RULE MAKING ACTIVITIES

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

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

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

Office for the Aging

EMERGENCY RULE MAKING

Expanded In-Home Services for the Elderly Program (EISEP) Consumer Directed In-Home Services

I.D. No. AGE-25-11-00002-E
Filing No. 502
Filing Date: 2011-06-06
Effective Date: 2011-06-06

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

Action taken: Amendment of sections 6654.15, 6654.16 and 6654.17 of Title 9 NYCRR.

Statutory authority: Elder Law, sections 201(3) and 214

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

Specific reasons underlying the finding of necessity: Consumer direction is the service delivery model that is strongly encouraged by both the Administration on Aging (AoA) and the Centers for Medicare and Medicaid Services. By allowing consumers to direct their own care, consumers are more satisfied, have better outcomes and tend to stay out of nursing homes for a longer period of time. By staying out of nursing homes, consumers can age in the least restrictive setting and protect their assets by not having to spend down to Medicaid in order to be able to afford institutional care. Furthermore, the State of New York saves money as consumers either delay or avoid relying on Medicaid to pay for their long term care. While not mandating that states implement consumer directed care into their programs, the AoA is strongly encouraging it in the OAA. In addition, to further encourage states to develop consumer directed service delivery models, the AoA is offering several federal grant programs that expect states to continue to provide consumer directed services after the federal grant money ends.

NYSOFA has received two federal grants, the Nursing Home Diversion Modernization Program (NHDMP) and the Community Living Program (CLP) grant which are tied to the adoption and implementation of state funded consumer directed in-home services. Thus far, three counties (Broome, Onondaga and Oneida) are participating in the NHDMP and are required to transition the federally funded consumer directed in-home services portion of this grant to state funded consumer directed in-home services under EISEP by the end of September 2010, when the grant expires. Additionally, there are seven counties participating in the CLP grant (Albany, Cayuga, Dutchess, Orange, Otsego, Tompkins and Washington) who need to be positioned to begin implementing consumer directed in-home services under EISEP in September 2010.

The Notice of Emergency Adoption is necessary to enable NYSOFA to meet its obligations under both grants by ensuring that there is no interruption of the consumer directed in-home services currently being provided to consumers located in the three counties participating in the NHDMP and to ensure that consumer directed in-home services will be provided to consumers located in the seven counties participating in the CLP. Accordingly, it would only apply to the ten counties participating in the two grants and would expire when the regulations are published for final adoption in the State Register.

Subject: Expanded In-Home Services for the Elderly Program (EISEP) Consumer Directed In-Home Services.

Purpose: The purpose of the proposed rule is to incorporate the Consumer Directed In-Home Services delivery model into EISEP.

Substance of emergency rule: The purpose of this rule is to allow consumers the opportunity to manage their own in-home services under the Expanded In-home Service for the Elderly Program (EISEP). The proposed amendments to 9 NYCRR sections 6654.15, 6654.16 and 6654.17 incorporate a consumer directed in-home services delivery model into EISEP.

The amendments to § 6654.15 add consumer directed in-home services eligibility criteria and definitions. Specifically, the amendments address the requirements an individual or their representative must meet in order to participate in the consumer directed in-home services delivery model. In addition, several terms have been defined in order to provide the regulated parties with clear direction as to what is meant when each of the defined terms are used in the regulations. Some of these terms are new to EISEP (e.g., Consumer, Consumer Representative, Consumer Directed In-home Services and Fiscal Intermediary) and others are not, though they had not been defined previously (e.g., In-home Services, In-home Services Agency and In-home Services Worker).

In addition, for purposes of this emergency adoption the eligibility criteria for those who can participate in Consumer Directed In-home Services found in § 6654.15, is limited to individuals who may be served by the ten counties currently participating in the two federal grants, the Nursing Home Diversion Modernization Program (NHDMP) and the Community Living Program (CLP) which are tied to the adoption and implementation of state funded consumer directed in-home services, currently being administered by New York State Office for the Aging.

Section 6654.16 of the regulations was amended so that the consumer directed in-home services delivery model could be incorpo-

rated into the EISEP regulations. Specifically, NYSOFA clearly delineated those tasks that are the responsibility of the case manager in traditional EISEP but which are the responsibility of the consumer or the consumer representative under consumer directed in-home services. This section of the regulations also articulates that while case managers will work with and assist consumers and/or consumer representatives who receive services under the consumer directed in-home services model, responsibility for the interviewing, selecting, scheduling, training, supervising and dismissing the in-home services worker lays with the consumer or the consumer representative and not the case manager. NYSOFA also made several technical amendments in this section that brought the regulations up to date with current practice.

NYSOFA also amended § 6654.17 of the regulations to incorporate the consumer directed in-home services model into EISEP. Again, the major focus of the changes in this section of the regulations was to identify the tasks and responsibilities of the consumer and/or consumer representative under consumer direction, including those that are the responsibility of the agency that is providing home care in the traditional services delivery model. NYSOFA also clearly establishes training responsibilities for all parties involved in consumer directed in-home services. The amendments to this section also establish the role and responsibilities of the fiscal intermediary, an entity responsible for many of the administrative tasks including financial transactions. NYSOFA clarified when a criminal background check is required and the type of criminal background check that is required. NYSOFA also made some technical amendments to this section to bring the regulations in line with current practice and enhance the consistency with the New York State Department of Health's (DOH) regulations for the Medicaid funded Personal Care Program and regulations for licensed home care services agencies. Among the amendments in this category are the changes to the guidelines regarding the qualifications needed by the nurse who supervises the in-home services worker who is providing home care under EISEP. Section 6654.17 provides guidance as to the type and content of records that must be maintained by the fiscal intermediary that is providing the administrative functions under consumer directed in-home services. The amendments also incorporate by reference the DOH's regulations regarding criminal background checks, health status and training of in-home services workers. NYSOFA's regulations have always mirrored the DOH's requirements regarding these three subjects and incorporating the DOH's requirements into the EISEP regulations by reference will facilitate regulatory compliance for regulated parties.

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 September 3, 2011.

Text of rule and any required statements and analyses may be obtained from: Stephen Syzdek, New York State Office for the Aging, Two Empire State Plaza, Albany, NY 12223-1251, (518) 474-5041, email: stephen.syzdek@ofa.state.ny.us

Regulatory Impact Statement

1. Statutory Authority - Section 201(3) of the New York State Elder Law allows the Director of the New York State Office for the Aging (NYSOFA) with the advice of the advisory committee for the aging to promulgate, adopt, amend or rescind rules and regulations necessary to carry out the provisions of Article II of the Elder Law.

New York State Elder Law Section 214 governs the administration of the Expanded In-home Services for the Elderly Program (EISEP).

2. Legislative Objectives - The legislative objectives of the statute that created EISEP are to increase the availability of in-home support services to non-Medicaid eligible elderly persons in need of assistance and improve access to and management of appropriate care through the use of comprehensive case management. In addition, the legislative intent of EISEP is to foster the use of non-medical supports to avoid the inappropriate use of more costly forms of care at home and in institutional settings; improve the targeting of aging network resources to those most in need and make optimal use of informal caregivers; and assist elderly clients to remain in their homes and communities. One of the ten main objectives found in the Older Americans Act (OAA) is to enable older people to secure equal opportunity to the full and free enjoyment of the following: freedom, independence and the free exercise of individual initiative in planning and managing their own lives, full participation in the planning and operation of community-based services and programs provided for their benefit, and protection against abuse, neglect and exploitation (Subsection 10 of Section 101 of the (OAA).

3. Needs and Benefits - The purpose of this rule is to allow consumers the opportunity to manage their own in-home services under EISEP. NYSOFA has received two federal grants, the Nursing Home Diversion Modernization Program (NHDMP) and the Community Living Program (CLP) which are tied to the adoption and implementation of state funded consumer directed in-home services. Three counties (Broome, Onondaga and Oneida) are participating in the first NHDMP and are required to transition the federally funded consumer directed portion of this grant to state funded consumer directed services - EISEP - by the end of September, when the grant expires.

Additionally, there are seven counties participating in the CLP (Albany, Cayuga, Dutchess, Orange, Otsego, Tompkins and Washington) who need to be positioned to begin implementing consumer directed services under EISEP in September. The Notice of Emergency Adoption would only apply to the ten counties that are participating in the federal grants referenced above and would expire when the regulations are published for final adoption in the State Register.

NYSOFA is filing a Notice of Emergency Adoption in order to ensure that it is able to meet its obligations under both grants by ensuring that there is no interruption of the consumer directed in-home services currently being provided to consumers located in the three counties participating in the NHDMP and to ensure that consumer directed in-home services will be provided to consumers located in the seven counties participating in the CLP.

Consumer direction is a service delivery model that provides consumers with more control and choice in the delivery of the care that they receive than the traditional models of care. Consumer direction has many variations and the scope of what is included within the construct of consumer direction varies from program to program. However, all consumer directed programs stem from the idea that individuals with needs should be empowered to make decisions about their care. Depending on the parameters established by a program, consumers select, train, schedule, supervise and dismiss their in-home services workers; decide what services and goods to spend their budget on and which providers or workers (other than for in-home services) to hire and when work will be performed.

Consumer direction is the service delivery model that is strongly encouraged by both the Administration on Aging (AoA) and the Centers for Medicare and Medicaid Services. By allowing consumers to direct their own care, consumers are more satisfied, have better outcomes and tend to stay out of nursing homes for a longer period of time. By staying out of nursing homes, consumers can age in the least restrictive setting and protect their assets by not having to spend down to Medicaid in order to be able to afford institutional care. Furthermore, the State of New York saves money as consumers either delay or avoid relying on Medicaid to pay for their long term care. While not mandating that states implement consumer directed care into their programs, the AoA is strongly encouraging it in the OAA. In addition, to further encourage states to develop consumer directed service delivery models, the AoA is offering several federal grant programs that expect states to continue to provide consumer directed services after the federal grant money ends. New York State is participating in two such grant programs.

EISEP services are provided to seniors through the Area Agencies on Aging (AAA's). Under the traditional EISEP model, case managers use the assessment and care planning process to determine the type, amount and the delivery method for the services to be provided. In-home services are provided by an agency, which is usually either a licensed home care services agency or a certified home health agency.

Under the consumer directed in-home services delivery model, consumers will have much more control, authority and decision-making capacity regarding the home care services that they receive. They will determine who will provide their home care, how the care will be provided and when it will be provided. They will establish the

worker's schedule, deciding when each task will be performed. The consumer will do so within the context of the assessment and care plan that is developed by the case manager with the consumer. However, the participation of the consumer in this process will be stronger and their role enhanced as a strength based and person centered approach is adopted.

By creating the consumer directed in-home services delivery model under EISEP, New York State continues to move toward the AoA's objective that states incorporate consumer directed models of service delivery into their programs. Moving in this direction allows for innovative, creative, flexible and cost saving options to meet the needs of older New Yorkers.

AAA's will not be mandated to implement consumer directed in-home services under EISEP. Each AAA will decide if, when and how to implement consumer direction. However, it is anticipated that over time all of New York State's AAA's will choose to implement the consumer directed model. It should also be noted that the traditional home care services delivery model remains the same and unchanged by these regulations. AAA's and clients will be free to continue to provide and receive traditional home care services.

This rule making amends three sections (9 NYCRR § 6654.15, 6654.16 and 6654.17) of the EISEP regulations to accommodate consumer direction.

The amendments to § 6654.15 add consumer directed in-home services eligibility criteria and definitions. As a result of extensive outreach to interested parties, NYSOFA learned that the eligibility criteria and terms needed to be expanded and clarified. As a result, NYSOFA clearly lays out who is eligible to participate in consumer directed in-home services and defines key terms so that regulated parties can better understand the regulations.

Section 6654.16 of the regulations was amended so that the consumer directed in-home services delivery model could be incorporated into the case management regulations. Specifically, NYSOFA clearly delineates those tasks that are the responsibility of the case managers in traditional EISEP but which are the responsibility of the consumer or the consumer representative under consumer directed in-home services. NYSOFA also made several technical amendments in this section that made the regulations more reflective of the way that EISEP is currently administered.

NYSOFA also amended § 6654.17 to incorporate the consumer directed in-home services model into the in-home services regulations. Again, the major focus of these changes was to identify the tasks and responsibilities of the consumer and/or consumer representative under consumer direction, including those that are usually the responsibility of the agency that is providing home care in the traditional services delivery model. NYSOFA also clearly establishes training responsibilities for all parties involved in consumer directed in-home services. These amendments also establish the role and responsibilities of the fiscal intermediary, an entity responsible for many of the administrative tasks including financial transactions. NYSOFA has also made some technical amendments to this section to more accurately reflect the current administration of EISEP. The amendments also incorporate by reference the New York State Department of Health's (DOH) regulations regarding criminal background checks, health status and training of in-home services workers. NYSOFA's regulations have always mirrored the DOH's requirements regarding these three subjects and NYSOFA has decided that incorporating the DOH's requirements into the EISEP regulations will facilitate regulatory compliance for regulated parties.

4. Costs - This proposed rule imposes no additional costs to the regulated parties, NYSOFA or state and local governments to implement and to continue to comply with this proposed rule. It should be noted that as mandated by the new 9 NYCRR section 6654.19(d), EISEP continues to be the payer of last resort and any services that are able to be provided through another source or program may not be provided through EISEP.

5. Paperwork - The proposed rule does not change any of the reporting requirements, forms or other paperwork from what is already required of the AAAs administering the program. However, for those AAA's that do decide to undertake consumer directed in-home services there will be some additional paperwork such as authorizations and releases that will need to be completed.

6. Local Government Mandates - The proposed rule does not impose any program, service, duty or responsibility upon any city, county, town, village, school district or other special district other than what is already required of the AAAs administering the program.

7. Duplication - There are no laws, rules or other legal requirements that duplicate, overlap or conflict with this proposed rule.

8. Alternatives - NYSOFA's internal workgroup discussed several significant programmatic alternatives during the development of this proposal. Some in the community of aging services providers believe that older adults will not have their needs met and be at greater risk of fraud and abuse under the consumer direction service model. NYSOFA rejected these notions as studies continue to demonstrate that older adults who manage their own care are more satisfied with the services that they receive, effective managers, less likely to be subjected to fraud and/or abuse at the hands of their caregivers and remain out of long term care facilities for a longer period of time. As a result, NYSOFA made the decision to allow for consumer directed in home services to be provided under EISEP. NYSOFA also considered limiting who could participate in the consumer directed in-home services program. Again, some are of the opinion that older adults with physical or mental disabilities should not be allowed to direct their own care. After discussing this concern with advocacy groups and other state units on aging that have implemented consumer directed care, NYSOFA believes that as long as the AAA delivering services is able to confirm that the consumer or the consumer's representative is able to assume responsibility for managing the consumer's care, these individuals should be given an opportunity to attempt to do so. Additionally, there were suggestions that the regulations place too much responsibility on the fiscal intermediary. NYSOFA, in drafting these amendments, discovered that there are varying degrees to which fiscal intermediaries involve themselves in the administrative duties and/or the support they provide to consumers who direct their own care. As a result, NYSOFA has rejected suggestions that limit the role of the fiscal intermediary and decided that the level of involvement of the fiscal intermediary will be determined by the AAA and particular fiscal intermediary involved in the consumer's care plan.

9. Federal Standards - This rule does not exceed Federal standards.

10. Compliance Schedule - AAAs will be able to comply with this proposed rule immediately after promulgation.

Regulatory Flexibility Analysis

This proposed rule will not have an adverse economic impact on small businesses or local governments nor will it impose reporting, recordkeeping or compliance requirements above those already required under EISEP on small businesses or local governments. This proposed rule simply changes the way in which EISEP is administered. The proposed rule only affects the AAA's, in-home services providers and the clients served by EISEP by allowing consumers or their representatives to direct and manage the in-home services portion of their own care plans.

Rural Area Flexibility Analysis

This proposed rule will not have an adverse economic impact on public or private entities in rural areas nor will it impose reporting, recordkeeping or compliance requirements above those already required under EISEP on public or private entities in rural areas. This proposed rule simply changes the way in which EISEP is administered. The proposed rule only affects the AAA's, in-home services providers and the clients served by EISEP by allowing consumers or their representatives to direct and manage the in-home services portion of their own care plans.

Job Impact Statement

The New York State Office for the Aging has determined that this proposed rule will not have a substantial adverse impact on jobs. This proposed rule simply changes the way in which EISEP is administered. The proposed rule only affects the AAA's, in-home services providers and the clients served by EISEP by allowing consumers or their representatives to direct and manage the in-home services portion of their own care plans.

Department of Civil Service

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-25-11-00004-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by decreasing the number of positions of Investigative Auditor from 2 to 1.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-25-11-00005-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by increasing the number of positions of Deputy Commissioner from 4 to 5.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-25-11-00006-P

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

Proposed Action: Amendment of Appendices 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: Delete subheading from exempt and non-competitive classes; classify and delete positions in the exempt and non-competitive classes.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department, by deleting therefrom the subheading "Governor's Office of Regulatory Reform," and the positions of Assistant Counsel (7), Associate Counsel, Confidential Assistant, Confidential Secretary, Counsel, Deputy Director, Program Associate (7), Secretary and Special Assistant (2); and, in the Executive Department under the subheading "Division of the Budget," by increasing the number of positions of Associate Counsel from 1 to 2 and Program Associate from 4 to 5; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, , in the Executive Department, by deleting therefrom the subheading "Governor's Office of Regulatory Reform," and the positions of øPrincipal Program Specialist (OPAL) (1), øRegulatory Policy Specialist 1 (8), øRegulatory Policy Specialist 2 (7), øRegulatory Policy Specialist 3 (2) and øSecretary 2 (2); and, in the Executive Department under the subheading "Division of the Budget," by adding thereto the position of øRegulatory Policy Specialist 3 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was

previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-25-11-00007-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by increasing the number of positions of Advocacy Specialist 2 from 5 to 6.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-25-11-00008-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Labor Management Committees, by decreasing the number of positions of Employee Relations Assistant from 6 to 5.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Department of Corrections and Community Supervision

NOTICE OF ADOPTION

Lyon Mountain Correctional Facility

I.D. No. COR-09-11-00004-A

Filing No. 504

Filing Date: 2011-06-06

Effective Date: 2011-06-22

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

Action taken: Repeal of section 100.110 of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Lyon Mountain Correctional Facility.

Purpose: To remove reference to a correctional facility that is no longer in operation.

Text or summary was published in the March 2, 2011 issue of the Register, I.D. No. COR-09-11-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, Harriman State Campus - Building 2 - 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Docs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Privileged Correspondence

I.D. No. COR-13-11-00003-A
Filing No. 505
Filing Date: 2011-06-06
Effective Date: 2011-06-22

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

Action taken: Amendment of section 721.2(b)(5) of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Privileged Correspondence.

Purpose: To clarify that incoming mail from a County Clerk shall be processed as regular correspondence.

Text or summary was published in the March 30, 2011 issue of the Register, I.D. No. COR-13-11-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, Harriman State Campus - Building 2, 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Docs.state.ny.us

Assessment of Public Comment
The agency received no public comment.

Division of Criminal Justice Services

EMERGENCY RULE MAKING

Probation State Aid Block Grant Funding

I.D. No. CJS-25-11-00003-E
Filing No. 503
Filing Date: 2011-06-06
Effective Date: 2011-06-06

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

Action taken: Repeal of Part 345; and addition of new Part 345 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 243 and 246; L. 2011, chs. 53 and 57

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

Specific reasons underlying the finding of necessity: In order to promote public safety, probation State aid block grant monies must be readily available to local governments for probation department operations to ensure continuity of probation services to the criminal justice and juvenile justice system and timely implementation of Chapters 53 and 57 of the Laws of 2011 with respect to probation State aid grants. Funding of probation services is viewed as a critical component to promote the effective application of the probation system. As the existing state aid rule has been rendered obsolete, new emergency regulations will avoid potential disruption of probation services caused by delayed funding. This emergency regulation will help maintain and improve service delivery to the criminal and juvenile justice systems with respect to the probation population in general, as well as for specialized high-risk populations for which targeted grant monies have been statutorily earmarked for distribution.

Subject: Probation State Aid Block Grant Funding.

Purpose: To conform probation state aid rule with new statutory provisions with respect to block grant funding.

Text of emergency rule: Part 345 of 9 NYCRR is Repealed and a new Part 345 is added to read as follows:

Section 354.1 Objective.

To provide for the distribution of State aid to county probation services and to the probation services of New York City and to provide State financial assistance to local governments for regular and/or specialized probation programming to promote offender accountability, rehabilitation, and enhance public safety.

Section 345.2 Definitions.

When used in this Part:

(a) ''Division'' shall mean the Division of Criminal Justice Services.

(b) ''Commissioner'' shall mean the Commissioner of the Division of Criminal Justice Services.

(c) ''Office'' shall mean the Office of Probation and Correctional Alternatives located within the Division of Criminal Justice Services.

(d) ''Director'' shall mean the Director of the Office of Probation and Correctional Alternatives within the Division.

(e) ''Department'' shall mean a county probation department or the City of New York probation department.

Section 345.3 State Aid Plan Application Submission and Eligibility for State Aid.

Every county outside of the City of New York and the City of New York shall annually file a probation state aid plan application with the Office pursuant to the format, timeframe and schedule prescribed by the Commissioner in consultation with the Director.

(a) Applications shall include a detailed plan with cost estimates covering probation services for the fiscal year or portion thereof for which aid is requested. Included in such estimates shall be clerical costs, maintenance and operation costs, salaries of probation personnel and other pertinent information including an overview of probation program services relating to staff training, investigation, supervision, and intake.

(b) An approved plan and compliance with standards relating to the administration of probation services, promulgated by the Commissioner in consultation with the Director, shall be a prerequisite to eligibility for State Aid.

(c) A county outside of the City of New York and the City of New York may apply for additional state aid as part of a block grant award for enhanced program services with respect to specific populations, including aid for the Intensive Supervision Program (ISP), Enhanced Specialized Services for Sex Offenders (ESSO), Juvenile Risk Intervention Coordination Services (J-RISC) or any other specific population determined by the Commissioner.

(d) The Commissioner shall allocate block grant monies based upon a review of all approved plans and their respective budgets and pursuant to a plan prepared by the Commissioner and approved by the Director of the Division of the Budget. All state aid shall be granted by the Commissioner after consultation with the State Probation Commission and the Director.

(e) State aid monies received by the Division during 2011 shall be, to the greatest extent possible, distributed in a manner consistent with the prior year distribution amounts and thereafter as authorized by law.

Section 345.4 Plan approval, funding, and reporting.

(a) State aid grants shall not be used for expenditures for capital additions or improvements, or for debt service costs for capital improvements.

(b) Each plan shall:

(1) ensure adherence to all applicable laws and rules and regulations governing probation services;

(2) ensure that the Integrated Probation Registrant System will be maintained by the Department in a timely and accurate manner and that the proportion of active but closable adult supervision cases will be maintained at less than five percent of the total active Department caseload and whenever in excess, immediate steps will be undertaken to reduce percentage to less than five percent;

(3) ensure that the Department will timely collect DNA from individuals under their supervision who have not yet submitted DNA as agreed upon pursuant to a plea, as required by law, or as otherwise ordered by the court and routinely review the ''DNA Owed'' report on the Division's Probation Services Suite for such purposes;

(4) ensure that the Department will facilitate timely Sex Offender Registration Act (SORA) compliance (registration, submission of photographs, completion of annual address verification form, change of address forms, and 48-hour forms) by the Department and by any registered sex offender subject to supervision by the Department and conduct quarterly address checks of registerable sex offenders under probation supervision as requested by the Division to verify compliance;

(5) ensure that probation officers have access to the Division's eJusticeNY;

(6) ensure that the Department uses a Division approved fully validated Risk/Need Assessment instrument for juvenile and adult offender populations;

(7) if application is made for ISP service funding, make the following assurances:

(i) defendants will be screened at the earliest/appropriate stage in the dispositional process for program participation using Division eligibility criteria, and any additional criteria developed by the Department;

(ii) the Department will maintain and update, when applicable, local eligibility criteria that will further limit the unnecessary incarceration of certain high risk offenders. These criteria shall be in accordance with Division rules and regulations and such criteria and any update shall be forwarded to the Division;

(iii) the Department will use an approved Division assessment process or instrument to identify and target those with greatest risk and needs for program participation;

(iv) the Department will reduce the number of defendants who may be unnecessarily incarcerated by diverting them into the program by facilitating a probation sentence with the condition of program participation for suitable high risk defendants who would otherwise have been incarcerated and probationers who violate the original order and conditions of probation who will be continued under probation supervision with the condition of program participation, as an alternative to incarceration;

(v) the Department will complete a full assessment of all probationer program participants' criminogenic risks and needs, using a Division approved instrument and establish a supervision plan in a timely manner;

(vi) the Department will refer all such probationers to appropriate service providers based on the case planning assessment in the supervision plan; and

(vii) the Department will ensure that all such probationer's participate and engage in all service programs, and monitor their progress.

(8) if application is made for ESSO funding, make the following assurances:

(i) the Department will ensure that all SORA Level 2 or 3 registered sex offenders under probation supervision are subject, where applicable, to the mandatory sex offender condition(s) set forth in Penal Law § 65.10(4-a), and court-ordered or interstate authorized specialized sex offender conditions which may include, but are not limited to, the internet restriction condition under Penal Law § 65.10(5-a);

(ii) the Department will ensure that all such sex offenders are assigned to the caseload of an experienced probation officer/ probation unit who either solely or primarily supervises sex offenders, or has a significant concentration of sex offenders on the caseload, and who has received specialized training on sex offender management;

(iii) the Department will perform enhanced field work (i.e. surveillance, collateral contacts, employment visits, as well as use of electronic monitoring, global positioning systems, computer scanning, internet usage monitoring, and other enforcement initiatives) in supervising such sex offenders;

(iv) the Department will conduct at least one visit to a SORA Level 2 or 3 sex offender's home each quarter during which, at a minimum, a plain view search for prohibited items and/or substances is completed;

(v) the Department will ensure that all such sex offenders are assessed by a probation officer or treatment provider using a sex-offender specific assessment instrument approved by the Division;

(vi) the Department will ensure that all such sex offenders are referred to, participate in, or successfully complete Association for the Treatment of Sexual Abusers (ATSA)-compliant clinical evaluation and/or treatment where available;

(vii) the Department will maintain and implement a policy which provides for collaboration with other law enforcement and service agencies on: warrant execution sweeps, home visits, surveillance, searches, treatment planning, housing, and other activities related to general sex offender management;

(viii) the Department will maintain and implement a policy which provides for officers to independently or in concert with law enforcement execute warrants on Sex Offenders, including apprehending absconders who are found, pursue extradition where appropriate, and secure warrants and retake interstate sex offenders where required and/or necessitated; and

(ix) the Department will utilize polygraph examinations for the management of certain sex offenders consistent with the goals of community safety where available.

(9) If application is made for J-RISC funding, make the following assurances:

(i) the Department will use an approved Division risk and needs assessment process or instrument, refer alleged and/or adjudicated Persons In Need of Supervision(PINS) and Juvenile Delinquent (JD) youth who are determined to be high risk and appropriate for program services and conduct reassessments as necessary; and

(ii) the Department will assign juvenile probation officers trained in family intervention and cognitive behavioral techniques, youth supervision and delinquency prevention to perform program services and/or work collaboratively with evidence-based intervention provider(s) to achieve reductions in dynamic risk for J-RISC youth and to achieve successful program completion.

(10) Ensure adherence to other program goals, objectives, and performance target requirements set forth by the Division for additional state aid with respect to special/specific populations other than the populations specified in paragraphs seven, eight and nine of this subdivision.

(c) The Commissioner may require modification of the plan in order to obtain approval. Any modification of a plan requires Commissioner approval.

(d) Vouchers and program reports shall be in a format established by the Division and shall be submitted on a schedule established by the Division.

(e) Division or other governmental findings by audit or program analysis and review which show that the Department has not adhered to the approved plan of operation and/or standards governing probation practice, may be the basis for withholding the payment of State aid or recouping monies. A county or the City of New York may request reconsideration of the decision to withhold payment or recoup monies to the Office and shall submit information as to their respective position and specific details in support of its position and such other information as may be requested by the Director. After consultation with the Director, the Commissioner will render a final determination which may include the steps that are necessary to obtain funding.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 3, 2011.

Text of rule and any required statements and analyses may be obtained from: Linda J. Valenti, Assistant Counsel, NYS Division of Criminal Justice Serivces, 4 Tower Place - 3rd Floor, Albany, New York 12203, (518) 457-8413, email: linda.valenti@dcjs.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Chapters 53 and 57 of the Laws of 2011 continued the provisions of block grant funding for probation services, originally enacted pursuant to Chapters 50 and 56 of the Laws of 2010. These 2010 Chapter laws had renamed the former Division of Probation and Correctional Alternatives (DPCA) to the Office of Probation and Correctional Alternatives (OPCA), merged OPCA within the Division of Criminal Justice Services (DCJS), specifically transferred all rules and regulations of DPCA to DCJS, and established that such rules and regulations shall continue in full force and effect until duly modified or abrogated by the Commissioner of DCJS. Additionally, other conforming statutory changes were made including the amendment of Executive Law Section 243(1) to establish in pertinent part that the Commissioner of DCJS has authority to ''adopt general rules which shall regulate methods and procedure in the administration of probation services…'' 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, Executive Law Section 246 was amended to revamp probation state aid funding from approvable expenditures to block grant distribution and authorize within such grant monies funding for other specific enhanced program services related to specific probation populations. State Fiscal Year 2010-2011 and 2011-2012 appropriations were enacted consistent with statutory changes in this area.

2. Legislative objectives:

These regulatory amendments are consistent with legislative intent to maintain State financial assistance to local governments for regular and/or specialized probation programming, continuing a streamlined mechanism for local government to apply for and receive probation state aid block grant monies, and to afford greater flexibility to probation departments with respect to managing probation operations. The amendments will help guarantee the stability of probation service delivery consistent with state law, rules and regulations, and additional specific state programmatic requirements, promote offender accountability and rehabilitation, and enhance public safety.

3. Needs and benefits:

The need for a new proposed regulation in this area replacing the existing probation state aid rule with a new probation state aid block grant rule is necessitated by statutory changes in the enacted 2010 and 2011 Executive Budget (L. 2010, Chapters 50 and 56 and L. 2011, Chapters 53 and 57) and the recent expiration of a 2010 emergency block grant rule which had replaced the former outdated probation state aid rule. Additionally, certain regulatory changes are sought to particular specialized sex offender funding performance measures in recognition of addressing some local issues which have arisen in complying with terms and conditions of such funding. Immediate regulatory changes must be implemented to ensure the timely distribution of probation funding to local governments to guarantee that there is no disruption of service delivery. This regulation will continue to provide local probation departments mandate relief with respect to the manner which they may apply for state monies for probation management operations. The proposed regulation has been designed to streamline application procedures, reduce program standards to core components in order to achieve fiscal efficiencies, and provide greater

flexibility as to local probation department service delivery consistent with law, and good professional practice. Program standards are not new, but instead codify past contractual agreements based upon best practices and ensure the integrity of probation service delivery to the criminal justice and juvenile justice system. For general State aid block grant monies, program standards have retained DNA, Sex Offender Registration Act (SORA), eJusticeNY, and Integrated Probation Registrant System requirements from past years to promote public safety and ensure sound probation management. Probation state aid is no longer based upon detailed regulatory criteria specifying eligible reimbursement expenditures; thus, departments will have greater latitude to utilize monies for probation operations. The singular regulatory restriction mirrors State law. For Intensive Supervision Program (ISP) State aid block grant monies, program standards are consistent with respect to key program operational expectations governing screening, initial and full assessment, advocacy, case planning, referral, and monitoring consistent with existing ISP operational guidelines, policies, and agency regulations and the application is now incorporated within the annual state aid application process. For Enhanced Specialized Services for Sex Offenders (ESSO) State aid block grant monies, the program standards have been reduced to essential program components critical for enhanced supervision of high-risk sex offenders with additional minor modifications in the area of polygraph examinations and referral to treatment services that will greatly assist some departments in adhering to particular terms and conditions. Consistent with 2010 statutory changes, departments are no longer restricted in the amount of monies which can be spent for certain program activities, including those related to specialized caseload, field work, polygraph testing, and retaking or extradition of a SORA Level II or III sex offender under probation supervision. Additionally, in accordance with a change implemented in 2010, specialized ESSO monies earmarked for polygraph testing and retaking and extradition of offenders remain included in total distribution. This will optimize flexibility in utilization of such ESSO monies for program performance in this area. For Juvenile Risk Intervention Services Coordination (J-RISC) grant monies, program standards have continued 2010 funding changes which retained prior year contractual core service delivery expectations based upon evidence-based practices. J-RISC monies may be spent as departments determine appropriate to effectuate program services.

Consistent with 2010 regulatory changes, for ISP, ESSO, and J-RISC State aid block grant monies, the application continues to be incorporated within the annual state aid application process and will not require detailed budgetary information for such specialized monies. As during 2010, no longer will there be a need to seek State approval with respect to changes in local ISP, ESSO, or J-RISC budgets. Further, to receive monies there is a simplified voucher process with less documentation necessitated and due to the block grant distribution, instead of separate quarterly program vouchers previously required, a probation department will submit one voucher on a quarterly basis covering all funded division programmatic services.

4. Costs:

This regulation will not result in increased costs. Greater flexibility in utilization of probation state aid should improve fiscal efficiencies and program operations, and reduce State and local costs associated with contractual processing.

a. This regulation will not impose a cost on probation departments. Prior to 2010, departments had to apply to OPCA for re-imbursement after expenses were incurred. This regulation continues 2010 rule changes which will allow for a single application for funding prior to incurring expenses and will likely result in savings to a probation department by reducing staff effort in securing re-imbursement.

b. Although DCJS must approve each plan, this approval can be accomplished using existing staff and resources. Therefore no additional costs will be incurred. As noted above, it is anticipated that the costs to each local government may be reduced through the streamlined funding plan.

c. This cost analysis is based on the prior experience of OPCA employees in consultation with DCJS.

5. Local government mandates:

The regulatory changes do not impose any new mandates upon probation departments with respect to probation state aid funding. While prior to 2010 probation departments seeking State funding were required to apply to OPCA, since 2010 applications are made directly to DCJS.

6. Paperwork:

No additional paperwork is necessary for implementation of these regulatory changes.

7. Duplication:

These amendments do not duplicate any State or Federal law or regulation.

8. Alternatives:

This regulation is similar to last year's funding rule with respect to probation block grant monies.

Chapter 53 and 57 of the laws of 2011 continued provisions of Chapter 56 of the laws of 2010 and provisions of Executive Law Section 246 which established that state aid block grant funding with respect to regular and certain specialized program services shall be pursuant to DCJS rules and regulations. Eliminated as no longer necessary was funding of such program services pursuant to contractual agreements. DCJS developed a regulation which created a singular streamlined application procedure as to regular State aid and the three new statutorily earmarked block grant specialized services. Further, DCJS chose to simplify and clarify program performance standards with respect to core components and provide greater flexibility as to local probation department service delivery consistent with law and good professional practice. Before finalization of the 2010 emergency regulation, DCJS distributed a draft regulation to the State Probation Commission, which consists of two probation directors and a former probation officer among others appointed by the Governor and which includes the Chief Administrator of the Courts. At the Probation Commission's August 2010 meeting, DCJS received unanimous favorable endorsement from the Commission as to the approach and identification of the core components of the probation standards reflected in the regulation, as well as the manner of distribution of monies which is consistent with Chapter 56 of the Laws of 2010 amendments to Executive Law Section 246 and appropriation language found in Chapter 50 of the Laws of 2010. Regulatory implementation and funding allocation methodology were further discussed with the Council of Probation Administrators, the professional organization of probation directors and deputy directors throughout New York State, which did not raise objection.

9. Federal standards:

There are no federal standards governing probation state aid.

10. Compliance schedule:

This regulation is similar to the 2010 state aid application procedures with respect to state aid probation block grant monies. Dissemination of the new regulation to local probation departments will enable such departments to comply with the regulation and timely secure State funds without delay.

Regulatory Flexibility Analysis

1. Effect of Rule:

This new rule Part sets forth parameters governing probation state aid block grant distribution.

The regulatory changes will better assist probation departments in funding and managing their own probation operations. They will afford relief to probation departments by streamlining state aid plan application procedures with respect to provision of State financial assistance to local governments for probation programming to achieve fiscal efficiencies and provide greater flexibility in usage of state aid monies consistent with Chapters 50 and 56 of the Laws of 2010 and Chapters 53 and 56 of the Laws of 2011 and state aid block grant provisions. Changes will expedite receipt of grant monies as once approved there is no need to enter into formal contractual processing.

The amendments do not affect small business.

2. Compliance Requirements:

In order to comply with this rule, a local probation department will be required to apply to the Division of Criminal Justice Services (DCJS) prior to receiving State financial assistance. This regulation is similar to prior year state aid application procedures with respect to state aid probation monies and the reporting, recordkeeping and compliance requirements are similar to those of prior years. This regulation has no affect on small businesses.

3. Professional Services:

No professional services are required to comply with this regulation.

4. Compliance Cost:

The regulatory changes will not result in probation departments incurring any compliance costs. The regulatory amendments mirror 2010 application procedures with respect to probation state aid block grant monies, and continue last year's provision of mandate relief to local probation departments with respect to the manner which they can distribute state monies for probation management operations consistent with other statutory provisions.

5. Economic and Technological Feasibility:

There are no economic or technological issues or problems arising from the proposed rule. A probation department will be able to apply for State financial assistance pursuant to this rule using existing staff and technology.

6. Minimizing Adverse Impacts:

DCJS foresees that these regulatory amendments will have no adverse impact on any local government. As noted in more detail below, the Office of Probation and Correctional Alternatives (OPCA) within DCJS collaborated with jurisdictions across the state, including rural, suburban, and urban counties, and probation professional associations in soliciting feedback as to regulatory changes in order to provide probation mandate relief. As a result of the 2010 enactment of probation state aid block grant

funding and continuation of block grant funding in 2011, the proposed regulation is designed to streamline application procedures, reduce program standards to core components, and provide greater flexibility as to local probation department service delivery consistent with law, and good professional practice.

As the probation state aid block grant rule does not have any impact upon small business, the regulatory changes have no negative impact upon small business operations.

7. Small Business and Local Government Participation:

Pursuant to Executive Order No. 17, the OPCA prepared initial Rule Review Findings in October 2009 of all of its rules and regulations and disseminated the findings to all probation departments, the Council of Probation Administrators (COPA) (the statewide professional association of probation directors), the New York State Probation Officers Association (NYSPOA), the New York State Association of Counties (NYSAC), the State Probation Commission, and the Division of the Budget (DOB). Additionally, OPCA convened an October 26, 2009 meeting in Albany which was attended by over a dozen probation departments (urban, suburban, and rural counties), COPA and NYSPOA Presidents, NYSAC, and DOB representatives. OPCA staff went over all rules and regulations and reviewed them individually, discussed proposed regulatory changes, and solicited feedback from the audience.

There was considerable interest by probation professionals across the state from rural, urban, and suburban jurisdictions, for legislation which would change the distribution of probation state aid from reimbursed expenditures to probation State aid block grants to achieve greater fiscal efficiencies and provide greater flexibility in probation management operations. This block grant concept was incorporated in the 2010 Public Protection appropriation portion of the Executive Budget and other statutory language which was subsequently signed into law and continued in enactment of 2011 budgetary provisions. During 2010, DCJS disseminated the 2010 emergency rule in this area to all local probation departments. This 2011 emergency rule incorporates a few modifications with respect to funding performance requirements which will assist certain departments in achieving regulatory compliance.

As this rule does not impact upon small businesses, there was no business involvement with respect to the regulatory changes.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

The regulation imposes no new reporting, recordkeeping, other compliance requirements. This regulation is similar to 2010 state aid application procedures with respect to state aid probation block grant monies and the reporting, recordkeeping and compliance requirements are similar to those of prior years. No professional services will be necessary to comply with the regulation.

3. Costs:

The new regulatory Part will not result in increased costs.

4. Minimizing adverse impact:

DCJS foresees that these regulatory amendments will have no adverse impact on any jurisdiction, including rural areas. As noted in more detail below, the former Division of Probation and Correctional Alternatives (DPCA), now the Office of Probation and Correctional Alternatives (OPCA) within DCJS, collaborated with jurisdictions across the state, including rural areas, and probation professional associations with rural membership in soliciting feedback as to agency regulations in order to provide sound probation mandate relief. The 2010 and 2011 statutory and appropriation language with respect to probation state aid block grant is consistent with recent suggestions raised by many probation departments and communicated by the Council of Probation Administrators, the statewide professional association of probation administrators. The regulatory amendments have been designed to streamline application procedures, reduce program standards to core components, and provide greater flexibility as to local probation department service delivery consistent with law, public safety, and good professional practice.

5. Rural area participation:

Pursuant to Executive Order No. 17, the OPCA prepared initial Rule Review Findings in October 2009 of all of its rules and regulations and disseminated the findings to all probation departments, the Council of Probation Administrators (COPA) (the statewide professional association of probation directors), the New York State Probation Officers Association (NYSPOA), the New York State Association of Counties (NYSAC), the State Probation Commission, and the Division of the Budget (DOB). Additionally OPCA convened an October 26, 2009 meeting in Albany which was attended by over a dozen probation departments (rural, urban, and suburban counties), COPA and NYSPOA Presidents, NYSAC, and DOB representatives. DPCA staff went over all rules and regulations and reviewed them individually, discussed proposed regulatory changes, and solicited feedback from the audience. There was considerable interest by some probation professionals across the state from rural, urban, and suburban jurisdictions, which gained legislative and Executive support, for legislation which would change the distribution of probation state aid from reimbursed expenditures to probation State aid block grant to achieve greater fiscal efficiencies and provide greater flexibility in probation management operations. This block grant concept was incorporated in the 2010 Public Protection appropriation portion of the Executive Budget which was subsequently signed into law and continued in enactment of 2011 budgetary provisions. The proposed regulation, which is similar in content with past expired emergency regulations, and consistent with recent statutory provisions, will achieve greater fiscal efficiencies and provide greater flexibility in probation management operations.

Job Impact Statement

The emergency regulation will have no adverse effect on private or public jobs or employment opportunities. The revisions are technical and procedural in nature and consistent with recently implemented State law probation State aid block grant language.

NOTICE OF ADOPTION

Preliminary Procedure for Article 3 Juvenile Delinquency Intake; Intake

I.D. No. CJS-49-10-00004-A

Filing No. 508

Filing Date: 2011-06-07

Effective Date: 2011-09-01

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

Action taken: Addition of new Part 356; and amendment of Part 354 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1)

Subject: Preliminary Procedure for Article 3 Juvenile Delinquency Intake; Intake.

Purpose: Establishes new procedures for Article 3 Juvenile Delinquency Intake to promote consistent application of law and best practices.

Substance of final rule: Pursuant to Chapter 56 of the Laws of 2010, the Division of Probation and Correctional Alternatives (DPCA) was renamed the Office of Probation and Correctional Alternatives (OPCA) and was merged with the Division of Criminal Justice Services (DCJS). All DPCA rules and regulations were transferred to DCJS and are to continue in full force and effect until duly modified or abrogated by the Commissioner of DCJS. These regulatory amendments would delete past references as to Article 3 cases in Part 354 and add a new Part 356 so that there will be one rule related to Juvenile Delinquency (JD) Intake services. The new Part 356 was developed by an OPCA working committee comprised of OPCA staff and local probation department representation across the state of all Council of Probation Administrators (COPA) regions, and including all levels of probation staff, including director, deputy director, supervisor, senior probation officer, and probation officer. The existing regulations regarding JD intake provisions were last amended in 1982. In drafting new rule language, the committee's primary objectives have been to: 1) reflect best practice as it has evolved over the past 20 years; 2) incorporate evidence-based practice that has come to the forefront of probation practices in recent years; and 3) integrate statute and best probation practice into a single document organized according to the flow of cases through preliminary procedure similar to what OPCA adopted in 2008 with respect to probation intake services surrounding Persons In Need of Supervision (PINS). In this way, both populations of youth will benefit from state of the art probation services and increase effective diversion of such youth from Family Court.

Section 356.1 Definitions.

These regulatory amendments define numerous terms not previously defined under the old JD Intake rule. Some of these terms have come into widespread use in probation practice over the past 20 years, others are anchored in the 2008 OPCA PINS Intake Rule revision, and others originate from evidence-based practice. To improve the system's ability to communicate about and distinguish among different types of services, the new Part 356 rule contains new definitions for intervention service, accountability measure, and control measure. Other new definitions have been developed for: actuarial risk, case plan, conference, evidence-based practice, potential respondent, referred for petition, risk assessment, and successfully adjusted.

Section 356.2 Objective.

This section has been strengthened to encourage successful adjustment of alleged JD youth and for probation services to be more reflective of evidence-based practices.

Section 356.3 and 356.4 Applicability and Jurisdiction.

These rule sections reaffirm all probation departments' statutory duty to provide JD intake services and provide guidance regarding cases where the child lives in one county but the JD act 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 356.5 General Requirements for JD Preliminary Procedure.

This rule section reinforces the importance and necessity of establishing, maintaining, and disseminating written policies and procedures for the uniform provision of preliminary procedure services for JD matters and addressing particular areas. It further refers to key statutory and Uniform Rules for the Family Court requirements regarding eligibility, suitability and parameters relative to timeframes to promote probation compliance. Additional provisions relate to screening and assessment for diversion, investigation, and supervision purposes utilizing validated actuarial tools approved by the Commissioner of DCJS and is consistent with OPCA's aforementioned recently adopted PINS Intake Rule.

Section 356.6 Probation Intake.

This rule section refers to eligibility and exclusionary criteria and establishes minimum suitability criteria. It further clarifies that the Family Court Act allows probation to provide JD intake services to eligible and suitable youth in pre-petition detention.

Section 356.7 Adjustment Services.

This rule section identifies minimum salient provisions with respect to adjustment services based in large part upon best practices and reaffirms a key statutory requirement that the inability to make restitution cannot be a factor in determining eligibility of services.

Section 356.8 Assessment, Case Planning, and Reassessment.

This rule section sets forth key provisions with respect to assessment, case planning, and reassessment. It requires an initial case plan to be developed within 30 calendar days of case initiation, and periodic reassessments during the adjustment period, including at case closure. 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 JD complaint. They also clarify that in addition to intervention services, accountability and control measures may be applied as part of adjustment services and that electronic monitoring may be used only with director consent and upon specific court order.

Similar to OPCA's PINS Intake Rule, this section emphasizes the importance for actuarial risk screening at intake in order to triage cases, and consideration for prompt termination of adjustment efforts with minimal probation intervention services where youth present as low risk for re-offending. Consistent with the actuarial screening and triage functions at intake, the rule language requires as part of adjustment services a full assessment of all youth who are at moderate or high risk for continued JD behavior, and directs that adjustment services be prioritized to higher risk youth.

Section 356.9 Referral To Presentment Agency.

This rule section in general delineates statutory responsibilities with respect to probation referral to presentment agencies when adjustment services are not appropriate or successful in order to promote compliance. Additionally, it reinforces the option that probation can recommend a referral back to probation for adjustment services in appropriate cases. This clarification will allow greater prosecutorial and judicial consideration of adjustment services for suitable cases.

Section 356.10 Return From Court.

This rule section outlines particular probation duties with respect to cases returned from the court for adjustment services.

Sections 356.11 and 356.12 Case Closing Requirements, and Case Recordkeeping Requirements.

These rule sections clarify the three case closing options with respect to JD adjustment services and situations where probation may discontinue the adjustment process, and, in the interest of consistency, outlines case recordkeeping requirements based in large part on OPCA's PINS Intake Rule. However, it does reflect specific case recordkeeping distinctions for excluded or sealed cases.

Part 354.

Necessary amendments have been made to Part 354 to delete reference to Article 3 cases or JD language since there is now one new proposed rule (Part 356) governing these matters. Other minor technical amendments are further made as necessitated by removal of such language.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 356.1(i), 356.5(l), 356.6(c)(2), (d)(2), (e)(3), 356.8(a)(2), 356.9, 356.11 and 356.12(d).

Text of rule and any required statements and analyses may be obtained from: Linda J. Valenti, NYS Division of Criminal Justice Services, 4 Tower Place - 3rd Floor, Albany, New York 12203, (518) 457-8413, email: linda.valenti@dcjs.state.ny.us

Revised Regulatory Impact Statement

1. Statutory authority:

Pursuant to Chapter 56 of the Laws of 2010, the former Division of Probation and Correctional Alternatives (DPCA) was merged within the Division of Criminal Justice Services (DCJS) and is now the Office of Probation and Correctional Alternatives (OPCA); hereinafter, all reference will be to OPCA. Section 8 of Part A of this Chapter specifically transferred all rules and regulations of OPCA to DCJS and provided that such shall continue in full force and effect until duly modified or abrogated by the Commissioner of DCJS. Additionally, section 17 of Part A of this Chapter amended Executive Law § 243(1) to make conforming changes and establish in pertinent part that the Commissioner of DCJS has authority 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 section 256(1) and (6)(a), requires probation agencies to perform intake services pursuant to 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 any alleged Juvenile Delinquent (JD) matter. The overarching goal of these amendments is to reduce unnecessary and costly reliance on detention and residential placement with local commissioners of departments of social services or the Office of Children and Family Services (OCFS). By vesting the Commissioner of DCJS with rule-making authority, the Legislature authorized DCJS to set minimum standards in this area.

These amendments are necessary to: 1) recognize good probation practice in the area of preliminary probation procedures involving youth; 2) incorporate contemporary evidence-based (research-supported) practice principles for effective interventions; 3) ensure consistent statewide application of such key intervention strategies to any youth regardless of receiving JD or Persons in Need of Supervision (PINS) intake services.

3. Needs and benefits:

In accordance with Family Court Act (FCA) article 3, probation is responsible for conducting JD preliminary procedures. OPCA has always had rules and regulations governing JD intake; however, there have not been significant revisions since statutory laws in this area have remained the same. However, as practice has nationally evolved in this area with emphasis on evidence-based principles, regulatory amendments are appropriate at this time.

The amendments clarify JD eligibility requirements, exclusionary and suitability criteria pursuant to FCA article 3. 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; and are 2) consistent with the OPCA's recently adopted PINS Intake rule, specifically Part 357.

To promote consistent application of law and best practices, these amendments address issues and confusion related to applicability, jurisdiction, and legal concerns. For example, where JD 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. In keeping with the aforementioned PINS Intake rule, it is clarified that electronic monitoring may be used only as part of adjustment services where there is director consent and a specific court order.

Consistent with good practice and/or certain legal provisions, these amendments reaffirm probation's need to notify the court of the status at case closing for cases returned from court for adjustment services. The amendments specify documents and other information to be included in case records and provided to the 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. These amendments incorporate nationally recognized evidence-based practice principles demonstrated in research to reduce risk of recidivism (continuing in a JD pattern of behavior), by addressing needs underlying the JD behaviors. These principles include actuarial risk and needs screening and assessment; prompt termination of adjustment efforts with minimal intervention services where youth present as low risk for continuing in JD behaviors; and full assessments for all JD youth at moderate or high risk for continued JD behavior. Adjustment services are to be prioritized for moderate and high risk youth, with a 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:

DCJS believes more effective JD adjustment 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, DCJS 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-seven counties 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 the State's efforts to streamline recordkeeping, avoid duplication, and achieve cost savings, OPCA supported the deployment of web-based case management software, known as Caseload Explorer. Currently, 37 departments participate, four additional departments are in the process of implementation, and it is anticipated that several other departments will participate in the near future. As of March 31, 2010, 17 other probation departments use similar software to achieve record-keeping cost efficiencies.

As to any anticipated in-service costs of educating staff, DCJS 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 JD youth and their families, and in turn, will reduce monetary costs associated with court processing, detention, and placement.

5. Local government mandates:

OPCA always had agency rules governing JD preliminary procedure, and therefore DCJS 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. DCJS requires actuarial risk and needs assessments along with case planning tools and protocols approved by the Commissioner. DCJS 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 section 351.3), our approval of any assessment tool is appropriate.

6. Paperwork:

The State has provided leadership in the development and deployment of Caseload Explorer case management software which is streamlining paper requirements by avoiding duplication of efforts. The status of such implementation and of similar software being utilized is earlier noted.

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 JD behaviors.

8. Alternatives:

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

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In July 2007, OPCA constituted the aforementioned JD rule working committee with representatives across the state from small, medium, and large jurisdictions representing urban and rural jurisdictions; 2) In February 2009, OPCA circulated a refined draft to all probation directors/commissioners; 3) In June 2009, OPCA and the aforementioned Workgroup 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; 4) in July 2009, OPCA communicated again with PARC as to content; and 5) subsequently, in August 2009, OPCA circulated a final draft for probation comment.

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, OPCA 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 NYC Probation is the sole remaining non-YASI jurisdiction and has in the past objected to State approval of their assessment tools, it is essential that DCJS ensure departments are using fully validated instruments. Flexibility in policy allows for New York City to choose another validated assessment tool, approved by DCJS, other than utilizing YASI at no cost. Importantly, the OPCA approved the use of NYC's Probation Assessment Tool (PAT) instrument and there has been in the past several months a change in Executive leadership within NYC's probation department. The Director of OPCA recently communicated with the new Probation Commissioner, forwarding the proposed regulations in this area, reaffirming State approval of PAT,

soliciting their utilization of YASI and its benefits, and requesting feedback on content of the proposed regulatory reform in this area. At this time, OPCA has not received any renewed NYC objection as to this measure.

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 implement these amendments and comply with the provisions as soon as they are adopted.

Revised Regulatory Flexibility Analysis

1. Effect of Rule:

This proposed rule revises existing regulatory procedures in the area of Juvenile Delinquent (JD) adjustment services and will impact local probation departments which are responsible for the delivery of such services to alleged JD youth.

The Division of Criminal Justice Services (DCJS) 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 certain flexibility in recognition of differences among jurisdictional policies and resources.

These amendments integrate law, research and model probation practices to establish specific minimum standards for probation's provision of adjustment services to JD 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 and local governments 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 JD population.

No small businesses are impacted by these proposed regulatory amendments.

2. Compliance Requirements:

While DCJS will require actuarial risk and needs assessments along with case planning tools and protocols approved by the Commissioner of the Division of Criminal Justice Services and consistent with OPCA's PINS Intake and Supervision Rules requiring a classification process to identify risks and needs (9 NYCRR §§ 357.8(a); 351.3), State agency approval of the assessment tools is appropriate.

This rule does not change the monthly workload reporting requirements to DCJS. There are no small business compliance requirements imposed by these proposed rule amendments.

3. Professional Services:

No professional services are required for probation departments to comply with the proposed rule changes. There are no professional services required of small business associated with these proposed rule amendments.

4. Compliance Cost:

DCJS does not foresee these reforms leading to significant additional costs, and does not anticipate that these new requirements will be burdensome or require additional staffing above and beyond current needs. Initial triage at intake and utilizing other community-based resources, wherever appropriate and feasible, with other agencies and services providers should produce cost savings.

Additionally, the Office of Probation and Correctional Alternatives (OPCA) within DCJS provided leadership in the development and deployment of Caseload Explorer case management software, which is streamlining paper requirements by avoiding duplication of effort. Currently, 37 probation departments currently participate, an additional four departments are in the process of implementation, and it is anticipated that several other departments will participate in the near future. As of March 31, 2010, 17 other probation departments use similar software to achieve record-keeping cost efficiencies.

5. Economic and Technological Feasibility:

Local probation departments should have no problem in complying with this rule as DCJS is providing the YASI software free of charge for 57 participating jurisdictions which enables them to have a validated DCJS approved risk and needs assessment tool and DCJS has supported the development and deployment of Caseload Explorer case management software for interested probation departments. DCJS does not anticipate any economic problems experienced by probation departments as a result of 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 the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In July 2007, OPCA constituted the aforementioned JD rule working committee with representatives across the state from small, medium, and large jurisdictions representing urban and rural jurisdictions; 2) In February 2009, OPCA circulated a refined draft to all probation directors/commissioners; 3) In June 2009, OPCA and the aforementioned Workgroup 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 4) in July 2009, OPCA communicated again with PARC as to content; and 5) subsequently, in August 2009, OPCA circulated a final draft for probation comment.

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, OPCA 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 New York City, the sole non-YASI jurisdiction, in the past has objected to State approval of its assessment tools, it is essential that DCJS ensure departments are using fully validated instruments. Flexibility in policy allows for New York City to choose another validated assessment tool, approved by DCJS, other than utilizing YASI at no cost. Importantly, OPCA approved the use of NYC's Probation Assessment Tool (PAT) instrument and there has been, in the past few months, a change in Executive leadership within NYC's probation department. The Director of OPCA has recently communicated with the new Probation Commissioner, forwarding the proposed regulations in this area, reaffirming OPCA approval of PAT, soliciting their utilization of YASI and its benefits, and requesting feedback on content of the proposed regulatory reform in this area. At this time, OPCA has not received any renewed NYC objection as to this measure.

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.

7. Small Business and Local Government Participation:

As noted earlier, OPCA previously sought to engage probation departments from across the State on the development of and refinement of the proposed regulatory changes.

Revised 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:

The Division of Criminal Justice Services (DCJS) continues the existing regulatory requirement previously adopted by the former Division of Probation and Correctional Alternatives (DPCA), which has been renamed the Office of Probation and Correctional Alternatives (OPCA) and merged with DCJS pursuant to Chapter 56 of the

Laws of 2010, that probation directors maintain local written policies and procedures governing preliminary procedure (intake) for juvenile delinquency (JD), and specifies key areas to be covered regarding timeframes, adjustment services, and case record documentation. These key areas for local policy development are consistent with best professional practices surrounding delivery of juvenile services and grant 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. DCJS 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 implement these amendments and comply with the provisions as soon as they are adopted.

This rule does not change the monthly workload reporting requirements to our state agency, DCJS.

3. Costs:

Fifty-seven counties currently use, at no cost, the DCJS 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.

DCJS believes that more effective JD adjustment 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. DCJS anticipates no additional costs in adhering to these regulatory 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 the State's efforts to streamline recordkeeping, avoid duplication and achieve cost savings, OPCA supported the deployment of a web-based case management software, known as Caseload Explorer. Currently, 37 probation departments currently utilize and an additional four departments are in the process of implementation of this software, and many rural counties benefit from this software. As of March 31, 2010, 17 other probation departments use similar software to achieve record-keeping cost efficiencies. 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 JD youth and their families, and in turn will reduce monetary costs associated with court processing, detention, and placement.

4. Minimizing adverse impact:

DCJS foresees that these regulatory amendments will have no adverse impact on rural areas. As noted in more detail below, OPCA collaborated with jurisdictions across the state, including rural areas, and probation professional associations with rural membership in developing the proposed rule and incorporated numerous suggestions to clarify or address issues raised and to reflect good probation practice across the state. To OPCA's knowledge, no adverse impact on rural areas were identified, and DCJS embraced flexibility where it was found to be consistent with good probation practice.

5. Rural area participation:

These revisions were developed by an OPCA working committee comprised of OPCA staff and several 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. Additionally, the Office of Children and Family Services and the Council on Children and Families services were represented. OPCA circulated initial and final drafts to all probation directors/commissioners, the Council of Probation Administrators or COPA (the statewide professional association of probation administrators), which assigned it to a specific committee for review, with rural representation. After the initial draft comment period ended, OPCA convened the Workgroup with COPA's representatives to address feedback. The proposed regulatory amendments incorporate verbal and written suggestions gathered from probation professionals, including rural entities, across the state to address problems which probation departments have experienced in the area of JD preliminary procedure.

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In July 2007, OPCA constituted the aforementioned JD rule working committee with representatives across the state from small, medium, and large jurisdictions representing urban and rural jurisdictions; 2) In February 2009, OPCA circulated a refined draft to all probation directors/commissioners; 3) In June 2009, OPCA and the aforementioned Workgroup met with a specific committee (known as the Probation Administrators Research Committee, or PARC) of COPA for their professional association's feedback which has rural county participation; 4) in July 2009, OPCA communicated again with PARC as to content; and 5) subsequently, in August 2009, OPCA circulated a final draft for probation comment.

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

Revised Job Impact Statement

A job impact statement is not being submitted with these adopted regulations because the amendments will have no adverse effect on private or public jobs or employment opportunities. While these regulatory changes 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.

Assessment of Public Comment

The Division of Criminal Justice Services (DCJS) received three written comments[1] regarding the proposed regulatory revision to 9 NYCRR Part 354 (Intake) and the addition of a new Part 356 governing preliminary procedure for Family Court Act (FCA) Article 3 Juvenile Delinquency (JD) Intake. These comments were carefully weighed and resulted in DCJS clarifying certain regulatory language and incorporating several suggestions to improve the content and quality of changes and to achieve better probation practice in this area.

Broome County Probation Department indicated that they did not have specific policies regarding referral to services or with respect to sealed records being made available to the respondent or designated agent. However, these rule revisions do not expressly require any such local policies. Regulatory language establishing that adjustment services shall include making referrals for service ''as needed'' is consistent with probation's existing statutory and regulatory intake function to attempt to adjust suitable JD cases in lieu of formal JD petitions. Broome's comments that their case recordkeeping policy does not reflect referral to service is not registered as an objection. Inclusion of regulatory language regarding sealed records was kept to remind probation departments of current law in this area, specifically, Family Court Act § 375.1(3). Finally, Broome sought clarification as to what the term ''assessment service'' means within the ''case plan'' regulatory definition. While assessment service refers to whatever protocol a jurisdiction may utilize to assess youth for risks and needs, DCJS does not believe further explanation is needed because the ''case plan'' definition is consistent with the Article 7 PINS Intake rule and ''assessment service'' terminology is long-standing and existed for several years in former Executive Law § 243-a, which governed enhanced funding for specialized PINS adjustment services.

New York City Department of Probation (NYCDOP) commented on rule definitions and other regulatory language and some of their suggestions were incorporated. Specifically, within rule section 356.1, the definition of ''conference'' was expanded to recognize other electronic means. In rule section 356.8, DCJS substituted certain regulatory language to avoid concerns that NYCDOP had regarding case plan expectations that they would be responsible for ''resolving'' a youth's presenting problems rather than ''remediate'' during

adjustment. In rule section 356.11, the language governing case closing requirements was also restructured to be clearer regarding intent.

Other NYCDOP regulatory suggestions were not incorporated in the final rule after a thorough discussion of their necessity and impact if rewording or deletion were to occur. DCJS has chosen not to amend the definition of ''case plan'' for reasons noted above and because of a misperception on NYCDOP's part that DCJS expects complete resolution of all of the youth's presenting problems during the adjustment period. While NYCDOP is opposed to utilization of electronic monitoring for JD Intake, the regulatory reference ought not be viewed as an endorsement of this practice. Instead, the reference has been added consistent with the PINS Intake rule to clarify that it should be used only as part of adjustment services where there is director consent and a specific court order. Additionally, the definitional term of ''control measure'' was similarly modified to reflect that the graduated sanction of electronic monitoring would only occur by court order. The use of electronic monitoring was carefully considered during both JD and PINS Intake Workgroup meetings of a cross-section of probation practitioners throughout the State, including NYCDOP representatives and two professional probation associations. It was widely endorsed that regulatory language with respect to electronic monitoring should be added but that it was preferable to limit its utilization only upon a local probation director's consent and upon a specific court order. Because electronic monitoring within the criminal justice system can only occur upon court order or releasing authority determination, an alleged JD or PINS should be similarly protected. However, DCJS is cognizant that some jurisdictions see merit in utilizing electronic monitoring in limited instances, for example, as an alternative to detention, while others disagree. Accordingly, DCJS carefully worded language in this area to fairly balance different viewpoints, but place the ultimate control within the probation director's authority, and only upon a court order. This proposed electronic monitoring regulatory language sends a message that it should not be commonly utilized, affords probation directors the legal ability to approve or disapprove its use, and better ensures that youth will not be subject to such usage without due process protection and an opportunity to challenge its appropriateness. Thus, DCJS left this unchanged. Finally, regarding the definition of ''control measure,'' DCJS does not want to encourage any harsher sanctions on alleged JDs during adjustment, especially without probation department consent. Therefore, we disagree with NYCDOP's suggestion to add ''other court-ordered sanctions'' to this definition. This substantive regulatory change likely would not be well-received by other probation departments across the State. Finally, although NYCDOP suggested rewording of the definition of ''arrest,'' it was subsequently determined by DCJS that this definition was not necessary and therefore removed from the rule text.

The LASNYC noted that the ''proposed regulatory amendments represent a significant positive step towards improving the probation intake process by employing evidence-based practices and other measures to insure that only those youth who truly need to enter the juvenile justice system do so.'' Further, LASNYC voiced support for the overarching goals of the JD Intake rule and cited as an example regulatory language to attempt to adjust with minimal intervention services those cases of low risk youth. However, LASNYC raised several concerns as to specific regulatory content. After examination, DCJS concurred with many of these recommendations and incorporated the suggestions where appropriate. For example, DCJS restructured language in rule section 356.6(d) to avoid confusion with respect to certain detention language to ensure its applicability only to probation departments which oversee detention services. rule section 356.6(e) was modified by incorporating additional suggested LASNYC wording. Furthermore, in rule section 356.9, DCJS removed objectionable language as to ''written records which support the complaint'' furnished to the presentment agency. However, DCJS kept specific language as to probation making ''a recommendation regarding adjustment to provide such information, including any arresting officer's report and the youth's records of previous adjustments and arrests as probation deems relevant…'' This regulatory language is consistent with FCA § 308.1(6) and LASNYC's recommendation in this area to limit content, while well-intended to promote further adjustment, would be unduly restrictive and at odds with statutory language which recognizes probation's ability to provide at a minimum, records of previous adjustments and arrests, the officer's arrest report, and also any other relevant information, not otherwise prohibited by other statutory language. Significantly, statutory language clearly infers that probation may make a favorable or unfavorable recommendation regarding adjustment. As to LASNYC concerns, there exists certain legal prohibitions with respect to probation communicating particular information concerning the adjustment process to a presentment agency, which have been incorporated within this same rule section to foster compliance and not be unfairly prejudicial to any youth.

Although LASNYC recommends that DCJS define ''substantial likelihood'' under suitability criteria within Rule Section 356.6, this terminology mirrors long-standing language found in FCA § 735 and the Uniform Rules of the Family Court (URFC), specifically 22 NYCRR § 205.22. Because the Office of Court Administration did not find it necessary to provide such rule clarification and it has existed within DCJS' past general Intake Rule governing JD Intake cases for well over two decades and was recently retained in DCJS' PINS Intake Rule, DCJS believes that further refinement is not warranted. Further, LASNYC's recommendation that suitability criteria language delete ''whether a proceeding has been or will be instituted against another person for acting jointly with the potential respondent'' is directly at odds with the aforementioned long-standing URFC regulatory language, which has existed for many years in DCJS's general Intake Rule governing JD Intake cases.

While LASNYC recommended in rule section 356.12(d) that DCJS either remove examples of types of cases which would be classified as ''terminated in favor of the respondent'' or include all types, DCJS reexamined this regulatory provision and modified wording by citing the statutory law listing other types and adding language ''included but not limited to.'' This approach better ensures that probation departments are cognizant of types of cases, avoids needless repetition of statutory wording and potential rule modification should statutory language change.

LASNYC's two remaining issues were with respect to risk assessments and concerns regarding usage of electronic monitoring. Specifically, LASNYC is concerned that use of a risk assessment instrument in NYC may lead to net-widening. However, DCJS believes such concerns are misplaced. Evidence-based research supports the use of risk assessment instruments at intake to more accurately target needs areas for intervention services and since all local probation departments outside NYC have consistently utilized such an instrument for over 10 years, there is no data which indicates net-widening. Next, the instrument is not the sole factor in deciding petition or adjustment services and, finally, the RAI instrument which LASNYC recommends, instead of the Youth Assessment Screening Instrument (YASI) used by all other probation departments in New York State, is a brief detention screening instrument, and does not address long-term risk or need. Their assertion that YASI was not validated for NYC youth is only due to the fact that NYC chose not to be part of the original development of YASI and/or had not previously joined others in its utilization. It should be noted that NYCDOP recently expressed interest and is considering the YASI for intake and probation supervision cases, for case planning purposes. As to the validity of the YASI instrument and its protocols, in 2003 preliminary and in 2007 long-term validation studies were conducted, and there has been overwhelming local probation receptivity of YASI meeting their needs and promoting evidence-based practices. Significantly, YASI has been validated by 22 other states including large metropolitan jurisdictions (i.e. Chicago, San Francisco, Atlanta) and there has not been a finding which substantiates that different jurisdictions throughout NYS or other YASI states have varying needs that cannot be met by a single instrument.

Additionally, DCJS internally met on rule content and streamlined a few regulatory provisions to reflect 2011 statutory changes in the area of detention and to be more consistent with efforts to divert youth. Specifically, consistent with Chapter 58 of the Laws of 2011, rule section 356.5(l) was modified to no longer require probation departments operating their local detention facility to use a detention risk assessment instrument approved by DCJS as the Commissioner of the Of-

fice of Children and Families has been recently empowered to approve every jurisdictions detention instrument throughout the state. The change to rule section 356.5(c) also now cross references the applicable URFC rule rather than set forth current suitability criteria considerations to encourage more receptivity toward intake services. Rule section 356.5(d)(2), governing issuance of family court appearance tickets by probation department's operating their local detention facility and criteria considered relative to pre-petition diversion of a detained youth, was also abbreviated to parallel criteria within FCA section 320.5(3) with respect to court efforts to divert certain youth from detention post-petition.

In conclusion, DCJS incorporated many suggested technical or clarifying Rule amendments. None of these changes substantively changed the regulatory content of these Rules. At an August 25, 2010 State Probation Commission meeting, DCJS received the support of the Commission members after a presentation was made of the proposed rule and DCJS communicated comments from the probation field which it had received as of that date and changes made. Accordingly, DCJS is adopting these Rule amendments, effective September 1, 2011.

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[1] Public comments were received from two Probation Departments: Broome County and New York City. The Legal Aid Society of New York City (LASNYC) also submitted comments. All sought clarification of certain Rule language and/or raised particular issues with respect to some regulatory provisions.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Elements of Test Battery to be Used for Physical Fitness Screening

I.D. No. CJS-25-11-00014-P

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

Proposed Action: This is a consensus rule making to amend section 6000.8(b) of Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13) and 840(2)

Subject: Elements of test battery to be used for physical fitness screening.

Purpose: The proposal updates the table used for the physical fitness screening test for police officer candidates.

Text of proposed rule: 1. Subdivision (b) of section 6000.8 of Title 9 NYCRR is amended to read as follows:

(b) Elements of the test battery. Elements of the test battery to be used for physical fitness screening are described below. Although these elements may not be directly representative of essential job functions to be performed by an entry-level police officer, such elements do measure the candidate's physiological capacity to learn and perform the essential job functions. The minimum scores for employment as an entry-level police officer as set forth below represent the 40th percentile of fitness. If a candidate does not successfully score to the 40th percentile of fitness for each of the elements of the test battery, the candidate shall not be deemed to have successfully completed the physical fitness screening test. Nothing herein shall preclude an administrator of such screening test from substituting an element of the test battery, which such administrator has determined and validated to accurately assess the candidate's physiological capacity to learn and perform essential job functions. The 1.5 mile run shall only be administered to such individuals who have successfully completed each of the other two elements of the test battery (sit-up and push-up).

Sit-up	Muscular endurance (core body) - The score indicated below is the number of bent-leg sit-ups performed in one minute.
Push-up	Muscular endurance (upper body) - The score below is the number of full body repetitions that a candidate must complete without breaks.
1.5 Mile Run	Cardiovascular capacity - The score indicated below is calculated in minutes: seconds.

AGE/SEX	TEST		
MALE	SIT-UP	PUSH-UP	1.5 MI RUN
20-29	38	29	[12:29] *12:38*
30-39	35	24	[12:53] *12:58*
40-49	29	18	13:50
50-59	24	13	[15:14] *15:06*
60+	19	10	[17:19] *16:46*
FEMALE			
20-29	32	15	[15:05] *14:50*
30-39	25	11	[15:56] *15:43*
40-49	20	9	[17:11] *16:31*
50-59	14	[9] *N/A*	[19:10] *18:18*
60+	6	[9] *N/A*	[20:55] *20:16*

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin, Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, (518) 457-8413, email: natasha.harvin@dcjs.state.ny.us

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

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

Consensus Rule Making Determination

This proposal revises the test battery elements and scores contained in subdivision (b) of section 6000.8 of Title 9 NYCRR. The test battery elements and scores are based on physical fitness models developed by the Cooper Institute for Aerobics Research, Inc. The Cooper Institute recently revised the successful scores for the 1.5 mile run. This proposal merely conforms to the recent changes made by the Cooper Institute. Given the ministerial nature and purpose of the proposal, which was unanimously approved by the Municipal Police Training Council, the Division of Criminal Justice Services has determined that no person is likely to object to the rule as written.

Job Impact Statement

The proposal updates the table used for the physical fitness screening test for a police officer candidate for appointment in the competitive class of the civil service as a municipal police officer. As such, it is apparent from the nature and purpose of the proposal that it will have no impact on jobs and employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Consolidated Edison Company of New York, Inc.'s Petition for a Targeted Demand Side Management Program

I.D. No. PSC-39-10-00014-A
Filing Date: 2011-06-01
Effective Date: 2011-06-01

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

Action taken: On 5/19/11, the PSC adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s petition for a Targeted Demand Side Management Program.

Statutory authority: Public Service Law, sections 5(1), (2), 65(1), (5), 66(1), (12) and (14)

Subject: Consolidated Edison Company of New York, Inc.'s petition for a Targeted Demand Side Management Program.

Purpose: To approve, with modifications, Consolidated Edison Company of New York, Inc.'s Targeted Demand Side Management Program.

Substance of final rule: The Commission, on May 19, 2011 adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s petition for a Targeted Demand Side Management Program, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann__ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-E-0115SA6)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

LIWC Proposes to Retain a Portion of Property Tax Refunds

I.D. No. PSC-25-11-00011-P

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

Proposed Action: The PSC is considering the petition of Long Island Water Corporation d/b/a Long Island American Water (LIWC) to retain a certain portion from approximately $108,600 in property tax refunds.

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

Subject: LIWC proposes to retain a portion of property tax refunds.

Purpose: To allow LIWC to retain a portion of property tax refunds.

Public hearing(s) will be held at: 10:00 a.m., Aug. 2, 2011 at 3 Empire State Plaza, 3rd Floor Hearing Rm., Albany, New York. There could be requests to reschedule the hearings. Notification of any subsequent scheduling changes will be available at the DPS website (www.dps.state.ny.us) under Case No. 10-W-0449.

Interpreter Service: Interpreter services will be made available to hearing impaired 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.

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

Substance of proposed rule: Long Island Water Corporation d/b/a Long Island American Water (LIWC) obtained Real Property Tax refunds in the amount of $108,600. When a public utility obtains a property tax refund, Public Service Law Section 113(2) provides that the Commission, after hearing, may determine the extent to which the refund will be passed on to the utility's customers. LIWC maintains that it has been aggressive in pursuing tax challenges, and should be allowed to retain a portion of the refunds for its shareholders. LIWC proposes to deduct its expenses ($36,725.42) for achieving the refunds from the refunds received to date. LIWC also proposes to retain 18% of the net Real Property Tax refunds for its shareholders. The Commission will consider the petition of LIWC and may grant or modify the relief sought in the petition or take other measures authorized by law.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann__ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.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 proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-W-0449SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standby Service

I.D. No. PSC-25-11-00009-P

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

Proposed Action: The Commission is considering a proposed filing 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. 2—Retail Access.

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

Subject: Standby Service.

Purpose: To revise Service Classification (''SC'') No. 14-RA - Standby Service.

Substance of proposed rule: The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) to modify SC No. 14-RA Special Provision E, which allows low-tension customers to interconnect their on-site generation on the high-tension side of Con Edison's distribution service facilities under certain conditions, and SC 14-RA Common Provision C, which indicates that a customer can establish its own contract demand and subsequently revise it. The proposed revisions have an effective date of August 30, 2011. The Commission may adopt in whole or in part, modify or reject Con Edison's proposal, and may apply its decision to other utilities.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann__ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.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 proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-E-0299SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Review of Wind Generation Facility Ownership Transfer and Restructuring Transactions Among Affiliates of First Wind and NE Wind

I.D. No. PSC-25-11-00010-P

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

Proposed Action: The Commission is considering a petition addressing review of wind generation facility ownership transfer and restructuring transactions among First Wind Holdings LLC (First Wind), Northeast Wind Holdings LLC (NE Wind) and their affiliates.

Statutory authority: Public Service Law, sections 2(11), 5(1)(b) and 70

Subject: Review of wind generation facility ownership transfer and restructuring transactions among affiliates of First Wind and NE Wind.

Purpose: Consider wind generation facility ownership transfer and restructuring transactions among affiliates of First Wind and NE Wind.

Substance of proposed rule: The Public Service Commission is considering a petition filed on May 18, 2011 addressing review of wind generation facility ownership transfer and restructuring transactions among First Wind Holdings LLC (First Wind), Northeast Wind Holdings LLC (NE Wind) and their affiliates. Through these transactions, NE Wind would acquire indirect 49% ownership interests in various First Wind affiliates, including Canandaigua Power Partners LLC and Canandaigua Power Partners II LLC, which would be merged into new companies, and which own, respectively, the Cohocton wind project sized at 87.5 and the Dutch

Hill wind project sized at 37.5 MW, both located in the Town of Cohocton. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann__ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.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 proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-E-0253SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Continuation and Expansion of Standby Rate Exemptions for Environmentally Advantageous Technologies

I.D. No. PSC-25-11-00012-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 a petition from Griffiss Utility Services Corporation and others requesting continuation and expansion of Niagara Mohawk Power Corporation's standby rate exemptions for environmentally advantageous technologies.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (2), (3), (4), (5), (8), (10) and (12)

Subject: Continuation and expansion of standby rate exemptions for environmentally advantageous technologies.

Purpose: Consider continuation and expansion of standby rate exemptions for environmentally advantageous technologies.

Substance of proposed rule: The Public Service Commission is considering a petition filed on May 23, 2011 by Griffiss Utility Services Corporation and UTC Power Corporation requesting the continuation and expansion of the standby rate exemptions for environmentally advantageous technologies available in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid. The availability of the exemptions would be extended at least through May 31, 2015 and ceilings on that availability would be removed or modified. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann__ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.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 proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-E-0279SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of 16 NYCRR Sections 894.1 Through 894.4(b)(2)

I.D. No. PSC-25-11-00013-P

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

Proposed Action: The PSC is considering whether to approve, modify or reject the Petition of The Heart of the Catskills Communication, Inc. d/b/a MTC Cable to waive sections 894.1, 894.2, 894.3, and 894.4 regarding franchising procedures for the Town of Conesville, NY.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4(b)(2).

Purpose: To allow the Town of Conesville to waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject the Petition of The Heart of the Catskills Communication, Inc. d/b/a MTC Cable to waive sections 894.1, 894.2, 894.3, and 894.4 regarding franchising procedures for the Town of Conesville, Schoharie County, 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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann__ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.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 proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-V-0273SP1)

State University of New York

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Amendment to Rules and Regulations for Purchasing and Contracting Regarding External Agency Contract and Purchase Order Approval

I.D. No. SUN-25-11-00001-P

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

Proposed Action: This is a consensus rule making to repeal section 316.4(e) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

Subject: Amendment to Rules and Regulations for Purchasing and Contracting regarding external agency contract and purchase order approval.

Purpose: To repeal subdivision (e) of section 316.4 of Title 8 NYCRR to conform to the provisions of Chapter 58 of the Laws of 2011.

Text of proposed rule: Repeal of Section 316.4(e) of Chapter V of Title 8 NYCRR.

Section 316.4. Contracting and purchasing materials, supplies, equipment, services and construction.

[(e) External agency contract and purchase order approvals.

(1) Contracts and purchase orders up to $250,000 shall require no prior approval by any State agency in order to be binding on the State University, subject to the following exceptions:

(i) a bid protest has been received prior to the time the contract or purchase order is fully executed;

(ii) the apparent low bid or best value is not selected;

(iii) the award is not made in accordance with the provisions of the IFB or RFP; or

(iv) a single or sole source procurement.

(2) In the case of the exceptions in subparagraphs (1)(i)-(iv) of this subdivision, the prior approval of the Attorney General and the Office of the State Comptroller, but no other State agency, will be required for contracts in excess of $125,000.

(3) For all intercollegiate athletics NCAA Division 1 agreements, the exceptions in subparagraphs (1)(i)-(iv) of this subdivision shall not apply,

and no approval shall be required by any State agency for such transactions up to $250,000.

(4) For those campuses which have been determined by the Vice Chancellor and chief financial officer to lack adequate internal controls, the approval of the Attorney General and Office of the State Comptroller, but no other State agency, will be required for all contracts and purchase orders (other than intercollegiate athletics NCAA Division I agreements) in excess of $50,000, or in excess of $75,000 for hospital contracts and purchase orders, until such time as the adequacy of internal controls can be certified.

(5) Contracts exceeding $250,000 are subject to the approval of the Attorney General and the Office of the State Comptroller, after consultation with, but not prior approval of, any other State agency, in order to be binding on the State University.

(6) The approval of the Office of the State Comptroller is required for contracts where the State University provides consideration other than money having a reasonably estimated value in excess of $10,000.

(7) Contracts for the acquisition of facilities suitable for the delivery of health services by purchase, lease, sublease, transfer of jurisdiction or otherwise, and for the repair, maintenance, equipping, rehabilitation or improvement of any such facilities, shall be subject to the prior approval of the Attorney General, Director of the Budget and the Office of the State Comptroller, regardless of amount.]

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, S-325, State University Plaza, 353 Broadway, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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

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

Consensus Rule Making Determination

The proposed rule will revise the University's purchasing and contracting regulations to conform to amendments made to Article 8 of the Education Law by the enacted 2011-12 State budget. No person is likely to object to the adoption of the rule as written because the proposed amendment makes technical changes and is otherwise non-controversial.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs purchasing and contracting for State University of New York and will not have any adverse impact on the number of jobs or employment.

Department of Taxation and Finance

NOTICE OF ADOPTION

City of Yonkers Withholding Tables and Other Methods

I.D. No. TAF-15-11-00008-A
Filing No. 497
Filing Date: 2011-06-01
Effective Date: 2011-06-22

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

Action taken: Repeal of Appendix 10-A; addition of new Appendix 10-A; and amendment of section 251.1 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 671(a)(1), 697(a), 1321, 1329(a), 1332(a); Code of the City of Yonkers, sections 15-105, 15-108(a) and 15-111; City of Yonkers Local Law No. 3-2011

Subject: City of Yonkers withholding tables and other methods.

Purpose: To provide current City of Yonkers withholding tables and other methods.

Text or summary was published in the April 13, 2011 issue of the Register, I.D. No. TAF-15-11-00008-EP.

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, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Obsolete Forms

I.D. No. TAF-15-11-00009-A
Filing No. 498
Filing Date: 2011-06-01
Effective Date: 2011-06-22

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

Action taken: Amendment of Parts 3, 6 and 21 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First and 1096(a)

Subject: Obsolete Forms.

Purpose: To eliminate references to obsolete forms.

Text or summary was published in the April 13, 2011 issue of the Register, I.D. No. TAF-15-11-00009-P.

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, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

Assessment of Public Comment

The agency received no public comment.