

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.

Department of Agriculture and Markets

NOTICE OF ADOPTION

Importation Requirements for Cattle, Sheep, Goats, Llamas and Deer

I.D. No. AAM-30-07-00004-A
Filing No. 147
Filing date: Feb. 19, 2008
Effective date: March 5, 2008

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

Action taken: Amendment of sections 53.5 and 62.1; repeal of sections 62.3, 62.4, 62.6 and 62.7 and addition of new sections 62.3, 62.4, 62.6 and 62.7 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 72, 74 and 76

Subject: Importation requirements for cattle, sheep, goats, llamas and deer.

Purpose: To eliminate certain testing and recordkeeping requirements for cattle, sheep, goats, llamas and deer.

Text of final rule: Subdivision (d) of section 53.5 is repealed and subdivision (e) is re-lettered subdivision (d).

Subdivisions (b), (d) and (l) of section 62.1 are repealed; Subdivisions (c), (e), (f), (g), (h), (i), (j), (k) and (m) of section 62.1 are re-lettered

subdivisions (g), (h), (i), (j), (k), (l), (o), (q) and (s); and new subdivisions (c), (d), (e), (f), (m), (n), (p) and (r) are added to read as follows:

(c) *Area veterinarian in charge is an official of the U.S.D.A. assigned to supervise and perform official animal health work in the State or other states concerned.*

(d) *Brucellosis-monitored cervid herd means a herd raised under range conditions in which sufficient numbers of sexually intact animals six months of age and older have been tested to provide a 95-percent probability of detecting a 2-percent brucellosis prevalence in the herd.*

(e) *Certificate of veterinary inspection.*

(1) *A certificate issued by an accredited veterinarian and approved and countersigned by the chief livestock health official of the state or country of origin. Approval and countersignature of the certificate shall signify that said official has caused the statements thereon to be verified and shall further signify that these statements qualify the animal for movement into New York State in accordance with the provisions of this Part.*

(2) *Such certificate shall identify each animal to be moved into this State. Individual identification shall include all eartags and tattoos carried by the animal, its species, breed, age, sex and its registration number, if any.*

(3) *Such certificate shall include the full name and address of both consignor and consignee, the date of issue, the dates and results of qualifying tests, the anticipated date of entry of the animal into New York State, and a statement that the animal has been inspected by an accredited veterinarian and is not showing signs of infectious, contagious or communicable disease (except where noted) and that the results of the tests are as indicated.*

(4) *Such certificate shall be valid for the purpose of this Part up to and including the 30th day following the date of inspection of the animal.*

(f) *Certified brucellosis-free cervid herd means a herd of cervidae that has qualified for and has been issued a certified brucellosis-free cervid herd certificate signed by both the area veterinarian in charge and the state animal health official.*

(m) *Recognized slaughtering establishment means any abattoir at which inspection service is provided by the U.S.D.A.*

(n) *Scrapie consistent state means a state that the U.S.D.A. has determined either enforces the federal scrapie control program set forth in section 79.6 of title 9 of the Code of Federal Regulations or enforces a state program which the U.S.D.A. determines is at least as effective in controlling scrapie as the federal program.*

(p) *Specifically approved stockyard means an establishment where sheep or goats are handled under permit or license issued by the department and which has been approved by the department to handle out-of-state sheep or goats.*

(r) *State animal health official is the official of the State or other states or countries responsible for animal disease control and eradication programs.*

Sections 62.3, 62.4, 62.6 and 62.7 are repealed and new sections 62.3, 62.4, 62.6 and 62.7 are added to read as follows:

Section 62.3. Sheep and Goats.

(a) *Sheep and goats may be moved directly to a recognized slaughtering establishment or specifically approved stockyard in the State under the provisions of section 62.4 of this Part.*

(b) *All other sheep and goats moving into the State shall be accompanied by an approved certificate of veterinary inspection.*

Section 62.4. Importation of sheep and goats to a specifically approved stockyard or recognized slaughtering establishment.

Sheep and goats may be moved to a specifically approved stockyard or recognized slaughtering establishment without a certificate of veterinary inspection under the following conditions:

(a) The sheep or goats shall be accompanied by a waybill.

(b) The sheep or goats shall be moved directly to the specifically approved stockyard or recognized slaughtering establishment named as the destination or consignee on the waybill.

(c) At any time after entry of the sheep or goats into the State, an authorized representative of the commissioner may direct the person transporting the sheep or goats to a designated location for the following purposes: unloading, restraint, inspection, identification, tagging, testing, or quarantine.

(d) The sheep or goats transported to a recognized slaughtering establishment shall be slaughtered within 6 days (144 hours) after the time of entry into this State.

(e) The sheep or goats transported to a specifically approved stockyard may be moved without restriction provided that:

(1) the stockyard complies with the requirements of this section including but not limited to maintenance of a segregation facility; and adequate handling and restraining equipment to enable the reading of ear tags and performance of physical examinations of the sheep and goats; and

(2) the sheep or goats originated in a state which is:

(i) bordering on New York State; and

(ii) recognized by the U.S.D.A. as a scrapie consistent state; and

(iii) has not been recognized by the Commissioner as having any other disease of sheep or goats which does not naturally occur in New York; and

(3) the federally assigned premises identification numbers of all premises of origin of the sheep or goats are included on the entry waybill. For purposes of this section, premises of origin shall be the farm or ranch where the animals originated and not a livestock market or dealer; and

(4) each sheep or goat entering the State has an individual, uniquely numbered ear tag, approved for identification by the U.S.D.A. or country of origin, which ear tag number is included on the entry waybill; and

(5) the sheep or goats which enter under this section are segregated by at least 30 feet from New York origin sheep or goats prior to the required veterinary inspection; and

(6) prior to release from the segregation pens, an accredited veterinarian shall physically examine all animals in the pen and shall prepare an approved certificate of veterinary inspection for those animals not going to immediate slaughter. If any animal shows any signs of infectious, contagious or communicable disease, that animal, and all animals exposed to that animal shall go for immediate slaughter, or, at the discretion of the commissioner may be returned to the premises of origin or quarantined and isolated from all other animals at the owner's expense until the commissioner determines that the animals are not a threat to New York livestock.

(f) The recognized slaughtering establishment or specifically approved stockyard shall maintain records including consignor, identification numbers, and the destination of all sheep and goats handled under this section. These records shall be maintained for a period of 5 years and be made available for examination upon the request of a representative of the department or U.S.D.A.

Section 62.6. Llamas.

Llamas moved into the State for any purpose shall be accompanied by an approved certificate of veterinary inspection.

Section 62.7. Deer importation.

(a) In order to move deer into the State for any purpose other than immediate slaughter:

(1) the destination of the deer must be in compliance with the requirements of section 68 of this Part; and

(2) the deer to be moved meet the requirements of section 68 of this Part including having a prior permit for importation; and

(3) all deer must be accompanied by an approved certificate of veterinary inspection; and

(4) deer originating from USDA Certified Brucellosis-Free cervid herds do not require testing for interstate movement; all sexually intact deer 180 days of age or older from USDA Brucellosis-Monitored cervid herds must test negative for brucellosis within 90 days prior to interstate movement; all other sexually intact deer 180 days of age or older must be tested for brucellosis within 30 days prior to interstate movement; and

(b) For purposes of the enforcement of article 5 of the Agriculture and Markets Law, and except where in conflict with the statutes of this State or with the rules and regulations promulgated by the commissioner, the

commissioner hereby adopts the current Federal regulation as it appears in title 9 of the Code of Federal Regulations, subpart C of part 77 (revised as of January 1, 2007; U.S. Government Printing Office, Washington DC 20402), at pages 257-273, entitled *Captive Cervids*. Copies of this regulation, as published in title 9 of the Code of Federal Regulations, are maintained in a file at the Department of Agriculture and Markets, Division of Animal Industry, 10-B Airline Drive, Albany, New York 12235, and are available for public inspection and copying during regular business hours.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 62.1(m).

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

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

The change made to the last published rule is nonsubstantive in nature. Accordingly, there are no changes to the Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis and Job Impact Statement which were previously submitted.

Assessment of Public Comment

The Department received a comment from John Wertis of BWW Farm in Trumansburg, New York 14886. Mr. Wertis indicates that he does not support the provisions of the proposal which would allow for the movement of out-of-state livestock to slaughter in New York State without certificates of veterinary inspection.

In considering Mr. Wertis' comment, the Department notes that the regulations currently in place allow for the movement of sheep, goats, llama and deer into New York for purposes of immediate slaughter without certificates of veterinary inspection. The proposed amendments do not change these provisions.

In addition, the Department received comments from Lisa Boyle of Cross Creek Farm in New Hampton, New York and Dr. Tatiana Luisa Stanton of Cornell University. Ms. Boyle and Dr. Stanton expressed concern over the definition of "recognized slaughtering facility" in section 62.1(m) of the proposed amendments. They indicated that there are establishments currently accepting sheep and goats for slaughter which are subject only to facility inspections under the United States Department of Agriculture (USDA) and not meat inspections by USDA. By defining "recognized slaughtering establishment" as an establishment at which meat inspection service is provided by the USDA, Ms. Boyle and Dr. Stanton question whether this definition would preclude those establishments from continuing to accept sheep and goats for slaughter, merely because they are not subject to meat inspection by USDA.

In considering the comments by Ms. Boyle and Dr. Stanton, the Department notes that in drafting the proposed regulations, it did not intend to preclude these establishments from continuing to accept sheep and goats for slaughter. Accordingly, the Department has made a nonsubstantive change to section 62.1(m) of the proposed amendment by removing the word "meat" from the definition of "recognized slaughtering establishment." This change does not materially alter the purpose, meaning or effect of the regulation but rather, clarifies its intended purpose and meaning, which is to continue to allow establishments subject only to USDA facility inspections to accept sheep and goats for slaughter.

Department of Correctional Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standards of Inmate Behavior

I.D. No. COR-10-08-00001-P

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

Proposed action: Repeal of section 270.2(B)(6)(iii), addition of sections 270.2(B)(6)(iv)-(v) and amendment of section 712.2(i) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112 and 138

Subject: Standards of inmate behavior, classification of each infraction, institutional rules of conduct and media review.

Purpose: To clarify and expand the types of unauthorized materials that can result in disciplinary action if possessed by inmates, and amend media review standards accordingly.

Text of proposed rule: Repeal and reserve section 270.2(B)(6)(iii) of Title 7 NYCRR (Rule 105.12).

Addition of two new sections 270.2(B)(6)(iv) and 270.2(B)(6)(v) to read as follows:

270.2(B)(6)(iv)

105.13 *An inmate shall not engage in or encourage others to engage in gang activities or meetings, or display, wear, possess, distribute or use gang insignia or materials including, but not limited to, printed or handwritten gang or gang related material.* I, II, III

Note: For purposes of this rule, a gang is a group of individuals, having a common identifying name, sign, symbol or colors, who have individually or collectively engaged in a pattern of lawlessness (e.g., violence, property destruction, threats of harm, intimidation, extortion, or drug smuggling) in one or more correctional facilities or that are generally recognized as having engaged in a pattern of lawlessness in the community as a whole. For purposes of this rule, printed or handwritten gang or gang related material is written material that, if observed in the inmate's possession, could result in an inference being drawn about the inmate's gang affiliation, but excludes published material that that the inmate has obtained through the facility library or that has been approved for the inmate to possess through the media review process.

270.2(B)(6)(v)

105.14 *An inmate shall not engage in or encourage others to engage in unauthorized organizational activities or meetings, or possess printed or handwritten material relating to an unauthorized organization where such material advocates either expressly or by clear implication, violence based upon race, religion, sex, sexual orientation, creed, law enforcement status or violence or acts of disobedience against department employees or that could facilitate organizational activity within the institution by an unauthorized organization.* I, II, III

Note: For purposes of this rule an unauthorized organization is any organization which has not been approved by the deputy commissioner for program services. Printed or handwritten material that could facilitate organizational activity includes, but is not limited to, a membership roster, organizational chart, constitution or by-laws. This rule excludes possession of published material that the inmate has obtained through the facility library or that has been approved for the inmate to possess through the media review process. During the pendency of an application to obtain authorization for a proposed inmate organization, the rule also excludes specific printed or handwritten material that the Deputy Superintendent of Programs or higher ranking employee has requested in writing the inmate submits as part of the application process.

Amend Section 712.2(i) of Title 7 NYCRR by adding a note to read as follows:

(i) The department reserves the right to deny the inmate publications which may be held noninciteful or nonadvocative, as the case may be, during the media review process, but which actually result in violence or disobedience after entrance into a facility, as is clearly set forth in

paragraphs (h)(3) and (6) of this section. Such items shall be referred to the Facility Media Review Committee, and if appealed, referred to the Central Office Media Review Committee, for decision.

Note: There also may exist certain written material that, if observed by a fellow inmate in the inmate's possession, could result in an inference being drawn about the inmate's gang affiliation and thereby target him or her for assault or result in other disruptive conduct. There likewise may exist certain written material that could facilitate organizational activity within an institution by an organization that has not been approved by the deputy commissioner for program services to operate within that institution. Material that could facilitate organizational activity includes, but is not limited to, a membership roster, organizational chart, constitution or by-laws. All such material described in this note can be disallowed although otherwise determined not to incite or advocate for violence or disobedience.

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

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

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

Regulatory Impact Statement

Statutory Authority

Section 112 of Correction Law grants the Commissioner of DOCS the superintendence, management and control of the correctional facilities and inmates confined therein and to promulgate rules and regulations for this purpose. Section 138 of Correction Law grants the Commissioner the ability to establish institutional rules and regulations that define and prohibit inmate misconduct provided such rules are published and posted so that all inmates are given notice of the prohibited conduct and the range of disciplinary sanctions that may occur due to violations of said rules.

Legislative Objective

By vesting the commissioner with this rulemaking authority, the legislature intended the commissioner to promulgate such rules, regulations and disciplinary standards so as to provide for the safe, secure and orderly operation of correctional facilities for both staff and inmates and to help ensure public safety.

Needs and Benefits

Rule 105.12 is one of the rules of conduct that collectively make up the standards of inmate behavior. The rule makes subject to inmate discipline certain activities and materials associated with gangs and other unauthorized organizations. The proposed rulemaking takes what was previously one rule and replaces it with two separate rules, each with an accompanying note. The new rules and accompanying notes will enhance clarity regarding the scope of the prohibited conduct. It is expected that this will allow for better inmate compliance and more uniform statewide enforcement. Proposed Rule 105.13 is limited to the activities and materials associated with gangs. Proposed Rule 105.14 is limited to the activities and materials associated with other unauthorized organizations. The only other change is the addition of a clarifying note added to the regulations governing media review. The note reiterates the security concerns associated with an inmate's possession of gang related written material as well as written material that could facilitate organizational activity within a correctional facility by other unauthorized organizations.

Costs

- a. To agency, state and local government: No discernable costs are anticipated.
- b. Cost to private regulated parties: None. The proposed rule changes do not apply to private parties.
- c. This cost analysis is based upon the fact that the rule changes merely clarify and expand upon previously established rules regarding internal management and Standards of Inmate Behavior. No additional procedures or new staff are necessary to implement the proposed changes.

Local Government Mandates

There are no new mandates imposed upon local governments by these proposals. The proposed amendments do not apply to local governments.

Paperwork

There are no new reports, forms or paperwork that would be required as a result of amending these rules.

Duplication

These proposed amendments do not duplicate any existing State or Federal requirement.

Alternatives

One alternative would be to leave Rule 105.12 of the inmate rules of conduct unchanged and omit the note to the regulations governing the media review process. This alternative would reduce the ability to provide enhanced consistency and clarity regarding the operation of the rule.

Another alternative would require all printed or handwritten material found in an inmate's possession processed through media review, see Part 712 of Title 7 NYCRR, prior to the possible imposition of inmate discipline. Media Review, however, governs "publications" or portions thereof and generally not handwritten or typed material. Expanding the role of media review committees to cover any handwritten or typed pieces of paper that may be found in the possession of the over 62,000 inmates under State custody would overwhelm the current media review process. Furthermore, to the extent that gang or gang related material is involved, such material constitutes an undue risk to safety and security irrespective of its overall content. This is the case because the mere possession of gang or gang related material, if observed in an inmate's possession by other inmates, could result in an inference being drawn about the inmate's gang affiliation and thereby target the inmate for assault or result in other disruptive conduct. Concomitant with the implementation of the proposed rules, however, the Department will issue instructions that any publication relating to an unauthorized organization, other than a gang, be forwarded to media review in accordance with 7 NYCRR § 712.3(b)(2), prior to the possible imposition of inmate discipline. Finally, it should be noted that prohibited material in proposed Rule 105.14 is narrowly circumscribed and in the accompanying note to Rule 105.13, the term gang is well defined. Consequently, with or without media review committee involvement, possession of only limited and identified printed or handwritten material may subject an inmate to possible disciplinary action.

Federal Standards

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

Compliance Schedule

The Department of Correctional Services will achieve compliance with the proposed rules immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This proposal clarifies Internal Management issues with regard to the Department's Institutional Rules of Conduct and the Department's Media Review Standards, specifically, but not limited to, the definition of a "gang".

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal clarifies Internal Management issues with regard to the Department's Institutional Rules of Conduct and the Department's Media Review Standards, specifically, but not limited to, the definition of a "gang".

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal clarifies Internal Management issues with regard to the Department's Institutional Rules of Conduct and the Department's Media Review Standards, specifically, but not limited to the definition of a "gang".

Proposed action: Amendment of sections 9003.1, 9003.2 and 9003.5 of Title 9 NYCRR.

Statutory authority: State Finance Law, section 5

Subject: Contract procedures.

Purpose: To permit expanded contracting procedures and contract terms.

Public hearing(s) will be held at: 10:00 a.m., May 2, 2008 at State Capitol, Rm. 124, 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.

Text of proposed rule: Section 1. Paragraph (b) of Section 9003.1 of Title 9 of the NYCRR is amended to read as follows:

(b) Notwithstanding section 9003.1(a) of this Subtitle, a *deferred compensation* committee may contract with a firm of certified public accountants selected as a result of a competitive proposal undertaken by the local employer that expressly included in the scope of services an audit of the deferred compensation plan sponsored by the local government to be conducted in compliance with section 9005.1 of this Subtitle. The competitive request for proposals must be in general compliance with section 9003.2 of this Subtitle, except for the requirement of notice in the State Register. The *deferred compensation* committee must adhere to the criteria contained in section 9003.3 of this Subtitle in the selection of such auditor made pursuant to this paragraph (b). A firm of certified public accountants selected by a *deferred compensation* committee pursuant to this paragraph (b) shall be subject to the provisions of section 9003.5 of this Subtitle. The firm of certified public accountants may be the same firm that is under contract with the local employer for other auditing services of the local employer.

Section 2. A new paragraph (c) is added to Section 9003.1 of Title 9 of the NYCRR to read as follows:

(c) *Notwithstanding section 9003.1(a) of this Subtitle, the board or a deferred compensation committee may contract with a financial organization for the purposes of investing a portion of the assets of a plan selected as a result a search conducted by the independent consultant to the board or deferred compensation committee of financial organizations that provide such services. The board or deferred compensation committee shall provide direction to the independent consultant, in writing, designating the generally recognized investment classification and sub-classification that the independent consultant is to make a recommendation to the board or deferred compensation committee after the conduct of a search of qualified financial organizations and the number of financial organizations that is to be recommended, which number shall not be less than three. The independent consultant must adhere to the criteria contained in section 9003.3 of this Subtitle prior to recommending any financial organization to the Board or deferred compensation committee. The independent consultant must recommend at least the number of financial organizations requested by the board or deferred compensation committee in each generally accepted investment classification and sub-classification and a detailed analysis of each financial organization being recommended, including a comparison of such recommended financial organization to the appropriate and generally recognized benchmarks for such investment classification and sub-classification. The board or deferred compensation committee may select one or more financial organizations for the purposes of investing a portion of the assets of a plan from the recommendation of the independent consultant. The provisions of this Section 9003.1(c) apply to the board and any deferred compensation committee that enters into contracts with financial organizations separately from any other contracts or agreements effecting the appointment of any trustee, independent consultant, administrative service agency, or firm of certified public accountants to provide services in respect of a plan.*

Section 3. Section 9003.2 of Title 9 of the NYCRR is amended to read as follows:

9003.2 Competitive proposals. All contracts and agreements in respect of a plan shall be awarded only after receiving competitive proposals; provided, however, that no competitive proposal or bidding shall be necessary for the board or a deferred compensation committee to serve as the trustee of a plan under its authority or with respect to financial organizations selected pursuant to Section 9003.1(c). The board or deferred compensation committee, as applicable, shall cause to be published an announcement requesting competitive proposals. Such announcement shall be published in the State Register and in the official newspaper or newspapers, if any, or otherwise in an appropriate newspaper designated for such

Deferred Compensation Board

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Contract Procedures

I.D. No. DCB-10-08-00003-P

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

purposes, at least 90 days prior to the date on which the contract or agreement will be awarded, and shall request proposals within a specified time period from the date of publication.

Section 4. Paragraph (a) of Section 9003.5 of Title 9 of the NYCRR is amended to read as follows:

9003.5 Miscellaneous requirements. (a) All contracts and agreements entered into with a trustee, an independent consultant, a financial organization, a firm of certified public accountants or an administrative service agency shall be in writing, shall be awarded on the basis of a competitive bid conducted or a search conducted in accordance with Section 9003.1(c) in respect of the specific contract or agreement in accordance with this Part 9003, shall not exceed five years in duration, and shall impose no penalties or surrender charges for the transfer of assets or responsibilities on expiration of the contract or agreement. *Where the board or a deferred compensation committee enters into a contract or agreement with a trustee, a financial organization or organizations, and an administrative service agency and such trustee, financial organization or organizations and administrative service agency is selected by the board or deferred compensation committee independently from each other service, such contracts or agreements shall not exceed ten years in duration.* Notwithstanding the previous sentence, no trustee who is the only trustee of a plan shall be forced to resign the position of trustee solely by operation of this section 9003.5(a) prior to the time such person's successor as trustee has been duly qualified and appointed.

Text of proposed rule and any required statements and analyses may be obtained from: Edward J. Lilly, Deferred Compensation Board, Rm. 124, Empire State Plaza Concourse - North, P.O. Box 2103, Albany, NY 12220-2103, (518) 473-6619, e-mail: elily@nysdcp.com

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

Public comment will be received until: Five days after the last scheduled public hearing required by statute.

Regulatory Impact Statement

1. Statutory authority: Section 5 of the State Finance Law authorizes the New York State Deferred Compensation Board to adopt rules and regulations regarding the standards and requirements of all deferred compensation plans established in the state, including selection of financial organizations for investment purposes.

2. Legislative objectives: Section 5 permits the State and local governments to establish deferred compensation plans in accordance with section 457 of the Internal Revenue Code as a voluntary supplemental retirement plan. The proposed amendments would expand the procedures used by the deferred compensation board or committee to identify and select financial organizations for the purposes of investing a portion of the assets of a plan and the term of those contracts. The objective of the proposed rule amendment is to improve the efficiency of this contracting process.

3. Needs and benefits: The selection and contracting with an administrative service agency, custodian/trustee, and financial organizations is an essential part of the plan sponsor's responsibility in administering a deferred compensation plan. These amendments would permit the board or a local deferred compensation committee to (1) select a financial organization for the purposes of investing a portion of the assets of a plan following a search process to identify the most qualified and appropriate firms for the plan, and (2) enter into a contract for an administrative service agency, trustee or investment firms for up to ten years, rather than five, when such services are selected independently from each other. This will improve the efficiency of the selection process of investment firms without compromising integrity because the proposed rule contains guidelines and restrictions related to the process. A ten-year contract for administrative service agency, trustee or investment services would provide for greater stability of the plan and potentially lower costs.

4. Costs: The implementation of this proposed rule should not add any costs to the administration of a deferred compensation plan. The expense to conduct a search process should be no greater than conducting a request for proposal process. Oftentimes there are start up costs involved for administrative service agency, trustee or investment service providers that are included in the costs. A contract longer than five years for these services could lower the overall costs because there would be a longer period to recover those costs.

5. Local government mandates: These proposed rules do not impose any local government mandates.

6. Paperwork: These proposed rules do not impose any additional paperwork.

7. Duplication: These proposed rules do not duplicate any other state or federal regulations.

8. Alternatives: There are no significant alternatives.

9. Federal standards: There are no federal minimum standards related to the proposed rule.

10. Compliance schedule: The proposed rule amendments do not impose a compliance schedule because they are permissive and prospective.

Regulatory Flexibility Analysis

1. Effect of rule: The proposed rule will have no effect on small businesses. Local governments that sponsor deferred compensation plans and contract for investment services independently from other plan services providers will have an alternative method to select the investment provider. Local governments that select administrative service agency, trustee, and investment service providers independently from each other will have the option to have a longer term contract with those providers that the current rules permit.

2. Compliance requirements: Local governments that sponsor a deferred compensation plan and contract for investment services independently from other plan services providers will have to follow the guidelines in the proposed rule to utilize a search process rather than the Request for Proposals ("RFP") process. However, these guidelines are no more stringent than conducting an RFP.

3. Professional services: In order to select an investment provider through a search process, a local government would have to contract with an investment consultant through an RFP process who would conduct the search. Local employers who would be eligible for this proposed rule generally already employ an investment consultant so there would be no additional professional services required.

4. Compliance costs: There are no additional costs required to comply with the proposed rule.

5. Economic and technological feasibility: Not applicable.

6. Minimizing adverse impact: The proposed rule does not impose an adverse economic impact on local governments because it is permissive.

7. Small business and local government participation: A public hearing will be held in order to provide small businesses and local governments to participate in the rule making process.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: These proposed rules will not apply to rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: These proposed rules will not apply to rural areas.

3. Costs: There are no costs of these proposed rules on rural areas.

4. Minimizing adverse impact: These proposed rules will not apply to rural areas.

5. Rural area participation: These proposed rules will not apply to rural areas.

Job Impact Statement

Nature of Impact: This proposed rule will have no impact on jobs or employment opportunities. The Board or a local deferred compensation committee must follow fiduciary standards when selecting an investment provider and make a selection based upon the best interests of the plan and plan participants. The same fiduciary standards of selection must be followed to select an investment provider whether a search process or a Request for Proposals process is followed.

Categories and number affected: None.

Regions of adverse impact: None.

Minimizing adverse impacts: Not applicable.

Self-employment opportunities: Not applicable.

Education Department

NOTICE OF ADOPTION

Accreditation of Teacher Education Programs

I.D. No. EDU-48-07-00007-A

Filing No. 144

Filing date: Feb. 19, 2008

Effective date: March 6, 2008

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

Action taken: Amendment of section 52.21(b)(2)(iv)(c)(3)(i) and (ii) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 210 (not subdivided); 215 (not subdivided); 305(1) and (2); 3001(2); and 3004(1)

Subject: Accreditation of teacher education programs.

Purpose: To extend for six months, until June 30, 2008, the required time period for completion of the accreditation process by teacher education programs registered on or before September 1, 2001 that are awaiting an accreditation decision following a site visit conducted on or before December 31, 2006; and accordingly, extend the period of eligibility in which certain teacher education programs, initially denied accreditation, may request from the department a deferral of the date by which they must be accredited.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-48-07-00007-P, Issue of Nov. 28, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Contracts for Excellence

I.D. No. EDU-20-07-00005-RC

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

Revised action: Addition of section 100.13 and amendment of section 170.12 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 211-d(1-9), and L. 2007, ch. 57, part A, section 12

Subject: Contracts for excellence.

Purpose: To establish allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures, and other requirements for purposes of preparation of contracts for excellence by certain specified school districts.

Expiration date: August 13, 2008.

Substance of revised rule: The State Education Department proposes to add a new section 100.13 and amend sections 170.12 of the Commissioner's Regulations, effective May 8, 2008. The rule is necessary to implement Education Law section 211-d, regarding contracts for excellence.

The proposed amendment was adopted as an emergency measure at the April Regents 2007 meeting, revised and readopted as an emergency rule at the June and July Regents meetings, and readopted as an emergency action at the September, October and January 2008 Regents meetings.

Further revisions are proposed as set forth in the Revised Regulatory Impact Statement. A summary of the revised rule follows.

Section 100.13(a) defines: (1) total foundation aid; (2) supplemental educational improvement plan grant; (3) contract amount; (4) base year; (5) experimental programs; (6) highly qualified teacher; (7) response to intervention program and (8) students with low academic achievement.

Section 100.13(b) establishes applicability provisions for determining whether a school district is required to prepare a contract for excellence. A contract shall be prepared by each district: (1) that has at least one school currently identified as: (a) requiring academic progress; (b) in need of improvement; (c) in corrective action; or (d) in restructuring; and (2) that receives: (a) an increase in total foundation aid compared to the base year in an amount that equals or exceeds either fifteen million dollars or ten percent of the amount received in the base year, whichever is less; or (b) a supplemental educational improvement plan grant. For the 2007-2008 school year, such increase in total foundation aid shall be the amount of the difference between total foundation aid received for the current year and the total foundation aid base as defined in Education Law section 3602(1)(j). In NYC, a contract shall be prepared for the city school district and each community district meeting the above criteria.

Section 100.13(c) provides that each contract shall be in a format, and submitted pursuant to a timeline, prescribed by the Commissioner and shall:

(1) describe how the contract amount shall be used to support new programs and new activities or expand use of programs and activities demonstrated to improve student achievement, from the allowable programs and activities and/or authorized experimental programs pursuant to section 100.13(d); and specify how the contract amount will be distributed in accordance with 100.13(c)(3);

(2) specify the new or expanded programs, from the allowable programs and activities and/or authorized experimental programs pursuant to section 100.13(d), for which each sub-allocation of the contract amount shall be used and affirm that such programs shall predominately benefit students with the greatest educational needs including, but not limited to: (a) limited English proficient (LEP) students and students who are English language learners (ELL), (b) students in poverty, (c) students with disabilities, and (d) students with low academic achievement;

(3) state, for all funding sources, whether federal, state or local, the instructional expenditures per pupil, the special education expenditures per pupil, and the total expenditures per pupil, projected for the current year and estimated for the base year; provided that no later than February 1 of the current school year, the district shall submit a revised contract stating such expenditures actually incurred in the base year;

(4) include any programmatic data projected for the current year and estimated for the base year, as the Commissioner may require; and

(5) in the NYC school district, include a plan that meets the requirements of section 100.13(d)(2)(i)(a), to reduce average class sizes within five years for the following grade ranges: (a) prekindergarten through grade three; (b) grades four through eight; and (c) grades nine through twelve. Such plan shall be aligned with the capital plan of the NYC school district and include continuous class size reduction for low performing and overcrowded schools beginning in the 2007-2008 school year and thereafter and include the methods to be used to achieve proposed class sizes, such as the creation or construction of more classrooms and school buildings, the placement of more than one teacher in a classroom or methods to otherwise reduce the student to teacher ratio. Beginning in the 2008-2009 school year, such plan shall provide for reductions in class size that, by the end of the 2011-2012 school year, will not exceed the prekindergarten through grade 12 class size targets prescribed by the Commissioner after consideration of the recommendation of an expert panel appointed to review class size research.

Paragraph (3) of section 100.13(c) is added, to clarify requirements for the use of contract for excellence funds.

The Commissioner shall approve each contract meeting the provisions of section 100.13(c) and certify, for each contract, that the expenditure of additional aid or grant amounts is in accordance with Education Law section 211-d(2). Approval shall be given to contracts demonstrating to the Commissioner's satisfaction that the allowable programs selected:

(i) predominately benefit students with the greatest educational needs;

(ii) predominately benefit students in schools identified as requiring academic progress, or in need of improvement, or in corrective action, or restructuring and address the most serious academic problems in those schools; and

(iii) are based on practices supported by research or other comparable evidence in order to facilitate student attainment of State learning standards.

Section 100.13(d) establishes the allowable programs and activities, including experimental programs. Section 100.13(d)(1) establishes general requirements, including that such programs and activities: (1) predominately benefit students with the greatest educational needs including, but not limited to: LEP and ELL students, students in poverty, students with disabilities, and students with low academic achievement; (2) predominately benefit students in schools identified as requiring academic progress, in need of improvement, in corrective action, or restructuring and address the most serious academic problems in those schools; (3) be consistent with federal and State statutes and regulations governing the education of such students; (4) be developed in reference to practices supported by research or other comparable evidence in order to facilitate student attainment of State learning standards; (5) where applicable, be accompanied by high quality, sustained professional development focused on content pedagogy, curriculum development, and/or instructional design in order to ensure successful implementation of each program and activity; (6) ensure that expenditures of the contract amount shall be used to supplement and not supplant funds expended by the district in the base year for such purposes; (7) ensure that all additional instruction is provided by

appropriately certified teachers or highly qualified teachers where required by section 120.6 of this Title, emphasizing skills and knowledge needed to facilitate student attainment of State learning standards; and (8) be coordinated with all other allowable programs and activities included in the district's contract as part of the district's comprehensive educational plan.

Section 100.13(d)(2) establishes criteria for specific allowable programs and activities, which shall include: (1) class size reduction for (a) the NYC school district and (b) all other school districts; (2) student time on task; (3) teacher and principal quality initiatives; (4) middle school and high school restructuring; and (5) full-day kindergarten or prekindergarten programs.

Section 100.13(d)(2)(i) establishes requirements for class size reduction, including special provisions for NYC. NYC must allocate some of its total contract amount to class size reduction according to a plan, included in their contract and approved by the Commissioner pursuant to section 100.13(c), to reduce the average class size for the following grade ranges: prekindergarten to grade three, grades four through eight, and grades nine through twelve, commencing in the 2007-2008 school year and ending in the 2011-2012 school year, to target levels recommended by the expert panel appointed by the Commissioner. Districts outside of NYC shall establish class size reduction goals in the 2007-2008 school year and demonstrate measurable progress towards meeting such goals; and beginning with the 2008-2009 school year, shall demonstrate measurable progress towards meeting the target levels recommended by the expert panel. The rule also mandates NYC give priority to prekindergarten through grade 12 students in schools requiring academic progress, correction, improvement or in restructuring and to overcrowded schools. Furthermore, it requires that classrooms created shall provide adequate and appropriate physical space to students and staff, among others. Class size reduction may be accomplished through the creation of additional classrooms and buildings, through assignment of more than one teacher to a classroom or, in NYC, by other methods to reduce the student to teacher ratio, as approved by the Commissioner.

Section 100.13(d)(2)(ii) provides that allowable programs and activities related to student time on task may be accomplished by: (1) lengthened school days, (2) lengthened school years and (3) dedicated instructional time, including individual intervention, tutoring and student support services.

Section 100.13(d)(2)(iii) prescribes requirements for teacher and principal quality initiatives, including: (1) recruitment and retention of teachers, (2) mentoring for teachers and principals in their first or second year of a new assignment, (3) incentive programs for teacher placement, (4) instructional coaches, and (5) school leadership coaches. Districts shall ensure that an appropriately certified, or highly qualified teacher where required under section 120.6, is in every classroom and an appropriately certified principal is assigned to every school.

Section 100.13(d)(2)(iv) provides that allowable programs and activities for middle and high school restructuring include: (1) instructional program changes to improve student achievement and attainment of the State learning standards and (2) structural organization changes. The section further requires that districts choosing to make organization changes must also make instructional program changes.

Section 100.13(d)(2)(v) provides that allowable programs and activities for full-day kindergarten or prekindergarten programs include: (1) a minimum full school day program, (2) a minimum full school day program with additional hours for children and families, (3) a minimum full school day program with additional hours in collaboration with community based agencies (prekindergarten only), and (4) classroom integration programs for students with disabilities (specifically for full-day prekindergarten).

Section 100.13(d)(3) lists the following requirements for experimental programs, not included in the allowable programs and activities described above: (1) a maximum percentage of the contract amount that may be used for experimental programs, (2) a plan must be submitted to the Commissioner, (3) the program must be based on an established theoretical base supported by research or other comparable evidence, (4) the implementation plan for an experimental program must be accompanied by a program evaluation plan based on empirical evidence to assess the impact on student achievement, and (5) the experimental program may be in partnership with an institution of higher education or other organization with extensive research experience and capacity.

Section 100.13(d)(3)(ii) states provides a maximum amount of up to \$30 million dollars or twenty-five percent of the contract amount, whichever is less, that districts may use in the 2007-2008 school year to maintain existing programs and activities listed in Education Law section 211-3(a).

Section 100.13(e) establishes criteria for the development of the contract for excellence pursuant to a public process, in consultation with parents or persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to Education Law section 211-c, which shall include at least one public hearing. Special provisions for NYC's development of the contracts are included.

Section 100.13(f) establishes requirements to assure procedures are in place by which parents may bring complaints concerning implementation of a district's contract for excellence, including special provisions for the NYC.

Section 100.13(g) establishes requirements for the public reporting by districts of their school-based expenditures of total foundation aid.

Section 170.12(e)(1), relating to requirements of an annual audit of school district records, is amended to provide that, for schools required to prepare a contract for excellence pursuant to Education Law section 211-d, the annual audit for the year such contract is in effect shall also include a certification by the accountant or, where applicable, the NYC comptroller, in a form prescribed by the Commissioner, that the increases in total foundation aid and supplemental educational improvement plan grants have been used to supplement, and not supplant funds allocated by the district in the base year for such purposes.

Revised rule compared with proposed rule: Substantial revisions were made in section 100.13(a)(8), (c)(1), (2), (3), (d)(1), (e) and (f).

Revised rule making(s) were previously published in the State Register on August 8, 2007 and August 15, 2007.

Text of revised proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Commissioner of Education - P16, Education Department, 2M West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: p16education@mail.nysed.gov

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on August 15, 2007, the proposed rule was revised as follows.

Section 100.13(a)(8) is added to define "students with low academic achievement."

Section 100.13(c)(1)(ii), (c)(2)(i) and (d)(1)(i)(a) is revised to add "students with low academic achievement" to the list of student groups comprising "students with the greatest educational needs."

Section 100.13(c)(1)(iii) is revised, and a new paragraph (3) of section 100.13(c) added, to clarify requirements for use of contract for excellence funds, including that at least 75 percent of the contract amount be distributed to benefit students having the greatest educational needs.

Sections 100.13(e) and (f) are revised to specify requirements relating to the conduct of the public process to develop contracts and the complaint process.

The above revisions require the following sections of the Regulatory Impact Statement be revised as follows:

COSTS:

The rule is necessary to implement Chapter 57 of the Laws of 2007 and does not impose any significant, additional costs beyond those inherent in the statute.

a. Costs to State government: None.

b. Costs to local governments:

(i) Sustained Professional Development

Assuming two extra days per year of sustained professional development for contract for excellence programs, for one to two dozen teachers per district at a cost of \$125 per teacher per day, a total annual cost for all of the districts of \$400,000 per year is estimated (treating NYC as 34 districts – one high school district, one special education district and thirty-two community school districts).

(ii) Other Costs

Costs will vary depending on a district's selection of allowable programs and activities. Particular activities where the cost imposed could be large include the following: the requirement that additional instruction under any allowable program must be provided by appropriately certified or highly qualified teachers; that allowable programs must be coordinated with school district comprehensive plans; determining if a student responds to scientific, research-base intervention; and analyzing, gathering

and compiling the necessary research to support their proposed programs and activities. Assuming each district (55 plus 34 for NYC (see above) for a total of 89 districts) hires two new teachers at \$53,000 per year/per teacher (salary plus benefits), an annual cost of \$9,435,000 is estimated.

(iii) Public Process Costs

Costs are associated with providing notice of the public comment period and public hearings, including translations where applicable, and preparation of the public comment record and assessment. Cost scope and size will vary by district size, State region, contract allocation, and the nature of the proposed interventions.

For example, in the case of Alexander, a small rural district with the smallest total contract amount award Statewide, and a single school in accountability status, the costs should be a few thousand dollars or less. District mailings, newspaper advertising and website postings can be included with existing, similar routine district tasks, resulting in marginal added expense; and there should be little/no need for translations. The average cost of a column inch of advertising space in similar rural districts is around \$7. A half page, posted twice during the comment period, results in about \$1,000 costs: (\$7 per inch X 70 inches X 2 days = \$980).

In New York City, the costs would be much greater, including translation services, and greater reliance on print media to reach individuals lacking computer access. A half page advertisement posted twice in the following publications would impose a cost in excess of \$115,000: African-American Observer (\$59 per inch X 70 inches X 2 = \$8,260); El Diario/La Prensa (\$60 X 70 X 2 = \$8,400); and the New York Post (\$711 X 70 X 2 = \$99,540).

We anticipate minimal costs for preparation of the public comment record and assessment to be absorbed using existing staff and resources.

(iv) Complaint Process Costs

We anticipate additional, marginal costs for creating a complaint form and providing notice of complaint procedures, which are anticipated to be absorbed using existing staff and resources.

Translation costs for a small-to-medium size district may amount to a few hundred dollars: professional translation of a 1000 word legal document into Latin-American Spanish could be procured for \$165; and the same document for Korean, Haitian-Creole, Caribbean-Spanish and Chinese could cost \$650. New York City might need several translations into the more than 100 languages spoken there. It is anticipated that translations for the complaint process can be included within other translating functions performed by the City's Department of Education, including centralized service in-house, in a cost-effective manner. However, any concomitant economies of scale this district might benefit from, would be offset by the higher costs of doing business there and the sheer number of languages to be translated. These two documents could also be posted to the district's website, or be sent out via other mailings, thereby incurring a small marginal cost.

The rule also requires districts make reasonable efforts to investigate complaints by parents, and notify the complainants of their determination within 30 days of its receipt. The rule provides for appeal procedures. These costs are hard to estimate and should vary by the size and scope of the contract and its allowable program activities. It is expected that the amount of professional, including legal and perhaps investigative or inspector general staff time (in the case of the NYC Department of Education) would not be insignificant in light of the importance of the contract for excellence and its public prominence as a school improvement initiative. One might also expect to see more complaints initially and fewer over time as the public process for developing contracts for excellence results in more public buy-in to the programs in which districts are investing. So, for example, if initially two days of investigation were required for each million dollars of Foundation Aid subject to Contract for Excellence requirements, and districts paid, on average, \$500 for a day of investigative services, and total Foundation Aid subject to Contract for Excellence requirements were \$400 million in 2008-09 (this figure was \$428 million in 2007-08), the cost statewide would be \$400,000.

c. Costs to private, regulated parties: None.

d. Costs to the Department of implementation and continuing compliance:

There may be additional costs for convening an expert panel by the Commissioner to determine class size ranges. The cost will vary depending on the "formality" of the process. If a study by an outside consultant or firm were commissioned by the panel, for example, the anticipated expense might be in the tens of thousands of dollars. A less formal process might only have costs for travel and necessary supplies.

LOCAL GOVERNMENT MANDATES

Each district identified in the statute must prepare a contract for excellence pursuant to the rule's provisions. Depending on the allowable programs and activities chosen, the rule mandates or requires certain actions.

School districts must establish a 30-day period for receipt of written public comment, and procedures for the conduct of public hearings on their proposed contracts, and provide reasonable notice to parents and persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to Education Law section 211-c.

Districts shall provide translations of the notices into languages other than English most commonly spoken in the district.

Districts shall prepare, and make available upon request, a record of public comment received. Not later than 20 days after expiration of the public comment period or conclusion of public hearings, whichever occurs later, each district shall prepare a public comment assessment. The public comment assessment shall be posted on a district website and made available upon request.

Districts shall develop a complaint form and instructions for use.

Districts shall provide reasonable notice to parents of students or persons in parental relation to students of the procedures for bringing a complaint concerning implementation of the contract for excellence, and provide translations of the complaint form and procedures into the languages other than English most commonly spoken in the district.

Each district shall post, and make available for downloading, its notice of complaint procedures and complaint form on a district website. Districts may use additional methods to provide notice, including making copies available in schools and district offices, and including copies in district mailings and distributions.

PAPERWORK

School districts will submit their contracts to the Commissioner for approval, using an automated, web-based application.

Districts must establish a 30-day period for receipt of written public comment, and procedures for the conduct of public hearings, on contracts, and provide reasonable notice, including:

(1) a general description of the contract;

(2) a detailed description of proposed allocations, on a school level, by program area, including details concerning proposed program additions and/or enhancements, by student achievement performance targets, and by affected student population groupings, including students with limited English proficiency and students who are English language learners, students in poverty, students with disabilities; and students with low academic achievement;

(3) information where to obtain a copy of the proposed contract; and

(4) a description of the public comment process and public hearing process.

Districts shall provide translations of the notices into languages other than English most commonly spoken in the district.

Districts shall prepare, and make available upon request, a record of public comment received. Not later than 20 days after expiration of the public comment period or conclusion of public hearings, whichever occurs later, each district shall prepare a public comment assessment containing a summary of the substance of the comments received, grouped by subject matter, and the district's response to each substantive comment, including a statement of any changes made to the contract as a result of such comment, or an explanation why the comment's suggestions were not incorporated into the contract. The public comment assessment shall be posted on a district website and made available upon request.

Districts shall develop a complaint form and instructions for its use. The form shall specify the locations and deadline for filing.

Districts shall provide reasonable notice to parents or persons in parental relation, of the procedures for bringing a complaint concerning implementation of the district's contract; and the locations and deadline for filing.

Districts shall provide translations of the form and notice into languages other than English most commonly spoken in the district.

Districts shall post, and make available for downloading, its notice of complaint procedures and complaint form on a district website, and may also use additional methods to provide notice.

The building principal, community superintendent or superintendent, as applicable shall notify the complainant in writing of his or her complaint determination, including the basis for such determination within 30 days from the date of receipt of the complaint, and an explanation of appeal procedures.

Upon appeal, the superintendent or community superintendent, as applicable, shall notify the complainant in writing of the appeal determina-

tion, including the basis for such determination, and an explanation of the appeal procedures.

Upon appeal of the complaint determination, or an appeal determination of a superintendent or community superintendent, to the trustees/board of education or chancellor, written notice shall be provided the appeal determination, the basis for the determination, and a statement that the determination may be appealed to the Commissioner pursuant to Education Law section 310.

COMPLIANCE SCHEDULE

Contracts for 2007-2008 were approved in November 2007 and will apply to expenditures through June 30, 2008. Districts will need to prepare and submit reports to the Department during Fall 2008 summarizing program activities, expenditures and results under their programs, and will need to have an independent audit performed and submitted to the Department.

Planning for the second year of the program (2008-2009) is ongoing and occurring concurrently. Changes in program regulations and requirements may occur as a result of the budgetary and legislative process. It is anticipated that a similar compliance scheduler under Chapter 57 of the Laws of 2008 will pertain, with districts required to submit or update their contracts by July 1, 2008 and the Department approving such contracts or updates by August 1, 2008.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on August 15, 2007, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule require that the following sections of the previously published Regulatory Flexibility Analysis be revised as follows.

COMPLIANCE REQUIREMENTS

Each district identified in the statute must prepare a contract for excellence pursuant to the rule's provisions. Depending on the allowable programs and activities chosen, the rule mandates or requires certain actions.

School districts will submit their contracts to the Commissioner for approval, using an automated, web-based application.

School districts must establish a 30-day period for receipt of written public comment, and procedures for the conduct of public hearings on their proposed contracts, and provide reasonable notice to parents and persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to Education Law section 211-c. The notice shall include:

- (1) a general description of the contract;
- (2) a detailed description of proposed allocations, on a school level, by program area, including details concerning proposed program additions and/or enhancements, by student achievement performance targets, and by affected student population groupings, including students with limited English proficiency and students who are English language learners, students in poverty, students with disabilities; and students with low academic achievement;
- (3) information where to obtain a copy of the proposed contract; and
- (4) a description of the public comment process and public hearing process.

Districts shall provide translations of the notices into languages other than English most commonly spoken in the district.

Districts shall prepare, and make available upon request, a record of public comment received. Not later than 20 days after expiration of the public comment period or conclusion of public hearings, whichever occurs later, each district shall prepare a public comment assessment. The public comment assessment shall be posted on a district website and made available upon request.

Districts shall develop a complaint form and instructions for use.

Districts shall provide reasonable notice to parents of students or persons in parental relation to students of the procedures for bringing a complaint concerning implementation of the contract for excellence, and provide translations of the complaint form and procedures into the languages other than English most commonly spoken in the district.

Each district shall post, and make available for downloading, its notice of complaint procedures and complaint form on a district website. Districts may use additional methods to provide notice, including making copies available in schools and district offices, and including copies in district mailings and distributions.

The building principal, community superintendent or superintendent, as applicable shall notify the complainant in writing of his or her complaint determination, including the basis for such determination within 30 days

from the date of receipt of the complaint, and an explanation of appeal procedures.

Upon appeal, the superintendent or community superintendent, as applicable, shall notify the complainant in writing of the appeal determination, including the basis for such determination, and an explanation of the appeal procedures.

Upon appeal of the complaint determination, or an appeal determination of a superintendent or community superintendent, to the trustees/board of education or chancellor, the trustees, board or chancellor shall provide written notice of the appeal determination, the basis for the determination, and a statement that the determination may be appealed to the Commissioner pursuant to Education Law section 310.

COMPLIANCE COSTS

The rule is necessary to implement Chapter 57 of the Laws of 2007 and does not impose any significant, additional costs beyond those inherent in the statute.

The new requirements will result in additional costs to school districts, as follows:

(i) Sustained Professional Development

If it is assumed that there will need to be two extra days per year of sustained professional development for contract of excellence programs, for one to two dozen teachers per district at a cost of \$125 per teacher per day, it is estimated that there might be a total annual cost for all of the districts of \$400,000 per year (for purposes of this calculation, NYC was treated as thirty-four districts – one high school district, one special education district and thirty-two community school districts).

(ii) Other Costs

Depending on a district's selection of allowable programs and activities, it is possible that there will be additional costs. Particular activities where the cost imposed could be large include the following: the requirement that additional instruction under any allowable program must be provided by appropriately certified or highly qualified teachers; that allowable programs must be coordinated with school district comprehensive plans; determining if a student responds to scientific, research-based intervention; and analyzing, gathering and compiling the necessary research to support their proposed contract for excellence programs and activities. To approximate the total yearly costs associated with these items, it is estimated that each district (55 plus 34 for NYC (see above) for a total of 89 districts) hires two new, appropriately certified teachers at an annual cost of \$53,000 per teacher (salary plus benefits). This yields a total estimated, annual cost of \$9,435,000 for all contract districts.

(iii) Public Process Costs

Costs are associated with providing notice of the public comment period and public hearings, including translations where applicable, and preparation of the public comment record and assessment. Cost scope and size will vary by district size, State region, contract allocation, and the nature of the proposed interventions.

For example, in the case of Alexander, a small rural district with the smallest total contract amount award Statewide, and a single school in accountability status, the costs should be a few thousand dollars or less. District mailings, newspaper advertising and website postings can be included with existing, similar routine district tasks, resulting in marginal added expense; and there should be little/no need for translations. The average cost of a column inch of advertising space in similar rural is around \$7. A half page, posted twice during the comment period, results in about \$1,000 costs: (\$7 per inch X 70 inches X 2 days = \$980).

In New York City, the costs would be much greater, including translation services, and greater reliance on print media to reach individuals lacking computer access. A half page advertisement posted twice in the following publications would impose a cost in excess of \$115,000: African-American Observer (\$59 per inch X 70 inches X 2 = \$8,260); El Diario/La Prensa (\$60 X 70 X 2 = \$8,400); and the New York Post (\$711 X 70 X 2 = \$99,540).

We anticipate minimal costs for preparation of the public comment record and assessment, to be absorbed using existing staff and resources.

(iv) Complaint Process Costs

We anticipate additional, marginal costs for creating a complaint form and providing notice of complaint procedures, which are anticipated to be absorbed using existing staff and resources.

Translation costs for a small-to-medium size district may amount to a few hundred dollars: professional translation of a 1000 word legal document into Latin-American Spanish could be procured for \$165; and the same document for Korean, Haitian-Creole, Caribbean-Spanish and Chinese could cost \$650. New York City might need several translations into the more than 100 languages spoken there. It is anticipated that translations

for the complaint processes can be included within other translating functions performed by the City's Department of Education, including centralized service in-house, in a cost-effective manner. However, any concomitant economies of scale this district might benefit from, would be offset by the higher costs of doing business there and the sheer number of languages to be translated. These two documents could also be posted to the district's website, or be sent out via other mailings, thereby incurring a small marginal cost.

The rule also requires districts make reasonable efforts to investigate complaints by parents, and notify the complainants of their determination within 30 days of its receipt. The rule provides for appeal procedures. These costs are hard to estimate and should vary by the size and scope of the contract and its allowable program activities. It is expected that the amount of professional, including legal and perhaps investigative or inspector general staff time (in the case of the NYC Department of Education) would not be insignificant in light of the importance of the contract for excellence and its public prominence as a school improvement initiative. One might also expect to see more complaints initially and fewer over time as the public process for developing contracts for excellence results in more public buy-in to the programs in which districts are investing. So, for example, if initially two days of investigation were required for each million dollars of Foundation Aid subject to Contract for Excellence requirements, and districts paid, on average, \$500 for a day of investigative services, and total Foundation Aid subject to Contract for Excellence requirements were \$400 million in 2008-09 (this figure was \$428 million in 2007-08), the cost statewide would be \$400,000.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The economic and technological feasibility of compliance with the rule by local governments is made easier by the fact that the rule imposes very few compliance requirements that are not already imposed by the authorizing statute. Moreover, those reporting requirements imposed by the statute are made feasible by the fact that they are generally automated and web-based, using data entry screens and edit checks. In addition, nothing in the rule prohibits local governments from using funds to procure professional services, such as certified professional accountants, software developers or experts in curriculum and instruction, or education research, all of whom may be necessary to meet the rule's requirements.

LOCAL GOVERNMENT PARTICIPATION:

Guidance memos to school districts and their component schools were sent out from the Senior Deputy Commissioner for P-16 education of the State Education Department on April 4, April 9, June 21 and June 25, 2007. In these documents, the Education Department sought the input, impact, questions and feedback of the proposed rule on districts as well as communicating in broad terms, how the contract would be implemented. Moreover, on April 12, 2007 districts were invited to meet with key Department stakeholders, including teleconferencing abilities for those district personnel unable to travel to Albany. In these memoranda, the Department communicated that staff in the Department's Office of School Operations and Management Services were available to respond to questions from 9 AM to 7:30 PM, from April 9-12. Copies of the proposed rule were also provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment.

Following approval of the contracts by the Commissioner in November 2007, a meeting was held in Troy, New York on December 19, 2007 to engage in collaborative discussions with representatives of each Contract for Excellence school districts. 82 superintendents and school district representatives attended the full-day session, along with many others participating via a web cast. Constructive feedback was sought and received on what worked well in the first year and areas for improvement. Changes to the proposed 2008-2009 legislation, regulations and the on-line contract system have been made and will continue to develop as a direct result of these meetings and discussions.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on August 15, 2007, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule require that the following sections in the previously published Rural Area Flexibility Analysis be revised as follows.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

Each district identified in the statute must prepare a contract for excellence pursuant to the rule's provisions. Depending on the allowable programs and activities chosen, the rule mandates or requires certain actions.

School districts will submit their contracts to the Commissioner for approval, using an automated, web-based application.

School districts must establish a 30-day period for receipt of written public comment, and procedures for the conduct of public hearings on their proposed contracts, and provide reasonable notice to parents and persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to Education Law section 211-c. The notice shall include:

- (1) a general description of the contract;
- (2) a detailed description of proposed allocations, on a school level, by program area, including details concerning proposed program additions and/or enhancements, by student achievement performance targets, and by affected student population groupings, including students with limited English proficiency and students who are English language learners, students in poverty, students with disabilities; and students with low academic achievement;
- (3) information where to obtain a copy of the proposed contract; and
- (4) a description of the public comment process and public hearing process.

Districts shall provide translations of the notices into languages other than English most commonly spoken in the district.

Districts shall prepare, and make available upon request, a record of public comment received. Not later than 20 days after expiration of the public comment period or conclusion of public hearings, whichever occurs later, each district shall prepare a public comment assessment. The public comment assessment shall be posted on a district website and made available upon request.

Districts shall develop a complaint form and instructions for use.

Districts shall provide reasonable notice to parents of students or persons in parental relation to students of the procedures for bringing a complaint concerning implementation of the contract for excellence, and provide translations of the complaint form and procedures into the languages other than English most commonly spoken in the district.

Each district shall post, and make available for downloading, its notice of complaint procedures and complaint form on a district website. Districts may use additional methods to provide notice, including making copies available in schools and district offices, and including copies in district mailings and distributions.

The building principal, community superintendent or superintendent, as applicable shall notify the complainant in writing of his or her complaint determination, including the basis for such determination within 30 days from the date of receipt of the complaint, and an explanation of appeal procedures.

Upon appeal, the superintendent or community superintendent, as applicable, shall notify the complainant in writing of the appeal determination, including the basis for such determination, and an explanation of the appeal procedures.

Upon appeal of the complaint determination, or an appeal determination of a superintendent or community superintendent, to the trustees/board of education or chancellor, the trustees, board or chancellor shall provide written notice of the appeal determination, the basis for the determination, and a statement that the determination may be appealed to the Commissioner pursuant to Education Law section 310.

Depending on which allowable programs and activities are chosen, districts may be required to hire or procure experts in: teacher professional development, curriculum and/or instructional design, school improvement and other related tasks and professional functions.

School districts will submit their contracts to the Commissioner for approval, using an automated, web-based application.

COSTS:

The rule is necessary to implement Chapter 57 of the Laws of 2007 and does not impose any significant, additional costs beyond those inherent in the statute.

The new requirements will result in additional costs to school districts, as follows:

(i) Sustained Professional Development

If it is assumed that there will need to be two extra days per year of sustained professional development for contract of excellence programs, for one to two dozen teachers per district at a cost of \$125 per teacher per day, it is estimated that there might be a total annual cost for all of the districts of \$400,000 per year (for purposes of this calculation, NYC was

treated as thirty-four districts – one high school district, one special education district and thirty-two community school districts).

(ii) Other Costs

Depending on a district's selection of allowable programs and activities, it is possible that there will be additional costs. Particular activities where the cost imposed could be large include the following: the requirement that additional instruction under any allowable program must be provided by appropriately certified or highly qualified teachers; that allowable programs must be coordinated with school district comprehensive plans; determining if a student responds to scientific, research-based intervention; and analyzing, gathering and compiling the necessary research to support their proposed contract for excellence programs and activities. To approximate the total yearly costs associated with these items, it is estimated that each district (55 plus 34 for NYC (see above) for a total of 89 districts) hires two new, appropriately certified teachers at an annual cost of \$53,000 per teacher (salary plus benefits). This yields a total estimated, annual cost of \$9,435,000 for all contract districts.

(iii) Public Process Costs

Costs are associated with providing notice of the public comment period and public hearings, including translations where applicable, and preparation of the public comment record and assessment. Cost scope and size will vary by district size, State region, contract allocation, and the nature of the proposed interventions.

For example, in the case of Alexander, a small rural district with the smallest total contract amount award Statewide, and a single school in accountability status, the costs should be a few thousand dollars or less. District mailings, newspaper advertising and website postings can be included with existing, similar routine district tasks, resulting in marginal added expense; and there should be little/no need for translations. The average cost of a column inch of advertising space in similar rural is around \$7. A half page, posted twice during the comment period, results in about \$1,000 costs: (\$7 per inch X 70 inches X 2 days = \$980).

In New York City, the costs would be much greater, including translation services, and greater reliance on print media to reach individuals lacking computer access. A half page advertisement posted twice in the following publications would impose a cost in excess of \$115,000: African-American Observer (\$59 per inch X 70 inches X 2 = \$8,260); El Diario/La Prensa (\$60 X 70 X 2 = \$8,400); and the New York Post (\$711 X 70 X 2 = \$99,540).

We anticipate minimal costs for preparation of the public comment record and assessment, to be absorbed using existing staff and resources.

(iv) Complaint Process Costs

We anticipate additional, marginal costs for creating a complaint form and providing notice of complaint procedures, which are anticipated to be absorbed using existing staff and resources.

Translation costs for a small-to-medium size district may amount to a few hundred dollars: professional translation of a 1000 word legal document into Latin-American Spanish could be procured for \$165; and the same document for Korean, Haitian-Creole, Caribbean-Spanish and Chinese could cost \$650. New York City might need several translations into the more than 100 languages spoken there. It is anticipated that translations for the complaint processes can be included within other translating functions performed by the City's Department of Education, including centralized service in-house, in a cost-effective manner. However, any concomitant economies of scale this district might benefit from, would be offset by the higher costs of doing business there and the sheer number of languages to be translated. These two documents could also be posted to the district's website, or be sent out via other mailings, thereby incurring a small marginal cost.

The rule also requires districts make reasonable efforts to investigate complaints by parents, and notify the complainants of their determination within 30 days of its receipt. The rule provides for appeal procedures. These costs are hard to estimate and should vary by the size and scope of the contract and its allowable program activities. It is expected that the amount of professional, including legal and perhaps investigative or inspector general staff time (in the case of the NYC Department of Education) would not be insignificant in light of the importance of the contract for excellence and its public prominence as a school improvement initiative. One might also expect to see more complaints initially and fewer over time as the public process for developing contracts for excellence results in more public buy-in to the programs in which districts are investing. So, for example, if initially two days of investigation were required for each million dollars of Foundation Aid subject to Contract for Excellence requirements, and districts paid, on average, \$500 for a day of investigative services, and total Foundation Aid subject to Contract for Excellence

requirements were \$400 million in 2008-09 (this figure was \$428 million in 2007-08), the cost statewide would be \$400,000.

RURAL AREA PARTICIPATION:

The proposed rule was submitted for discussion and comment to the Department's Rural Education Advisory Committee that includes representatives of school districts in rural areas as well as the Rural Schools Association. Guidance memos to school districts and their component schools were sent out from the Senior Deputy Commissioner for P-16 education of the State Education Department on April 4, April 9, June 21 and June 25, 2007. In these documents, the Education Department sought the input, impact, questions and feedback of the proposed rule on districts as well as communicating in broad terms, how the contract would be implemented. Moreover, on April 12, 2007 districts were invited to meet with key Department stakeholders, including teleconferencing abilities for those district personnel unable to travel to Albany. In these memoranda, the Department communicated that staff in the Department's Office of School Operations and Management Services were available to respond to questions from 9 AM to 7:30 PM, from April 9-12. Copies of the proposed rule were also provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment.

Following approval of the contracts by the Commissioner in November 2007, a meeting was held in Troy, New York on December 19, 2007 to engage in collaborative discussions with representatives of each Contract for Excellence school districts. 82 superintendents and school district representatives attended the full-day session, along with many others participating via a web cast. Constructive feedback was sought and received on what worked well in the first year and areas for improvement. Changes to the proposed 2008-2009 legislation, regulations and the on-line contract system have been made and will continue to develop as a direct result of these meetings and discussions.

Job Impact Statement

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on August 15, 2007, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed rule, as so revised, is necessary to implement Education Law section 211-d, as added by Chapter 57 of the Laws of 2007, to establish allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures and other requirements for purposes of preparation of contracts for excellence by certain specified school districts. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Payment for Nursing Services Provided to Medically Fragile Children

I.D. No. HLT-51-07-00002-E

Filing No. 143

Filing date: Feb. 19, 2008

Effective date: Feb. 19, 2008

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

Action taken: Amendment of section 505.8(g) of Title 18 NYCRR.

Statutory authority: Social Services Law, section 363-a; and Public Health Law, section 206

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

Specific reasons underlying the finding of necessity: We are proposing that this regulatory amendment be adopted on an emergency basis to comply with the statutory effective date of enacted legislation. Chapter 109 of the Laws of 2006, part C, subdivision (d) provides that the amendments to section 367-r(1-a) of the SSL are effective January 1, 2007. Chapter 57 of the Laws of 2006, part A, section 101, subdivision (9) provides a sixty (60) day period following the receipt of federal approvals for the Department to implement the enhanced private duty nursing rate and provider certification requirement. Accordingly, for the quarter immediately following the January 1, 2007 effective date of the enacted legislation, the Department submitted on March 30, 2007 State plan amendment #07-01, requesting federal approval of a State plan amendment for non-institutional services related to rates of payment for private duty nursing services provided to medically fragile children, effective as of January 1, 2007. Promulgation of this regulatory amendment as soon as possible ensures that the Department will comply with the effective date mandated by the Legislature and within the sixty day period following federal approval of the State plan amendment. Moreover, the sooner the provisions of the statute can be implemented, the sooner the statutory goal will be met of ensuring a sufficient number of qualified providers to care for medically fragile children in non-institutional settings, with a consequent benefit to public health in terms of easier access to necessary health care. Therefore, complying with the normal rulemaking requirements would be contrary to the public interest, and the immediate adoption of the rule is necessary.

Subject: Payment for nursing services provided to medically fragile children.

Purpose: To authorize payment of Medicaid reimbursement for private duty nursing services at an enhanced rate when provided to medically fragile children in the community upon submission of a certification to the Department of Health that the provider is trained and experienced in caring for medically fragile children.

Text of emergency rule: A new paragraph (6) of subdivision (g) of Section 505.8 is added to read as follows:

6. Effective January 1, 2007 through January 1, 2009, payment for nursing services provided to medically fragile children shall be at an enhanced rate which exceeds the provider's nursing services payment rate established by the Department of Health and approved by the State Budget Director under this subdivision.

(a) Medically fragile children means children who are at risk of hospitalization or institutionalization, but who are capable of being cared for at home if provided with appropriate home care services, including but not limited to case management services and continuous nursing services, and includes any children under the age of 21 receiving continuous nursing services pursuant to this section.

(b) The enhanced rate shall be determined by applying thirty percent (30%) of the provider's approved rate in addition to the rate otherwise payable under this subdivision, which increase is at least equivalent to the reimbursement rate for the AIDS Home Care Program specified in section 86-1.46(b) of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Licensed Home Care Services Agency (LHCSA) providers receiving reimbursement at the enhanced rate shall use such amounts only to recruit and retain nurses to ensure the delivery of nursing services to medically fragile children.

(c) The enhanced rate shall only be payable upon submission of a certification by a nurse provider, on forms and procedures prescribed by the Department, that he or she has satisfactory training and experience to provide nursing services to medically fragile children. A LHCSA provider shall make and submit such certifications on behalf of nurses rendering services to children under this subdivision.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-51-07-00002-P, Issue of December 19, 2007. The emergency rule will expire April 18, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqa@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

Section 206(1)(f) of the Public Health Law requires the Department of Health (Department) to enforce the provisions of the Medical Assistance (Medicaid) program, pursuant to titles eleven, eleven-A, and eleven-B of the Social Services Law (SSL). Section 363 of the SSL states that the goal

of the Medicaid program is to make available to everyone, regardless of race, age, national origin or economic standing, uniform, high quality medical care. Section 363-a of the SSL designates the Department as the single state agency for the administration of the Medicaid program authorizes the Department to establish such regulations as may be necessary to implement the Medicaid program. Section 365-a of the SSL defines Medicaid to include payment of part or all of the cost of medically necessary care, services, and supplies, including the care and services of private duty nurses. Section 367-r(1-a) of the SSL authorizes the Department to increase the Medicaid payment rate for private duty nursing services provided to medically fragile children, in order to recruit and retain private duty nurses and ensure service delivery to medically fragile children.

Legislative Objectives:

The proposed regulatory amendment is necessary to implement the payment of enhanced Medicaid rates for private duty nursing services provided to medically fragile children, and to require such providers to certify that they are trained and experienced to care for medically fragile children.

Needs and Benefits:

Effective January 1, 2007, rates of payment for private duty nursing services provided to medically fragile children were increased to ensure the availability of a sufficient number of qualified providers to deliver services to these children in the community setting. Previously, providers were reimbursed at the hourly nursing services rate established for their geographic area, without regard to the relative acuity of the pediatric non-institutional population, the corresponding intensity of continuous medical intervention and supervision necessary to sustain these children safely in the community setting, or a shortage of qualified providers. The need for continuous coverage by nurses possessing the specialized training and experience these cases require often resulted in a shortage of available qualified providers sufficient to ensure service delivery in a geographic area. The increased rate of payment will facilitate the recruitment and retention of qualified private duty nurses by providing adequate financial incentive to attract and retain skilled providers sufficiently qualified to meet the complex medical needs of these children. The proposed regulatory amendment requires providers to certify to the Department their requisite training and experience in order to receive the enhanced rate, to ensure that only qualified providers are recruited. Social Services Law Section 367-r requires the Department to consider several factors in establishing the enhanced rate, including the case mix adjustment factor used for AIDS home care program services. The proposed regulatory amendment calculates the enhanced rate as a thirty percent (30%) add-on to the provider's standard nursing services rate, which is equivalent to using the AIDS home care case mix adjustment factor. Because the entire population of pediatric patients receiving continuous at-home private duty nursing services is by definition medically fragile, the regulation provides for payment of the enhanced rate for such services when provided to any Medicaid enrollee under age 21 in a community setting.

Costs:

There should be no additional costs associated with this regulatory amendment. While the regulatory amendment will result in the payment of increased Medicaid reimbursements to qualified providers, this will be offset by cost savings achieved from caring for increased numbers of children in the more cost-effective community setting. Consequently, rates of payment established through this regulatory amendment will result in budget neutrality to the Medicaid program.

Local Government Mandates:

The proposed regulatory amendment does not impose any new mandates to local social services districts.

Paperwork:

The proposed regulatory amendment will result in a minimal amount of additional paperwork for medical providers, since they must complete and submit a one-page certification of training and experience to Department, upon which a specialty code will be added to the provider's enrollment file to enable the provider to receive the enhanced rate.

Duplication:

This proposed regulatory amendment does not duplicate, overlap, or conflict with any other State or federal law or regulations.

Alternatives:

Section 367-r of the SSL authorizes the payment of an enhanced rate to qualified providers upon demonstration of satisfactory training and experience to the Department. No alternatives were considered.

Federal Standards:

The proposed regulatory amendment does not exceed any minimum federal standards.

Compliance Schedule:

The proposed regulatory amendment will become effective upon filing with the Department of State.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required because the proposed rule will not have a substantial adverse impact on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required because the proposed rule will not have any adverse impact on rural areas.

Job Impact Statement

A Job Impact Statement is not required because the proposed rule will not have any adverse impact on jobs and employment opportunities.

EMERGENCY RULE MAKING

Criminal History Record Check

I.D. No. HLT-10-08-00006-E

Filing No. 142

Filing date: Feb. 19, 2008

Effective date: Feb. 19, 2008

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

Action taken: Addition of Part 402 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 899-a(4); and Executive Law, section 845-b(12)

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

Specific reasons underlying the finding of necessity: Emergency agency action is necessary for preservation of the public health, public safety and general welfare.

The regulation is needed on an emergency basis to implement the Department of Health's statutory duty to act on requests for criminal history record checks which are required by law. The law is intended to protect patients, residents, and clients of nursing homes and home health care providers from risk of abuse or being victims of criminal activity. These regulations are necessary to implement the law as of its effective date so that the Department of Health can fulfill its statutory duty of ensuring that the health, safety and welfare of such patients, residents and clients are not unnecessarily at risk.

Subject: Criminal history record check.

Purpose: To require nursing homes, certified home health agencies, licensed home care service agencies and long term home health care programs to request criminal background checks of certain prospective employees.

Substance of emergency rule: This regulation adds a new Part 402 to Title 10 NYCRR, which relates to prospective unlicensed employees of nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs who will provide direct care or supervision to patients, residents or clients of such providers.

The regulation establishes standards and procedures for criminal history record checks required by statute. Provisions govern the procedures by which fingerprints will be obtained and describe the requirements and responsibilities of the Department and the affected providers with regard to this process. The regulations address the identification of provider staff responsible for requesting the criminal history checks, supervision of temporary employees, notice to the Department when an employee is no longer employed, the content and procedure for obtaining consent and acknowledgment for finger printing from prospective employees. The Department's responsibilities for reviewing requests are set forth and specify time frames and sufficient information to process a request.

The proposed rule also describes the extent to which reimbursement is available to such providers to cover costs associated with criminal history record checks and obtaining the fingerprints necessary to obtain the criminal history record check.

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 May 18, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Al-

bany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

Section 2899-a (4) of the Public Health Law requires the State Commissioner of Health to promulgate regulations implementing new Article 28-E of the Public Health Law which requires all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs ("the providers") to request, through the Department of Health ("the Department"), a criminal history record check for certain unlicensed prospective employees of such providers.

Subdivisions (3) and (12) of section 845-b of the Executive Law requires the Department to promulgate rules and regulations necessary to implement criminal history information requests.

Legislative Objectives:

Chapter 769 of the Laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 establish a requirement for all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs to obtain criminal history record checks of certain unlicensed prospective employees who will provide direct care or supervision to patients, residents or clients of such providers. This is intended to enable such providers to identify and employ appropriate individuals to staff their facilities and programs and to ensure patient safety and security.

Needs and Benefits:

New York State has the responsibility to ensure the safety of its most vulnerable citizens who may be unable to protect and defend themselves from abuse or mistreatment at the hands of the very persons charged with providing care to them. While the majority of unlicensed employees in all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs are dedicated, compassionate workers who provide quality care, there are cases in which criminal activity and patient abuse by such employees has occurred. While this proposal will not eliminate all instances of abuse, it will eliminate many of the opportunities for individuals with a criminal record to provide direct care or supervision to those most at risk. Pursuant to Chapter 769 of the laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 ("the Chapter Laws"), this proposal requires the providers to request the Department to obtain criminal history information from the Division of Criminal Justice Services ("the Division") and a national criminal history check from the FBI, concerning each prospective unlicensed employee who will provide direct care or supervision to the provider's patients, residents or clients.

Each provider subject to these requirements must designate up to two "authorized persons" who will be empowered to request, receive, and review this information. Before a prospective unlicensed employee who will provide direct care or supervision to patients, residents or clients can be permanently hired, he or she must consent to having his/her fingerprints taken and a criminal history record check performed. Two sets of fingerprints will be taken and sent to the Department, which will then submit them to the Division. The Division will provide criminal history information for each person back to the Department.

The Department will then review the information and will advise the provider whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the Department disapproves the prospective employee's eligibility for employment, (e.g., the person has a felony conviction for a sex offense or a violent felony or for any crime specifically listed in section 845-B of the Executive Law and relevant to the prospective unlicensed employees of such providers). In some cases, a person may have a criminal background that does not rise to the level where the Department will disapprove eligibility for employment. The proposed regulations allow the provider, in such cases, to obtain sufficient information to enable it to make its own determination as to whether or not to employ such person. There will also be instances in which the criminal history information reveals a felony charge without a final disposition. In those cases, the Department will hold the application in abeyance until the charge is resolved. The prospective employee can be temporarily hired but not to provide direct care or supervision to patients, residents or clients of such providers.

The proposal implements the statutory requirement of affording the individual an opportunity to explain, in writing, why his or her eligibility for employment should not be disapproved before the Department can finally inform a provider that it disapproves eligibility for employment. If the Department maintains its determination to disapprove eligibility for

employment, the provider must notify the person that the criminal history information is the basis for the disapproval of employment.

The proposed regulations establish certain responsibilities of providers in implementing the criminal history record review required by the law. For example, a provider must notify the Department when an individual for whom a criminal history has been sought is no longer subject to such check. Providers also must ensure that prospective employees who will be subject to the criminal history record check are notified of the provider's right to request his/her criminal history information, and that he or she has the right to obtain, review, and seek correction of such information in accordance with regulations of the Division, as well as with the FBI with regard to federal criminal history information.

COSTS:

Costs to State Government:

The Department estimates that the new requirements will result in approximately 108,000 submissions for a criminal history record check on an annual basis. This number of submissions for an initial criminal history record check will decrease overtime as the criminal history record check database (CHRC) is populated. The Department will allow providers to access any prior Department determination about a prospective employee at such time as the prospective employee presents himself or herself to such provider for employment. In the event that the prospective employee has a permanent record already on file with the Department, this information will be made available promptly to the provider who intends to hire such prospective employee.

The provider will forward with the request for the criminal history review, \$75 to cover the projected fee established by the Division for processing a State criminal history record check, and a \$19.25 fee for a national criminal history record check. The Department estimates that the provider's administrative costs for obtaining the fingerprints will be \$13.00 per print. The total annual cost to providers is estimated to be approximately \$12 million.

Requests by licensed home care services agencies (LHCSAs) are estimated to constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual cost to LHCSAs is estimated to be approximately \$6 million. Reimbursement shall be made available to LHCSAs in an equitable and direct manner for the above fees and costs subject to funds being appropriated by the State Legislature in any given fiscal year for this purpose. Costs to State government will be determined by the extent of the appropriations.

The Department estimates that nursing homes, certified home health agencies and long term home health care programs will constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual costs to nursing homes, certified home health agencies and long term home health care programs is estimated to be approximately \$6 million. These providers may, subject to federal financial participation, claim the above fees and costs as reimbursable costs under the medical assistance program (Medicaid) and may recover the Medicaid percent of such fees and costs. Reimbursement to such providers will be determined by the percent of Medicaid days of care to total days of care. Therefore, approximately \$6 million of the total costs for these providers will be subject to a 50 percent federal share and approximately \$2.3 million will be borne entirely by the State.

Costs to Local Governments:

There will be no costs to local governments for reimbursement of the costs of the criminal history record check paid by LHCSAs. LHCSAs will receive reimbursement from the State subject to an appropriation (See "Costs to State Government").

Costs to local governments for reimbursement of the costs of the criminal history record check paid by nursing homes, certified home health agencies, and long term home health care programs will be the local government share of Medicaid reimbursement to such providers which is estimated to be annual additional cost to local governments of approximately \$700,000 (See "Costs to State Government").

Costs to Private Regulated Parties:

Costs to LHCSAs will be determined by the extent of annual appropriations by the State Legislature (See "Costs to State Government").

Costs to nursing homes, certified home health agencies and long term home health care programs will be determined by their Medicaid percentage of total costs (See "Costs to State Government").

Costs to the Department of Health:

Estimated start-up costs for the Department of Health which includes the purchase of equipment, activities and systems and staffing costs are approximately \$2.8 million.

Local Government Mandates:

The required criminal history record check is a statutory requirement, which does not impose any new or additional duties or responsibilities upon county, city, town, village, school or fire districts. The Chapter Laws state that they supercede any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

Paperwork:

Chapter 769 of the Laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 require that new forms be developed for use in the process of requesting criminal history record information. The forms are, for example, an informed consent form to be completed by the subject party and the request form to be completed by the authorized person designated by the provider. Temporarily approved employees are required to complete an attestation regarding incidents/abuse. Provider supervision of temporary employees must be documented. In addition, other forms will be required by the department such as a form to designate an authorized party or forms to be completed when someone who has had a criminal history record check is no longer subject to the check.

The regulations also contain a requirement to keep a current roster of subject parties.

Duplication:

This regulatory amendment does not duplicate existing State or federal requirements. The Chapter Laws state that they supercede and apply in lieu of any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

Alternatives:

No significant alternatives are available. The Department is required by the Chapter Laws to promulgate implementing regulations.

Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Small Business Guide:

A small business guide as required by section 102-a of the State Administrative Procedure Act is unnecessary at this time. The Department provided an intensive orientation of program operations to those providers affected by criminal history record program.

Information was provided and continues to be provided to providers about implementation; process and procedures; and compliance with rules and regulations through a message board, staff attendance at trade association meetings, dear administrator letters, a training script or frequently asked questions document, and a dedicated e-mail log.

Compliance Schedule:

The Chapter Laws mandate that the providers request criminal history record checks for certain unlicensed prospective employees on and after September 1, 2006. These regulations are proposed to be effective upon publication of a Notice of Adoption in the *New York State Register*.

Regulatory Flexibility Analysis

Effect of Rule on Small Businesses and Local Governments:

For the purpose of this Regulatory Flexibility Analysis, small businesses are considered any nursing home or home care agency within New York State which is independently owned and operated, and employs 100 individuals or less. Approximately 100 nursing homes and 200 home care services agencies would therefore be considered "small businesses," and would be subject to this regulation.

For purposes of this regulatory flexibility analysis, small businesses were considered to be long term home health care programs with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the long term home health care program cost report 77 out of 110 long term home health care programs were identified as employing fewer than 100 employees. Twenty-eight local governments have been identified as operating long term home health care programs.

Compliance Requirements:

Providers must, by statute, on and after September 1, 2006, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform prospective unlicensed employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State and the FBI. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not the prospective employee's eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be required by small businesses or local governments to comply with this rule.

Compliance Costs:

For programs eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers (See "Regulatory Impact Statement - Costs to State Government").

For LHCSAs which are unable to access reimbursement from state and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to an appropriation by the State Legislature (See "Regulatory Impact Statement - Costs to State Government").

There will be costs to local governments only to the extent such local governments are providers subject to the regulations.

Economic and Technological Feasibility:

The proposed regulations do not impose on regulated parties the use of any technological processes. Fingerprints will be taken generally by the traditional "ink and roll" process. Under the "ink and roll" method, a trained individual rolls a person's fingers in ink and then manually places the fingers on a card to leave an ink print. Two cards would then need to be mailed to the Division by the Department. However, before the Department could submit the card, demographic information would need to be filled in on the card (such as the person's name, address, etc.) into the Department databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint cards is difficult to read.

The Department hopes to move in the future to Live Scan. Live Scan is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Department to obtain criminal history information.

Minimizing Adverse Impact:

The Department considered the approaches for minimizing adverse economic impact listed in SAPA Section 202-b (1) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

Small Businesses and Local Government Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments were solicited from all affected parties. Informational briefings were held with such associations. There will be informational letters to providers prior to the effective date of the regulations.

Rural Area Flexibility Analysis

Effect of Rule:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population of greater than 200,000 includes towns with population densities of 150 persons or less per square mile. The following 42 counties have a population less than 200,000.

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chemung	Livingston	Seneca
Chenango	Madison	Steuben
Clinton	Montgomery	Sullivan
Columbia	Ontario	Tioga
Cortland	Orleans	Tompkins
Delaware	Oswego	Ulster
Essex	Otsego	Warren
Franklin	Putnam	Washington
Fulton	Rensselaer	Wayne
Genesee	St. Lawrence	Wyoming
Greene	Saratoga	Yates

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements:

Providers, including those in rural areas, must, by statute, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform covered unlicensed prospective employees of their right to request such information and of the

procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be necessary to comply with the proposed regulations.

Compliance Costs:

For programs located in rural areas eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers. (See "Regulatory Impact Statement - Costs to State Government").

For LHCSAs located in rural areas which are unable to access reimbursement from state/and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to appropriation by the State Legislature. (See "Regulatory Impact Statement - Costs to State Government").

Minimizing Adverse Impact:

The Department considered the approaches for minimizing adverse economic impact listed in SAPA section 202-bb (2) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

Rural Area Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments solicited from all affected parties. Such associations include members from rural areas. Informational briefings were held with such associations. There will be informational letters to providers to include rural area providers prior to the effective date of the regulations.

Job Impact Statement

A Job Impact statement is not necessary for this filing. Proposed new 10 NYCRR Part 402 does not have any adverse impact on the unlicensed employees hired before September 1, 2006 as they apply only to future prospective unlicensed employees. The number of all future prospective unlicensed employees of providers who provide direct care or supervision to patients, residents or clients will be reduced to the degree that the criminal history record check reveals a criminal record barring such employment.

Since the inception of the program approximately 14% of all unlicensed employees applying for positions with nursing homes or home health care providers were found to have a criminal record barring such employment.

Division of Probation and Correctional Alternatives

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Preliminary Procedure for PINS Probation Intake and Diversion Services

I.D. No. PRO-10-08-00002-P

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

Proposed action: Repeal of Part 357, addition of new Part 357, and amendment of Part 354 of Title 9 NYCRR.

Statutory authority: Executive Law, art. 12, sections 243(1) and 256(1); Family Court Act, section 735(a); Social Services Law, section 34-a(4)(b)

Subject: Preliminary procedure for PINS probation intake and diversion services.

Purpose: To reflect statutory changes and promote consistent application of law and best practices.

Substance of proposed rule (Full text is posted at the following State website: www.dPCA.state.ny.us): These regulatory amendments would replace the former Part 357 Intake for Article 7 and delete references as to Article 7 cases in Part 354 so that there will be one rule related to Persons In Need of Supervision (PINS). These regulatory amendments to Part 357 were developed by a DPCA working committee comprised of DPCA staff and local probation department representation across the state of all COPA regions, and including all levels of probation staff, including director, deputy director, supervisor, senior probation officer, and probation officer. The existing Part 357 Intake for Article 7 was last revised in 1986, and was in effect made defunct by the repeal and reenactment of Family Court Act Section 735 effective April 2005. This rule was applicable to jurisdictions with approved PINS plans and Part 354 governed jurisdictions without an approved PINS plan. In light of recent statutory changes creating one procedural process for handling of PINS, the work of the subcommittee was significant, requiring a near complete rewriting of Part 357. In drafting new rule language, the committee's primary objectives has been to: 1) ensure conformity with all current laws, most notably the 2000 and 2001 PINS to 18 laws and the 2005 PINS Diversion and Detention Reform law (specifically Chapter 596 of the Laws of 2000, Chapter 383 of the Laws of 2001, and Chapter 57 of the Laws of 2005); 2) reflect best practice as it has evolved over the past 20 years; 3) incorporate evidence-based practice that has come to the forefront of probation practices in recent years; and 4) integrate statute and best probation practice into a single document organized according to the flow of cases through preliminary procedure.

In meeting statutory requirements of Family Court Act Article 7, these regulatory amendments eliminate former suitability language, given that all PINS cases are now considered to be suitable for diversion services. Amendments articulate the requirements of these aforementioned PINS laws revising Article 7 of the Family Court Act, and require directors to issue policies and procedures that address statutory requirements, including timeframes for case initiation and criteria for determining "diligent efforts" and "no substantial likelihood" standards. Other statute requirements specified include: the provision of information at the first point of contact with the parties; diligent attempts to engage the youth and family, including documentation; providing an immediate response to families in crisis; identifying and utilizing appropriate alternatives to detention; and attempting to divert youth from Family Court. For school based complaints, these amendments articulate the requirement to review steps taken by the school and attempt to engage the school in further attempts if deemed beneficial to the youth. These regulatory amendments incorporate language regarding termination of diversion efforts, and the ability to continue to provide diversion services after filing of a petition where it is determined that the youth and family will benefit from further attempts to prevent the youth from entering foster care. Statutory requirements for referral for petitions are incorporated, including the "no substantial likelihood" standard. The pre-requisites of parental cooperation and participation are delineated for instances where the case has been terminated because of the failure of the parent(s)/guardian(s).

Section 357.1 Definitions.

These regulatory amendments eliminate most of the definitions of the old Part 357 rule, and define nineteen terms not previously defined under the old Intake rule. Some of these terms have come into widespread use in probation practice over the past 20 years, others are anchored in the 2005 PINS law, and others originate from evidence-based practice. For example, more and more counties are involved in pre-diversion services, and so a new definition for pre-diversion services distinguishes these services from "information only" and "diversion services" work. To improve the system's ability to communicate about and distinguish among different types of services, the revised Part 357 rule contains new definitions for intervention service, accountability measure, and control measure. Other new definitions have been developed for: actuarial risk, case plan, complainant, conference, diligent efforts, diversion services, evidence-based practice, no substantial likelihood, Person In Need of Supervision (PINS), potential respondent, services, referred for petition, risk assessment, successfully diverted, runaway, and youth at risk of placement.

Section 357.3 and 357.4 - Applicability and Jurisdiction.

The changes to Part 357 address applicability and jurisdictional issues. They clarify that this Part applies to probation departments responsible for the conducting of preliminary procedure, in whole or in part, either because they are the lead agency, or because they are responsible to provide a portion of preliminary procedure. They also provide guidance regarding cases where the child lives in one county but the behavior occurred in a different county, and provides a mechanism in such instances in order to

address provision of services for moderate and high risk youth by ensuring access to such services in the county of residence.

Section 357.5 - General Requirements for PINS Preliminary Procedure.

Issues related to school are addressed throughout the revised rule. Under the general requirements section, the revised rule specifies that parent-initiated complaints of ungovernability/incorrigibility may be made for youth who are not attending school and are beyond the compulsory education age. For school complaints, where a parent refuses to cooperate, clarifies that an educational neglect report may be made. For special-education students, the revised rule requires probation to gather information from the Committee on Special Education as part of preliminary procedure, and that, prior to referring the matter for petition, documentation that a Manifestation Determination hearing was held to determine whether a special education youth's behaviors are intentional and ongoing and not related to the youth's disability. Finally, regulatory amendments address the role of probation to establish procedures by which schools report to probation steps taken to improve youth attendance and conduct, and to determine whether acceptable efforts have been made to improve youth attendance and conduct.

Section 357.6 - Probation Intake.

The probation intake section reaffirms eligibility requirements, that is, in order to accept a PINS complaint, the alleged behavior must meet the criteria set forth in Article 7 of the Family Court Act. It recognizes pre-diversion services as an alternative to pursuing a PINS complaint. In cases where the complainant indicates that the youth is a runaway, it requires probation to advise the parent of the need to file a missing person report, and encourages probation to attempt to contact youth for the purpose of engaging the youth in diversion services. It clarifies that, where feasible, at least one joint intake conference in real time with all parties should be held. It underscores that parents need to be advised of a potential bar to filing a petition where there is failure to consent or to participate in diversion services (DPCA plans to develop a model advisement form for use at local option).

Section 357.7 - Diversion Services.

The regulatory amendment requires an initial case plan to be developed within 30 calendar days of case initiation, and reassessment to be conducted 60 days later and every 90 calendar days thereafter. Case plans must be based initially on assessment results, updated periodically in accordance with reassessment results, and focus on the priority areas for intervention to resolve the presenting problem. Further, these amendments require that referrals for service incorporate the results of the actuarial risk assessment to target the specific underlying dynamic risk factors related to the PINS complaint. Further, they clarify that in addition to intervention services, accountability and control measures may be applied as part of diversion services, and that electronic monitoring may be used only with director consent and upon specific court order.

Section 357.8 - Assessment, Case Planning, and Reassessment.

New in these regulatory amendments are requirements for actuarial risk screening at intake in order to triage cases, and consideration for prompt termination of diversion efforts with minimal or no intervention services where youth present as low risk for continuing in the PINS behaviors. Consistent with the actuarial screening and triage functions at intake, the rule language requires as part of diversion services a full assessment of all youth who are at moderate or high risk for continued PINS behavior, and directs that diversion services be prioritized to higher risk youth.

Section 357.9 - Petition To Court.

The regulatory amendments clarify that probation may file a petition in instances where the parent is prohibited from filing after diversion is terminated due to their lack of cooperation and the youth's behavior remains problematic as a result. They also add that once a petition is filed diversion efforts may continue pending court action. New language outlines all of the legal requirements for filing that must be addressed (DPCA and the rule drafting workgroup have developed a model PINS petition report to the court for use at local option).

Section 357.10 - Return From Court.

This section reaffirms that probation is to notify the court of the status at case closing when it closes a diversion case that was returned from the court for diversion services.

Sections 357.11, 357.12, and 357.13 - Pre-Diversion Case Designation Requirements and Criteria, Case Closing Requirements, and Case Record Keeping Requirements.

For pre-diversion services, these regulatory amendments require that at minimum, a record be maintained of the date of receipt of the complaint, and a description of pre-diversion services either referred to or directly

provided. Where preliminary procedure was commenced, the case closing options have been modified to reflect the current options under the law. New language delineates the required documents and other information to be included in the case record.

Part 354

Necessary amendments have been made to Part 354 to delete reference to Article 7 cases or PINS language in order that there is now one rule (Part 357) governing these matters. Other minor technical amendments are further made as necessitated by removal of such language.

Text of proposed rule and any required statements and analyses may be obtained from: Linda J. Valenti, Counsel, Division of Probation and Correctional Alternative, 80 Wolf Rd., Suite 501, Albany, NY 12205, (518) 485-2394, e-mail: linda.valenti@dpc.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority:

Executive Law Article 12, specifically § 243(1), authorizes the State Director of Probation and Correctional Alternatives to “adopt general rules which shall regulate methods and procedure in the administration of probation services, including investigation of ... children prior to adjudication, supervision, casework, recordkeeping program planning and research so as to secure the most effective application of the probation system and the most effective enforcement of the probation laws throughout the state.” Such rules are binding with the force and effect of law. Further, Article 12-A of such law, specifically § 256(1) and (6)(a), requires probation agencies to perform intake services pursuant to law.

Family Court Act (FCA) Article 7 § 735(a) requires “[E]ach county and any city having a population of one million or more shall offer diversion services ...to youth who are at risk of being the subject of a person in need of supervision petition. Such services shall be designed to provide an immediate response to youth in crisis, to identify and utilize appropriate alternatives to detention and to divert youth from being the subject of a petition in family court. Each county and such city shall designate either the local social services district or the probation department as lead agency for the purposes of providing diversion services.” Additionally, Social Services Law § 34-a(4)(b) requires every jurisdiction to submit a multi-year consolidated services plan which includes diversion services for persons in need of supervision. It outlines services planning requirements, in that “The commissioner of the office of children and family services shall review and approve or disapprove the diversion services portion of the plan jointly with the director of probation and correctional alternatives.... The requirements for the portion of the plan and report regarding the provision of diversion services shall be jointly established by the commissioner to the office of children and family services and the director of probation and correctional alternatives.... The multi-year services plan and where appropriate the annual implementation reports shall be based upon a written understanding between the local social services district and the probation department which outlines the cooperative procedures to be followed by both parties regarding the diversion services pursuant to section 735 family court act, consistent with their respective obligations as otherwise required by law.”

2. Legislative objectives:

These regulatory amendments are consistent with legislative intent regarding critical probation functions and the promotion of professional standards which govern administration and delivery of probation services in the area of intake (preliminary procedure) for family court involving Persons In Need of Supervision (PINS). By vesting the State Director with rule-making authority, the Legislature authorized the Division of Probation and Correctional Alternatives (DPCA) to set minimum standards in this area.

Passage of statutory changes amending Article 7 of the FCA (specifically Chapter 596 of the Laws of 2000, Chapter 383 of the Laws of 2001, and Chapter 57 of the Laws of 2005) resulted in numerous probation department requests for DPCA’s formal direction regarding implementation of such changes. These amendments are necessary to: 1) conform to current law, most notably the 2000 and 2001 laws raising the PINS age to 18, and the 2005 PINS Diversion and Detention Reform Law; 2) ensure consistent statewide application; and 3) incorporate contemporary evidence-based (research-supported) practice principles for effective interventions.

3. Needs and benefits:

Probation is responsible for conducting preliminary procedure, because they are either the designated lead agency in their county or responsible to

provide a portion of preliminary procedure under a PINS Memorandum of Understanding with the local department of social services.

The amendments clarify PINS eligibility requirements pursuant to Article 7 criteria; recognize pre-diversion services; and eliminate former “suitability” regulatory language. They promote consistent application of statutory requirements through statewide standardization of terms by eliminating obsolete terminology, updating, and adding definitions that: 1) reflect model probation practices, including evidence-based (research-supported) practices; or 2) are anchored in the aforementioned PINS laws amending Article 7 of the FCA.

To promote consistent application of law and best practices, these amendments address issues and confusion related to applicability, jurisdiction, school-related and legal concerns. For example, where PINS behavior occurs in a county other than where the youth resides, a mechanism is provided to ensure access to needed services in the county of residence. Among other provisions where clarification is made are that: probation may continue diversion services after filing a petition in certain instances; parent-initiated complaints of ungovernability/incorrigibility may be made for youth beyond compulsory education age who are not attending school; educational neglect reports may be made in school-filed complaints where a parent refuses to cooperate; and, probation may file a petition in instances where the parent is prohibited from filing after diversion is terminated due to their lack of cooperation. They clarify that electronic monitoring may be used only as part of diversion services where there is director consent and specific court order.

Consistent with good practice and/or certain legal provisions, these amendments reaffirm probation’s responsibility to give advisements to parents as to potential bar to filing a petition, and regarding probation’s need to notify the court of the status at case closing for cases returned from court for diversion services. Prior to referring PINS matters for petition, the rule requires probation to gather information from the Committee on Special Education (CSE) if a special education student is involved. The rule requires probation to inform parents of procedures required for filing a missing persons report for runaway youths. Where preliminary procedure was commenced, case closing options have been modified to reflect current law. The amendments specify documents and other information for inclusion in case records and provided to court to satisfy legal filing requirements.

Model probation practices have been incorporated. While some are prescriptive, there is flexibility for jurisdictions to develop policies and procedures that meet local needs and resources (i.e. timeframes for case initiation; criteria for determining “diligent efforts” and “no substantial likelihood” standards; procedures by which schools report to probation steps taken to improve youth attendance and conduct; and how “acceptable efforts” determinations will be made).

These amendments incorporate nationally recognized evidence-based practice principles demonstrated in research to reduce risk of recidivism, (continuing in a PINS pattern of behavior) by addressing needs underlying the PINS behaviors. These principles include actuarial risk and needs screening and assessment; prompt termination of diversion efforts with minimal or no intervention services where youth present as low risk for continuing in PINS behaviors; and full assessments for all PINS youth at moderate or high risk for continued PINS behavior. Diversion services are to be prioritized for moderate and high risk youth, with focus on addressing youth criminogenic needs in the community to reduce costly detention and placement outside the home and improve long term outcomes for youth and their families.

4. Costs:

DPCA believes more effective PINS diversion services can reduce long-term state and local governmental costs for youth at risk of continued involvement with the juvenile justice or criminal justice system. We anticipate no additional costs in adhering to these amendments beyond what is currently required in law and regulation. Rather, initial triage at intake and sharing resources, wherever appropriate and feasible, with other agencies and services providers is designed to produce cost savings in the short-term, as well as generate longer-term savings by increasing youth capacity to lead productive, law-abiding lives.

Further, DPCA has made available, at no cost to jurisdictions, the Youth Assessment and Screening Instrument (YASI) tools and software for youth intake, investigation and supervision services. Fifty-four counties (54) currently use YASI. Consistent application and sharing of screening, assessment, and case planning protocols and results will further add savings by avoiding duplication of efforts within and across probation departments.

As part of DPCA's efforts to streamline recordkeeping, avoid duplication, and achieve cost savings, DPCA has supported the deployment of web-based case management software, known as Caseload Explorer/ProberWeb. Currently, thirty-six (36) departments participate and forty-four (44) are expected to participate by December 2008.

As to any anticipated in-service costs of educating staff, DPCA believes orientation can be readily accomplished through memoranda and supervisory oversight without incurring any direct costs. Any minimal costs are outweighed by significant benefits of meeting the intent of current law and regulatory provisions to serve the best interests of PINS youth and their families, and in turn will reduce monetary costs associated with court processing, detention, and placement.

5. Local government mandates:

DPCA has always had agency rules governing PINS preliminary procedure, and does not anticipate that these new requirements will be burdensome. While this regulatory reform requires specific attention to key areas, establishing provisions for effective preliminary procedure consistent with traditional and emerging probation practices, it also provides flexibility and recognizes differences among jurisdictional policies and resources. DPCA requires actuarial risk and needs assessments along with case planning tools and protocols approved by the Director. DPCA has made YASI software available to all jurisdictions free of charge. As the state oversight agency, and consistent with our supervision rule classification process (9 NYCRR § 351.3), our approval of any assessment tool is appropriate.

6. Paperwork:

DPCA has provided leadership in the development and deployment of Caseload Explorer/Prober Web case management software which is streamlining paper requirements by avoiding duplication of efforts. Thirty-six (36) probation departments participate and forty-four (44) are expected to participate by December 2008.

7. Duplication:

These amendments do not duplicate any State or Federal law or regulation. They clarify and reinforce certain laws regarding provision of preliminary procedure for youth engaged in PINS behaviors.

8. Alternatives:

These amendments integrate law, research, and model probation practices to establish specific minimum standards for probation's provision of diversion services to PINS youth and their families. Strengthening and supporting consistent application of preliminary procedures is essential to ensure effective diversion of youth, wherever appropriate. By addressing youth needs within the context of their families and communities, the state can realize savings in detention, placement, legal and social costs. Accordingly, it is not a viable alternative to have a seriously outdated probation rule, or no rule, governing preliminary procedure for the PINS population.

In preparation and drafting proposed amendments, DPCA was diligent in engaging probation professionals from around the state: 1) in May-June 2006 DPCA held three regional PINS meetings to discuss strengths, issues, and concerns voiced by probation departments regarding implementation of the 2005 PINS law; 2) In March 2006, DPCA constituted a PINS rule drafting workgroup of representatives from small, medium, and large jurisdictions representing urban and rural jurisdictions--this workgroup was comprised of all levels of probation staff, including director, deputy director, supervisor, senior officer, and officer; 3) In March 2007, DPCA circulated a refined draft to all probation directors/commissioners; 4) In April 2007, DPCA met with a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA) for their professional association's feedback; and 5) in April DPCA presented all written comments from the twelve responding jurisdictions at a special workgroup meeting for consideration.

Most of the feedback indicated that these amendments reflect current model best probation practices. Some feedback sought clarification of language, alternate language, or increased flexibility. The majority of substantive suggestions for change were incorporated, and the workgroup clarified issues raised, and increased flexibility in certain instances. Overall, DPCA has received favorable support from probation agencies that these amendments are manageable and consistent with good professional practice. For reasons stated throughout this document relative to approval and use of actuarial tools, and while remaining non-YASI jurisdictions may object to state approval of their assessment tools, it is essential that DPCA ensure departments are using fully validated instruments.

9. Federal standards:

There are no federal standards governing the probation intake/preliminary procedure process.

10. Compliance schedule:

Through prompt dissemination to staff of the new rule and its summary, local departments should be able to promptly implement these amendments and comply with its provisions. These regulatory amendments shall take effect as soon as they are published in the State Register under a Notice of Adoption.

Regulatory Flexibility Analysis

Regulatory Flexibility Analysis for Small Business and Local Government (RFASBLG) (SAPA § 202-b) is required for an amendment of Parts 354 and 357 of Title 9 NYCRR regarding the Executive Law, Sections 243, 255(2), 256(1) and (6)(a); Sections 735 and 742 of the Family Court Act.

1. Effect of Rule:

This proposed rule revises existing regulatory procedures in the area of Persons In Need of Supervision (PINS) diversion services and will impact local probation departments which are responsible, in whole or in part, for the delivery of such services to alleged PINS and may indirectly impact local social service departments that enter into a Memoranda Of Understanding with local probation departments.

DPCA does not anticipate that these new requirements will be burdensome upon probation departments. While this regulatory reform requires specific attention to key areas, establishing provisions for effective preliminary procedure consistent with traditional and emerging probation practices, it also provides flexibility and recognizes differences among jurisdictional policies and resources and the establishment of local policies and procedures in this area.

These amendments integrate law, research, and model probation practices to establish specific minimum standards for probation's provision of diversion services to PINS youth and their families. Strengthening and supporting consistent application of preliminary procedures is essential to ensure effective diversion of youth, wherever appropriate. By addressing youth needs within the context of their families and communities, the state can realize savings in detention, placement, legal and social costs. Accordingly, it is not a viable alternative to have a seriously outdated probation rule, or no rule, governing preliminary procedure for the PINS population.

No small businesses are impacted by these proposed regulatory amendments.

2. Compliance Requirements:

While DPCA will require actuarial risk and needs assessments along with case planning tools and protocols approved by the Director of Probation and Correctional Alternatives, as the state oversight agency, and consistent with DPCA's Supervision Rule requiring a classification process to identify risks and needs (9 NYCRR § 351.3), state agency approval of the assessment tools is appropriate.

This rule does not change the monthly workload reporting requirements to our state agency, the Division of Probation and Correctional Alternatives (DPCA). However it does modify the types of PINS intake (preliminary procedure) case closing categories to be reported, consistent with recent statutory changes. The proposed rule, while requiring modification of these data elements, will not require the completion of additional forms or other paperwork.

There are no small business compliance requirements imposed by these proposed rule amendments.

3. Professional Services:

DPCA recognizes that pursuant to Social Services Law § 34-a(4)(b), local social services districts and probation departments are required to develop a written memorandum of understanding approved by the Office of Children and Family Services and DPCA which outlines the cooperative procedures to be followed by both parties regarding the provision of diversion services. These regulatory changes are consistent with minimum requirements established by both our respective agencies that encourage sharing of services between different local services providers within the same jurisdiction. The proposal also supports cooperation between local government jurisdictions.

There are no professional services required of small business associated with these proposed rule amendments.

4. Compliance Cost:

DPCA does not foresee these reforms leading to significant additional costs, and does not anticipate that these new requirements will be burdensome, nor require additional staffing above and beyond current needs. Initial triage at intake and sharing resources, wherever appropriate and feasible, with other agencies and services providers will produce cost savings.

Additionally, DPCA has provided leadership in the development and deployment of Caseload Explorer/ProberWeb case management software, which is streamlining paper requirements by avoiding duplication of ef-

fort. Thirty-six (36) probation departments currently participate and forty-four (44) are expected to participate by December 2008.

5. Economic and Technological Feasibility:

Local probation departments should have no problem in complying with this rule as DPCA is providing free of charge the YASI software for participating jurisdictions which enable them to have a validated DPCA approved risk and needs assessment tool and we have supported the development and deployment of Caseload Explorer/ProberWeb case management software for interested probation departments. DPCA does not anticipate any economic problems experienced by probation departments with these rule changes. There are no economic or technological issues faced by small businesses as these proposed rules do not affect them.

6. Minimizing Adverse Impacts:

In preparation and drafting proposed amendments, DPCA was diligent in engaging probation professionals from around the state: 1) In March 2006, DPCA constituted a PINS rule drafting workgroup of representatives from small, medium, and large jurisdictions representing urban and rural jurisdictions--this workgroup was comprised of all levels of probation staff, including director, deputy director, supervisor, senior officer, and officer; 2) in May-June 2006 DPCA held three regional PINS meetings to discuss strengths, issues, and concerns voiced by probation departments regarding implementation of the 2005 PINS law; 3) In March 2007 DPCA circulated a refined draft to all probation directors/commissioners; 4) In April 2007 DPCA met with a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA) for their professional association's feedback; and 5) in April DPCA presented all written comments from the twelve responding jurisdictions at a special workgroup meeting for consideration.

Most of the feedback indicated that these amendments reflect current model best probation practices. Some feedback sought clarification of language, alternate language, or increased flexibility. The majority of substantive suggestions for change were incorporated, and the workgroup clarified issues raised, and increased flexibility in certain instances. Overall, DPCA has received favorable support from probation agencies that these amendments are manageable and consistent with good professional practice.

While there was discussion as to DPCA requiring all jurisdictions to obtain approval of their screening instrument, the overwhelming majority of jurisdictions already use YASI. As the state oversight agency, and consistent with our supervision rule as to requiring a classification process to identify risks and needs (9 NYCRR § 351.3), state agency approval of any assessment tool is appropriate. Flexibility in policy allows for counties to choose a validated assessment, approved by DPCA, other than utilizing YASI at no cost.

These proposed regulatory reforms require specific attention to key areas, establishing provisions for effective preliminary procedure consistent with traditional and emerging probation practices, yet provides flexibility and recognizes differences among jurisdictional policies and resources and the establishment of local policies and procedures in this area.

7. Small Business and Local Government Participation:

As noted earlier, DPCA sought to engage probation departments from across the state on development of and refinement of our proposed regulatory changes: 1) In March 2006, DPCA constituted a PINS rule drafting workgroup of representatives from small, medium, and large probation departments, representing urban and rural jurisdictions and comprised of all levels of probation staff, including director, deputy director, supervisor, senior officer, and officer; 2) in May-June 2006 DPCA held three regional PINS meetings to solicit input regarding implementation of the 2005 PINS law; 3) In March 2007, DPCA circulated a refined regulatory draft to all probation directors/commissioners; 4) In April 2007, DPCA met with a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA) for their professional association's feedback; and 5) in April 2007, DPCA presented all written comments from the twelve responding jurisdictions at a special workgroup meeting for consideration.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

DPCA continues its requirement that probation directors maintain local written policies and procedures governing preliminary procedure (intake) for persons in need of supervision (PINS), and specifies key areas to be covered regarding timeframes, standards, criteria, case record documenta-

tion, and school communication. These key areas for local policy development recognize 2000, 2001, and 2005 statutory changes amending Article 7 of the Family Court Act (specifically Chapter 596 of the Laws of 2000, Chapter 383 of the Laws of 2001, and Chapter 57 of the Laws of 2005), while granting certain flexibility that takes into account local needs and resources.

There are no additional professional services necessitated in any rural area to comply with this rule. DPCA does not believe that these regulatory changes will prove difficult to achieve. Through prompt dissemination to staff of this new rule and its summary, local probation departments should be able to promptly implement these amendments and comply with its provisions.

This rule does not change the monthly workload reporting requirements to our state agency, the Division of Probation and Correctional Alternatives (DPCA). However it does modify the types of PINS intake (preliminary procedure) case closing categories to be reported, consistent with recent statutory changes. The proposed rule, while requiring modification of these data elements, will not require the completion of additional forms or other paperwork.

3. Costs:

Fifty-four counties (54) currently use at no cost, the DPCA approved actuarial Youth Assessment Screening Instrument (YASI) which promotes consistent application of screening assessment and case planning protocols for youth intake, investigation, and supervision services. Only three rural counties, Hamilton, St. Lawrence and Tompkins will remain as non-YASI counties. While one or more of these counties may object to requiring state approval of their assessment tools, DPCA as the oversight agency believes that this is imperative, and consistent with evidence-based practice principles, and has the authority to require a validated instrument to measure risk of recidivism, and the needs that must be addressed to reduce the likelihood of youth continuing with the PINS behaviors.

DPCA believes that more effective PINS diversion services can reduce long term state and local governmental costs for those youth who are at risk of continued involvement with the juvenile justice or criminal justice system. DPCA anticipates no additional costs in adhering to these amendments beyond what is currently required in law and regulation. Initial triage at intake and sharing resources, wherever appropriate and feasible, with other agencies and services providers will produce cost savings. Consistent application and sharing of screening, assessment, and case planning protocols and results will further add savings by avoiding duplication of efforts within and across probation departments.

As part of DPCA's efforts to streamline recordkeeping, avoid duplication and achieve cost savings, DPCA has supported the deployment of a web-based case management software, known as Caseload Explorer/ProberWeb case management software. Currently, thirty-six (36) probation departments participate and forty-four (44) are expected to participate by December 2008. Many rural counties are and will continue to benefit from this deployment.

Any anticipated in-service costs of educating staff, can be readily accomplished through memoranda and supervisory oversight without incurring any direct costs. Any minimal costs are outweighed by significant benefits of meeting the intent of current law and regulatory provisions to serve the best interests of PINS youth and their families, and in turn will reduce monetary costs associated with court processing, detention, and placement.

4. Minimizing adverse impact:

DPCA foresees that these regulatory amendments will have no adverse impact on rural areas. Our agency collaborated with jurisdictions across the state, including rural areas in developing the proposed rule and incorporated numerous suggestions from probation departments representing urban, rural, and suburban areas to clarify or address issues raised and to reflect good probation practice across the state. To our knowledge no adverse impact on rural areas were identified, and DPCA embraced flexibility where it was found to be consistent with good probation practice.

5. Rural area participation:

These revisions were developed by a DPCA working committee comprised of DPCA staff and eight local probation departments representing all geographic regions of the state, including rural, and involving all levels of probation staff, including director, deputy director, supervisor, senior probation officer, and probation officer. DPCA circulated a refined draft to all probation directors/commissioners, the Council of Probation Administrators, (the statewide professional association of probation administrators) which assigned it to a specific committee for review, with rural representation, and subsequently met with DPCA to provide feedback. The proposed regulatory amendments incorporate verbal and written suggestions gath-

ered from probation professionals, including rural entities, across the state to address problems which probation departments have experienced in the area of PINS preliminary procedure.

In preparation and drafting proposed amendments, DPCA was diligent in engaging probation professionals from around the state: 1) In March 2006, DPCA constituted the aforementioned PINS rule working committee with representatives across the state from small, medium, and large jurisdictions representing urban and rural jurisdictions; 2) In May-June 2006 DPCA held three regional PINS meetings to discuss strengths, issues, and concerns voiced by probation departments regarding implementation of the 2005 PINS law; 3) In March 2007, DPCA circulated a refined draft to all probation directors/commissioners; 4) In April 2007, DPCA met with a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA) for their professional association's feedback which has rural county participation; and 5) in April 2007, DPCA presented all written comments from the twelve responding jurisdictions at a special workgroup meeting for consideration.

Moreover, DPCA did not find significant differences among urban, rural, and suburban jurisdictions as to issues raised or suggestions for change. DPCA is confident that these amendments have the flexibility to accommodate rural jurisdictional needs.

Job Impact Statement

A job impact statement is not being submitted with these proposed regulations because it will have no adverse effect on private or public jobs or employment opportunities. The revisions incorporate changes in 2000 and 2005 laws with respect to preliminary procedure for probation in the provision of intake and diversion services for persons in need of supervision (PINS). They also address out-of-date requirements and reflect up-to-date best practices in the area of probation services. These changes are not onerous and can be implemented through correspondence and in-service training of probation staff.

Public Service Commission

NOTICE OF ADOPTION

Mini Rate Filing by the Village of Greene

I.D. No. PSC-20-07-00017-A

Filing date: Feb. 14, 2008

Effective date: Feb. 14, 2008

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

Action taken: The commission, on Feb. 13, 2008, adopted an order approving the Village of Greene's request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 1.

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

Subject: Mini rate filing.

Purpose: To approve an increase in annual electric revenues by \$162,205 or 9.7 percent.

Substance of final rule: The Public Service Commission adopted an order approving the request of the Village of Greene to increase annual electric revenues by \$162,205 or 9.7%, effective March 1, 2008.

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.

(07-E-0486SA1)

NOTICE OF ADOPTION

Wireless Attachments by Orange and Rockland Utilities, Inc. and Sprint Spectrum L.P.

I.D. No. PSC-36-07-00008-A

Filing date: Feb. 14, 2008

Effective date: Feb. 14, 2008

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

Action taken: The commission, on Feb. 13, 2008, adopted an order approving the joint petition filed by Orange and Rockland Utilities, Inc. (O&R) and Sprint Spectrum L.P. for wireless attachments on O&R's transmission facilities in the Town of Orangetown, Rockland County, NY and approving the standard procedure for existing and future attachments.

Statutory authority: Public Service Law, section 70

Subject: Wireless attachments to O&R's transmission facilities and procedure for future attachments.

Purpose: To approve the wireless attachments to O&R's transmission facilities.

Substance of final rule: The Commission adopted an order approving the joint petition filed by Orange and Rockland Utilities, Inc. (O&R) and Sprint Spectrum L.P. for wireless attachments on O&R's transmission facilities in the Town of Orangetown, Rockland County, New York and approving the Standard Procedure for existing and future attachments, 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.

(07-M-0954SA1)

NOTICE OF ADOPTION

Dishonored Payment by Corning Natural Gas Corporation

I.D. No. PSC-46-07-00006-A

Filing date: Feb. 13, 2008

Effective date: Feb. 13, 2008

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

Action taken: The commission, on Feb. 13, 2008, approved Corning Natural Gas Corporation's (Corning) request to make various changes in the rates, charges, rules and regulations for gas service—P.S.C. No. 4.

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

Subject: Dishonored payment.

Purpose: To approve the revisions to Corning's dishonored check charge.

Substance of final rule: The Public Service Commission adopted an order approving Corning Natural Gas Corporation's request to revise its gas and tariff schedule, P.S.C. No. 4, to revise its dishonored check charge from \$10.00 to \$23.00, effective February 22, 2008.

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.

(07-G-1282SA1)

NOTICE OF ADOPTION

Approval of Credit Facilities and Light Regulations by Empire Generating Co, LLC**I.D. No.** PSC-51-07-00006-A**Filing date:** Feb. 19, 2008**Effective date:** Feb. 19, 2008

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

Action taken: The commission, on Feb. 13, 2008, adopted an order approving Empire Generating Co, LLC's (Empire) request for lightened regulation and approving financing for construction of a natural gas fired electric generation facility located in Rensselaer, New York.

Statutory authority: Public Service Law, sections 2(13), 5(1)(b), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Empire's request for financing and lightened regulation of an approximately 505 MW natural gas fired electric generation facility.

Purpose: To approve Empire's request for financing and lightened regulation.

Substance of final rule: The Public Service Commission adopted an order approving Empire Generating Co, LLC's request for lightened regulation and financing arrangements up to a maximum of \$735 million for the construction of an approximately 505 MW natural gas fired electric generation facility to be located in Rensselaer, New York, 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. (07-E-1390SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Submetering of Electricity by Avalon Bay Communities****I.D. No.** PSC-10-08-00007-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 grant, deny or modify, in whole or part, the petition filed by Avalon Bay Communities to submeter electricity at 27 Barker Ave., White Plains, NY.

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

Subject: Submetering of electricity.

Purpose: To consider the request of Avalon Bay Communities to submeter electricity at 27 Barker Ave., White Plains, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Avalon Bay Communities to submeter electricity at 27 Barker Avenue, White Plains, New York, located in the territory of Consolidated Edison Company of New York.

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

Data, views or arguments may be submitted to: Jaclyn A. 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. (08-E-0113SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Submetering of Electricity by Collins Yonkers II LLC****I.D. No.** PSC-10-08-00008-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 grant, deny or modify, in whole or part, the petition filed by Collins Yonkers II LLC to submeter electricity at One Alexander St., Yonkers, NY.

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

Subject: Submetering of electricity.

Purpose: To consider the request of Collins Yonkers II LLC to submeter electricity at One Alexander St., Yonkers, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Collins Yonkers II LLC to submeter electricity at 1 Alexander Street, Yonkers, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Data, views or arguments may be submitted to: Jaclyn A. 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. (08-E-0140SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Rider U—Distribution Load Relief Program by Consolidated Edison Company of New York, Inc.****I.D. No.** PSC-10-08-00009-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 Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 9—Electricity, to become effective April 24, 2008.

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

Subject: Rider U—Distribution Load Relief Program (Rider U).

Purpose: To make various revisions to Rider U including a revision to the penalty provision and addition of a testing provision under the Summer Reservation Payments Program.

Substance of proposed rule: The Commission is considering Consolidated Edison Company of New York, Inc.'s (Con Edison) proposal to make revisions to Rider U - Distribution Load Relief Program (Rider U). Con Edison proposes to make various revisions to Rider U including revisions to the penalty provision and addition of a testing period provision under the Summer Reservation Payments program. The filing is being made pursuant to the Commission Order issued June 21, 2007 in Case 07-E-0392 which directed Con Edison to file a report assessing the effectiveness of the Rider U program changes on increasing the level of customer participation and recommending any tariff changes for implementation prior to the summer 2008 capability period. The proposed filing has an

effective date of April 24, 2008. The Commission may approve, reject or modify, in whole or in part, Con Edison'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.

(08-E-0176Sa1)

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

Report on Rider U—Distribution Load Relief Program by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-10-08-00010-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 report filed by Consolidated Edison Company of New York, Inc. regarding Rider—Distribution Load Relief Program pursuant to commission order in Case 07-E-0392 issued June 21, 2007.

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

Subject: Report on Rider U—Distribution Load Relief Program (Rider U).

Purpose: To assess effectiveness of the Rider U Program changes on increasing the level of customer participation.

Substance of proposed rule: The Commission is considering a report filed by Consolidated Edison Company of New York, Inc. (Con Edison) pursuant to Commission Order issued June 21, 2007 in Case 07-E-0392. In its Order, the Commission directed Con Edison to file a report assessing the effectiveness of the Rider U program changes on increasing the level of customer participation and recommending any tariff changes for implementation prior to the summer 2008 capability period.

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.

(08-E-0176SA2)

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

Waiver of Rules by Orange & Rockland Utilities Inc. and Sprint Spectrum L.P.

I.D. No. PSC-10-08-00011-P

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

Proposed action: The commission is considering whether to approve or reject, in whole or in part, a joint petition filed by Orange & Rockland

Utilities Inc. (O&R) and Sprint Spectrum L.P. for waiver of 16 NYCRR section 31.1(f) through (l), regarding contests of petitions under PSL section 70 for attachment of wireless equipment to O&R's transmission towers.

Statutory authority: Public Service Law, sections 4(1), 66(1) and 70

Subject: Waiver of rules regarding leased property for PSL section 70 petitions for wireless attachments to O&R's transmission facilities.

Purpose: To consider a waiver of rules regarding leased property for wireless attachments to O&R's transmission facilities.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, a joint petition filed by Orange & Rockland Utilities Inc. (O&R) and Sprint Spectrum L.P. for waiver of 16 NYCRR Sections 31.1(f) through (l), regarding contents of petitions under PSL § 70 for attachment of wireless equipment to O&R's transmission towers.

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

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

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

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

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

(07-M-0954SA2)

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

Implementation of Recommendations by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-10-08-00012-P

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

Proposed action: The commission is considering whether to order Consolidated Edison Company of New York, Inc. (Con Ed) to implement the recommendations set forth in the February 2008 staff report on steam pipeline rupture, 41st St. & Lexington Ave. or any additional actions or recommendations it deems necessary for improvements to the steam system operations or show cause why it should not comply.

Statutory authority: Public Service Law, sections 4(1) and 79(1)

Subject: Implementation of the recommendations in the staff report.

Purpose: To consider ordering Con Ed to implement the recommendations in the staff report intended to improve the steam system operations or show cause why they should not be implemented.

Substance of proposed rule: The Commission is considering whether to order Consolidated Edison Company of New York, Inc. (Con Ed) to implement the Department of Public Service Staff recommendations set forth in the February 2008 Staff Report on Steam Pipeline Rupture or any additional recommendations or actions it deems necessary for improvements to the steam operations system. The Staff Report was issued after extensive investigation and analysis, including the review of Con Ed's own reports and those of its consultants, and recommends actions for improvement to the steam system operations.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-S-0984SA1)

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

Water Rates and Charges by Windemere Highlands, Inc.

I.D. No. PSC-10-08-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a request filed by Windemere Highlands, Inc. to convert its paper tariff to an electronic tariff and increase its annual revenues by \$22,200 or 57 percent, to become effective May 31, 2008.

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

Subject: Water rates and charges.

Purpose: To convert Windemere Highlands, Inc.'s paper tariff to an electronic tariff and increase its annual revenues by \$22,200 or 57 percent.

Substance of proposed rule: On February 12, 2008, Windemere Highlands, Inc. (Windemere or the company) electronically filed Original Leaf Nos. 1-12 to tariff schedule P.S.C. No. 1 - Water, to become effective May 31, 2008. The proposed filing would convert Windemere's paper tariff to an electronic tariff. The company also proposes to increase its annual operating revenues by \$22,200 or approximately 57%. Windemere's tariff is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us located under File Room). The company provides metered water service to approximately 143 residential customers in a real estate subdivision known as Forest Park, in the Town of Red Hook, Dutchess County. The Commission may approve or reject, in whole or in part, or modify the company's request.

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

Data, views or arguments may be submitted to: Jaclyn A. 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. (08-W-0139SA1)

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

Water Rates and Charges by Hudson Valley Water Companies, Inc.

I.D. No. PSC-10-08-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a request filed by Hudson Valley Water Companies, Inc. to increase its annual revenues by \$22,774 or approximately 17 percent, to become effective May 31, 2008.

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

Subject: Water rates and charges.

Purpose: To increase Hudson Valley Water Companies, Inc.'s annual revenues by \$22,774 or approximately 17 percent.

Substance of proposed rule: On February 15, 2008, Hudson Valley Water Companies, Inc. (Hudson Valley or the company) electronically filed Leaf 12, Revision 3, and Leaf 13, Revision 3, to its tariff schedule

P.S.C. No. 2 - Water, to become effective May 31, 2008. The company proposes to increase its annual operating revenues by \$22,774 or approximately 17%. Hudson Valley's tariff is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us located under File Room then Tariffs). The company provides metered water service to approximately 430 customers in five real estate developments in Ulster County known as Mt. Marion, High Falls, Hurley Ridge East, Hurley Ridge West, and Mountain Valley Acres. Public fire protection service is only provided to a municipal fire district in the Mt. Marion System. The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-W-0168SA1)

**Susquehanna River Basin
Commission**

Notice of Public Hearing and Commission Meeting
AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Public Hearing and Commission Meeting.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting beginning at 1:00 p.m. on March 13, 2008 in Bedford, Pennsylvania. At the public hearing, the Commission will consider: 1) a request for an administrative hearing, 2) approval of certain water resources projects, including one enforcement action and several diversions into and out of the basin for pipeline testing, and 3) a separate rescission of an existing docket approval. Details concerning the matters to be addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATE: March 13, 2008.

ADDRESS: Bedford Springs Resort, P.O. Box 639, Bedford, Pa. See Supplementary Information section for mailing and electronic mailing addresses for submission of written comments.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423; ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Deborah J. Dickey, Secretary to the Commission, telephone: (717) 238-0423, ext. 301; fax: (717) 238-2436; e-mail: ddickey@srbc.net.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes the following items on the agenda: 1) a special presentation on the Bedford Springs Resort renovation project, 2) a report on the present hydrologic conditions of the basin, 3) authorization to release for public comment a proposed increase of the consumptive use fee from its current level of 14 cents per 1,000 gallons of water consumed to 28 cents per 1,000 gallons consumed with an annual CPI adjustment, 4) a Consumptive Use Mitigation Plan,, 5) the 2008 Water Resources Program, 6) adjustments in the FY-09 Budget, and 7) approval of various grants and contracts.

Public Hearing - Request for Administrative Hearing:

1. Project Sponsor: East Hanover Township, Dauphin Co., Pa. re: December 5, 2007 Commission approval of a consumptive use for Mountainview Thoroughbred Racing Association, Inc.

Public Hearing - Projects Scheduled for Action:

1. Project Sponsor and Facility: Cooperstown Dreams Park, Inc., Town of Hartwick, Otsego County, N.Y. Modification of consumptive use and surface water withdrawal approval (Docket No. 20060602).
2. Project Sponsor and Facility: Millennium Pipeline Company, L.L.C. (Chenango River), Towns of Chenango and Fenton, Broome County, N.Y. Application for surface water withdrawal of 2.480 mgd.
3. Project Sponsor and Facility: Millennium Pipeline Company, L.L.C. (Susquehanna River); Town of Windsor; Broome, Tioga, and Chemung Counties; N.Y. Application for surface water withdrawal of 4.130 mgd.
4. Project Sponsor and Facility: Millennium Pipeline Company, L.L.C. (Newtown Creek), Town of Horseheads, Chemung County, N.Y. Application for surface water withdrawal of 2.150 mgd.
5. Project Sponsor and Facility: Millennium Pipeline Company, L.L.C. (Cayuta Creek); Towns of Van Etten and Barton; Chemung and Tioga Counties, N.Y. Application for surface water withdrawal of 2.810 mgd.
6. Project Sponsor and Facility: Millennium Pipeline Company, L.L.C. (Owego Creek), Towns of Owego and Tioga, Tioga County, N.Y. Application for surface water withdrawal of 3.000 mgd.
7. Project Sponsor: Sand Springs Development Corp. Project Facility: Sand Springs Golf Community, Butler Township, Luzerne County, Pa. Modification of groundwater withdrawal approval (Docket No. 20030406).
8. Project Sponsor and Facility: First Quality Tissue, LLC, City of Lock Haven, Clinton County, Pa. Applications for consumptive water use of up to 2.500 mgd and surface water withdrawal of 10.500 mgd.
9. Project Sponsor: Wynding Brook, Inc. Project Facility: Wynding Brook Golf Club (formerly Turbot Hills Golf Club), Turbot Township, Northumberland County, Pa. Applications for consumptive water use of up to 0.283 mgd and surface water withdrawal of 0.499 mgd, and rescission of Commission Docket No. 20020808.
10. Project Sponsor: Papetti's Hygrade Egg Products, Inc. Project Facility: Michael Foods Egg Products Co., Upper Mahanoy Township, Schuylkill County, Pa. Modification of consumptive water use and groundwater withdrawal approval (Docket No. 19990903).
11. Project Sponsor and Facility: Mountainview Thoroughbred Racing Association, Inc., East Hanover Township, Dauphin County, Pa. Application for groundwater withdrawal of 0.400 mgd.
12. Project Sponsor and Facility: Bottling Group, LLC, dba The Pepsi Bottling Group - Harrisburg, Lower Paxton Township, Dauphin County, Pa. Application for consumptive water use of up to 0.466 mgd, and settlement of an outstanding compliance matter.
13. Project Sponsor: Martin Limestone, Inc. Project Facility: Burkholder Quarry, Earl Township, Lancaster County, Pa. Modification of groundwater withdrawal approval (Docket No. 20040307).
14. Project Sponsor: Golf Enterprises, Inc. Project Facility: Valley Green Golf Course, Newberry Township, York County, Pa. Modification of groundwater withdrawal approval (Docket No. 20021019).
15. Project Sponsor: Springwood, LLC Project Facility: Springwood Golf Club, York Township, York County, Pa. Applications for consumptive water use of up to 0.350 mgd and surface water withdrawal of 0.400 mgd.
16. Project Sponsor and Facility: Port Deposit Water & Sewer Authority, Town of Port Deposit, Cecil County, Md. Application for surface water withdrawal of 1.500 mgd.

Public Hearing - Project Scheduled for Action Involving a Diversions:

1. Project Sponsor and Facility: Millennium Pipeline Company, L.L.C., Re: Nos. 2-6 above, Projects Scheduled for Action, Chemung, Tioga & Broome Counties, N.Y. A portion of the waters withdrawn by these projects (up to 3.230 mgd) will be diverted into the Delaware River Basin and the Great Lakes Basin, which will also constitute a consumptive use of water. (Susquehanna River/Newtown Creek), Town of Windsor, Broome County, N.Y. Application for consumptive water use of up to 3.230 mgd and diversion.

Public Hearing - Project Scheduled for Rescission Action:

1. Project Sponsor and Facility: Walsh Construction (Docket No. 20050603), Fermanagh Township, Juniata County, Pa. Opportunity to Appear and Comment:

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania

17102-2391, or submitted electronically to Richard A. Cairo, General Counsel, e-mail: rcairo@srbc.net or Deborah J. Dickey, Secretary to the Commission, e-mail: dddickey@srbc.net. Comments mailed or electronically submitted must be received prior to December 5, 2007 to be considered.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel

I.D. No. TAF-48-07-00005-A

Filing No. 145

Filing date: Feb. 19, 2008

Effective date: Feb. 19, 2008

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period Jan. 1, 2008 through March 31, 2008.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-48-07-00005-P, Issue of November 28, 2007.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.state.ny.us

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.

NOTICE OF ADOPTION

Out-of-State Resale Permits

I.D. No. TAF-52-07-00009-A

Filing No. 146

Filing date: Feb. 19, 2008

Effective date: March 5, 2008

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

Action taken: Amendment of sections 526.6(c)(2), 528.23(b); and repeal of section 532.6 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 1142, subds. (1) and (8); and 1250 (not subdivided)

Subject: Out-of-state resale permits.

Purpose: To repeal obsolete out-of-state resale permit provisions from the sales and compensating use tax regulations.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-52-07-00009-P, Issue of December 24, 2007.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.state.ny.us

Assessment of Public Comment

The agency received no public comment.

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

Supplemental Schedule for Distributor of Tobacco Products

I.D. No. TAF-10-08-00004-P

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

Proposed action: Addition of section 89.4 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivisions First and Fourteenth and 475 (not subdivided); Public Health Law, section 1399-oo, subdivision (10)

Subject: Supplemental schedule for distributors of tobacco products to account for roll-your-own cigarette tobacco in New York State.

Purpose: To codify in regulation reporting requirements for distributors of roll-your-own cigarette tobacco.

Text of proposed rule: Section 1. A new section 89.4 is added to such regulations, to read as follows:

Section 89.4 Supplemental schedule for distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own tobacco. (Tax Law, sections 473-a, 475; Public Health Law, art. 13-G, sections 1399-oo and 1399-pp).

(a) The Tobacco Escrow Funds Act (Public Health Law, art. 13-G), as amended by Chapter 272 of the Laws of 2006, requires tobacco product manufacturers that do not participate in the Tobacco Master Settlement Agreement to make annual escrow payments based on units sold as measured, in part, by excise taxes on roll-your-own tobacco. Roll-your-own tobacco is any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. In order to provide information on roll-your-own tobacco, as part of the tobacco products tax return required by section 473-a of the Tax Law, those distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own tobacco must complete and file a schedule, as prescribed by the department, to account for the quantity of roll-your-own tobacco imported or caused to be imported into New York State, or manufactured in New York State. Such schedule must contain the following information:

(1) a listing of each supplier of roll-your-own tobacco that the distributor imported or caused to be imported into New York State;

(2) for each supplier listed, a listing of all the brands of roll-your-own tobacco imported or caused to be imported from such supplier and the quantity in pounds and ounces of each brand of roll-your-own tobacco imported or caused to be imported by the distributor;

(3) for each brand of roll-your-own tobacco listed for each supplier, the name of the manufacturer of such brand;

(4) if a distributor manufactures roll-your-own tobacco, a listing of all the brands of roll-your-own tobacco product the distributor manufactured in New York State along with the quantity of each brand; and

(5) any other information as may be required by the department.

(b) The distributor must maintain complete and accurate records to support the information reported on the schedule required by subdivision (a) of this section.

(c) The failure of a tobacco products distributor to comply with the provisions of this section by not furnishing the schedule required by this section, or by not furnishing complete and accurate information as required by such schedule, constitutes grounds for cancellation of the appointment as a distributor or suspension or revocation of a license under article 20 of the Tax Law.

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.state.ny.us

Data, views or arguments may be submitted to: William Ryan, Director, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153, e-mail: tax_regulations@tax.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivisions First and Fourteenth, and section 475 (not subdivided); and Public Health Law, section 1399-oo, subdivision (10). Section 171, subdivision First of the Tax Law provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations, which are consistent with the law, that may be necessary for the exercise of the Commissioner's powers and the

performance of the Commissioner's duties under the Tax Law. Section 171, subdivision Fourteenth of the Tax Law provides for the Commissioner to perform the other powers and duties conferred upon it by law. Section 475 (not subdivided) of the Tax Law provides that the Commissioner may require tax returns relating to the tax on cigarettes and tobacco products to be filed at such times and containing such information as it may prescribe. Section 1399-oo, subdivision (10) of the Public Health Law provides that the Commissioner of Taxation and Finance shall promulgate regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes, including roll-your-own tobacco, of each tobacco manufacturer selling such tobacco in the state.

2. Legislative objectives: This rule is being proposed pursuant to such authority and in accordance with the legislative objectives that the Commissioner equitably administers the provisions of the Tax Law and other applicable provisions of law under his jurisdiction to preserve State revenue. The rule is an exercise of the Commissioner's authority to require returns to contain the information as it may prescribe and to prescribe a rule that, consistent with the Tax Law, will enable the Department to assist with the enforcement of the Master Settlement Agreement (MSA), as described below in Section 3 of this statement.

3. Needs and benefits: The Public Health Law, as it relates to the enforcement of the tobacco Master Settlement Agreement (MSA), was amended by Chapter 272 of the Laws of 2006 to require that non-participating manufacturers, as defined in the MSA, include units of roll-your-own cigarette tobacco imported or caused to be imported into New York State, or manufactured in New York State, in determining their annual escrow payments. Beginning with the return for January 2007, distributors importing, causing to be imported, or manufacturing roll-your-own cigarette tobacco are required to complete and attach a supplemental schedule to their monthly return to account for roll-your-own cigarette tobacco imported or caused to be imported into New York State, or manufactured in New York State. Public Health Law (PHL) § 1399-oo(10), which defines "unit sold," requires that the Tax Department provide certain information to the New York State Attorney General necessary for the administration and enforcement of the Tobacco Escrow Funds Act. For standard packs of cigarettes, this information is collected and reported by cigarette stamping agents on an attachment to their monthly cigarette tax reports pursuant to 20 NYCRR 75.1(f). Roll-your-own cigarette tobacco is taxable as a tobacco product under section 471-b of the Tax Law. New section 89.4 codifies in regulation similar reporting requirements imposed based on the amendments to the provisions of the Tobacco Escrow Funds Act as it applies to roll-your-own tobacco and mirrors 20 NYCRR 75.1(f). This amendment codifies in regulation the new filing requirements needed to assist in the enforcement of the Public Health Law.

4. Costs:

(a) Costs to regulated persons: The regulated parties affected by this rule are approximately 65 distributors of tobacco products that are currently filing form MT-203-ATT each month, reporting purchases of roll-your-own cigarette tobacco. There is no tax liability impact on these regulated parties for the implementation of and continuing compliance with the rule. There are administrative costs associated with the filing of the supplemental schedule. This schedule is currently required to be filed by distributors of roll-your-own cigarette tobacco importing or causing to be imported into New York State, or manufacturing roll-your-own cigarette tobacco in New York State, as explained above in Section 3 of this statement. The rule merely codifies this requirement. It is estimated that it takes an affected distributor of tobacco products that imports, causes to be imported, or manufactures roll-your-own cigarette tobacco thirty minutes to learn about the form, one hour for recordkeeping, and one hour and thirty minutes for preparing the form for a total of three hours. Assuming an hourly rate of \$17 an hour (equivalent with a clerical New York State position), the average cost for an affected distributor of tobacco products to complete the form as part of its monthly tobacco products tax return is \$51 a month. After the first filing, the costs of learning about the form could be reduced to zero for these distributors, resulting in compliance costs to each affected distributor of \$42.50 a month for each subsequent month. The time estimates are from the Department's Transaction and Transfer Tax Bureau of its Audit Division and are based on estimates of time to complete similar forms.

(b) Costs to the State and its local governments including this agency: This rule will have no cost in terms of revenue impact on New York State or its local governments. It is estimated that the implementation and continued administration of this rule will have no fiscal impact on the Department of Taxation and Finance. Distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own cigarette to-

bacco were notified of the new filing requirement in December 2006, providing that beginning with the return for January 2007, (due February 20, 2007) distributors must complete and attach Form MT-203-ATT, Information on Roll-Your-Own Cigarette Tobacco Manufactured or Imported by a Distributor, to their monthly return, (Form MT-203, Distributor of Tobacco Products Tax Return). Form MT-203-ATT is mailed to all distributors each month along with Form MT-203.

(c) Information and methodology: These conclusions are based upon the information and methodology discussed above and an analysis of the rule from the Department's Taxpayer Guidance Division, Office of Tax Policy Analysis, Transaction and Transfer Tax Audit Bureau, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The required schedule to account for the quantity of roll-your-own tobacco will result in minimal additional paperwork on the regulated parties as discussed in 4(b) above.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

8. Alternatives: The intention of the Department is to codify in regulation the requirement of proper reporting by distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own tobacco to ensure compliance with the Public Health Law. No alternatives exist.

9. Federal standards: The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

10. Compliance schedule: The rule will take effect on the date that the Notice of Adoption is published in the State Register. The rule codifies in regulation the reporting requirement for distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own cigarette tobacco to file, as part of the tobacco products tax return, a schedule to account for the quantity of such roll-your-own tobacco.

Regulatory Flexibility Analysis

1. Effect of rule: The rule will affect approximately 65 distributors of tobacco products that import or cause to be imported into New York State, or manufacture roll-your-own cigarette tobacco in New York State, some of which may be small businesses as defined in section 102(8) of the State Administrative Procedure Act. All distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own cigarette tobacco, regardless of the size of the business operation, are currently required to file a supplemental schedule to account for roll-your-own cigarette tobacco. The rule codifies this requirement.

2. Compliance requirements: The rule does not impose any adverse economic impact or any additional reporting, recordkeeping, or compliance requirements on local governments. The rule codifies the requirement that all distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own cigarette tobacco, including those that are small businesses, must complete and attach to their monthly tobacco products tax return a supplemental schedule to account for roll-your-own cigarette tobacco imported or cause to be imported into New York State, or manufactured in New York State. The information contained in this supplemental schedule is used by the Department of Taxation and Finance to fulfill its responsibilities under the Public Health Law to provide certain information necessary for the administration and enforcement of the Tobacco Escrow Funds Act.

3. Professional services: The rule itself imposes no requirements for professional services upon small businesses or local governments. However, an affected distributor of tobacco products may employ professional services in preparing its tax returns, including the supplemental schedule.

4. Compliance costs: There are no compliance costs to local governments as a result of this rule. With regard to the affected distributors of tobacco products, there are administrative costs associated with the filing of the supplemental schedule. This supplemental schedule is currently required by distributors of roll-your-own cigarette tobacco importing or causing to be imported into New York State, or manufacturing roll-your-own cigarette tobacco in New York State. The rule merely codifies this filing requirement. It is estimated that it takes an affected distributor of tobacco products that imports, causes to be imported, or manufactures roll-your-own cigarette tobacco thirty minutes to learn about the supplemental schedule, one hour for recordkeeping, and one hour and thirty minutes for preparing the supplemental schedule for a total of three hours. Assuming an hourly rate of \$17 an hour (equivalent with a clerical New York State

position), the average cost for an affected distributor of tobacco products to complete the supplemental schedule as part of their monthly tobacco products tax return is \$51 a month. After the first filing, the costs of learning about the supplemental schedule could be reduced to zero for these distributors, resulting in compliance costs to each affected distributor of \$42.50 a month for each subsequent month. There are no variations in these costs for small businesses.

5. Economic and technological feasibility: The rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: As discussed in more detail in the Regulatory Impact Statement, the Public Health Law, as it relates to the enforcement of the tobacco Master Settlement Agreement (MSA), was amended by Chapter 272 of the Laws of 2006 to require that non-participating manufacturers, as defined in the MSA, include units of roll-your-own cigarette tobacco imported or caused to be imported into New York State, or manufactured in New York State in determining their annual escrow payments. In addition, the Tax Department is required to provide certain information to the New York State Attorney General (AG) necessary for the administration and enforcement of the Tobacco Escrow Funds Act. Accordingly, beginning with the return for January 2007, distributors importing, causing to be imported, or manufacturing roll-your-own cigarette are required to complete and attach a supplemental schedule to their monthly return to account for roll-your-own cigarette tobacco imported or caused to be imported into New York State, or manufactured in New York State. This rule codifies in regulation the additional reporting requirements needed to assist the AG's office with the enforcement of the Public Health Law. The rule does not distinguish between affected small businesses and other types of businesses as the information is necessary from all affected distributors. Recognizing the impact of the additional reporting requirements, the Department has taken the following steps to minimize any adverse effects. The rule mirrors 20 NYCRR 75.1(f), which requires similar reporting requirements for New York State cigarette excise tax stamps affixed to packages of cigarettes by the agent. In addition, in developing the supplemental schedule for distributors of tobacco products importing, causing to be imported, or manufacturing roll-your-own cigarette tobacco, the Department modeled such schedule after Form CG-5/6-ATT, which requests similar information from New York State cigarette stamping agents that affix New York State tax stamps.

7. Small business participation: The following organizations were notified that the Department was in the process of developing this rule and were given the opportunity to participate in its development: the New York State Association of Tobacco and Candy Distributors; the Association of Towns of New York State; the Deputy Secretary of State for Local Government and Community Services; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York State Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; and the Retail Council of New York State. The notified groups did not submit any comments concerning the rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The rule will affect approximately 65 distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own cigarette tobacco, some of which may be located in rural areas as defined by section 102 (10) of the State Administrative Procedure Act. There are 44 counties in the State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile.) The rule affects all of these distributors of tobacco products in the same way; it does not distinguish between distributors of tobacco products that are located in rural, suburban, or metropolitan areas of the State. All distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own cigarette tobacco, regardless of where they are located, are required to file a supplemental schedule to account for roll-your-own cigarette tobacco imported or caused to be imported into New York State, or manufactured in New York State.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule codifies the requirement that all distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own cigarette tobacco, including those located in rural areas, must complete and attach to their monthly tobacco products tax return a supplemental schedule to account for roll-your-own cigarette tobacco imported or caused to be imported into New York State, or manufactured in New

York State. Although not required, an affected distributor of tobacco products may employ professional services in preparing its tax returns.

3. Costs: There are no variations in costs for public or private concerns in rural areas. With regard to the affected distributors of tobacco products located in rural areas or elsewhere, there are administrative costs associated with the filing of the supplemental schedule. This supplemental schedule is currently required to be filed by distributors importing or causing to be imported into New York State, or manufacturing roll-your-own cigarette tobacco in New York State. The rule merely codifies this filing requirement. It is estimated that it takes an affected distributor of tobacco products that imports, causes to be imported, or manufactures roll-your-own cigarette tobacco thirty minutes to learn about the supplemental schedule, one hour for recordkeeping, and one hour and thirty minutes for preparing the supplemental schedule for a total of three hours. Assuming an hourly rate of \$17 an hour (equivalent with a clerical New York State position), the average cost for an affected distributor of tobacco products to complete the supplemental schedule as part of their monthly tobacco products tax return is \$51 a month. After the first filing, the costs of learning about the supplemental schedule could be reduced to zero for these distributors, resulting in compliance costs to each affected distributor \$42.50 a month for each subsequent month.

4. Minimizing adverse impact: The rule does not distinguish between affected distributors of roll-your-own cigarette tobacco located in rural areas and those located elsewhere as the information is required from all such distributors. As discussed in more detail in the Regulatory Impact Statement, the Public Health Law, as it relates to the enforcement of the tobacco Master Settlement Agreement (MSA), was amended by Chapter 272 of the Laws of 2006 to require that non-participating manufacturers, as defined in the MSA, include units of roll-your-own cigarette tobacco imported or caused to be imported into New York State, or manufactured in New York State in determining their annual escrow payments. In addition, the Tax Department is required to provide certain information to the New York State Attorney General (AG) necessary for the administration and enforcement of the Tobacco Escrow Funds Act. Accordingly, beginning with the return for January 2007, distributors importing, causing to be imported, or manufacturing roll-your-own cigarette tobacco are required to complete and attach a supplemental schedule to their monthly return to account for roll-your-own cigarette tobacco that is imported or caused to be imported into New York State, or manufactured in New York State. This rule codifies in regulation the additional reporting requirements needed to assist the AG's office with the enforcement of the Public Health Law. Recognizing the impact of the additional reporting requirements, the Department has taken the following steps to minimize any adverse effects. The rule mirrors 20 NYCRR 75.1(f), which requires similar reporting requirements for New York State cigarette excise tax stamps affixed to packages of cigarettes by an agent. In addition, in developing the supplemental schedule for distributors of tobacco products importing, causing to be imported, or manufacturing roll-your-own cigarette tobacco, the Department modeled such schedule after Form CG-5/6-ATT, which requests similar information from New York State cigarette stamping agents that affix New York State tax stamps.

5. Rural area participation: The following organizations were notified that the Department was in the process of developing this rule and were given the opportunity to participate in its development: the New York State Association of Tobacco and Candy Distributors; the Association of Towns of New York State; the Deputy Secretary of State for Local Government and Community Services; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York State Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; and the Retail Council of New York State. The notified groups did not submit any comments concerning the rule.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities. The purpose of this rule is to codify in regulation the reporting requirement for distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own cigarette tobacco to file, as part of the tobacco products tax return, a schedule to account for the quantity of roll-your-own tobacco that is imported or caused to be imported into New York State, or manufactured in New York State. The filing of this additional supplemental schedule will not impact jobs or employment opportunities.

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

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel

I.D. No. TAF-10-08-00005-P

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

Proposed action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2008 through June 30, 2008.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (xlx) to read as follows:

Sales Tax Component	Motor Fuel		Diesel Motor Fuel		
	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(xlx) January - March 2008	22.0	38.4	14.0	22.0	36.65
(xix) April - June 2008	14.0	22.0	14.0	22.0	36.65

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.state.ny.us

Data, views or arguments may be submitted to: William Ryan, Director, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153, e-mail: tax_regulations@tax.state.ny.us

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

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

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