the Department, and EPA has determined that mercury from coal-fired EGUs should be regulated pursuant to Section 111 of the Act, not Section 112. The purpose of this rulemaking is to address the problem of mercury emissions in New York State, while at the same meeting the State's obligations under the federal Clean Air Mercury Rule (CAMR).

The Department is promulgating Part 246 pursuant to its statutory authority under the New York State Environmental Conservation Law (ECL). Part 246 will fulfill New York's obligation under CAMR but Part 246 will be significantly more protective of the public health and welfare of the people of the State than the federal rule. Neither CAMR, nor the ECL, imposes a three year deadline to implement the Phase II mercury emission limit in Part 246. This is important because the Phase II emission limits represent substantial reductions in mercury emissions over and above CAMR, and are more ambitious than any NESHAP or New Source Performance Standard (NSPS) EPA has proposed. The Department, taking into account all relevant statutory and regulatory considerations, reached a different determination with respect to the Part 246 Phase II emission limit.

The need to reduce mercury emissions into the atmosphere has never been in doubt. Nor is there any question that coal-fired EGUs throughout New York State continue to emit significant quantities of mercury (Hg), estimated to total 21.6 percent of the State's total anthropogenic mercury emissions from stationary sources. These emissions impact the State's natural resources, as well as the health and welfare of New Yorkers, and pose a significant public health hazard, especially for children and pregnant women. Although the Department believes that effective nationwide control of mercury emissions can only be achieved through strict federal standards, we recognize that EPA's rules fall far short of providing adequate protection and are now moving forward with State regulations to reduce mercury emissions.

In determining the optimal schedule for implementing Part 246 emission reductions, the Department, as required by the ECL and SAPA, had to consider, along with the environmental and public health benefits of the rule, the impact of the rule on regulated entities. Specifically, the Department considered a number of relevant technical, economic, and regulatory factors, including: the feasibility of the 0.6 lb of mercury per TBtu emission limit; the extensive retrofit and reconfiguration of existing facilities that will be needed to achieve compliance with the 0.6 lb of mercury per TBtu emission limit; other State and Federal regulations that will come into effect during the same timeframe as Part 246; and the need for reliable supplies of electricity in the State.

The Department's decision with respect to the implementation of the 0.6 lb of mercury per trillion Btu (0.6 lb Hg/10¹² Btu) emission limit is driven in part by the stringency of the standard. For example, compared to the New Source Performance Standard promulgated by EPA of 2.0 lb of mercury per trillion Btu for electric generating units firing bituminous coal, Part 246's Phase II emission limit of 0.6 lb/10¹² Btu is significantly more stringent. Under the former standard, total mercury emissions from coal-fired utilities would be 500 lbs per year based upon the average fuel firing from 2000 to 2004; under the Phase II emission limit, emissions would be 150 lbs per year. Unlike CAMR, which allows facilities to emit mercury in excess of applicable emission limits by purchasing allowances, Part 246 requires facilities to achieve strict compliance with applicable emission limits. DEC recognizes that none of the eleven existing coal-fired EGUs currently operating in the State, or the two units that are on "cold standby", can meet the Phase II emission limit with existing pollution control equipment or by switching from bituminous to sub-bituminous coal. These facilities will need to substantially reduce emissions of SO₂, NO_x and/or Particulate Matter, from current baseline levels and control

these pollutants on an on-going basis in order to achieve compliance with the Phase II mercury emission limit.

The Department believes the 0.6 lb Hg/10¹² Btu limit is feasible, however, at the present time it is only being achieved by select facilities that have installed state of the art pollution control equipment within the past several years. The Department of Energy has funded demonstration studies/pilot projects at numerous coal-fired EGUs utilizing a variety of coal types, boiler types, control equipment testing the efficacy of mercury control technology by utilizing activated carbon, oxidation catalysts, advanced baghouse configurations, and implementing new continuous emission monitoring technology for the measurement of mercury. Trial studies involving slipstream tests and some full scale testing on a relatively short term basis have demonstrated significant reductions in mercury, but one of the most important aspects of the testing to date is that each electric utility is unique and one technology will not fit all scenarios. The most promising reductions were found using brominated activated carbon injection and subbituminous coal in achieving 90 percent mercury removal with varying particle control devices. But this does not represent the technology currently employed in New York and New York's facilities will need to make changes to their particle control devices to achieve similar results. The excellent work done by the Department of Energy's National Energy Testing Laboratory (DOE/NETL) has shown that technology does exist and can be utilized at electric utilities but plant operators and owners need to begin testing and implementing control strategies to determine which technology will work at their plant.

Part 246 is one of several regulations affecting electric generating units that will be implemented in the 2009-2015 timeframe and overlap in terms of affected pollutants. The Clean Air Interstate Rule (CAIR), Regional Greenhouse Gas Initiative (RGGI), State Acid Deposition rules and the next generation particulate regulations, which are based upon the required State Implementation Plan for PM_{2.5}, are being implemented on roughly the same schedule as Part 246. Each of these rules imposes significant and substantive requirements in terms of emission limitations and reduction targets, continuous emission monitoring and recordkeeping requirements. Since several rules target the same pollutants, most facilities will need to undertake construction projects to install state-of-the-art pollution control equipment and/or emission monitoring equipment. Most of the construction work will need to occur during non-peak operating periods (Spring and Fall) to avoid straining the electric generating system during peak operating periods (Summer cooling season and Winter heating season).

The Department believes it is essential for regulated entities to have a consistent timeframe for meeting these overlapping regulatory requirements to ensure compliance and reliability in the supply of electricity. Accordingly, in setting an effective date for the Phase II emission limits, the Department made a deliberate effort to ensure that the implementation of Part 246 requirements coordinated with other regulations. The second phase of Part 246 commences in 2015 in conjunction with both RGGI and the second phase of CAIR.

The significant reductions in emissions that will occur as a result of the implementation of Part 246 will produce significant environmental benefits for the State, including reducing mercury concentrations in fish. The consumption of sport fish is a significant exposure pathway.

Some commenters stated that most of the mercury emissions from electric generating facilities that remain after implementation of CAIR and CAMR are in the form of elemental mercury, which will not deposit in New York. The commenters state that CAIR will reduce reactive gas mercury (RGM) which can act more like a particle. As a result, deposition in New York is unlikely to change very much from increasing the reduction requirement from 70 percent to 90 percent because only elemental mercury remains after CAIR implementation. The Department finds this statement to be inaccurate. Part 246 is reducing the mass of mercury emissions and will require EGUs to capture more mercury than CAIR or CAMR would require, elemental mercury or RGM. The Department contends that the Northeast States are a hot-spot for the deposition of mercury based upon fish sampling the Department has conducted over the last thirty years.

Some commenters expressed the concern that a number of other states have finalized plant-specific mercury limits in a timeline more consistent with the MACT standard, and others are in the process of doing so. The Department does not believe it is appropriate to compare various States in terms of their mercury reduction programs. First, not all States are starting from the same baseline of mercury emissions per trillion Btu of heat input, (coal burned). Second, the number of affected facilities differs greatly in size, pollution control equipment and number of steam generating units per

facility. Third, some affected facilities in other States have actively pursued Department of Energy grants and assistance.

Some commenters stated the Department was not clear on how mercury emissions were distributed to affected EGUs. The Department divided New York State's annual mercury budget of 786 pounds among the eleven currently operating coal-fired utilities, reserving a "set aside" of 40 pounds for new units and existing units on cold-standby, to establish an annual mercury emission limit. The Department created a mercury emission cap for each electric steam generating facility (Mercury Reduction Program Facility) according to the procedure used in the CAMR model rule. The Department opted to use the more conservative method in 40 CFR 60.4142 to establish the facility-specific emission caps.

Some commenters claimed that by not requiring 90 percent reduction by 2010, the Department will allow an additional 3000 pounds of mercury during the time period between 2010 and 2014. The Department does not believe that an additional 3000 pounds of mercury will be emitted. The Department estimates the annual emission rate from coal-fired EGUs to be approximately 600 pounds per year in 2000 to 2014. Affected facilities will need to start construction of any needed pollution control equipment some time prior to 2015 to allow ample time to build, test, and trouble shoot their pollution control systems. It is more likely that a facility would be at the 90 percent emission rate prior to 2015, in 2014 for example, rather than 2015. Therefore, while the potential excess mercury emissions from 2010 to 2014 could be 3000 pounds, the actual mercury emissions are expected to be closer to 1800 - 2000 pounds for the time period between 2010 to December 31, 2014. ((600 lb/yr - 150)*4 years).

The Department determined the significance of this rule making action in accordance with SEQRA and the Department's implementing regulations at 6 NYCRR Part 617. The promulgation of Part 246 implicates none of the indicators of significant adverse impacts in 6 NYCRR 617.7(b), which include, a substantial adverse change in air or water quality or the creation of a hazard to human health. The adoption of Part 246 will have a significant positive impact on the environment by substantially reducing the amount of mercury emitted by coal-fired EGUs, one of the largest emitting source categories in the State.

The Department is revising the requirement for inlet testing in section 246.3(b)(2) to allow for fuel sampling. The second stack test requirement is intended to be satisfied with the stack testing requirements in the Relative Accuracy Test Audit (RATA) procedures in Part 75 or the low mass emission testing requirements of 40 CFR Subpart I.

Some commenters contend that the monitoring technology may be valid with respect to a cap-and-trade program but is not valid for Part 246, which establishes definite emission limitations. The Department disagrees. Control strategies employed in New York State will generate flue gas environments no different than any other state where a monitoring program and its associated monitoring systems are required. Part 246 will require the same level of sensitivity as those facilities participating in the federal cap-and-trade program under CAMR. EPA is confident that the CAMR monitor certification will be met, and the Department agrees. Part 246 and 40 CFR Part 75 also allow for alternate monitoring techniques such as sorbent trap monitoring, if CEMs do not appear appropriate for a particular facility. Also, the low emitter exemption is available for facilities using technology to reduce mercury. Existing EGUs have eight years until they will be required to meet the 0.6 lbs of mercury per trillion Btu limit (lbs Hg/10¹² Btu) or a stack concentration of 0.6 ug/m³.

In response to comments in connection with emission reporting, the Department has revised Part 246 to state "12 month rolling total, rolled monthly, reported quarterly." The Department has revised the Phase II emission standard to reflect a facility-wide 30-day rolling average, rolled daily, reported quarterly.

The Department established the 0.6 lb/10¹² Btu standard based in part on the Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Proposed Rule, 69 FR 4652 - 4752 (January 30, 2004). In this proposal, EPA established a new source performance standard of 0.6 lb/10¹² Btu for bituminous coal and 2.0 lb/10¹² Btu for subbituminous coal. According to the ICR, New York State's average emission rate was 6.26 lb/10¹² Btu. The Department determined that a 0.6 lb/10¹² Btu emission limit was appropriate based upon the federal new source performance standard.

Commenters questioned the availability and reliability of continuous emission monitoring systems to meet the requirements of Part 246. Part 246 offers two mass emission monitoring options, continuous emission monitoring systems (CEMs) and sorbent trap monitoring systems. In addition, for those units that qualify for low mass emissions under 40 CFR 75

Subpart I, periodic emission testing to quantify mercury emissions will be required.

The Department believes that continuous emission monitor systems have been field tested and are currently available for field deployment and have sensitivities well below the future, Phase II Part 246 limit equivalent concentrations of 0.6 ug/scm (wet). In addition to CEMS, sorbent trap monitoring systems with ultimate analysis utilizing ambient air analyzers have the ability to monitor average mercury mass emissions over a time period of well below 0.1 ug/scm. Part 246 will require the same level of sensitivity as those facilities participating in the federal cap-and-trade program under CAMR. EPA is confident that the CAMR monitor certification deadline will be met, and the Department agrees.

Jamestown BPU commented that the Department's cost estimates were inaccurate. The Department used all appropriate and available cost and operational information regarding the Jamestown S. A. Carlson generating station to develop specific cost estimates for annual financial impact and incremental costs on generation. The Department believes the cost estimates for an activated carbon injection system under different carbon injection rates used in the RFA are most appropriate as a carbon injection system's capital cost is not scaled on electrical generation in the same fashion traditional air pollution control devices are.

The cost range provided in the Regulatory Flexibility Analysis estimates the additional cost of generation over the four boilers and two generators subject to Part 246. The incremental cost of generation is based on the purchase and operation of an ACI system in conjunction with the facility's existing pollution control equipment. To enable Jamestown and other facilities to target the most economically feasible units for mercury control, the Department is modifying Part 246 to allow the Phase II emission standard to be a facility-wide 30-day rolling average, rolled daily, reported quarterly.

The set-aside of 40 pounds would be in effect until December 31, 2014. At this time, the Department is aware of the installation of 43 MW of additional electric generating capacity by Jamestown and NRG announced the development of a 600 MW clean coal project in June of 2006 with an expected operational date of 2014. Two additional existing sources are on cold stand-by and equated to less than 1 pound of mercury emissions if they operated at their 2000 levels or 12 pounds if they operated at faceplate capacity for 8,760 hours a year, an unlikely scenario. Even with these two announced projects that could commence operation during Phase I, the Department is certain that neither the new source set aside nor the State's annual will be exceeded. After 2014, all existing facilities and new projects would need to meet the Phase II emission limit for mercury.

EPA sent a number of comments concerning Part 246 definitions and applicability criteria. The Department is revising Part 246 as a result of some comments submitted by EPA. None of these changes are substantial or significant and all are discussed in detail in the response to comments. The Department is complying with the minimal requirements of CAMR but is not adopting a cap-and-trade program.

Action taken: Amendment of sections 405.9 and 405.19 and addition of Part 722 to Title 10 NYCRR.

Statutory authority: Public Health Law, art. 6A and sections 2805-1, 2805-i and 2805-p

Subject: Sexual assault forensic examiner.

Purpose: To establish standards necessary for implementation of chapter 1, section 24 of the Laws of 2000 and section 2805-e of the Public Health Law.

Substance of final rule: The proposed regulatory changes update existing requirements for the care and treatment of sexual assault survivors and add a new Part 722 to establish standards and processes for the Department of Health (DOH or Department) hospital-based Sexual Assault Forensic Examiner (SAFE) program designation. Operational standards will be incorporated and identified as standards that programs must agree to meet as a condition of designation and continued recognition.

New Part 722 defines operational standards and processes a program must meet for Department designation as a hospital-based SAFE program. Programs must agree to meet these standards as a condition of designation and continued recognition.

Section 405.9(c) is being amended to clarify every hospital's responsibility to provide treatment to sexual assault survivors as well as to maintain evidence.

Section 405.19(c)(4) is being amended to provide an appropriate cross-reference to section 405.9(c).

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 722.1(a)(3), 722.2(a)(4), 722.5(a)(4) and 722.6(a)(8).

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

Revised Regulatory Impact Statement

Statutory Authority:

These regulations are authorized pursuant to the passage of the Sexual Assault Reform Act (SARA), Chapter 1 of the Laws of 2000, which amends Public Health Law ("PHL") section 2805-i. In accordance with SARA, section 2805-i(4-b)(a) of the PHL, as amended, authorizes the Commissioner, to "with the consent of the directors of interested hospitals in the state and in conjunction with the commissioner of the division of criminal justice services, designate hospitals in the state as the sites of a twenty-four hour sexual assault forensic examiner (SAFE) program." The hospital sites "shall be designated in urban, suburban and rural areas to give as many state residents as possible ready access to the sexual assault forensic examiner program."

Section 2803(2) of the PHL authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, to effectuate the provisions and purposes of Article 28.

Legislative Objectives:

A primary legislative objective of Article 28 of PHL is "the protection and promotion of the health of the inhabitants of this state." PHL section 2800 provides, inter alia, that "the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services. . . ." Subdivision (5) of PHL section 2805-i, as amended, authorizes the Commissioner to promulgate such rules and regulations as may be necessary and proper to carry out effectively the provisions of this section regarding the designation of hospital-based sexual assault forensic examiner programs. These regulatory standards will promote quality medical and forensic care to survivors of rape and sexual assault in the hospital setting.

Needs and Benefits:

The Department has established regulatory standards to promote quality care for survivors of rape and sexual assault in hospitals throughout the state as set forth in:

Section 405.9 – Establishment of hospital-based protocols and the maintenance of sexual offense evidence;

Section 405.19 – Emergency Services.

The above regulations are amended to clarify every hospital's responsibility for the treatment of survivors as well as for the maintenance of evidence. This clarification is supported by Chapter 504 of the Laws of 1994.

Every hospital in New York State must ensure that all survivors of rape or sexual assault who present at the hospital are provided with care that is consistent with current standards of practice. In addition to maintaining

Department of Health

ERRATUM

A Notice of Amended Adoption, I.D. No. HLT-20-06-00003-AA pertaining to Non-Transplant Anatomic Banks, published in the January 3, 2007 issue of the *State Register* contained an incorrect effective date. The effective date is February 24, 2007.

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

NOTICE OF ADOPTION

Sexual Assault Forensic Examiner (SAFE) Programs

I.D. No. HLT-26-06-00003-A

Filing No. 1593

Filing date: Dec. 28, 2006

Effective date: Jan. 17, 2007

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

evidence collection, hospitals are expected to maintain current protocols regarding the care of patients reporting sexual assault, provide survivors with appropriate assessment, treatment and referrals, provide emotional support, and minimize the potential for further trauma. Hospital staff are also expected to discuss with the survivor the option of reporting the offense to the police, offer to provide and provide if requested, prophylaxis against pregnancy, sexually transmitted diseases, hepatitis B and HIV, as appropriate, and reasonably assure the survivor an appropriate and safe discharge. Additionally, all hospitals shall advise patients of the availability of services provided by local rape crisis or victim assistance organizations and contact such an organization when an alleged sexual offense victim seeks treatment so that a representative may offer services to the survivor.

Further, a new Part 722 is being added to define operational standards and process for SAFE designation. Hospitals interested in becoming DOH-approved SAFE programs must agree to meet these standards as a condition of designation and continued recognition.

To enhance access to and the quality of care to survivors of sexual assault, the Department implemented a hospital-based twenty-four hour sexual assault forensic examiner (SAFE) program. This designation reflects the hospital's intention to comply with DOH requirements and provide more comprehensive services to survivors. These services include providing consistent and compassionate state of the art medical care and providing forensic examinations in private settings by specially trained DOH-certified sexual assault forensic examiners.

There have been significant changes pertaining to the care and treatment of the survivors of sexual assault. Only in recent years have health care facilities begun to recognize their responsibility to have trained staff available to provide specialized services for survivors of sexual assault. Hospitals now recognize the importance of having knowledgeable staff to conduct sexual assault examinations, gather forensic evidence, and work with the survivors to enable the recovery process to begin.

SAFE program philosophy is based upon the belief that providing a specialized standard of medical care and evidence collection to survivors of sexual assault will support recovery and prevent further injury or illness arising from victimization, and may increase the successful prosecution of sex offenders for survivors who choose to report the crime to law enforcement. In a journal review conducted by the Division of Criminal Justice Services ("DCJS") and reported in an unpublished Report on New York State Sexual Assault Examiner Programs (June 2002), SAFE programs are credited with significantly improving medical-forensic treatment of sexual assault survivors.

Anecdotal claims of programs' success in increasing survivor use of aftercare services, improving reporting rates and facilitating successful prosecution, are found throughout the literature as well. The confidential and sensitive nature of sexual assault can make it difficult to contact survivors directly for their perceptions of the services they received from SAFE programs. In an effort to obtain information about the efficacy of the program, DCJS surveyed thirty prosecutors (with a response from 22 or 73%) and 33 rape crisis advocate programs (with a response from 25 or 76%) for

- (1) their perceptions of the quality and effectiveness of SAFE services,
- (2) the quality of forensic evidence collected by SAFE practitioners in comparison to non-SAFE practitioners, and
- (3) the effects, if any, of those differences upon the prosecution of sexual assault cases and the survivors' use of aftercare.

Of the prosecutors who were able to distinguish SAFE from non-SAFE cases, almost 90% of the 22 responders indicated they were very satisfied with SAFE programs and view them as valuable in achieving successful outcomes in sexual assault cases. Advocates also rated SAFE hospital medical treatment and quality of forensic evidence collection as superior to the treatment and quality of evidence by and from non-SAFE hospitals. They also consider SAFEs more knowledgeable, competent, more experienced and better equipped than non-SAFE medical providers.

Hospitals wishing to provide more comprehensive services to survivors may seek and obtain DOH designation as SAFE programs under new Part 722. The DOH-approved SAFE program will involve an interdisciplinary collaborative effort involving the SAFE program, a rape crisis center, law enforcement, the prosecutor's office and other appropriate community service agencies. These organizations will provide a coordinated response that not only effectively meets the needs of the sexual assault survivor, but also improves the overall community response to sexual assault.

In reviewing applications from interested hospitals, the Department is required by law to consider specific criteria when designating hospital SAFE programs, including the following:

- (1) location,
- (2) capacity to coordinate services for survivors,
- (3) accessibility for survivors with disabilities,
- (4) existing services for survivors,
- (5) capacity to collect uniform data, and
- (6) compliance with applicable Federal and State laws and regulations and standards established in the NYS Protocol for the Acute Care of the Adult Patient Reporting Sexual Assault (as currently posted on the DOH website at www.health.state.ny.us/nysdoh/sexual_assault/index.htm).

The implementation of DOH-approved hospital-based SAFE programs will result in greater access to more appropriate levels of care for survivors of sexual assault and strengthen the relationships between the SAFE programs and others who serve this population.

Failure to adopt these regulations will negatively impact the ability of the Department to comply with SARA as well as to improve the care and treatment of the survivor of rape and sexual assault.

Costs:

Costs for the Implementation of and Compliance with the Regulations to Regulated Entities:

There should not be a negative fiscal impact on hospitals. Although there was no appropriation of funds for hospitals in SARA, currently all hospitals are required to provide medical services to all patients presenting at their hospitals, including survivors of sexual assault. Many hospitals across the state already have SAFE examiners. The regulations will merely establish quality standards for SAFE programs that will result in improved outcomes of treatment for survivors.

There are also data collection requirements, which will be helpful to the SAFE programs in evaluating their services to the community. A designation as a DOH-approved SAFE program will recognize that such a hospital is able to provide the highest level of care to survivors, including the on-site provision of HIV prophylaxis and emergency contraception; and with the interdisciplinary collaboration required in the response to sexual assault, may result in a positive perception by the community.

Seeking DOH designation as a SAFE program is voluntary. Depending on the level of services currently offered, there may be some additional costs to the hospitals, but a hospital need not seek the designation if its administrator feels that doing so would compromise the hospital financially.

The expansion of section 405.9(c) of this Title clarifies treatment standards that all hospitals should be using in the care of survivors of sexual assault and therefore, no additional expense should be incurred.

Costs to State and Local Governments:

There will be no additional costs to State or local governments.

Costs to the Department of Health:

The cost of designating hospitals will be absorbed by the Department using existing resources. The statewide designation process will be carried out on a continuous basis, with interested hospitals applying at their discretion. It is expected that the submission of applications will be staggered and not pose an undue burden on staff.

Paperwork:

Hospitals interested in becoming sites of DOH-approved SAFE programs will need to complete a survey describing their ability to meet required standards. These hospitals will also be required to maintain and submit data related to their activities in a format prescribed by the Department. This data will enable the SAFE program to document the extent of the problem of sexual assault and the level of service it provides, determine the cost of the service and provide information for program planning, quality improvement, and evaluation purposes. The data will be submitted periodically for use in program monitoring and public health and criminal justice planning.

Local Government Mandates:

These amendments do not impose any new program, services, duties or responsibilities upon any county, city, town, village, school district, fire district, or other special district.

Duplication:

These regulations do not duplicate any other State or Federal law or regulation.

Alternatives:

Significant effort has been made by the Bureau of Women's Health (BWH) to obtain meaningful input into this process by stakeholders and other interested parties. A workgroup comprised of experts involved with the prevention, care, treatment and intervention of crises precipitated by the crimes of rape and sexual assault was convened to advise the Department about the impact of designating hospital-based SAFE programs in NYS. This group was comprised of rape crisis service providers and

advocates, sexual assault examiners (nurses and physicians), forensic pathologists, the NYS Police, representatives from the Crime Victims Board and DCJS, The Greater NY Hospital Association, emergency department physicians, and various representatives from DOH, including the Office of Health Systems Management and the Division of Legal Affairs and BWH. Based on the input received from the workgroup, the Department developed standards for hospital-based SAFE programs, sexual assault examiners and individuals who wish to provide training to sexual assault examiners. These standards and SARA form the basis for the proposed regulations.

The concept of designating DOH-approved hospital-based SAFE programs throughout NYS has the strong support of health care and victim service providers and rape crisis and victim advocates. The proposed regulations reflect the highest standard of care for survivors of sexual assault.

Federal Requirement:

At present, the Federal Government does not have any minimum standards for this area of injury prevention and public health. There are no Federal requirements in place for this area.

The DOH-approved hospital-based SAFE program will help New York meet Healthy People 2010 injury prevention goals established by the U.S. Department of Health and Human Services.

Compliance Schedule:

The proposed regulation will become effective upon publication of a Notice of Adoption in the State Register. Since applications will be accepted continuously and designation is voluntary, hospitals that do not wish to become DOH-approved SAFE Programs will not need to comply with the proposed regulation. Compliance schedules for those hospitals seeking DOH approval will be set in accordance with the date on which the application is received.

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

Although the regulation has been changed since it was published in the *State Register* on June 28, 2006, the changes do not necessitate any changes to the Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

Comment:

Section 405.9(c)(1)(v) – One commenter requested the sentence “provide to patients, upon request, prophylaxis against pregnancy, sexually transmitted diseases, hepatitis B and HIV, as medically indicated” to “provide patients information about prophylaxis against pregnancy, sexually transmitted diseases, hepatitis B and HIV, as medically indicated.”

Response:

Changes are not recommended. Section 405.9(c)(1)(iv) requires hospitals to provide written and verbal information to patients in regards to treatment options and emergency prophylaxis to facilitate an informed choice. In addition, the phrase “upon request” mirrors the language in Section 2805(p) of the Public Health related to emergency contraception.

Comment:

Section 405.9(c)(2)(i) – One commenter suggested the listing of sexual offenses subject to the provision of the subdivision either be expanded or deleted as “providing a partial list may be construed as only those offenses listed being subject to evidence collection.”

Response:

Changes are not recommended. The listing of sexual offenses is in current regulation. The language “as defined in Article 130 of the Penal Law” was to clarify the definition of sexual offense and accompanying terms.

Comment:

Section 405.9(c)(2)(v) – One commenter requested a clarification of the types of burn injuries that must be reported to the state fire administrator.

Response:

Changes are not recommended. The regulation also references Section 265.26 of the Penal Law which defines burn injuries or wounds to be reported.

Comment:

Section 405.9(c)(2)(vii) – One commenter requested language in this section be amended to state that, if evidence has not been surrendered to police within 30 days of treatment, the evidence “may” be discarded rather than “shall” be discarded in cases where hospitals with more storage would choose to keep the evidence beyond the 30 day period.

Response:

Changes are not recommended. The current language conforms to Section 2805-I of Public Health Law that stipulates that sexual offense evidence will be discarded after 30 days.

Comment:

Section 405.9(c)(1)(iii) - One commenter requested that this section “advise patients of the availability of services provided by a local rape crisis or victim assistance organization and, unless the patient declines such services, contact such organization. . . .so a representative may offer the patient the services the organization provides” be revised to require patient consent.

Response:

Changes are not recommended. The current language requires the patient be informed of the services and provides the opportunity for the patient to decline. There is also no consent requirement in Section 2805-I of Public Health Law.

Comment:

Section 722.1(a)(3) – One commenter suggested that this section that currently reads “are designed to provide specialized standards of medical care and evidence collection that support recovery and prevent further injury or illness arising from the trauma for survivors who choose to report the crime to law enforcement and may increase the successful prosecution of sex offenders” is revised to read “are designed to provide specialized standards of medical care and evidence collection that support recovery and prevent further injury or illness arising from the trauma for all survivors and may increase the successful prosecution of sex offenders for survivors who choose to report the crime to law enforcement.” The commenter stated that current language seems to indicate that specialized standards only apply to survivors choosing to report the crime to law enforcement.

Response:

The technical amendment has been made to better reflect the intent of the regulation.

Comment:

Section 722.2(a)(4) – One commenter requested that the term “disabled individuals” be replaced with the more appropriate term “individuals with disabilities” as the term “disabled individuals” is “labeling and potentially offensive to persons with disabilities.”

Response:

This technical amendment has been made.

Comment:

Section 722.5(a)(4) – One commenter requested that the term “disabled” be replaced with the more appropriate term “individuals with disabilities.”

Response:

This technical amendment has been made.

Comment:

Section 722.6(a)(8) – One commenter requested that the term “disabled patients” be replaced with the more appropriate term “patients with disabilities”

Response:

This technical amendment has been made.

Comment:

Section 722.6(a)(5) and 722.9(a) – One commenter requested that the 60 minute timeframe required in regulation for the SAFE examiner to meet the patient at the hospital should be extended for situations such as distance the examiner may live from the hospital etc.

Response:

Changes are not recommended. Both sections include the phrase “except under exigent circumstances” which allows for a greater timeframe if needed due to circumstances such as weather or hospitals located in rural areas.

Comment:

Section 722.6(a)(10) – One commenter suggested that the sentence “For example, HIV PEP should be offered within 0-34 hours after exposure. If a sexual assault survivor is too distraught to engage in a discussion about the drug regimen or make a decision about whether to initiate treatment at the initial assessment, the clinician should offer a first dose of medication and make arrangements for a follow-up appointment within 24 hours to further discuss the indications of PEP” be added to clarify the section discussing prophylaxis for sexually transmitted diseases, HIV and hepatitis B.

Response:

Changes are not recommended. Section 766.6(a)(9) states that medical treatment must be consistent with generally accepted standards, including standards such as those incorporated in the Department’s Protocol for the

Acute Care of the Adult Patient Reporting Sexual Assault (Protocol). The Protocol contains details regarding medical treatment and follow-up that would not be appropriate to include in regulation.

Comment:

Section 722.7(a)(1) – One commenter requested that the language that hospital emergency staff “provide triage and assessment in a timely manner” be revised to require that the triage and assessment take place “within sixty minutes or less of the patient’s arrival at the hospital. The same commenter requested that the rape crisis advocate be contacted at the same time as the triage and assessment.

Response:

Changes are not recommended. Section 722.7(a) already states the emergency department staff shall immediately implement the protocol and Section 722.6(a)(5) already requires a SAFE examiner to meet the patient within sixty minutes of the patient’s arrival in the hospital. Section 722.7(a)(3) currently requires that the rape crisis advocate is contacted the same time as the SAFE examiner. No further clarification is required.

Comment:

Section 722.10(a) – One commenter suggested that the Continuous Quality Improvement Program in the SAFE program include that the survivor be provided with written policies and a form to evaluate the quality of services.

Response:

Changes are not recommended. This section requires that the SAFE program develop a quality improvement program which will be integrated into the hospital’s overall quality improvement program. The written policies discussed are related to the establishment of the quality improvement program. These policies would not be appropriate to give to rape survivors. The components listed as part of the quality improvement program are examples and not an inclusive list. The addition of a form for the survivor to evaluate services would be optional on the part of the hospital and also dependent on the survivor’s situation and therefore unnecessary to put into regulation.

Comment:

Needs and Benefits – One commenter requested that the term “disabled survivors” be changed to “survivors with disabilities”.

Response:

This technical amendment has been made.

Comment:

One commenter suggested that the requirement for a “local rape crisis or victim assistance organization” be revised to just include “rape crisis counselor” as the commenter stated “counselor” is a more universal term.

Response:

Changes are not recommended. The current language mirrors Section 2805-I of Public Health Law and also provides hospitals with the flexibility to contact a victim advocate based on the hospital’s and local resources and the patient’s needs.

Comment:

One commenter stated that sexual “offense” and sexual “assault” are used interchangeably throughout the regulations and suggested that the same phrase be used throughout.

Response:

Changes are not recommended. Choices of terms are consistent with practices and terminology used in the field, and in some cases the use of “assault” in place of “offense” and vice versa would be inappropriate. Implementation and enforcement of regulations has not, and will not, be affected by the use of both terms.

Division of Housing and Community Renewal

NOTICE OF WITHDRAWAL

New York City Rent and Eviction Regulations

I.D. No. HCR-42-06-00018-W

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

Action taken: Notice of proposed rule making, I.D. No. HCR-42-06-00018-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on October 18, 2006.

Subject: City Rent and Eviction Regulations (CRER).

Reason(s) for withdrawal of the proposed rule: Agency seeks further review and examination of proposed regulations.

NOTICE OF WITHDRAWAL

Emergency Tenant Protection Regulations

I.D. No. HCR-42-06-00019-W

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

Action taken: Notice of proposed rule making, I.D. No. HCR-42-06-00019-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on October 18, 2006.

Subject: Emergency Tenant Protection Regulations (TPR).

Reason(s) for withdrawal of the proposed rule: Agency seeks further review and examination of proposed regulations.

NOTICE OF WITHDRAWAL

State Rent and Eviction Regulations

I.D. No. HCR-42-06-00020-W

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

Action taken: Notice of proposed rule making, I.D. No. HCR-42-06-00020-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on October 18, 2006.

Subject: State Rent and Eviction Regulations (SRER).

Reason(s) for withdrawal of the proposed rule: Agency seeks further review and examination of proposed regulations.

NOTICE OF WITHDRAWAL

Rent Stabilization Code

I.D. No. HCR-42-06-00021-W

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

Action taken: Notice of proposed rule making, I.D. No. HCR-42-06-00021-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on October 18, 2006.

Subject: Rent Stabilization Code (RSC).

Reason(s) for withdrawal of the proposed rule: Agency seeks further review and examination of proposed regulations.

State Division of Human Rights

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

General Regulations; Election of Arbitration

I.D. No. HRT-03-07-00006-P

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

Proposed action: This is a consensus rule making to amend Part 466 and repeal Part 467 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 290.3, 293.2, 295.5 and 297

Subject: General regulations; election of arbitration.

Purpose: To make minor changes, including updating various addresses, providing information regarding changes relative to Freedom of Information requests, and information about the division’s website; and repeal an obsolete rule.

Text of proposed rule: 466.5(g) A copy of the plan, when approved, shall be filed in the offices maintained by the division at [270 Broadway, New York City] *One Fordham Plaza, Bronx, New York 10458* and at the regional offices serving the regions in which the plan is to be operative. Such plans shall be open to public inspection during regular business hours of the division.

466.6(b) Designation of privacy compliance officer.

(1) [The privacy compliance officer for a regional office of the division, designated pursuant to 21 NYCRR 1401.2, is the regional director for that office. His business address is the address of said office.] The privacy compliance officer for [the central office of] the division is the division's [librarian] *freedom of information officer*. This business address is: [55 West 125th Street, New York, NY 10027] *One Fordham Plaza, Bronx, New York 10458*.

(2) The privacy compliance officer[s] [are] is responsible for:

466.6(d) Location.

(1) Records shall be made available at the main office of the agency, which is located at: [55 West 125th Street, New York, NY 10027] *One Fordham Plaza, Bronx, New York 10458*.

466.6(f)(4) Within five business days of the receipt of a request, the agency shall provide access to the record, deny access in writing explaining the reasons therefore, or acknowledge the receipt of the request in writing, stating the approximate date when the request will be granted or denied, which date shall not exceed 30 days from the date of the acknowledgment.

466.6(h)(3) Any such denial may be appealed to the commissioner, who may decide the appeal him/herself or refer it to General Counsel [55 West 125th Street, New York, NY 10027], *One Fordham Plaza, Bronx, New York 10458*.

466.6(k)(2) Fees.

(2) Unless otherwise prescribed by statute, copies of records shall be provided:

(i) at a fee [of 10 cents per photocopy page up to 9 x 14 inches;] *in the amount prescribed by Section 87 of the Freedom of Information Act*; or

466.7(b) Request for records. Any person may request to inspect and copy any record in the division's custody which is required to be made available. [Said] *Such* request shall be in writing [and on a form to be supplied by the division] *and sent to the division by mail, facsimile or electronic mail. A form is available on the division's website, www.dhr.state.ny.us*. [Request forms may be obtained from any office of the division during regular office hours. Such forms when completed shall be filed in such office.]

466.7(d)(2) Unless otherwise prescribed by statute, copies of records shall be provided:

(i) at a fee [of 15 cents per photocopy page up to 9 x 14 inches;] *in the amount prescribed by Section 87 of the Freedom of Information Act*; or

466.7(e) Appeal of denial of record. Any person denied access to a requested record may, within 30 days, appeal in writing to the commissioner. The commissioner may decide the appeal himself or herself or refer it to general counsel. If the commissioner or general counsel denies access to the requested record, his/her reasons shall be explained fully in writing within seven business days of the time of the appeal.

466.7(f) Designation of records access officer. [The records access officer for a regional office of the division, designated pursuant to 21 NYCRR 1401.2, is the regional director for that office. His business address is the address of said office.] The records access officer for the [central office of the] division is the division's [librarian] *freedom of information officer*. His/her business address is: [55 West 125th Street, New York, NY 10027] *One Fordham Plaza, Bronx, New York 10458*.

466.10(c) The commissioner may, in his/her sole discretion, issue a declaratory ruling. Nothing shall be deemed a declaratory ruling unless it is entitled as such, is in writing and is signed by the commissioner.

Text of proposed rule and any required statements and analyses may be obtained from: Jane M. Stack, Senior Attorney, Division of Human Rights, One Fordham Plaza, Fourth Fl., Bronx, NY 10458, (718) 741-3225, e-mail: jstack@dhr.state.ny.us

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

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

Consensus Rule Making Determination

It is unlikely that any person will object to the rule as revised, as no substantive changes have been made in the regulations. The changes include updating various addresses, providing information regarding changes relative to Freedom of Information requests, and information about the Division's website.

Job Impact Statement

1. Nature of impact: None.
2. Categories and numbers affected: None.
3. Regions of adverse impact: None.
4. Minimizing adverse impact: None.
5. Self-employment opportunities: Not applicable.

Insurance Department

EMERGENCY RULE MAKING

Market Stabilization Mechanisms for Individual and Small Group Market

I.D. No. INS-03-07-00005-E

Filing No. 2

Filing date: Jan. 2, 2007

Effective date: Jan. 2, 2007

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

Action taken: Amendment of sections 361.5 and 361.7(a), renumber sections 361.6-361.7 to sections 361.7-361.8 and addition of new section 361.6 to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3233; and L. 1992, ch. 501, L. 1995, ch. 504

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

Specific reasons underlying the finding of necessity: The first filing for the new pooling methodology is November 10, 2006.

Subject: Market stabilization mechanisms for individual and small group market.

Purpose: To create a new market stabilization process in the individual and small group market, to share among plans substantive cost variations attributable to high cost medical claims.

Text of emergency rule: The title of Section 361.5 is amended to read as follows:

Section 361.5 Pooling of variations in costs attributable to variations in specified medical conditions (SMC) beginning in 1999 through 2006.

Section 361.5 is hereby amended to add a new subdivision (k) to read as follows:

(k) *Reporting requirements, payments to the pools, or collections from the pools under this section shall not be required in 2005 or 2006.*

Sections 361.6 and 361.7 are hereby renumbered 361.7 and 361.8 and a new section 361.6 is added to read as follows:

361.6 *Pooling of variations of costs attributable to high cost claims beginning in 2006 for individual and small group policies, other than Medicare supplement and Healthy New York policies.*

(a) *In each pool area a risk adjustment pool is established in connection with individual and small group health insurance policies, other than Medicare supplement insurance policies and Healthy New York health insurance policies. Each pool shall operate independently; that is, all calculations and payments described below are made for each pool independently of any other pool.*

(b) *The annual funding amount for all pool areas combined is as follows:*

(1) \$80,000,000 for 2007;

(2) \$120,000,000 for 2008; and

(3) \$160,000,000 for 2009 and each calendar year thereafter.

(c) *The annual funding amount for each pool area is in proportion to the annualized premiums in that pool area. For 2007, the amounts are as specified in the table below. For 2008 and each calendar year thereafter, each pool participant shall provide to the superintendent annualized premium information on or before January 31. The superintendent shall advise carriers of the funding amount for each pool area within sixty days of receipt of annualized premium information from all carriers.*

Pool Area	Percentage of Premiums	2007 Pool Area Funding Amount
Albany	5.5%	\$4,400,000
Buffalo	7.4%	\$5,920,000
Mid-Hudson	5%	\$4,000,000
NYC	69.5%	\$55,600,000
Rochester	5.1%	\$4,080,000
Syracuse	4.8%	\$3,840,000
Utica/ Watertown	2.7%	\$2,160,000
Total	100%	\$80,000,000

(d)(1) Each carrier's share of the total funding payable to or from the pools shall be determined based on the carrier's high cost claims in its areas of operation.

(2) In order to implement the phase in of the new specified medical condition pooling process, on or before November 10, 2006 each carrier shall report to the superintendent its annualized premium amount as of December 31, 2005 and its cumulative calendar year claims paid in 2005 for individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, using the form in subdivision (h) of this section for each pool area. The superintendent will provide carriers with an estimate of potential pool receivables or liabilities using this 2005 data for advisory purposes only.

(3) Each following year, beginning in 2007, on or before January 31, each carrier shall report to the superintendent its annualized premium amount as of December 31 of the preceding year and its cumulative calendar year claims paid in the preceding year for individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, using the form in subdivision (h) of this section for each pool area. In 2007, the superintendent will provide carriers with a second estimate of potential pool receivables or liabilities using 2006 data, for advisory purposes. Payments to the pools, or collections from the pools, shall be required beginning in 2008 and shall be based upon the data from the preceding calendar year.

(4) Cumulative calendar year claims paid shall include the total of all claim payments on behalf of an insured individual from January 1 through December 31 of the preceding year, regardless of when the services were provided.

(5) Cumulative calendar year claims paid shall include payments for hospital and medical services, prescription drug payments, capitation payments, and regional covered lives assessments paid pursuant to section 2807-t of the Public Health Law or percentage surcharges paid pursuant to section 2807-j or section 2807-s of the Public Health Law. Carriers that include the covered lives assessments shall convert the family covered lives assessment into a per member assessment component in order to be included with claims expenses attributable to any one member.

(6) Cumulative calendar year claims paid shall not include amounts paid in satisfaction of the 24 percent surcharge requirement set forth in section 2807-j(2)(b)(i)(B) of the Public Health Law or interest paid out by a carrier pursuant to section 3224-a(c) of the Insurance Law.

(7) Each carrier's submission shall be signed by an officer of the carrier certifying that the information is accurate.

(8) If a carrier makes a submission after January 31 and the carrier is a pool payer, the carrier's payment into the pool will be increased by one percent interest per month. If a carrier makes a submission after January 31 and the carrier is a pool receiver, the carrier's distribution will be reduced by one percent per month.

(e) The superintendent shall calculate each carrier's share of the total funding payable to or from the pools pursuant to the example in subdivision (i) of this section for each pool area as follows:

(1) Identify the total claims paid by each carrier for the following types of policies: individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, other than Medicare supplement and Healthy New York insurance policies.

(2) Identify the total claims paid in excess of \$20,000 for each insured by type of policy.

(3) For each carrier for each type of policy, divide the claims paid in excess of \$20,000 by the total claims paid (the amount specified in paragraph (2) of this subdivision divided by the amount specified in paragraph (1) of this subdivision) to determine the high cost claim ratio.

(4) Calculate the average high cost claim ratio for all carriers for all types of policies combined and multiply that ratio by the total claims paid for each carrier for each type of policy (a carrier's amount specified in paragraph (1) of this subdivision multiplied by the average high cost claim amount specified in paragraph (3) of this subdivision.)

(5) Subtract the amount calculated in paragraph (4) of this subdivision from the amount in paragraph (2) of this subdivision for each carrier for each type of policy to determine the adjustment needed to equalize high cost claims and determine if the carrier is a net contributor or receiver.

(6) Sum the net contributions of all carriers who are net contributors in the pool area to determine the total net contribution.

(7) Divide the pool area funding amount by the total of paragraph (6) of this subdivision and multiply by the amount identified for each carrier for each type of policy in paragraph (5) of this subdivision to determine the carrier's net pool contribution or distribution.

(f) Billings will be done by the superintendent beginning in 2008 within thirty days of receipt of submissions from all carriers, and payments will be due from carriers within five business days from the date billed. Payments made after the due date shall include interest at a rate of one percent per month. Subsequent to the billing date, but within the calendar year, carrier data that formed the basis of the billing will be audited. In the event audits necessitate post-billing adjustments, such adjustments will be charged or credited in the next year's billing or distribution. Additional payments due from any carrier whose data errors caused it to underpay shall include a one percent interest charge from the original due date.

(g) A carrier shall, with respect to distributions from the pools attributable to each type of policy, as determined in paragraph (7) of subdivision (e) of this section, without reduction for contributions owed on other types of policies:

(1) refund the distributions directly to insureds based upon the type of policy that caused the payments to be received without consideration of minimum loss ratio provisions; or

(2) submit a detailed plan to the superintendent for approval:

(i) demonstrating how the distribution will be applied to reduce future premium rates for the type of policy whose insureds caused the payments to be received, or

(ii) providing a detailed explanation as to how the distribution was considered in the development of premium rates for that year.

(h) Claim Submission Form.

Claims Paid From January 1–December 31, ()

Carrier: _____

Pool Area: _____

Total annualized premium for individual standardized direct payment health maintenance organization (HMO) policies, individual standardized

direct payment point of service (POS) policies, other individual health insurance policies, and small group policies: _____.

Cumulative	Direct	Direct	Direct	Small Group	Total
Total Claims Paid Above Listed Amounts (Attachment Point)					
	Payment HMO	Payment POS	Payment Other		
ZERO					
\$10,000					
\$15,000					
\$20,000					
\$25,000					
\$30,000					
\$35,000					
\$40,000					
\$45,000					
\$50,000					
\$60,000					
\$70,000					
\$80,000					
\$90,000					
\$100,000					

Instructions:
 * Do not include Medicare Supplement Policies or Healthy New York Policies.
 ** For each insured determine the cumulative claims paid from January 1 through December 31 and report the total claims paid for all insureds for each type of policy listed above.
 *** At each dollar level (Attachment Point), report all claims paid over that attachment point level amount from January 1 through December 31 for any insured. Cumulative total claims paid above the ZERO attachment point level would equal the total claims paid by the carrier for all insureds for the period. At the \$10,000 attachment point level, the amount would equal the sum of all claim amounts exceeding the \$10,000 attachment point level for any insured from January 1 through December 31. (Example: For an insured with \$17,000 of cumulative total claims paid in the calendar year, \$17,000 would be included in the zero level attachment point total, \$7,000 would be included in the \$10,000 level attachment point total, and \$2,000 would be included in the \$15,000 attachment point total.)
 (i) Chart for calculation of pool amounts.

	1	2	3	4	5	6
						Pool Amount Owed or Receivable (Pre-determined Total Pool Amount Divided by Column 5 Total Net Contributions of All Net Contributors Multiplied by Column 6)
			High Cost Claim Ratio (Column 2 Divided by Column 1)	Average High Cost Claim Multiplied by (Column 3 Multiplied by Column 4)	Adjustment to Equalize High Cost Claims (Column 5 Minus Column 4)	Contributions of All Net Contributors Multiplied by Column 6
Albany Region	Total Claims Paid	Excess of \$20,000	by Column 1	Multiplied by Average)	2 Minus 4)	Column 5)
Carrier A						

Dir Pay HMO
Dir Pay POS
Dir Pay Other
Small Group
Carrier A Net Contribution or Distribution
Carrier B
Dir Pay HMO
Dir Pay POS
Dir Pay Other
Small Group
Carrier B Net Contribution or Distribution
Total Net Contributions All Net Contributors
Total Net Distributions All Net Receivers

Section 361.6 is renumbered to be 361.7 and the opening paragraph of subdivision (a) is amended to read as follows:

361.7(a) The pools shall be administered either directly by the superintendent, or in conjunction with a firm, performing at least the following functions:

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 1, 2007.

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the fifth amendment to 11 NYCRR 361 is derived from Sections 201, 301, 1109, 3233 and Chapter 501 of the Laws of 1992 and Chapter 504 of the Laws of 1995.

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

Section 1109 authorizes the Superintendent to promulgate regulations to effectuate the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to contracts between a health maintenance organization and its subscribers.

Section 3233 authorizes the Superintendent to promulgate regulations to create a pooling process involving insurer contributions to, or receipts from, a fund designed to share the risk of or equalize high cost claims with respect to individual and small group health insurance.

Chapter 501 of the Laws of 1992 amended the insurance law and public health law to require that individual and small group health insurance be made available on an open enrollment basis; community rating of individual and small group health insurance policies; portability of health insurance coverage; continuation of hospital, surgical or medical expense insurance; and requiring the superintendent to promulgate regulations to assure an orderly implementation and ongoing operation of open enrollment and community rating.

Chapter 504 of the Laws of 1995 amended the insurance law and the public health law to establish standardized direct payment contracts for individual health insurance and to provide that regulations promulgated by the superintendent shall include only reinsurance or a pooling process involving insurer or health maintenance organization contributions to, or receipts from, a fund which shall be designed to share the risk of high cost claims or the claims of high cost persons.

2. Legislative objectives: The statutory sections cited above provide a framework for the establishment of a market stabilization process in the

individual and small group health insurance market. The proposed amendment to Regulation 146 is consistent with legislative objectives in that it would effectuate the Legislature's direction in Section 3233 to establish a pooling process involving health maintenance organization and insurer contributions to, or receipts from, a fund which shall be designed to share the risk of or equalize high cost claims or claims of high cost persons, designed to protect insurers and health maintenance organizations from disproportionate adverse risks of offering coverage to all applicants.

3. Needs and benefits: This amendment is the result of comments and suggestions received by the Department in relation to the current market stabilization pool. The current market stabilization pool is being phased-out. Payments, collections and data reports were not required in 2005, and the new pooling methodology established by the proposed amendment will be established in 2006 and become fully operational in 2007 to ensure a prospective application. The proposed amendment will modify the pooling methodology established in the Fourth Amendment to Regulation 146 (11 NYCRR 361.5) to provide a simplified approach and to increase uniformity and consistency in the methodologies used by insurers and health maintenance organizations when determining their contributions and/or distributions from the pools, and should help insurers and health maintenance organizations avoid reporting errors. The proposed amendment is needed because of the widely differing methodologies used by insurers and health maintenance organizations and the inconsistencies and resulting confusion as to how to apply the distributions and/or contributions to premium rates.

4. Costs: This amendment imposes no compliance costs upon state or local governments. The amendment does not impose any significant additional compliance costs to insurers or health maintenance organizations. Insurers and health maintenance organizations may have to modify their internal policies and procedures for compliance with the new pooling methodology, and if insurers or HMOs fail to comply with statutory or regulatory pooling requirements a penalty could be imposed. In addition, similar to the previous pooling methodology, insurers and HMOs with healthier lives will have to pay money into the market stabilization pool and those with unhealthy lives will receive money from the pool. There will be a cost to insurers and HMOs with healthier lives; however the purpose of any market stabilization mechanism is to share risk and equalize claim costs. There should be no additional costs to the Insurance Department as existing personnel are available to assist insurers and health maintenance organizations with the transition to the new market stabilization process.

5. Local government mandates: The proposed amendment imposes no new programs, services, duties or responsibilities on local government.

6. Paperwork: The proposed amendment imposes new reporting requirements. However, insurers and health maintenance organizations are currently reporting similar information to the superintendent for the pooling requirements set forth in the specified medical condition pools established by the Fourth Amendment to Regulation 146 (11 NYCRR 361.5). Therefore, this proposed amendment should not create more paperwork for the insurers and health maintenance organizations than is currently in place.

7. Duplication: Section 3233 directs the Superintendent of Insurance to promulgate regulations to create a pooling process to establish stabilization in the individual and small group market. There is no duplication with federal or state laws.

8. Alternatives: The Insurance Department has been meeting with the Health Plan Association and the Conference of BlueCross BlueShield Plans to discuss this amendment. A suggestion was made to take payments from the Direct Payment Stop Loss Pools into consideration when determining amounts owed or received under the new pooling methodology. The pooling methodology established by the Fourth Amendment to Regulation 146 (11 NYCRR 361.5) in the existing regulation does not take these direct payment stop loss recoveries into consideration. The Department researched this alternative in conjunction with this Fifth Amendment and determined that the standardized individual direct payment health maintenance organization policies would be adversely impacted if the stop loss recoveries were taken into consideration. A suggestion was also made to increase the claim threshold from \$20,000 to \$100,000. The Insurance Department researched this alternative as well and found that the risk sharing and market stabilization would be significantly diminished and that legislative goals would not be accomplished.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The provisions of this amendment will take effect immediately. Insurers and health maintenance organizations will be expected to submit initial reports to the superintendent by November 10, 2006 and January 31, 2007, for advisory purposes only, and payments under the new pooling process will be made in 2008. The Insurance Department had several meetings with representatives of insurers and health maintenance organizations to discuss this amendment, and insurers and health maintenance organizations should be aware of the requirements established by this amendment.

Regulatory Flexibility Analysis

1. Effect of the rule: This amendment will affect all health maintenance organizations (HMOs) and insurers licensed to do business in New York State. Based upon information provided by these companies in annual statements filed with the Insurance Department, HMOs and insurers licensed to do business in New York do not fall within the definition of small business found in Section 102(8) of the State Administrative Procedures Act because none of them are both independently owned and have under 100 employees. This amendment may indirectly affect small businesses because it simplifies the market stabilization process for the individual and small group health insurance market, established by the 4th Amendment to Regulation 146. This amendment does not apply to or affect local governments.

2. Compliance requirements: This amendment will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

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

4. Compliance costs: This amendment will not impose any compliance costs upon small businesses or local governments.

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

6. Minimizing adverse impact: This amendment simplifies the market stabilization methodology for individual and small group coverage established by the 4th Amendment to Regulation 146. The same requirements will apply uniformly to individual and small group insurance coverage offered by HMOs and insurers, similar to the 4th amendment to Regulation 146, and should not impose any adverse or disparate impact.

7. Small business and local government participation: These regulations are directed at HMOs and insurers licensed to do business in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Act. Notice of the proposal was previously published in the Insurance Department's Regulatory Agenda. This notice was intended to provide small businesses with the opportunity to participate in the rule making process. Interested parties were also consulted through direct meetings during the development of the proposed regulations.

Rural Area Flexibility Analysis

The amendment will not have any adverse impact on rural areas and does not impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Insurers and health maintenance organizations to which the amendment applies do business in all counties of the state, including rural areas as defined under State Administrative Procedure Act Section 102(13). Since the amendment applies to the insurance market throughout New York, not only to rural areas, the same regulation will apply to regulated entities across the state. Therefore, there is no adverse impact on rural areas as a result of this amendment.

Job Impact Statement

This amendment to Regulation 146 will not adversely impact job or employment opportunities in New York. The proposed amendment is likely to have no measurable impact on jobs. Insurers and health maintenance organizations will need to annually report to the superintendent their annualized premium amount and their cumulative calendar year claims paid. However, it is anticipated that such responsibilities will be handled by existing personnel because these reporting requirements are similar to the existing reporting requirements set forth in the Fourth Amendment to Regulation 146 (11 NYCRR 361.5); which will be eliminated as a result of this amendment. Costs to the Insurance Department will also be minimal as existing personnel are available to assist insurers and health maintenance organizations in implementing the new pooling methodology.

EMERGENCY RULE MAKING

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. INS-03-07-00013-E

Filing No. 5

Filing date: Jan. 2, 2007

Effective date: Jan. 2, 2007

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

Action taken: Amendment of section 83.2 (Regulation 172) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-c and 4408-a; and L. 2002, ch. 599

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

Specific reasons underlying the finding of necessity: Certain provisions of the Insurance Law require that insurers file financial statements annually and quarterly with the Superintendent. These insurers are subject to the provisions of Sections 307 and 308 of the Insurance Law and are required to file what are known as Annual and Quarterly Statement Blanks on forms prescribed by the Superintendent. The Superintendent has prescribed forms and Annual and Quarterly Statement Instructions that are adopted from time to time by the National Association of Insurance Commissioners ("NAIC"), as supplemented by additional New York forms and instructions. To assist in the completion of the Financial Statements, the NAIC also adopts and publishes from time to time certain policy procedure and instruction manuals. The latest edition of one of the manuals, Accounting Practices and Procedures Manual As Of March 2006 ("Accounting Manual") includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs"). The Accounting Manual, which is incorporated by reference into this regulation, was adopted by the NAIC in March 2006.

The Accounting Manual represents a codification of statutory accounting principles. The purpose of the codification of statutory accounting principles is to produce a comprehensive guide for regulators, insurers and auditors. This amendment will take effect upon filing with the Secretary of State so that the accounting principles of this part will be in place for use in the preparation of Quarterly Statements and the Annual Statement for 2006. This amendment adopts the latest version of the Accounting Manual.

This regulation, as amended, will enhance the consistency of the accounting treatment of assets, liabilities, reserves, income and expenses by entities subject to the regulation, by clearly setting forth the accounting practices and procedures to be followed in completing quarterly and annual statements required by law. In the preparation of this amendment, it was necessary for the Insurance Department to take into account determinations made by the NAIC at its meetings in 2006.

Absent the amendment being effective immediately, many of New York's accounting practices and procedures would not be consistent with the practices and procedures followed in most other states.

For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the general welfare.

Subject: Financial statement filings and accounting practices and procedures.

Purpose: To update a citation in section 83.2(c) to refer to an accounting manual entitled Accounting Practices and Procedures Manual as of March 2006 (instead of 2005).

Text of emergency rule: Subdivision (c) of Section 83.2 of Part 83 is amended to read as follows:

(c) To assist in the completion of the Financial Statements, the NAIC also adopts and publishes from time to time certain policy, procedures and instruction manuals. The latest of these manuals, the Accounting Practices and Procedures Manual as of March [2005*]2006* ("Accounting Manual") includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs"). The Accounting Manual shall be used in the preparation of Quarterly Statements and the Annual Statement for [2005]2006, which will be filed in [2006]2007.

The footnote to subdivision (c) of Section 83.2 is amended to read as follows: *ACCOUNTING PRACTICES AND PROCEDURES MANUAL AS OF MARCH [2005] 2006. Copyright 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006 by National Association of Insurance Commissioners, in Kansas City, Missouri.

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 1, 2007.

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

Regulatory Impact Statement

Filing of a Regulatory Impact Statement for the Sixth Amendment to 11 NYCRR 83 (Regulation 172) is unnecessary because the action is a technical amendment as described in SAPA § 202-a.

Regulatory Flexibility Analysis

The Insurance Department finds that this regulation will have no adverse economic impact on local governments, and will not impose reporting, recordkeeping or other compliance requirements on local governments. The basis of this finding is that this regulation is directed to insurers as defined under this regulation, none of which are local governments.

The Insurance Department finds that this regulation will have no adverse impact on small businesses, and will not impose reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this regulation is directed to insurers. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and determined that none of them would come within the definition of small businesses, within the meaning of the State Administrative Procedure Act, because none are both independently owned and have fewer than one hundred employees.

Rural Area Flexibility Analysis

The Insurance Department finds that this rule does not impose any additional burden on persons located in rural areas, and the Insurance Department finds that it will not have an adverse impact on rural areas. This rule applies uniformly to parties that do business in both rural and nonrural areas of New York State.

Job Impact Statement

The proposed rule changes should have no adverse impact on jobs and employment opportunities in New York State. The regulation codifies numerous accounting practices and procedures that had not previously been organized in such a unified and coherent manner. The current amendment only changes a publication date references to a publication incorporated by reference in the regulation and should have no adverse impact on jobs or employment opportunities.

NOTICE OF ADOPTION

Unemployment Lapse Protection Benefit for Life Insurance

I.D. No. INS-42-06-00003-A

Filing No. 1592

Filing date: Dec. 28, 2006

Effective date: Jan. 17, 2007

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

Action taken: Addition of Part 46 (Regulation 174) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1113, 3201, and 4525

Subject: Unemployment lapse protection benefit for life insurance.

Purpose: To establish minimum standards for benefit levels, benefits eligibility and exclusions and establishing premium levels that meet the statutory requirement that the premium charged shall be reasonable in relation to the benefit provided.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-42-06-00003-P, Issue of October 18, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2289, e-mail: amais@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Division of the Lottery

EMERGENCY RULE MAKING

Raffle to Riches Promotional Game

I.D. No. LTR-03-07-00003-E

Filing No. 1594

Filing date: Dec. 28, 2006

Effective date: Dec. 28, 2006

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

Action taken: Addition of Part 2837 to Title 21 NYCRR.

Statutory authority: Tax Law, section 1604(a)

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

Specific reasons underlying the finding of necessity: The New York Lottery will be conducting New York's Raffle to Riches promotional game. Game sales are scheduled to commence on or about January 17, 2007, thereby leaving insufficient time for the normal rule making process under SAPA section 202 to be completed. This game is necessary to assist the lottery in reaching its projected revenue target for this fiscal year. This promotional game is intended to improve somewhat slow revenues and will provide needed aid to education by the end of this fiscal year.

Subject: Raffle to Riches promotional game.

Purpose: To add New York's Raffle to Riches promotional game to current New York Lottery regulations.

Text of emergency rule:

PART 2837

NEW YORK LOTTERY

NEW YORK'S RAFFLE TO RICHES GAME

Section 2837.1 Definitions. The following definitions apply to New York's Raffle to Riches game.

(a) "Bet ticket" means the ticket generated by the computer terminal containing at a minimum a unique multiple-digit number constituting a single play or chance, the drawing date and validation data. Consecutively numbered on-line tickets will be sold through computer terminals. Players purchasing more than one bet ticket may not receive consecutively numbered tickets.

(b) "Computer terminal" means the device at the on-line retailer location authorized by the Lottery for the placing of game bets.

(c) "Director" means the director of the New York State Lottery or any other person to whom the director's authority is lawfully delegated.

(d) "Draw date" means the date determined by the director on which the process used to randomly select the winning game numbers takes place for the game.

(e) "Drawing" means the formal process which is used to randomly select the winning numbers for the game.

(f) "Game" means New York's Raffle to Riches Game which is a Lottery game where a player purchases number(s) generated by the Lottery's on-line gaming computer system.

(g) "Gross sales" means the value of the tickets eligible for the game.

(h) "Lottery" or "State Lottery" means the New York State Division of the Lottery operated pursuant to Article 34 of the Tax Law.

(i) "Lottery rules and regulations" means the rules and regulations currently in force as adopted by the Lottery.

(j) "Manual entry" means the capability of the computer terminal operator to enter the amount of dollars wagered by a player for the game into the terminal in response to verbal or written communication by the player. There is no other method of play at the terminal for the game.

(k) "New York's Raffle to Riches" means a game played at any on-line retailer location(s) by purchasing a ticket which will be sold for a limited sales period, and in which a maximum designated number of chances or plays will be offered, and the winning chances or plays will be selected from only those chances or plays eligible.

(l) "On-line retailer" means a person licensed to sell Lottery tickets, pursuant to Part 2801 of this Title.

(m) "Prize pool" means those funds available from the game sales or other sources to support the payment of prizes for the game.

(n) "Sales period" means the period of time starting from the initial sales date of the game tickets as specified by the director and ending on the date when all available numbers have been sold or a date specified by the director.

(o) "Ticket" means New York's Raffle to Riches game ticket produced by the Lottery and sold by a licensed retailer in an authorized manner containing at a minimum a unique nine digit number constituting a single play or chance, the drawing date and validation data. Raffle numbers are issued in sequence starting at X00000000 and continuing in single digit increments until all possible game numbers are distributed.

2837.2 Drawing. (a) Winning game numbers are the numbers randomly selected by the Lottery at a drawing which entitle the legitimate ticket holder to a prize. Such winning numbers shall be (i) randomly selected in accordance with existing Lottery draw procedures and (ii) announced publicly.

(b) The game drawing shall be conducted on or about a date which shall be determined by the director.

2837.3 Calculation and payment of prizes. (a) Prizes levels and amounts for the game shall be determined by the director prior to the sales period.

(b) The holder of a winning bet ticket shall only win one prize per winning number.

(c) The payment of prizes to persons under 18 years of age and to those who are known to have died before receiving any or all of the particular prize shall be paid as prescribed in Lottery rules and regulations as set forth in Part 2803 of this Title.

2837.4 Withholding. Federal, State and local withholding taxes shall be withheld by the Lottery from prize payments in such amounts as may be required in accordance with the applicable provisions of law.

2837.5 Procedures for claiming a prize. (a) All prizes must be claimed within one year of the drawing date. All prize claims must be made by surrendering the winning ticket, together with a completed prize claim form, to the Lottery in person at a Lottery office or by mail, addressed to: New York Lottery, Post Office Box 7533, Schenectady, NY 12301-7533.

(b) A bet ticket is deemed to be a bearer instrument. Neither the New York State Lottery nor its contractors shall be responsible for lost or stolen bet tickets, nor for alleged winning tickets thrown away by mistake.

2837.6 Disputes. In the event a dispute occurs between the Lottery and/or its contractors and the player as to whether a ticket is a winning ticket, and if the ticket prize is not paid, the director may, at his or her discretion, refund the entry cost of the wager placed by the player on that ticket. This shall be the sole and exclusive remedy of the player.

2837.7 Ticket sales. (a) No person shall sell a bet ticket at a price greater than that fixed by this Part.

(b) No person other than a licensed Lottery retailer shall sell a bet ticket.

(c) The price for a Raffle to Riches bet shall be determined by the director prior to the sales period.

(d) Each number shall constitute a single play or chance.

(e) A player shall not select specific game numbers. Numbers shall be generated in consecutive numerical order based on instruction from the on-line gaming central system with the next consecutive number. Players shall only be entitled to the next available game number(s) when purchasing a ticket.

2837.8 Prize funds. Any funds in the Lottery prize account may be utilized to support the prize structure of the game in relation to the prize pool.

2837.9 Determination of winning ticket prizes, chances of winning, allocation of winning prize pool. For the game, the number of tickets sold shall be limited as prescribed by the director prior to the sales period. Winning numbers shall be randomly selected and announced publicly. A game number can only be selected once during the draw. Any bet ticket having a match with the winning number shall be entitled to the prize for which the number was drawn. Prize categories and amounts shall be determined by the director prior to the sales period.

2837.10 Miscellaneous. (a) Where one person submits a ticket as agent or nominee for another person or persons, the Lottery shall not be deemed to have any knowledge of such transaction, and all dealings of the Lottery will be conducted solely with the bearer of the ticket.

(b) No claimant will be considered eligible to receive a prize without presentation of a valid winning bet ticket.

(c) The Lottery reserves the right to change the prize structures, frequency of draws, draw dates, or the games themselves.

(d) If, for any reason, an on-line bet ticket is not entirely legible or is misprinted or altered in any way, then the on-line computer record created

at the time of sale will be the sole method of determining whether such ticket is a valid winning ticket.

(e) When any question shall arise as to the validity of a Lottery drawing for any reason whatsoever, the director shall make the determination as to the validity of said drawing on the basis of the information at his or her disposal. The director's determination shall be final.

(f) Bet tickets for the game may not be cancelled once issued by the computer terminal. However, the retailer may receive credit for any unreadable bet ticket issued, as these tickets (although unreadable) are recorded on the computer file as valid bets. A request for credit must be postmarked before the draw date to receive credit for any such unreadable bet ticket.

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 March 27, 2007.

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

Regulatory Impact Statement

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law, Section 1604[a] and the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 21, Chapter XLIV, Section 2804.6, the following official game rules shall take effect and shall remain in full force and effect throughout the New York Lottery's Raffle to Riches promotional game.

2. Legislative objectives: The purpose of operating Lottery games is to generate revenue for the support of education in the State. Amendment of these regulations forwards the mission of the New York State Lottery to generate revenue for education.

3. Needs and benefits: The New York Lottery has sustained competitive pressure from large jackpot lottery games in adjoining states. New Yorkers routinely travel outside the state to participate in those games. The New York Lottery's Raffle to Riches promotional game allows the New York Lottery to continue its effort to keep and enlarge its market share of players (from within New York State and those visiting New York State from other states) who participate in large jackpot lottery games. The New York Lottery's Raffle to Riches promotional game is anticipated to bring in more than \$13.5 million in revenue to benefit education in the State.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing lottery games are expected to be sufficient to support this new game.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 30 years.

5. Local government mandates: None.

6. Paperwork: There are no changes in paperwork requirements. New game brochures will be issued by the New York State Lottery for public convenience at retailer locations free of charge.

7. Duplication: None.

8. Alternatives: The alternative to adding New York Lottery's Raffle to Riches promotional game is not to proceed and forfeit the investment already made by the New York State Lottery for the game. The failure to proceed will also result in lost revenue to education that is anticipated to be earned.

9. Federal standards: None.

10. Compliance schedule: None.

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

The proposal does not require a Regulatory Flexibility Statement, Rural Flexibility Statement or Job Impact Statement. There will be no adverse impact on jobs, rural areas, small business or local governments.

Department of Motor Vehicles

NOTICE OF ADOPTION

Sullivan County Motor Vehicle Use Tax

I.D. No. MTV-42-06-00016-A

Filing No. 1

Filing date: Jan. 2 2007

Effective date: Jan. 17, 2007

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

Action taken: Amendment of Part 29 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

Subject: Sullivan County motor vehicle use tax.

Purpose: To impose a Sullivan County motor vehicle use tax.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-42-06-00016-P, Issue of October 18, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

Division of Probation and Correctional Alternatives

NOTICE OF ADOPTION

Probation Investigations and Reports

I.D. No. PRO-41-06-00008-A

Filing No. 4

Filing date: Jan. 2, 2007

Effective date: Jan. 17, 2007

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

Action taken: Repeal of Part 350 and addition of new Part 350 to Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1); and Family Court Act, section 252-a

Subject: Investigations and reports prepared by probation departments.

Purpose: To clarify existing laws governing the investigation and reports and provide the court with relevant and reliable information for decision making consistent with good probation practice.

Substance of final rule: Part 350 - Investigations and Reports

Part 350 of Title 9 NYCRR is repealed and a new Part 350 is amended to reflect current best practice and emphasize recent statutory changes and policy direction to promote greater offender/respondent accountability, interests and safety of victims and youth, as well as to provide key information regarding the individual who is the subject of a court-ordered investigation to ensure appropriate decision-making. These changes clarify and update certain existing provisions to ensure good professional practice, and provide flexibility in specific areas while maintaining quality service delivery. The rule also better distinguishes and integrates provisions with respect to juvenile, criminal court, and other court investigations and reports.

The definitional section, Section 350.1 is retained. However it has been expanded to include and/or clarify particular terms, such as legal history, social circumstances, verification, victim, victim impact statement, and various types of interviews.

A newly added Section 350.2 clarifies the varied types of investigations which probation conducts and Section 350.4 governing applicability establishes the scope of the investigation and report rule consistent with this earlier noted section.

Section 350.3 entitled "Objective" delineates those dispositional and regulatory agencies that may or are required to receive probation reports for immediate or future decision-making.

Section 350.5 provides a general statement as to investigations and reports and clarifies the need to distinguish between fact and professional assessment, information sources, professional and other assessment protocols and observations, and to cite sources of information.

Section 350.6 governs the investigation process. Previous language in this area has been reworked and certain noteworthy provisions are highlighted below:

(a) Order for investigation and report. Refers to DPCA-2.2 Court Order for Investigation and Report to obtain the required information necessary to initiate the investigation and report process. The CJTN and NYSID are also required in this document. Allows for entry of information into an electronic case record management system.

(b) Scope of investigation. Refers to DPCA-221 Pre-Dispositional/Pre-Plea/Pre-Sentence Investigation Report Worksheet for the minimum required information, and articulates that this information is to be included where it has a bearing on the disposition of a case. This section organizes the format and contents of the report, incorporating areas to be addressed, both new and as previously described in various sections of the existing rule. It more clearly distinguishes the information required for juvenile and criminal court investigations, and incorporates more recent changes in law and probation practice (i.e. SORA eligibility, persistent and predicate felony status, immigration and alien status, juvenile placement considerations). This section specifies and expands the range of risk, need and protective factor information to be included. It requires victim information in all cases where there is a victim, and specifies and expands the types of information to be sought from and about the victim. It clarifies who can speak on the victim's behalf and addresses reimbursement received from Crime Victims Board.

(c) Conducting the investigation.

1. Obtaining basic legal information. This was moved to the top of this section to more accurately reflect actual workflow. Specifies and expands the legal information that should be gathered prior to the interview with the defendant.
 2. Interviews with respondent/defendant, or subject(s) of the court order for investigation. Delineates what types of interviews are required and/or permissible. Recognizes procedures approved by DPCA and the NYS Division of Parole (DOP) for cases where the defendant is in the custody of the NYS Department of Correctional Services (DOCS). Provides relief from an in-person interview of defendant/respondent on a case-by-case basis where individual resides in a distant jurisdiction and probation director has determined exigent circumstances exist.
 3. Other interviews/contacts. For juvenile cases, provides a requirement to interview parents/guardians for the purpose of gathering information relative to the parent's/guardian's perspective of the youth's legal and social circumstances, as well as the parent's/guardian's perceived ability and willingness to assist in meeting the goals of supervision of the youth in probation-bound cases. For youth eligible to receive youthful offender treatment, encourages such interviews, as appropriate. Requires communication with the victim/victim representative to inform them of their right to seek restitution and to attempt to secure a victim impact statement.
 4. Types of Assessment. Incorporates financial, community, and institutional resource assessment from existing rule. Adds a requirement to assess a respondent/defendant risk and needs.
 5. Verification. Expands the list of informational elements requiring verification to include: citizenship; place of birth; current address; alien status; and steps taken to verify the information. Expands the list of informational elements to be verified, when such is likely to have a bearing on recommendation, to include names of members of the household and their relationship to the respondent/defendant.
- d. Preservation of investigation materials. Adds that the probation officer shall document the sources of information.

Section 350.7 governs preparation of reports and highlighted below are important features:

(a) Scope of report. Provides that the Investigation Facesheet must contain the information as provided for in DPCA-220 Pre-Dispositional/Pre-Plea/Presentence Investigation Report Facesheet.

(b) Informational contents of report and format. Provides for the following:

- Reorganizes into subsections content including legal history, current offense information, social circumstances, evaluative analysis, and recommendation.
- Incorporates some of the language from existing rule § 350.6(b).
- Clarifies relevant information to be reported from various interviews, including arresting officer, respondent/defendant, victim(s), and parent(s).
- Distinguishes between required family court and criminal court legal history, and adds a requirement for order of protection information.
- Adds that a victim impact statement is always relevant to the recommendation or court disposition.
- Requires that the address of the victim or victim family member not be included in the report.
- Refers to new § 350.5(b)(2) for contents regarding social circumstances.
- The evaluative analysis section is significantly expanded to specify the elements requiring probation officer assessment and analysis.
- Adds that the recommendation must be consistent with law.
- Requires a recommendation for special conditions that address public safety, reparation, DNA collection, and offender accountability when probation or conditional discharge is recommended.
- Requires a recommendation for restitution, where such is being sought, that acknowledges the defendant's potential earnings/allowances while in the community or in prison.
- Where prison is anticipated, requires that the rate of payment shall not be specified, and that the start date for payment shall not be recommended for deferral.
- Adds provision for exception of portion of the report where disclosure would endanger the safety of any person.
- Provides for electronic signatures and date stamping as to when and by whom review was completed.
- For potential supervision transfer cases, adds requirement to secure all necessary information necessary to affect transfer at time of sentence.

Section 350.8 governs certificate of relief from disabilities investigations and reports and is similar to existing language, except for the new language which requires a recommendation be made as to the relief to be granted.

Section 350.9 pertains to special requirements for pre-plea investigations and reports which is similar in nature to existing language, yet clarifies in general the scope of pre-plea investigations and reports shall conform to pre-dispositional reports, that the recommendation shall take into account that there is no conviction, and recognizes situations where on advice of counsel or their own volition, the defendant declines to discuss the current offense.

Section 350.10 governs submission, transmittal and confidentiality of probation reports and while similar to existing language, it has been updated to conform to state law and reflect recent regulatory changes to DPCA's case record rule governing confidentiality and accessibility of probation reports.

Section 350.11 governs pre-disposition investigations and reports in all other family court cases and while similar to existing regulatory provisions, new language requires fingerprinting and criminal history search of the parties in custody, adoption, visitation, and guardianship investigations to conform to recent statutory changes in this area.

Lastly, Section 350.12 retains without change guidelines, as required by Family Court Act Section 252-a, for schedule of payments relating to family court custody investigation fees which have been authorized by law.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 350.7(b)(2) and (3).

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

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

Nonsubstantive changes made to Section 350.7(b)(2) and (3) do not necessitate revision of the previously published Regulatory Impact Statement,

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

Assessment of Public Comment

The Division of Probation and Correctional Alternatives (DPCA) received two comments relative to the proposed investigation and report rule after the official public comment period ended which we reviewed and considered to foster better understanding of DPCA's willingness to engage practitioners in a discussion of collaboration and achieving what is model practice.

The first, from the New York City Department of Probation (NYCDOP), raised virtually identical issues contained in prior letters responding to earlier internal rule drafts DPCA shared with all local probation departments. These earlier draft rules were a culmination of efforts to update DPCA's investigation and report rule by a DPCA established professional workgroup comprised of state and county probation practitioners with representation from urban and rural jurisdictions. Prior to submitting the proposed rule for filing, DPCA reviewed all concerns and suggestions, incorporated certain rule changes, and shared issues raised with the State Probation Commission, the advisory body to the State Director of Probation and Correctional Alternatives which supported the proposed rule with slight revision. DPCA also discussed NYCDOP issues raised with the Council of Probation Administrators (COPA) the statewide professional association of probation directors and gained their support on particular DPCA positions with respect to proposed rule changes. DPCA verbally communicated with NYCDOP as to what changes DPCA would incorporate and that the remaining suggestions would not be made at the present time. Moreover, DPCA comments to their specific concerns are as follows:

As to the issue of in-person interviews for all respondent/defendants, NYCDOP believes "it is not reasonable to require a face-to-face interview in adult criminal cases involving plea bargains in state prison cases" and instead recommends that DPCA "expressly exempt those cases from any in-person interview requirement". After further dialogue with probation professionals across the state, DPCA was willing to modify our earlier draft and incorporated specific language in proposed Rule Section 350.6(c)(2) that provides relief from an in-person interview on a case-by-case basis where the individual resides in a distant jurisdiction and the probation director has determined exigent circumstances exist. Instead an "interview" may be substituted. This term, defined in proposed Rule Section 350.1(a), recognizes an "in-person interview, or another form of telecommunication, such as telephone or e-mail". This compromise was viewed as reasonable by the State Probation Commission and other probation practitioners and the recent Task Force on Probation hearings reinforced support towards DPCA's position not to provide a blanket exemption to in-person interviews on plea bargain cases, even where state prison bound.

With respect to victims, NYCDOP voices several issues. As to proposed Rule Section 350.6(c)(3)(iii), DPCA believes that "[W]here the offense/act includes one or more victims, probation personnel shall communicate with each victim." NYCDOP's recommendation is that this be "discretionary". DPCA disagreed as it is important that all victims have the opportunity to provide a victim impact statement. As to NYCDOP's claim that "[O]ften the local probation department has little or no information regarding victims", DPCA previously incorporated language that the probation department "may seek to communicate with a victim's advocate or victim service provider to gather additional victim information." As to comments that "this rule should prohibit the inclusion of telephone numbers as well as addresses of any victim or victim family member", NYCDOP previously raised this comment when responding to an earlier draft. Proposed Rule Section 350.7(b)(2)(iv) states unequivocally that "The report shall not include the address or the phone number of any victim or victim family". As to their concern with respect to victims in context of pre-plea investigations, DPCA has recognized that "Generally, the investigation and body of the report shall conform to Section 350.6 and 350.7." DPCA believes that sound professional practice by probation departments across the state will incorporate key provisions in pre-plea investigations and reports, including victim provisions and therefore we did not see the necessity to repeat all salient provisions. Should it be necessary at another point in time due to problems, DPCA will revisit the scope of pre-plea investigations and reports.

As to NYCDOP's suggestion that in pre-plea matters "that the recommendation not be initially mandated as there is no plea or conviction", DPCA's proposed Rule Section 350.9 establishes that the "recommendation shall take into account that at the time of report preparation there is no conviction." When ordered to conduct the investigation and report, how-

ever probation is made aware of the pre-plea. While NYCDOP believes that it "is critical that probation be able to provide a recommendation before the plea is taken", their remark that "all too often, a post-plea recommendation has little or no impact" reinforces DPCA's decision to recognize a probation recommendation at this stage. DPCA over the years has received anecdotal information from probation professionals, that probation recommendations at times has made a difference in the ultimate plea arrangement and influenced sentencing. As to requiring probation instead to do an update before the court accepts a plea, proposed rule Section 350.9(c) recognizes upon conviction by plea in all cases where the presentence investigation is required and whenever sentencing does not occur at time of conviction by plea, the pre-plea investigation and report may be utilized unless the court orders an update or probation has learned of other relevant information, in which case an addendum may be attached to such report. It appears unnecessary and burdensome and DPCA does not choose at this time to create an additional regulatory procedural requirement to mandate an update in all instances.

As to NYCDOP's public safety concern as to "inclusion of addresses of accomplices/co-respondents/co-defendants be included in the report", address language has been in DPCA's investigation and report rule for over twenty years and DPCA has not heard of any reported problems in this area. Further, statutory language found in Criminal Procedure Law Section 390.50(2) establishes parameters by which a court may except from disclosure a part or parts of the report. Accordingly, DPCA does not believe a rule change in this area is necessary.

With respect to DNA collection, NYCDOP has indicated that it will "reserve comment" as to DPCA's rule requirement with limited exception that "DNA sample collection shall be considered for all non-designated offenders" because "that issue is currently the subject of pending litigation." Although, there is pending litigation, DPCA's language in this area is premised on the Division of Criminal Justice Services regulation in this area, having the force and effect of law, establishing a mechanism for collection for certain non-designated offenders.

As to NYCDOP's disagreement with what it refers to "as the mandate that restitution be recommended in jail-bound cases" and their rationale for doing so, DPCA respectfully disapproves of their suggestion. DPCA's proposed Rule Section 350.7(b)(5)(iii) seeks to promote greater imposition of restitution consistent with law. Specifically, Penal Law Section 60.27(1) establishes that a court "may require restitution or reparation as part of the sentence imposed upon a person convicted of an offense". DPCA's rule with respect to restitution and special mention of jail-bound, prison-bound, and community-based dispositions reinforce the law and will better ensure courts are made aware of restitution sought by victims. Additionally, CPL 390.50(3)(b) requires "the report shall also contain a victim impact statement, unless it appears that such information would be of no relevance to the recommendation or court disposition". Ancillary issues which NYCDOP raises as to our rule provision in the area of restitution being a "burden on probation" was not shared by the overwhelming majority of other probation departments which commented on prior internal rule drafts. Accordingly, DPCA has made no further changes in this area.

NYCDOP suggested that "DPCA should expressly qualify the requirement that, in Family Court, probation reports be submitted five court days prior to disposition", because "a shorter advance submission is necessary in Family Court 10-day remand cases" DPCA has previously communicated that our rule provision mirrors Family Court Act Sections 351.1(5)(a) and 750(2). Accordingly, DPCA cannot through rule making override existing law as to such timeframes.

As to "when a PSI must be sent to a licensing agency", DPCA has previously taken into consideration NYCDOP's view and shared our position with them which we believe is consistent with CPL 390.50(6). While NYCDOP prefers that this rule provision be narrowed to when at time of sentencing probation is aware that a defendant is licensed pursuant to Title 8 of the Education Law, overall the provisions of this CPL Section governing probation's sharing or disclosing pre-sentence report information is not limited to the day of sentence. While NYCDOP conveys "[I]t cannot reasonably be probation's continuing responsibility to send the PSI to a licensing agency, for example, if the probationer obtains a license after being sentenced to probation, a local probation agency cannot reliably be certain of obtaining such information.", DPCA believes that it is in the interests of public safety and reasonable that the statutory provision be interpreted to provide probation with the ability to subsequently provide any such report on a probationer known to be licensed pursuant to Title 8 so that licensing officials are better made aware of criminal convictions of licensees. Admittedly, there may be instances where probation is not aware that the person is licensed under Title 8. However, in the case of an

individual under probation supervision, there exists a pertinent mandatory condition of probation which should assist probation in obtaining such information. Specifically, CPL Section 390.50(6) and Penal Law Section 65.10(3)(c) collectively establish that a defendant under interim probation supervision or any probationer sentenced by a criminal court must “[A]nswer all reasonable inquiries by the probation officer and notify the probation officer prior to any change in address or employment.”

While NYCDOP opposes probation providing recommendations in all Family Court civil matters such as custody, adoption, guardianship, and neglect/abuse proceedings, DPCA’s rule changes do not require recommendations. Specifically, proposed Rule Section 350.11 states that “in the absence of court direction, the scope of the investigation and content for all other family court related matters shall be in accordance with local probation policies and procedures.” As to custody recommendations, while two appellate courts have issued similar rulings in this area, no changes appear necessary because of aforementioned language as to court direction appears to suffice.

With respect to reported structural concerns, NYCDOP prefers that our rule differentiate more between various adult and juvenile investigations and reports. DPCA’s workgroup initially discussed separate provisions and determined that it would be duplicative and unnecessary in most instances and instead that the scope can be gleaned from context and by language “where applicable”. Training and/or technical clarification to staff can clarify remaining issues. Moreover, the overwhelming consensus from other probation departments did not support such a change. As to other provisions relative to “victim information” and “parental information”, the former is not limited to criminal and delinquency matters as family offense and PINS cases can also be ordered to make restitution. Further, the latter is not limited solely to delinquency matters and silent as to youthful offenders. It pertains to “where the subject of the report is a juvenile, or where appropriate for a criminal court case involving an individual younger than 19 years of age”. Lastly, legal history information is relevant for custody, adoption, guardianship investigations and recognized by Executive Law Section 243(3)(b).

The second comment was received from the New York State Defender’s Association Inc. and advocates that DPCA modify its regulation to establish that “[F]or all criminal court cases the probation report shall be submitted to the court not less than five court days prior to sentencing except if waived by the parties”. DPCA’s language, however, mirrors CPL 390.50(2) and we cannot through rule making override existing statutory timeframes. DPCA does not disagree as to providing defense with additional time to review the probation report; however a legislative change must occur for this to happen. Other comments raised focused on the value and accuracy of these reports. DPCA is committed to promote statewide the importance and integrity of such reports and to continue to work with interested parties to improve their quality.

Public Service Commission

ERRATUM

A Notice of Proposed Rule Making, I.D. No. PSC-52-06-00014-P pertaining to Property Tax Refunds by Orange and Rockland Utilities, Inc., published in the December 27, 2006 issue of the *State Register* contained an incorrect effective date. The hearing scheduled for this rule making is being held on January 30, 2007. The correct date is in the Hearing Calendar.

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

NOTICE OF ADOPTION

Water Rates and Charges by Fishers Island Water Works Corporation

I.D. No. PSC-18-06-00012-A

Filing date: Dec. 28, 2006

Effective date: Dec. 28, 2006

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

Action taken: The commission, on Dec. 13, 2006, adopted an order approving Fishers Island Water Works Corporation’s 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 approve an increase of Fishers Island Water Works Corporation’s annual revenues.

Substance of final rule: The Commission adopted an order approving Fishers Island Water Works Corporation’s tariff schedule, P.S.C. No. 2 - Water to become effective January 1, 2007, 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.

(06-W-0446SA1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Property Tax Refunds Received by the Long Island Water Company

I.D. No. PSC-03-07-00011-P

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

Proposed action: In Case 06-W-0069, concerning a petition of Long Island Water Corporation providing notification of the receipt of property tax refunds of \$7,386,087.89 from Nassau County, the Public Service Commission is considering and may adopt a joint proposal provided by the water company and Department of Public Service staff.

Statutory authority: Public Service Law, section 113(2)

Subject: Property tax refunds received by the Long Island Water Company.

Purpose: To determine the portion of the property tax refunds to be distributed to customers and the portion of the refunds to be retained by shareholders.

Public hearing(s) will be held at: 1:00 p.m., Feb. 5, 2007 at Public Service Commission, Three Empire State Plaza, 3rd Fl., (Alternative Dispute Resolution Room), Albany, NY.

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

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

Substance of proposed rule: In November 2005, the Long Island Water Company (the Company) received approximately \$7.4 million in property tax refunds from Nassau County. The Company notified the Public Service Commission (Commission) of the property tax refunds and, in 2006, the Department of Public Service (DPS) Staff audited the Company’s books and records of the tax refunds. In December 2006, the DPS Staff entered into a joint proposal with the Company that has been submitted to the Commission for consideration and action. The proposal, if adopted by the Commission, would allow the Company to retain 15% of the net tax refund and would provide 85% of the refund to customers. The customers’ portion of the refund would either be applied as a credit and a reduction to the customers’ water bills or be used to pay amounts that the Company could otherwise collect from customers. The Commission may accept, reject or modify the joint proposal when it acts in this proceeding.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

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

Public comment will be received until:**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-0069SA2)

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

Interconnection Agreement between Frontier Communication of Rochester, Inc. and USD CLEC, Inc.

I.D. No. PSC-03-07-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Frontier Communications of Rochester, Inc. and USD CLEC, Inc. for approval of an interconnection agreement executed on July 31, 2006.

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

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

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

Substance of proposed rule: Frontier Communications of Rochester, Inc. and USD CLEC, Inc. have reached a negotiated agreement whereby Frontier Communications of Rochester, Inc. and USD CLEC, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until July 31, 2007, or as extended.

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

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

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

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

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

(06-C-1541SA1)

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

Charges for Municipal Undergrounding by Orange and Rockland Utilities, Inc.

I.D. No. PSC-03-07-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Orange and Rockland Utilities, Inc. (O&R) to make various changes in the rates, charges, rules and regulations contained in its schedule for electronic service, P.S.C. No. 2, to become effective April 1, 2007.

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

Subject: Charges for municipal undergrounding.

Purpose: To revise tariff provisions for municipal undergrounding to allow O&R greater flexibility in the determination of and timing of the surcharge used to recover the costs of undergrounding.

Substance of proposed rule: The Commission is considering Orange and Rockland Utilities, Inc.'s (O&R) request to modify General Information

Section 18A - Charges for Municipal Undergrounding contained in its electric tariff, P.S.C. No. 2. This section addresses municipal requests or requirements for O&R to relocate underground all or a portion of its existing overhead distribution or transmission facilities within the municipality. General information Section 18A provides a framework for addressing such requests through the implementation of municipality-specific surcharges to recover the costs of undergrounding from those customers located in the municipality making the request. The proposed changes provide O&R with greater flexibility in the determination of the surcharge and in the timing of its implementation. The changes will permit O&R, upon written agreement of O&R and the municipality, to (a) defer implementation of the surcharge; and (b) defer collection of a portion of the surcharge. O&R's filing has a proposed effective date of April 1, 2007. The Commission may approve, reject or modify, in whole or in part, O&R's request.

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

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

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

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

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

(06-E-1571SA1)

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

Purchase of Accounts Receivable by Central Hudson Gas & Electric Corporation

I.D. No. PSC-03-07-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 15, to become effective March 28, 2007.

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

Subject: Purchase of accounts receivable.

Purpose: To revise the purchase of accounts receivable discount rate.

Substance of proposed rule: The Commission is considering Central Hudson Gas & Electric Corporation's (Central Hudson's) request to revise its Purchase of Accounts Receivable discount rate offered under its Retail Access Program in its electric tariff, P.S.C. No. 15. The proposed effective date of Central Hudson's filing is March 28, 2007. The Commission may approve, reject or modify, in whole or in part, Central Hudson's request.

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

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

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

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

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

(06-E-1573SA1)

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

Purchase of Accounts Receivable by Central Hudson Gas & Electric Corporation

I.D. No. PSC-03-07-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 12, to become effective March 28, 2007.

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

Subject: Purchase of accounts receivable.

Purpose: To revise the purchase of accounts receivable discount rate.

Substance of proposed rule: The Commission is considering Central Hudson Gas & Electric Corporation's (Central Hudson's) request to revise its Purchase of Accounts Receivable discount rate offered under the Retail Access Program in its gas tariff, P.S.C. No. 12. The proposed effective date of Central Hudson's filing is March 28, 2007. The Commission may approve, reject or modify, in whole or in part, Central Hudson's request.

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

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

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

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

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

(06-G-1574SA1)

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

Transfer of Water Plant Assets and Electronic Tariff Filing by Donald E. Mulligan

I.D. No. PSC-03-07-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition by Donald E. Mulligan to transfer the water plant assets formerly owned by Standard Stone Construction Corporation, and presently owned and operated under an individual proprietorship, to Terrel Hills Water Company, Inc., and approval of its electronic tariff schedule, P.S.C. No. 1—Water.

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

Subject: Transfer of water plant assets and electronic tariff filing.

Purpose: To consider transfer of the water plant assets formerly owned by Standard Stone Construction Corporation, and presently operated under an individual proprietorship, to Terrel Hills Water Company, Inc., and approve an electronic tariff schedule, P.S.C. No. 1—Water.

Substance of proposed rule: On December 19, 2006, Donald E. Mulligan filed a petition requesting approval of the transfer of the water plant assets formerly owned by Standard Stone Construction Corporation, and presently owned and operated under an individual proprietorship, to Terrel Hills Water Company, Inc. (Terrel). Under the proprietorship, Mr. Mulligan currently provides water service to 227 residential customers in the Town of Northumberland, Saratoga County. Mr. Mulligan has also filed an electronic tariff schedule, P.S.C. No.1 - Water, which sets forth the rates, charges, rules and regulations under which Terrel will provide water service to become effective April 1, 2007. The Commission may approve or reject, in whole or in part, or modify the petition.

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

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

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

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

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

(06-W-1549SA1)

Department of Transportation

NOTICE OF ADOPTION

State Single Audit Program

I.D. No. TRN-16-06-00003-A

Filing No. 3

Filing date: Jan. 2, 2007

Effective date: Jan. 17, 2007

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

Action taken: Addition of Part 43 to Title 17 NYCRR.

Statutory authority: Transportation Law, section 21 as added by L. 1998, ch. 279 as amd. by L. 1999, ch. 100

Subject: Implementation of a State Single Audit Program when one is being done on the Federal level.

Purpose: To identify requirements, criteria and information necessary to establish the program.

Text or summary was published in the notice of proposed rule making, I.D. No. TRN-16-06-00003-P, Issue of April 19, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Linda Zinzow, Department of Transportation, 50 Wolf Rd., First Fl., Albany, NY 12232, (518) 457-4700, e-mail: lzinzow@dot.state.ny.us

Assessment of Public Comment

The agency received no public comment.