

# 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.

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## Department of Corrections and Community Supervision

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

#### Media Review

**I.D. No.** CCS-25-12-00012-P

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

**Proposed Action:** Amendment of sections 712.2, 712.3 and 712.5 of Title 7 NYCRR.

**Statutory authority:** Correction Law, section 112

**Subject:** Media Review.

**Purpose:** To clarify and enhance existing procedures consistent with Penal Law and established regulations, and to update the agency name.

**Substance of proposed rule (Full text is posted at the following State website: [docs.ny.gov/RulesReg/index.html](https://docs.ny.gov/RulesReg/index.html)):** The following represents a summary of the rule making actions as listed in the Text of Rule for 7NYCRR Part 712, Media Review.

The amendment to subdivision 712.2(a) is being made to improve grammar and clarity. The amendment of subdivision 712.2(b) is being made to expand upon and clarify what constitutes unacceptable printed materials consistent with the provisions of Penal Law Article 263, “Sexual Performance by a Child.”

The amendment of paragraph 712.2(h)(3) adds maps that could aid in an inmate escape from a correctional facility to the listing of prohibited materials.

A new paragraph 712.2(h)(7) is added to prohibit any gang related

identifiers or text that would promote the formation of gangs or other unauthorized groups inside a correctional facility.

The note after subdivision 712.2(i) is being moved to follow the new paragraph 712.2(h)(7) and it is also being amended to specifically reference that paragraph for the sake of clarity.

The amendment to paragraph 712.3(a)(1) is being made to add recreation staff to the list of staff that may serve on the media review committee. The amendment of paragraph 712.3(a)(2) is being made to reflect current Department procedures in that the Office of the Deputy Commissioner for Program Services is the Executive Team member with direct oversight and administration of the media review program.

The amendment of paragraph 712.3(b)(3) includes minor changes to improve clarity and adds a clause to safeguard the confidentiality of a related ongoing investigation.

The amendments of paragraph 712.3(c)(4) includes a minor changes to improve clarity. The amendment of paragraph 712.3(c)(5) adds a clause to safeguard the confidentiality of a related ongoing investigation.

The addition of new paragraph 712.3(c)(6) introduces provisions for the “sender” of a publication or printed materials to be notified in the event that the facility media review committee disapproves a publication, or any portion thereof, and allows for the sender to appeal the disapproval to the central office media review committee.

The minor amendment of subdivision 712.3(d) simply improves clarity. The amendment of paragraph 712.3(d)(2) clarifies current procedure in that the decision regarding the option of blotting out or removing material that does not meet the guidelines as established in section 712.2 of 7 NYCRR is made at the discretion of the facility.

The addition of a new note after paragraph 712.3(d)(4) provides instructions for facility staff to hold disapproved publications for a reasonable period of time pending a possible appeal by the sender.

The amendment to subdivision 712.3(e) clarifies the inmate appeal process and also introduces the appeal process for the sender of the publication or printed materials.

The amendment to subdivision 712.3(f) adds a representative from the Department’s counsel’s office to the central office media review committee.

The amendment of subdivision 712.3(g)(1) is being made to reflect current procedures.

The amendments to subdivision 712.3(g)(4) introduce the procedures for notification to the inmate, the sender, or both, of the central office media review appeal determination. They also reflect current procedure in that the Facility Media Review Chairperson functions as the Superintendent’s designee in the capacity for oversight of the facility media review committee and clarify current practice with regard to the processing and distribution of Central Office Media Review Committee decisions.

The amendment of subparagraph 712.3(g)(5)(iv) reflects current procedure in that the superintendent can designate a staff person to carry out the disposal of disapproved materials, if a disposable option is not chosen by the inmate.

The amendments to subdivision 712.3(h) are made to name the Deputy Superintendent for Programs as the facility point of contact for the receipt and distribution of the listing of approved publications that is published by the Central Office Media Review Committee. This list-

ing is used as a reference tool for the facility media review committees which function on behalf of the Superintendent and Deputy Superintendent for Programs.

The amendments to paragraph 712.3(d)(3) and subparagraph 712.3(g)(5)(ii) reflect the new agency name resulting from the merger with the former Division of Parole.

The amendment of subdivision 712.3(j), Exhibit A, clarifies the title of the initial referral notice.

Subdivision 712.3(k), Exhibit B, is repealed and replaced with a new subdivision 712.3(k) in order to reflect the amended disposal options as outlined in the new note after paragraph 712.3(d)(4).

A new subdivision 712.3(l), Exhibit C, is introduced to provide notice to the sender when materials are disapproved by the facility media review committee. This notice also provides the sender with the guidelines by which literature for inmates is reviewed.

New paragraph 712.3(m), Exhibit D (previously subdivision 712.3(l)), is amended by adding an appropriate title to the form and removes a disposal option that is no longer applicable due to the 30 day waiting period that is introduced to allow for the sender to possibly submit an appeal.

A new paragraph 712.3(n), Exhibit E, is added to reflect the new sender central office media review appeal determination that was introduced in the amendments to paragraph 712.3(g)(4).

The amendments to subdivision 712.5(c)(1) clarify existing policy with regard to limitations on the amount of materials that can be received, and also serves to allow materials printed from the internet to be subject to the media review process.

**Text of proposed 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, The Harri-man State Campus - Building 2, 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@doccs.ny.gov

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

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

#### **Regulatory Impact Statement**

##### 1. Statutory Authority

Section 112 of Correction Law empowers the Commissioner of DOCCS to promulgate rules and regulations that are deemed necessary in order to maintain safe, secure and orderly operations within the Department that are not in conflict with any State statutes.

##### 2. Legislative Objective

By vesting the Commissioner with this rulemaking authority the legislature intended the Commissioner to promulgate such rules and regulations that are consistent with the Department's mission to enhance public safety by providing programs and services that address the needs of inmates so they can return to their communities better prepared to lead successful and crime-free lives. Consistent with the Department's mission, the "Media Review" rules were promulgated to allow inmates to receive and subscribe to publications and printed materials, subject to a formal review process, in order to promote constructive individual development. The purpose of this review process is to ensure that printed materials that may encourage disruptive or disorderly behavior which could negatively impact safe, secure and orderly operations are not allowed into a correctional facility.

##### 3. Needs and Benefits

This proposed rulemaking was determined to be necessary in order to improve clarity, make technical corrections, and make substantive amendments, in order to meet the goals as stated above, and maintain institutional safety and efficient operations. Included are new provisions that provide the sender with notification and an appeal option if printed materials, or any portion thereof, are disapproved for possession by the intended inmate. A brief statement regarding the needs and benefits of specific amendments follows:

The amendment to subdivision 712.2(a) is being made to improve grammar and clarity.

The amendment of subdivision 712.2(b) is being made to expand upon and clarify what constitutes unacceptable printed materials con-

sistent with the provisions of Penal Law Article 263, "Sexual Performance by a Child." The amendment of paragraph 712.2(h)(3) is being made to clarify the types of maps that could be withheld from an inmate as they could be used to aid in the escape from a correctional facility. The disapproval of both of these types of materials is consistent with the Department's goals of rehabilitation and institutional security.

A new paragraph 712.2(h)(7) is being added to prohibit any gang related identifiers or text that would promote the formation of gangs and unauthorized groups inside a correctional facility. The formation of gangs and unauthorized inmate groups is contrary to both Department rehabilitative goals and to the safe, sound and secure operation of correctional facilities.

The note after subdivision 712.2(i) is being moved to follow the new paragraph 712.2(h)(7) and it is also being amended to directly reference the paragraph for the sake of clarity. With the introduction of the new paragraph 712.2(h)(7) it was determined that this move and amendment were needed to improve the logic and clarity of the paragraph.

The amendment to paragraph 712.3(a)(1) is being made to add recreation staff to the list of staff that may serve on the media review committee in order to allow increased flexibility for the administration of the program. The amendment of paragraph 712.3(a)(2) is being made to reflect current Department procedures in that the Office of the Deputy Commissioner for Program Services is the Executive Team member with direct oversight and administration of the media review program, which provides for program accountability.

The amendment of paragraph 712.3(b)(3) includes minor changes to improve clarity and adds a clause to safeguard the confidentiality of a related ongoing investigation consistent with sound security practice.

The amendment of paragraph 712.3(c)(4) includes a minor changes to improve clarity. The amendment of paragraph 712.3(c)(5) adds a clause to safeguard the confidentiality of a related ongoing investigation consistent with sound security practice.

The addition of new paragraph 712.3(c)(6) introduces provisions for the "sender" of a publication or printed materials to be notified in the event that the facility media review committee disapproves a publication, or any portion thereof, and allows for the sender to appeal the disapproval to the central office media review committee. These changes provide a measure of due process for the sender or publisher of the materials.

The minor amendment of subdivision 712.3(d) simply improves clarity. The amendment of paragraph 712.3(d)(2) clarifies current procedure in that the decision regarding the choice between blotting out or removing material that does not meet the guidelines as established in section 712.2 of 7 NYCRR is made at the discretion of the facility.

The addition of a new note after paragraph 712.3(d)(4) provides instructions for facility staff to hold disapproved publications for a reasonable period of time pending a possible appeal by the sender. This ensures that the materials are not inappropriately disposed of before all affected parties have had a chance to provide justification in support of receipt.

The amendment to subdivision 712.3(e) clarifies the inmate appeal process and also introduces the appeal process for the sender of the publication or printed materials. This serves to provide a measure of due process for the sender or publisher of the materials.

The amendment to subdivision 712.3(f) reflects that a representative from the Department's Counsel's Office is part of the central office media review committee. This helps the committee with regard to issues with potential legal implications.

The amendment of subdivision 712.3(g)(1) is being made to reflect current procedures. The requirement for a weekly meeting was unrealistic and created an undue burden for staff. Bi-weekly meetings of the facility media review committees are able to meet the needs of the program and result in increased efficiencies for staff.

The amendments to subdivision 712.3(g)(4) introduce the procedures for notification to the inmate, the sender, or both, of the central office media review determination of the appeal. They also reflect current procedure in that the Facility Media Review Chairperson func-

tions as the Superintendent’s designee for oversight of the facility media review committee and clarify current practice with regard to the processing and distribution of Central Office Media Review Committee decisions. Again this serves to bring an additional level of transparency to the process and provides a measure of due process for the sender or publisher of the materials and helps provide for efficiencies of staff at each facility.

The amendment of subparagraph 712.3(g)(5)(iv) reflects current procedure in that the superintendent can designate a staff person to carry out the disposal of disapproved materials if a disposable option is not chosen by the inmate, which helps to increase efficiencies for staff at each facility.

The amendments to subdivision 712.3(h) are made to name the Deputy Superintendent for Programs as the facility point of contact for the receipt and distribution of the listing of approved publications that is published by the Central Office Media Review Committee. This listing is used as a reference tool for the facility media review committees which function on behalf of the Superintendent and Deputy Superintendent for Programs. These amendments provide clarity and help increase the efficiency of the facility media review committee in rendering determinations for referred materials.

The amendments to paragraph 712.3(d)(3) and subparagraph 712.3(g)(5)(ii) reflect the new agency name resulting from the merger with the former Division of Parole.

The amendment of subdivision 712.3(j), Exhibit A, clarifies the title of the initial referral notice. Due to the new sender notification and appeal process it was determined that clear and accurate form titles would serve to clarify and improve the implementation of the media review process. This reasoning also applies to the next four actions described below (712.3(k), 712.3(l), 712.3(m) and 712.3(n)).

Subdivision 712.3(k), Exhibit B, is repealed and replaced with a new subdivision 712.3(k) in order to reflect the amended disposal options as outlined in the new note after paragraph 712.3(d)(4).

A new subdivision 712.3(l), Exhibit C, is introduced to provide notice to the sender when materials are disapproved by the facility media review committee. This notice also provides the sender with the guidelines by which literature for inmates is reviewed.

New paragraph 712.3(m), Exhibit D (previously subdivision 712.3(l)), is amended by adding an appropriate title to the form and removes a disposal option that is no longer applicable due to the 30 day waiting period that is introduced to allow for the possible submission of an appeal by the sender.

A new paragraph 712.3(n), Exhibit E, is added to reflect the new sender central office media review appeal determination that was introduced in the amendments to paragraph 712.3(g)(4).

The amendments to subdivision 712.5(c)(1) clarify existing policy with regard to limitations on the amount of materials that can be received, and also serves to allow materials printed from the Internet to be subject to the media review process. The limitation serves to clarify the process for staff and increases staff efficiency. The inclusion of Internet materials is necessary due to the current, readily accessible technology.

4. Costs

a. To agency, state and local government: Minor increases in the amount of postage costs due to the new sender notifications are anticipated for DOCCS.

b. Cost to private regulated parties: None. The proposed rule changes do not apply to private parties.

c. This cost analysis is based upon the fact that the rule requires notification to be made to the sender when materials intended for an inmate are disapproved through the media review process. It is anticipated that the increased postage cost should not create a significant increase in postage costs.

5. Paperwork

Two new forms have been created in order to enact the new sender notification procedures. However, these forms are intended to be reproduced locally as needed and their implementation should not impose significant costs or undue burden on staff.

6. Local Government Mandates

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

7. Duplication

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

8. Alternatives

DOCCS considered the alternative of not promulgating this rule. However, DOCCS decided that this rule making was important in order to provide the sender, which in many cases may also be the publisher, with the means to provide the Department with justification in support of any materials, or portions thereof, which are disapproved by the media review committee without compromising institutional safety and the goals of the media review program. The amendments also provide clarity for staff, inmates, and senders with regard to the media review criteria and procedures.

9. Federal Standards

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

10. Compliance Schedule

The Department of Corrections and Community Supervision will achieve compliance with the proposed rules immediately.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This proposal is clarifying, expanding and updating existing procedures for the administration of inmate media review procedures.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal is clarifying, expanding and updating existing procedures for the administration of inmate media review procedures.

**Job Impact Statement**

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities, nor does it place any excess burden on staff. This proposal is clarifying, expanding and updating existing procedures for the administration of inmate media review procedures.

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## Division of Criminal Justice Services

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

**Probation Supervision**

**I.D. No.** CJS-25-12-00006-P

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

**Proposed Action:** Repeal of Part 351; and addition of new Part 351 to Title 9 NYCRR.

**Statutory authority:** Executive Law, sections 243(1) and 257(4)

**Subject:** Probation Supervision.

**Purpose:** To reflect newly emerging offender supervision principles/practices and provide mandate relief to probation departments.

**Substance of proposed rule (Full text is posted at the following State website: [www.criminaljustice.ny.gov](http://www.criminaljustice.ny.gov)):** The proposed rule repeals existing Part 351 and adds a new Part 351 governing probation supervision.

Section 351.1 is the definitional section. This section defines over thirty key operational terms to ensure consistency statewide with respect to language interpretation. Among these are the definition of

“active case” and various types of “contact” with respect to supervision to clarify what is meant by specific contact terminology. New definitions of “administrative case” and “contact substitution” set forth parameters by which departments are afforded additional supervision flexibility in certain regulatory requirements. Further, there are added several new definitional terms to reflect latest principles and practices in managing offenders in the community. For example, the terms “graduated sanctions”, “merit credit”, “merit credit activities”, and “pro-social community activities” are defined to ensure there is universal understanding of what is meant by these terms in New York State, and to encourage these new supervisory approaches.

Section 351.2 sets forth the Objective which is twofold: (1) to provide local probation departments with procedures for persons who receive a probation sentence or are placed on probation supervision or under interim probation supervision by the courts, and (2) to promote evidence-based practices in the field of probation to promote public safety by holding the offender accountable, improving offender competencies, restoring victims, and reducing recidivism.

Section 351.3 governs applicability and establishes that it shall be applicable to all probation departments for family and criminal court probation supervision as well as interim supervision cases.

Section 351.4 establishes parameters relative to case assignment, in terms of timeframes, review of pertinent material, verification, and assignment where applicable to specialized caseloads.

Section 351.5 governs assessment and case planning, and delineates timeframes and critical procedures that must be undertaken to determine an individual offender’s appropriate probation supervision classification level. For example, this section requires completion of the risk and need assessment if not already done at the time of investigation, recognizes a department may complete other specialized assessments, where available, and delineates specific confirmation of applicable legal case requirements are met, including DNA sample obtained, Sex Offender Registration Act status compliance, fingerprints obtained, and where ordered, a restitution account is established for collection.

Section 351.6 entitled “Probation Supervision” contains the main supervision standards to be followed. It distinguishes between “active” and “administrative” cases and delineates the various differential supervision classification levels and supervision contact requirements that must be met along with setting forth parameters by which probation departments may utilize greater flexibility in the area of certain contact provisions. A chart summarizing minimum contact provisions by classification level and merit credit/activities, where applicable is incorporated to foster better understanding and promote compliance. Additionally this section sets forth parameters governing periodic reassessments/case reviews.

Section 351.7 governs probation supervision practices relative to victim services, probationer referrals, risk management, risk reduction, technology, and supervisory directives/instructions.

Section 351.8 governs interstate and intrastate transfer cases and compliance requirements which must be met.

Section 351.9 sets forth criteria surrounding probation departments requesting termination of a sentence in accordance with statutory law.

Section 351.10 enumerates the types of probation case closing options.

Section 351.11 reiterates regulatory reporting parameters to the Division of Criminal Justice Services which is similar to existing regulations.

**Text of proposed rule and any required statements and analyses may be obtained from:** Linda J. Valenti, Assistant Counsel, NYS Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, (518) 457-8413, email: linda.valenti@dcjs.ny.gov

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

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

#### **Regulatory Impact Statement**

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) within DCJS. Section 8 of Part A of this Chapter specifically transferred all rules and regulations of DPCA 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 Section 243(1) to make conforming changes and establish in pertinent part that the DCJS Commissioner has authority to adopt “general rules which shall regulate methods and procedure in the administration of probation services, including ... supervision... so as to secure the most effective application of the probation system and the most effective enforcement of the probation laws throughout the state.” Further, Executive Law Section 257(4) requires that probation officers contact probationers “at least once a month” pursuant to rules promulgated by the Commissioner. Such rules are binding with the force and effect of law.

2. Legislative objectives:

In general, these regulatory amendments which will replace the existing rule in this area are consistent with legislative intent regarding critical probation functions and the promotion of professional standards which govern administration and delivery of probation supervision services for both family court and criminal court persons receiving a probation disposition or sentence. By vesting the DCJS Commissioner with rule-making authority, the Legislature authorized DCJS to set minimum probation supervision standards.

The overarching goal of these amendments is to reflect newly emerging and recognized evidence-based offender supervision principles and practices for effective interventions and better outcomes to reduce recidivism, and to afford additional flexibility to probation departments relative to certain supervisory management decision-making in an effort to provide mandate relief. Specifically, the proposed rule will incorporate evidence-based practices around case assessment, case planning, and reassessment, encourage the use of technology, where appropriate, promote the use of effective risk management and risk reduction strategies, provide greater flexibility in terms of supervision levels and how, when, and where supervision contacts can be made, and reduce unnecessary paperwork. Through modernization of minimum supervision standards, this proposed rule will advance statewide application of best supervision practices throughout all probation departments in New York State (NYS).

3. Needs and benefits:

Since the last major revision of the rule occurred over 20 years ago, model contemporary probation practices have been incorporated into the proposed rule to guarantee statewide utilization of sound supervision strategies that promote probationer accountability, rehabilitation and behavioral change. These regulatory amendments emphasize the importance of actuarial risk and need assessments, recognize case planning protocols which research indicates help achieve better outcomes, and incorporate the protocol of reassessing cases on a regular periodic basis, which have proven to be an effective method to measure how an offender is progressing, or not, toward the goals of their conditions of probation and case plan. These amendments reflect nationally recognized evidence-based practice principles demonstrated in research to reduce risk of recidivism by addressing needs underlying the presenting delinquent or criminal behaviors. Through the aforementioned screening and assessment and case planning and reassessment protocols, probation departments will have greater insight into individual risks and needs and responsivity to supervision strategies in order to more effectively implement changes as the case progresses. Recognizing greater utilization of technology, with a strong emphasis on core principles surrounding effective risk and needs strategies, also will benefit probation departments to structure their supervisory caseloads according to risk and need, supervise accordingly, and achieve probation supervisory management in a more efficient manner. While certain amendments are more prescriptive, special care and attention was paid to provide enhanced flexibility for departments to develop and implement policies and procedures that meet their local needs and resource capacities.

Finally, the regulatory amendments update the existing rule consis-

tent with recent statutory changes in other New York State laws relative to interstate transfer and interim probation supervision, and embrace several key terms and strategies consistent with other recently adopted DCJS rules relative to community corrections and programmatic initiatives to reduce recidivism, positively change behavior, and assist victims.

#### 4. Costs:

DCJS anticipates no additional costs in adhering to these amendments beyond what is currently required in law and regulation. Good assessments at the beginning of each case, case plans based on the dynamic risk factors, and meaningful reassessments will achieve more effective probation supervision and efficiency of staff supervisory deployment and concomitantly facilitate offender capacity to lead productive, law-abiding lives. DCJS believes such efforts can optimally avoid, or at a minimum reduce, short-term and long-term state and local incarceration and/or placement costs for offenders at risk of continued involvement with the juvenile justice or criminal justice system and associated court costs involved. Notably, probation population and individual risks and needs are not static in nature and vary across the State, the scope of enhanced probation services differs among jurisdictions, and in recent years numerous probation departments have experienced reduced local fiscal aid, yet increased workload. Consequently, DCJS cannot definitively quantify governmental cost savings. However, it is anticipated that changes will help departments better manage their finite resources in a more efficient manner.

Significantly, DCJS has made available, at no cost to jurisdictions, the Youth Assessment and Screening Instrument (YASI) tools and software for youth and the Correctional Offender Management Profiling for Alternative Sanctions (NY COMPAS) for adults. Fifty-seven counties currently use YASI and COMPAS. Consistent application and sharing of screening, assessment, case planning, and reassessment protocols and results will avoid duplication of efforts within and across probation departments.

As part of the State's efforts to streamline recordkeeping, prevent duplication, and achieve cost savings, OPCA supported the deployment of web-based case management software, known as Caseload Explorer (CE) to standardize probation information and reporting in a more efficient manner. Currently, 44 departments utilize this software and it is anticipated that several other departments will participate in the near future.

As to any anticipated in-service costs of educating staff, DCJS believes orientation can be readily accomplished through memoranda, statewide trainings via Live Meeting technology, OPCA technical assistance on an as-needed basis, and director/supervisory oversight without incurring any direct costs. Overall, any minimal costs are outweighed by the benefits of avoiding or lessening unnecessary reliance on jail or State incarceration and/or juvenile placement, reducing attendant costs associated therewith, and serving the best interests of youth and adult offenders.

#### 5. Local government mandates:

While this regulatory reform requires specific attention to key areas, including slightly greater minimum supervisory contact with greatest risk and high risk probationers, amendments provide considerable flexibility and appropriate contact substitution consistent with public safety. It acknowledges certain operational policy and resource differences among departments.

Importantly, former DPCA always had agency rules governing probation supervision, and current DCJS regulations are consistent with its statutory authority. Therefore continuance of DCJS supervisory rules does not anticipate that any new supervisory requirements will be burdensome. DCJS already requires actuarial risk and needs assessments along with case planning tools and protocols approved by the Commissioner. DCJS has made assessment software available to all jurisdictions free of charge. As the state oversight agency with respect to administration of probation services, State approval of any assessment tool is appropriate.

#### 6. Paperwork:

The proposed rule does not require additional reports or forms. As noted earlier, the State's efforts in deployment of CE case manage-

ment software has streamlined several paper requirements and avoided duplication of efforts. While refinement of certain reports and forms to reflect the revised regulatory content will be necessitated, OPCA has convened a specific workgroup of state and local probation professionals to develop specifications and to determine which software changes are required. Such changes will occur prior to rule implementation.

#### 7. Duplication:

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

#### 8. Alternatives:

These amendments integrate law, research, and model probation practices to establish specific minimum standards for probation's provision of supervision for both juvenile and adult offenders who are subject to terms and conditions of probation in the community. Strengthening and supporting consistent application of probation supervision is essential to ensure public safety through risk management and risk reduction approaches. By addressing offenders' needs within the context of their families and communities and reducing offender recidivism, the State and local government can realize savings in jail, imprisonment, placement, and social costs.

It is OPCA's statutory responsibility to exercise general supervision over the administration of probation services and DCJS has been empowered with rulemaking authority governing probation services, including but not limited to supervision, to secure the most effective application of the probation system and the most efficient enforcement of probation laws throughout the State. Accordingly, it is necessary to maintain a rule in the area of supervision and this new updated rule governing probation supervision helps achieve these statutory goals with respect to oversight of probation supervision services.

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation, juvenile justice, and criminal justice professionals from around the State, as well as reaching out to other states and organizations to become better informed on data and current research. In February 2010, OPCA convened a Supervision Rule Revision Workgroup with representatives across the state from small, medium, and large jurisdictions representing urban and rural jurisdictions as well as staff from DCJS. Also included in the workgroup were representatives from the NYS Probation Officers Association (POA) and the NYS Council of Probation Administrators (COPA). Monthly meetings were held throughout 2010 and into early 2011. While monthly meetings were occurring, OPCA reached out to other states and organizations with expertise in the area of community supervision (Colorado; Arizona; Texas; Michigan; Council of State Governments; American Probation and Parole Association) and invited Orbis Partners, author of YASI, Northpointe, author of COMPAS, and the DCJS Research Unit to present NYS probation data to the workgroup. In March 2011, OPCA circulated a refined draft to all probation directors for their informal review and feedback. While in June 2011 OPCA presented the proposed rule at the COPA Summer Institute, OPCA officials also met with probation directors from COPA Area 3 in May, Area 1 in July, and Area 2 in September of 2011 relative to this new rule. In August 2011 OPCA provided probation departments with a draft Practice Commentary to accompany the rule and provide more insight into and guidance surrounding proposed regulatory provisions. In September 2011 the Probation Commission approved the rule. In all, eighteen regulatory drafts were developed, critiqued and debated, and edited to address the feedback from probation and criminal justice professionals from across the State.

Most of the feedback indicated that these amendments reflect current model best probation practices and some sought clarification of language, alternate language, or increased flexibility. The majority of substantive suggestions were incorporated in this final version, 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 and non-COMPAS

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. Notably, there exists regulatory flexibility to allow New York City to choose another validated assessment tool, approved by DCJS, and State agency permission previously has been granted in this area.

#### 9. Federal standards:

There are no federal standards governing the provision of probation supervision in NYS.

#### 10. Compliance schedule:

COPA has expressed concern that new rule implementation not occur until CE software changes are made. As noted earlier, a workgroup has already been established to identify necessary changes. DCJS agrees to defer implementation until changes are completed. Through prompt staff dissemination of the rule, its summary, the Practice Commentary, and future OPCA training, local departments should be able to implement and comply with new provisions within 90 days of adoption.

### *Regulatory Flexibility Analysis*

#### 1. Effect of Rule:

This proposed rule revises existing regulatory procedures in the area of probation supervision for both family court and criminal court cases and will impact local probation departments which are responsible for the delivery of such services.

These amendments reflect newly emerging and nationally recognized evidence-based offender supervision principles and practices demonstrated in research to reduce risk of recidivism by addressing needs underlying the presenting delinquent or criminal behavior. Specifically, model contemporary probation practices have been incorporated into the proposed rule to guarantee statewide utilization of sound supervision strategies that promote probationer accountability, rehabilitation and behavioral change. Through modernization of minimum supervision standards, this proposed rule will advance statewide application of best supervision practices throughout all probation departments in New York State (NYS).

These regulatory amendments emphasize the importance of actuarial risk and need assessments, recognize case planning protocols which research indicates help achieve better outcomes, and incorporate the protocol of reassessing cases on a periodic basis, which has proven to be an effective method to measure how an offender is progressing, or not, toward the goals of their conditions of probation and case plan. Strengthening and supporting consistent application of probation supervision is essential to ensure effective and efficient risk management and risk reduction as appropriate.

Additional flexibility is afforded to probation departments relative to certain supervisory management decision-making and contact requirements in an effort to provide mandate relief. Recognizing greater utilization of technology, with a strong emphasis on core principles surrounding effective risk and needs strategies, also will benefit probation departments to structure their supervisory caseloads according to risk and need, supervise accordingly, and achieve probation supervisory management in a more efficient manner. While certain amendments are more prescriptive, special care and attention was paid to provide enhanced flexibility for departments to develop and implement policies and procedures that meet their local needs and resource capacities.

By addressing probationer needs within the context of their families, schools, employment, treatment programs, and communities, and reducing offender recidivism, the State and local governments can better realize savings in jail, state imprisonment, placement, and social costs. Such efforts will further assist probation departments in more efficiently and effectively managing their supervisory workload.

No small businesses are impacted by these proposed regulatory amendments.

#### 2. Compliance Requirements:

Importantly, OPCA and its predecessor agency, the Division of Probation, always had agency rules governing probation supervision. The proposed regulatory amendments continue minimum probation supervision requirements to ensure similar service delivery throughout

the state. While this regulatory reform requires specific attention to key areas, including slightly greater minimum supervisory contact with greatest risk and high risk probationers, amendments provide considerable flexibility and appropriate contact substitution consistent with public safety. It further acknowledges certain operational policy and resource differences among departments. DCJS does not anticipate that any new supervisory requirements will be problematic in terms of compliance as the agency was diligent in working together with local probation professionals to update the rule to achieve current best supervision practices, afford mandate relief, and guarantee workable provisions that can be met.

DCJS already requires actuarial risk and needs assessments along with case planning tools and protocols approved by the Commissioner and has made assessment software available to probation departments. Therefore, regulatory provisions in this area ought not to be problematic in terms of implementation. As the state oversight agency with respect to administration of probation services, State approval of any assessment tool is appropriate.

With respect to paperwork, the proposed rule does not require additional reports or forms and does not change the monthly workload reporting requirements to DCJS. Additionally, DCJS has made case management software available to all probation departments to promote greater efficiency and facilitate electronic record sharing where appropriate. While refinement of certain reports and forms to reflect the revised regulatory content will be necessitated, OPCA has convened a workgroup of state and local probation professionals to develop necessary specifications and changes will occur prior to implementation.

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. Additionally, as this rule does not impact small businesses, there are no professional services required of small business associated with these proposed rule amendments.

#### 4. Compliance Cost:

DCJS anticipates no additional costs in adhering to these amendments beyond what is currently required in law and regulation. Good assessments at the beginning of each case, case plans based on the dynamic risk factors, and meaningful reassessments will achieve more effective probation supervision and efficiency of staff supervisory deployment and concomitantly facilitate offender capacity to lead productive, law-abiding lives. DCJS believes such efforts can optimally avoid, or at a minimum reduce, short-term and long-term State and local incarceration and/or placement costs for offenders at risk of continued involvement with the juvenile justice or criminal justice system and the associated court costs involved. Notably, probation population and individual risks and needs are not static in nature and vary across the State, the scope of enhanced probation services differs among jurisdictions, and in recent years numerous probation departments have experienced reduced local fiscal aid, yet increased workload. Consequently, DCJS cannot definitively quantify governmental cost savings. However, it is anticipated that changes will help departments better manage their finite resources in a more efficient manner.

Significantly, DCJS has made available, at no cost to jurisdictions, the Youth Assessment and Screening Instrument (YASI) tools and software for youth and the Correctional Offender Management Profiling for Alternative Sanctions (NY COMPAS) for adults. Fifty-seven counties currently use YASI and COMPAS. Consistent application and sharing of screening, assessment, case planning, and reassessment protocols and results will avoid duplication of efforts within and across probation departments.

As part of the State's efforts to streamline recordkeeping, prevent duplication, and achieve cost savings, OPCA supported the deployment of web-based case management software, known as Caseload Explorer (CE), to standardize probation information and reporting in a more efficient manner. Currently, 44 departments are utilizing the software and it is anticipated that several other departments will participate in the near future.

As to any anticipated in-service costs of educating staff, DCJS believes orientation can be readily accomplished through memoranda, statewide trainings via Live Meeting technology, OPCA technical assistance on an as-needed basis, and director/supervisory oversight without incurring any direct costs. Overall, any minimal costs are outweighed by the benefits of avoiding or lessening unnecessary reliance on jail or State incarceration and/or juvenile placement, reducing attendant costs associated therewith, and serving the best interests of youth and adult offenders.

#### 5. Economic and Technological Feasibility:

Local probation departments should have no problem in complying with this rule. All departments, with the exception of New York City (NYC), are using both the YASI and COMPAS risk and needs assessment software which enables them to have a validated DCJS approved risk and needs assessment tool. Further, NYC Department of Probation has been granted State permission to utilize other instruments and has recently expressed some interest in YASI and COMPAS. As noted earlier, DCJS also has supported deployment of CE case management software for interested probation departments and the clear majority of probation departments are utilizing this software and additional departments will be participating in the near future. Further, OPCA has recently convened a workgroup of state and local professionals to ensure that CE software changes will be made prior to rule implementation. DCJS does not anticipate any economic or technological problems experienced by probation departments as a result of final adoption 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, juvenile justice, and criminal justice professionals from around the State, as well as reaching out to other states and organizations to become better informed on data and current research. In February 2010, OPCA convened a Supervision Rule Revision Workgroup with representatives across the state from small, medium, and large jurisdictions representing urban and rural jurisdictions as well as staff from DCJS. Also included in the workgroup were representatives from the NYS Probation Officers Association (POA) and the NYS Council of Probation Administrators (COPA). Monthly meetings were held throughout 2010 and into early 2011. While monthly meetings were occurring, OPCA reached out to other states and organizations with expertise in the area of community supervision (Colorado; Arizona; Texas; Michigan; Council of State Governments; American Probation and Parole Association) and invited Orbis Partners, author of YASI, Northpointe, author of COMPAS, and the DCJS Research Unit to present NYS probation data to the workgroup. In March 2011, OPCA circulated a refined draft to all probation directors/commissioners for their informal review and feedback. While in June 2011 OPCA officials presented the proposed rule at the COPA Summer Institute, OPCA officials also met with probation directors from COPA Area 3 in May, Area 1 in July, and Area 2 in September of 2011 relative to this new rule. In August 2011 OPCA provided probation across NYS with a draft Practice Commentary document to accompany the rule and provide more insight into and guidance surrounding proposed regulatory provisions. In September 2011 the Probation Commission approved the rule. In all, eighteen drafts of the proposed rule were developed, critiqued and debated, and edited to address the feedback from probation and criminal justice professionals from across the State.

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 in this final version, 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 and non-COMPAS jurisdiction and has in the past objected to State approval of their assessment tools, it is essential that DCJS ensure depart-

ments are using fully validated instruments. Notably, there exists regulatory flexibility to allow New York City to choose another validated assessment tool, approved by DCJS, and State agency permission previously has been granted in this area.

#### 7. Small Business and Local Government Participation:

See Section 6 above with respect to local government participation in reform of this supervision rule and in assisting DCJS finalize necessary specifications of case management software changes.

This proposed rule does not impact small businesses within the state and, therefore, there was no need to involve small businesses across the state in rule reform in this area.

#### *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 newly proposed supervision rule continues current and expands slightly on regulatory requirements that probation directors maintain certain local written policies and procedures governing key aspects of probation supervision functions for both juvenile and adult offenders receiving a disposition or sentence of probation. These key areas for local policy development were carefully vetted with probation departments across the State and are consistent with best professional practices surrounding delivery of probation supervision and ensure departments maintain flexibility that takes into account local needs and resources. Some regulatory amendments establishing minimum timeframes, criteria, and/or contact requirements surrounding assessments, reassessments, case planning, classification level, and case record documentation are consistent with current regulations in this area. Others afford additional flexibility to probation departments or strengthen supervision requirements in accordance with best professional practices surrounding delivery of probation supervision services and to enhance probation supervisory management flexibility cognizant of local needs and resources. With respect to supervision record keeping, the regulatory changes revamp contact requirements and expand somewhat upon recording of key supervision areas to reflect sound minimum supervision standards. While this new rule does not change the monthly workload reporting requirements to DCJS which is integral to maintain current relevant statistical information on probation supervision operations, there has been considerable efforts in recent years to streamline and automate probation record keeping and reporting through software initiatives and further detail of such enhanced measures and the benefits to probation departments across the State are explained in more detail under the Costs section. Overall, regulatory language emphasizes that record keeping governing probation services are to be in accordance with the DCJS Case Record Management rule. Notably, DCJS is in the process of revising this specific rule in terms of affording greater mandate relief and management flexibility and updating provisions to reflect automation of records.

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, statewide trainings via Live Meeting technology, OPCA technical assistance on an as-needed basis, and normal director/supervisory oversight of supervision services, local probation departments should be able to promptly implement these amendments and comply with the rule's provisions ninety days after formal adoption. DCJS has agreed to defer implementation until certain software changes have been made and it has established a workgroup to develop necessary specifications regarding changes necessitated.

As to professional service requirements, there are no additional professional services necessitated in any rural area to comply with this rule.

##### 3. Costs:

DCJS anticipates no additional costs in adhering to these amendments beyond what is currently required in law and regulation. Good assessments at the beginning of each case, case plans based on the dynamic risk factors, and meaningful reassessments will achieve more

effective probation supervision and efficiency of staff supervisory deployment and concomitantly facilitate offender capacity to lead productive, law-abiding lives. DCJS believes such efforts can optimally avoid or at a minimum reduce short-term and long-term State and local incarceration and/or placement costs for offenders at risk of continued involvement with the juvenile justice or criminal justice system and associated court costs involved. Notably, probation population and individual risks and needs are not static in nature and vary across the State, the scope of enhanced probation services differs among jurisdictions, and in recent years numerous probation departments have experienced reduced local fiscal aid, yet increased workload. Consequently, DCJS cannot definitively quantify governmental cost savings. However, it is anticipated that changes will help departments better manage their finite resources in a more efficient manner.

Significantly, DCJS has made available, at no cost to jurisdictions, the Youth Assessment and Screening Instrument (YASI) tools and software for youth and the Correctional Offender Management Profiling for Alternative Sanctions (NY COMPAS) for adults. Fifty-seven counties, including every rural jurisdiction's probation department, currently use YASI and COMPAS. Consistent application and sharing of screening, assessment, case planning, and reassessment protocols and results will avoid duplication of efforts within and across probation departments.

As part of the State's efforts to streamline recordkeeping, prevent duplication, and achieve cost savings, OPCA supported the deployment of web-based case management software, known as Caseload Explorer (CE) to standardize probation information and reporting in a more efficient manner. Currently, 44 departments utilize this software and it is anticipated that several other departments will participate in the near future. Overall, participating rural counties benefit from this software and none of the remaining rural jurisdictions have voiced concern with any of the supervision reporting or recordkeeping requirements.

As to any anticipated in-service costs of educating staff, DCJS believes orientation can be readily accomplished through memoranda, statewide trainings via Live Meeting technology, OPCA technical assistance on an as-needed basis, and director/supervisory oversight without incurring any direct costs. Any minimal costs are outweighed by the benefits of avoiding or lessening unnecessary reliance on jail or State incarceration and/or juvenile placement, reducing attendant costs associated therewith, and serving the best interests of youth and adult offenders.

DCJS believes that more effective probation supervision in the community can reduce long-term State and local governmental costs for those probationers 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.

#### 4. Minimizing adverse impact:

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

In the preparation and drafting of the proposed amendments, DCJS was diligent in engaging probation, juvenile justice, and criminal justice professionals from around the State, as well as reaching out to other states and organizations to become better informed on data and current research. In February 2010, OPCA convened a Supervision Rule Revision Workgroup with representatives across the state from small, medium, and large jurisdictions representing urban and rural jurisdictions as well as staff from DCJS. Also included in the workgroup were representatives from the NYS Probation Officers Association (POA) and the NYS Council of Probation Administrators (COPA). Monthly meetings were held throughout 2010 and into early

2011. While monthly meetings were occurring, OPCA reached out to other states and organizations with expertise in the area of community supervision (Colorado; Arizona; Texas; Michigan; Council of State Governments; American Probation and Parole Association) and invited Orbis Partners, author of YASI, Northpointe, author of COMPAS, and the DCJS Research Unit to present NYS probation data to the workgroup. In March 2011, OPCA circulated a refined draft to all probation directors for their informal review and feedback. While in June 2011 OPCA presented the proposed rule at the COPA Summer Institute, OPCA officials also met with probation directors from COPA Area 3 in May, Area 1 in July, and Area 2 in September of 2011 relative to this new rule. In August 2011 OPCA provided probation departments with a draft Practice Commentary to accompany the rule and provide more insight into and guidance surrounding proposed regulatory provisions. In September 2011 the Probation Commission approved the rule. In all, eighteen regulatory drafts were developed, critiqued and debated, and edited to address the feedback from probation and criminal justice professionals from across the State.

#### 5. Rural area participation:

These revisions were developed by an OPCA workgroup comprised of DCJS 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, there was representation from the NYS Probation Officers Association and the NYS Council of Probation Administrators. See Section 4 above for details.

Most of the feedback indicated that these amendments reflect current model best probation practices and some sought clarification of language, alternate language, or increased flexibility. The majority of substantive suggestions were incorporated in this final version, 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 and non-COMPAS 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. Notably, there exists regulatory flexibility to allow New York City to choose another validated assessment tool, approved by DCJS, and State agency permission previously has been granted in this area.

As OPCA did not find significant differences among urban, rural, and suburban jurisdictions as to issues raised or suggestions for change, and this rule satisfactorily addresses issues raised, DCJS is confident that these regulatory changes have the flexibility to accommodate rural probation department needs.

#### Job Impact Statement

A job impact statement is not being submitted with these proposed regulations because the Division of Criminal Justice Services (DCJS) believes there will be no adverse effect on private or public jobs or employment opportunities.

These regulatory changes establish new minimum probation supervision standards, yet simultaneously afford greater flexibility to probation departments in performing supervision functions, especially in certain supervisory management decision-making and contact requirements. As noted in other regulatory documents, this rule was developed with considerable input of local probation departments across the state to incorporate nationally recognized evidence-based offender supervision practices and principles, afford mandate relief, and guarantee workable provisions that can be met. A Supervision Rule Revision workgroup was formed by the Office of Probation and Correctional Alternatives (OPCA) with state and local probation professionals across the state from small, medium, and large jurisdictions and also with representatives from the NYS Probation Officers Association and the NYS Council of Probation Administrators to ensure regulatory reform met all the aforementioned goals. Additionally, another workgroup was convened of state and local probation

professionals to ensure web-based case management software changes, utilized by the overwhelming majority of departments, will be made prior to rule implementation. Further, through recognition of greater utilization of technology with a strong emphasis on core principles surrounding effective risk and needs strategies, probation departments will have the ability to better structure their supervisory caseloads according to risk and need and achieve probation supervisory management in a more efficient manner.

As to any anticipated in-service costs of educating staff, DCJS believes orientation can be readily accomplished through memoranda, statewide trainings via Live Meeting technology, OPCA technical assistance on an as needed basis, and director/supervisory oversight without incurring any direct costs.

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## Department of Economic Development

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### EMERGENCY RULE MAKING

#### Economic Transformation and Facility Redevelopment Program

**I.D. No.** EDV-25-12-00002-E

**Filing No.** 487

**Filing Date:** 2012-05-30

**Effective Date:** 2012-05-30

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

**Action taken:** Addition of Parts 200 - 204 to Title 5 NYCRR.

**Statutory authority:** Economic Development Law, art. 18

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

**Specific reasons underlying the finding of necessity:** Regulatory action is needed immediately to implement the Economic Transformation and Facility Redevelopment Program ("the Program") which was created by Chapter 61 of the Laws of 2011. The Program is created to support communities affected by the closure of correctional and juvenile justice facilities. The Program will provide tax credits to firms that create jobs and make investments in certain areas designated as economic transformation areas. The Program will leverage private sector job creation and investments and help transform the economies of the communities in these areas and lessen the impact of the facility closures.

New York is in the midst of a national economic slowdown. The impact of the national financial crisis and resulting slowed economic growth was particularly devastating to New York State and could be even more severe for those communities where correctional and juvenile justice facilities will be closed.

The Economic Transformation and Facility Redevelopment Program will be a key economic development tool for creating jobs and private sector investment in communities affected by the facility closures. It is imperative that this Program be implemented immediately so that the State can respond quickly to the dislocation and job losses that will likely result from the closure of these facilities.

It bears noting that section 403 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations and explicitly indicates that such regulations may be adopted on an emergency basis.

**Subject:** Economic Transformation and Facility Redevelopment Program.

**Purpose:** Allow Department to implement the Economic Transformation and Facility Redevelopment Program.

**Substance of emergency rule:** The regulation creates new Parts 200-204 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the Economic Transformation and Facility Redevelopment Program (the "Program"). Key definitions include, but are not limited to, certificate of eligibility, preliminary schedule of benefits, net new jobs, new business, economic transformation area, and closed facility.

2) The regulation creates the application and review process for the Program. In order to become a participant in the Program, an applicant must submit a complete application by the later of: (1) the date that is

three years after the date of the closure of the closed facility located in the economic transformation area in which the business entity would operate or (2) January 1, 2015. An applicant must also agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the "Department"); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; and (c) agreeing to not participate in either the Excelsior Jobs Program, the Empire Zones Program or claim any tax credits under the Brownfield Cleanup Program if admitted into the Economic Transformation and Facility Redevelopment Program specifically with regard to the facility located in the economic transformation area.

3) Upon receiving a complete application, the Commissioner of the Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 5 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commissioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility. When considering an application, the Commissioner shall consider factors including, but not limited to, the overall cost and effectiveness of the project, and whether the project is consistent with the intent of the Program. If a participant does not start construction on or acquire a qualified investment or create at least one net new job within one year of the issuance of its certificate of eligibility, the participant will not be eligible for any of the Program's tax credits.

4) The regulation sets forth the eligibility criteria for the Program. In order to qualify for the Program, (1) a participant must create and maintain at least five net new jobs in an economic transformation area, and must demonstrate that its benefit-cost ratio is at least ten to one; (2) a participant must be in compliance with all worker protection and environmental laws and regulations; (3) a participant must not owe past due federal or state taxes or local property taxes, unless those taxes are being paid pursuant to an executed payment plan; and (4) the location of the participant's operations for which it seeks tax benefits must be wholly located within the economic transformation area.

5) In addition, a business entity that is primarily operated as a retail business is not eligible to participate in the program if its application is for any facility or business location that will be primarily used in making retail sales to customers who personally visit such facilities. A business entity that is engaged in offering professional services licensed by the state or by the courts of this state is not eligible to participate in the Economic Transformation and Facility Redevelopment Program. In addition, a business entity that is or will be principally operated as a real estate holding company or landlord for retail businesses or entities offering professional services licensed by the state or by the courts of this state is also not eligible to participate in the Note, however, that that the commissioner may determine that such a business entity described in the preceding three sentences may be eligible to participate in the Program at the site of a closed facility if it is pursuant to an adaptive reuse plan for a substantial portion of such facility, the adaptive reuse plan is consistent with the strategic plan of the Regional Economic Development Council and it has been recommended by the Regional Economic Development Council to the Commissioner.

6) The regulation sets forth the fourteen (14) evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) the number of net new jobs to be created in New York State; or (2) the amount of capital investment to be made; or (3) whether the applicant is proposing to substantially renovate and reuse closed facilities; or (4) whether the applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (5) whether the application has been recommended by the Regional Economic Council representing the region where the project will be located; or (6) the degree to which the project is consistent with the strategic plan and priorities for the region; or (7) the degree of economic distress in the area where the applicant will locate the project identified in its application; or (8) the degree of an applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (9) the degree to which the project identified in the application supports New York State's minority and women business enterprises; or (10) the degree to which the project identified in the application supports the principles of Smart Growth; or (11) the estimated return on investment that the project identified in the application will provide to the state; or (12) the overall economic impact that the project identified in the application will have on a region, including, but not limited to, the impact of any direct and indirect jobs that will be created; or (13) the degree to which other state or local incentive programs are available to the applicant; or (14) the likelihood

that the project identified in the application would be located outside of New York State or would not occur but for the availability of state or local incentives.

7) The regulation states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

8) The regulation calls for removal of a participant in the Program for failing to meet the application requirements or eligibility criteria of the statute. Upon removal, a participant will be notified in writing and have the right to appeal such removal.

9) The regulation lays out the appeal process for participants who have been removed from the Program. A participant will have thirty (30) days to appeal to the Department. An appeal officer will be appointed and shall evaluate the merits of the appeal and any response from the Department. The appeal officer will determine whether a hearing is necessary and the level of formality required. The appeal officer will prepare a report and make recommendations to the Commissioner. The Commissioner will then issue a final decision in the case.

The full text of the emergency rule is available at the Department's website at <http://esd.ny.gov/BusinessPrograms/EconomicTransformation.html>.

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 27, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Thomas P Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany, NY 12245, (518) 292-5123, email: [tregan@empire.state.ny.us](mailto:tregan@empire.state.ny.us)

#### **Regulatory Impact Statement**

##### **STATUTORY AUTHORITY:**

Chapter 61 of the Laws of 2011 established Article 18 of the Economic Development Law, creating the Economic Transformation and Facility Redevelopment Program and authorizing the Commissioner of Economic Development to adopt, on an emergency basis, rules and regulations governing the Program.

##### **LEGISLATIVE OBJECTIVES:**

The emergency rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of public policy, to create competitive financial incentives for businesses to create jobs and invest in the redevelopment of closed facilities and the economic transformation of surrounding communities. The Economic Transformation and Facility Redevelopment Program is created to support communities affected by closure of correctional and juvenile justice facilities. The Program will provide tax credits to firms that create jobs and make investments in certain areas designated as economic transformation areas. The Program will leverage private sector job creation and investments and help transform the economies of the communities in these areas and lessen the impact of the facility closures. The emergency rule is specifically authorized by the Legislature.

##### **NEEDS AND BENEFITS:**

The emergency rule is required in order to immediately implement the statute contained in Article 18 of the Economic Development Law, creating the Economic Transformation and Facility Redevelopment Program. The statute directed the Commissioner of Economic Development to adopt regulations with respect to an application process and eligibility criteria and authorized the adoption of such regulations on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedures act. New York is in the midst of a national economic slowdown. The impact of the national financial crisis and resulting slowed economic growth was particularly devastating to New York State and could be even more severe for those communities where correctional and juvenile justice facilities will be closed.

The Economic Transformation and Facility Redevelopment Program will be one of the State's key economic development tools for creating jobs and private sector investment in communities affected by the facility closures. It is imperative that this Program be implemented immediately so that the State can respond quickly to the dislocation and job losses that will likely result from closure of these facilities.

This rule will establish the process and procedures for launching this new Program in the most efficient and cost-effective manner while protecting all New York State taxpayers with rules to ensure accountability, performance and adherence to commitments by businesses choosing to participate in the Program.

##### **COSTS:**

A. Costs to private regulated parties: None. There are no regulated parties in the Economic Transformation and Facility Redevelopment Program, only voluntary participants.

B. Costs to the agency, the State, and local governments: The Department of Economic Development does not anticipate any significant costs with respect to implementation of this program. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

##### **LOCAL GOVERNMENT MANDATES:**

None. There are no mandates on local governments with respect to the Economic Transformation and Facility Redevelopment Program. This emergency rule does not impose any costs to local governments for administration of the Economic Transformation and Facility Redevelopment Program.

##### **PAPERWORK:**

The emergency rule requires businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program to establish and maintain complete and accurate books relating to their participation in the Economic Transformation and Facility Redevelopment Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job creation and investment commitments.

##### **DUPLICATION:**

The emergency rule does not duplicate any state or federal statutes or regulations.

##### **ALTERNATIVES:**

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

##### **FEDERAL STANDARDS:**

There are no federal standards in regard to the Economic Transformation and Facility Redevelopment Program. Therefore, the emergency rule does not exceed any Federal standard.

##### **COMPLIANCE SCHEDULE:**

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

#### **Regulatory Flexibility Analysis**

##### **1. Effect of rule**

The emergency rule imposes record-keeping requirements on all businesses (small, medium and large) that choose to participate in the Economic Transformation and Facility Redevelopment Program. The emergency rule requires all businesses that participate in the Program to establish and maintain complete and accurate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

##### **2. Compliance requirements**

Each business choosing to participate in the Economic Transformation and Facility Redevelopment Program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the program and relating to annual reporting requirements. Local governments are unaffected by this rule.

##### **3. Professional services**

The information that businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program would be required to keep is information such businesses already must establish and maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

##### **4. Compliance costs**

Businesses (small, medium or large) that choose to participate in the Economic Transformation and Facility Redevelopment Program must create new jobs and/or make capital investments in order to receive any tax incentives under the Program. If businesses choosing to participate in the Program do not fulfill their job creation or investment commitments, such businesses would not receive the tax incentives. There are no other initial capital costs that would be incurred by businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program. Annual compliance costs are estimated to be negligible for businesses because the information they must provide to demonstrate their compliance with their commitments is information that is already established and maintained as part of their normal operations. Local governments are unaffected by this rule.

##### **5. Economic and technological feasibility**

The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

##### **6. Minimizing adverse impact**

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

##### **7. Small business and local government participation**

DED is in compliance with SAPA Section 202-b(6), which ensures that

small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

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

The Economic Transformation and Facility Redevelopment Program is a tax credit program available to new businesses that locate in communities affected by the closure of correctional and juvenile justice facilities, create jobs and make private sector investments. Economic transformation areas will be designated through implementation of these regulations. New businesses to these areas that create jobs and make investments are eligible to apply to participate in the Program entirely at their discretion. Municipalities are not eligible to participate in the Program. The emergency rule does not impose any special reporting, record keeping or other compliance requirements on private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas nor on the reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

#### **Job Impact Statement**

The emergency rule relates to the Economic Transformation and Facility Redevelopment Program. The Economic Transformation and Facility Redevelopment Program will enable New York State to provide financial incentives to businesses that create jobs and make investments in communities affected by the closure of correctional and juvenile justice facilities. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. The emergency rule will immediately enable the Department to fulfill its mission of job creation and investment in certain areas designated as economic transformation areas. Because this emergency rule will authorize the Department to immediately begin offering financial incentives to firms that commit to creating new jobs and/or to making significant capital investment in these areas, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

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## Department of Financial Services

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### EMERGENCY RULE MAKING

#### **Limitation of New Enrollment to the Healthy NY High Deductible Plan Pursuant to Section 4326(g) of the Insurance Law**

**I.D. No.** DFS-25-12-00005-E

**Filing No.** 528

**Filing Date:** 2012-06-04

**Effective Date:** 2012-06-04

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

**Action taken:** Addition of section 362-2.9 (Regulation 171) to Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202, 301 and 302; and Insurance Law, sections 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4326 and 4327

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

**Specific reasons underlying the finding of necessity:** Chapter 1 of the Laws of 1999 enacted the Healthy New York ("Healthy NY") program, an initiative designed to enable small employers to provide health insurance to employees and their families and to provide working uninsured individuals with an affordable health insurance coverage option. The program offers standard benefit packages and high deductible health plan options to eligible individuals and employers. Healthy NY currently provides essential health coverage to over 170,000 New Yorkers.

Due to State fiscal constraints, the New York State budget has set Healthy NY funding appropriations at approximately \$160 million for the past three consecutive fiscal years. During this timeframe, Healthy

NY enrollment and claims have increased. As a result, there has been a need to pro-rate stop loss distributions to health plans for the last two years.

Health maintenance organizations and participating insurers ("health plans") are currently setting Healthy NY premiums for 2012. In developing proposed premium rates for 2012, most health plans have assumed that future funding for Healthy NY will again be held flat. This has caused health plans to apply for significant rate increases, to the detriment of Healthy NY's low income enrollees and applicants.

In response to the anticipated rate increases, the Department of Financial Services proposes to promulgate this amendment to 11 NYCRR Part 362. Through this amendment, existing Healthy NY enrollees will be permitted to keep their current coverage option. New applicants, for coverage effective January 1, 2012 or later, will be limited to Healthy NY's high deductible health plans only. This change will allow the Department to better leverage the program's limited financial resources because Healthy NY high deductible health plans are not as popular with consumers as the standard Healthy NY products. Therefore, we expect new enrollment in the program to decrease. This decrease, combined with normal program attrition, will lead to an overall reduction in the size of the Program. State stop loss funds will go further in providing premium support to this smaller population.

The Department recognizes that this change will pose a hardship for some applicants seeking broader choice in benefit options. However, the Department believes this approach strikes a balance in protecting existing enrollees from unaffordable rate increases, while maintaining an affordable option for those purchasing coverage.

This emergency filing is necessary at this time in order to ensure that the health plans have adequate time to prepare for this change to the program. The plans will need to educate their customer service personnel regarding the new enrollment restrictions, make revisions to websites and consumer materials, and notify brokers about the enrollment restrictions. If the health plans are fully prepared to implement this change, eligible applicants who wish to enroll in the Healthy NY high deductible option effective January 1, 2012 and thereafter will be able to do so without any impediments.

In light of the foregoing, it is critical that this amendment be adopted as promptly as possible, and this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

**Subject:** Limitation of new enrollment to the Healthy NY high deductible plan pursuant to Section 4326(g) of the Insurance Law.

**Purpose:** To mitigate large premium increases for current enrollees in Healthy NY by limiting new enrollees to the high deductible plan.

**Text of emergency rule:** A new section 362-2.9 is added to read as follows:

#### *§ 362-2.9 Healthy New York Enrollment Limitation*

(a) *With respect to coverage effective on or after January 1, 2012, a health maintenance organization or a participating insurer may enroll new applicants in the Healthy New York Program only in the high deductible health plans set forth in section 362-2.8 of this Part.*

(b) *With respect to existing enrollees who are in non-high deductible health plans with coverage effective prior to January 1, 2012, a health maintenance organization or a participating insurer shall:*

(1) *permit qualifying individuals to add dependents to or remove dependents from their qualifying health insurance contracts; and*

(2) *permit qualifying small employers to add employees and dependents to or remove employees and dependents from their qualifying health insurance contracts.*

(c) *A health maintenance organization or participating insurer shall permit qualifying individuals and qualifying employers enrolled in non-high deductible plans to change their benefit packages to other non-high deductible plans with the same health maintenance organization or participating insurer at the time of annual recertification or a change in the premium rate.*

**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 1, 2012.

*Text of rule and any required statements and analyses may be obtained from:* Patricia Patwell, Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 486-7815, email: Patricia.Patwell@dfs.ny.gov

**Regulatory Impact Statement**

1. Statutory authority: The Superintendent's authority for the adoption of the fourth amendment to 11 NYCRR 362 is derived from sections 202, 301, and 302 of the Financial Services Law ("FSL") and sections 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4326, and 4327 of the Insurance Law.

Section 202 of the Financial Services Law establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services.

FSL section 301 establishes the powers of the Superintendent generally. FSL section 302 and section 301 of the Insurance Law, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law.

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

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

Section 3216 of the Insurance Law sets forth the standard provisions to be included in individual accident and health insurance policies written by commercial insurers.

Section 3217 of the Insurance Law authorizes the Superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies.

Section 3221 of the Insurance Law sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers.

Section 4235 of the Insurance Law defines group accident and health insurance and the types of groups to which such insurance may be issued.

Section 4303 of the Insurance Law governs the accident and health insurance contracts written by non-for-profit corporations and sets forth the benefits that must be covered under such contracts.

Section 4304 of the Insurance Law includes requirements for individual health insurance contracts written by not-for-profit corporations and HMOs.

Section 4305 includes requirements for group health insurance contracts written by not-for profit corporations and HMOs.

Section 4326 of the Insurance Law authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying working uninsured individuals. Section 4326(g) authorizes the Superintendent to modify the copayment and deductible amounts for qualifying health insurance contracts. Section 4326(g) also authorizes the Superintendent to establish additional standardized health insurance benefit packages to meet the needs of the public after January 1, 2002.

Section 4327 of the Insurance Law authorizes the establishment of stop loss funds for standardized health insurance contracts issued to qualifying small employers and qualifying individuals. Section 4327(k) authorizes the suspension of enrollment in the program if it is anticipated that annual expenditures from the stop loss fund will exceed the total funds available for distribution from the fund.

2. Legislative objectives: Chapter 1 of the Laws of 1999 enacted the Healthy New York (Healthy NY) program, an initiative designed to enable small employers to provide health insurance to employees and their families and to provide working uninsured individuals with an affordable health insurance coverage option.

3. Needs and benefits: Healthy NY provides essential health coverage to over 170,000 New Yorkers. Due to State fiscal constraints, the

New York State budget set Healthy NY funding appropriations at approximately \$160 million for the past three consecutive fiscal years. During this timeframe, Healthy NY enrollment and claims increased. As a result, there has been a need to pro-rate state payments to health plans for the last two years. This has caused health plans to apply for significant rate increases, to the detriment of Healthy NY's low income enrollees and applicants.

In response, the Department of Financial Services intends to better utilize Healthy NY's limited financial resources. Expedited promulgation of this regulation is the first and most necessary step to better utilizing program resources. This rule will permit existing Healthy NY enrollees to keep their current coverage option. New applicants, for coverage effective January 1, 2012 or later, will be limited to Healthy NY's high deductible health plans only. The Department believes this approach strikes a balance in protecting existing enrollees from unaffordable rate increases, while maintaining an affordable option for those purchasing coverage.

Healthy NY high deductible health plans are not as popular with consumers as the standard Healthy NY products. Therefore, we expect new enrollment in the program to decrease. This decrease, combined with normal program attrition, will lead to an overall reduction in the size of the program. State stop loss funds will go further in providing premium support to this smaller population. As noted above, expedited promulgation of this regulation is necessary to begin the limitation of program enrollment that will ultimately lead to more effective usage of the stop loss funds.

4. Costs: This rule imposes no compliance costs upon state or local governments. The overall costs of the program are capped at the appropriated funding amounts. Through this rule the Department of Financial Services expects to be able to maintain the viability of the program within the appropriated funding amounts.

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

6. Paperwork: Healthy NY requires HMOs and participating insurers to report enrollment changes on a monthly basis and also requires an annual request for reimbursement of eligible claims. Twice a year, enrollment reports that discern enrollment on a county-by-county basis are submitted to the Department. This rule will not impose any new reporting requirements.

7. Duplication: There are no known federal or other states' requirements that duplicate, overlap, or conflict with this regulation.

8. Alternatives: The Department of Financial Services examined multiple alternatives ranging from full program suspension to adjustments to benefits and cost-sharing amounts. It was determined that a full program suspension would have eliminated an affordable health insurance alternative for the working uninsured, and adjustments to benefits and cost-sharing would have had an insufficient impact on savings. Thus, it was decided that this rule would have the most positive outcome in that it will strike a balance in protecting existing enrollees from unaffordable rate increases, while maintaining an affordable option for those who seek to purchase coverage.

9. Federal Standards: The Healthy NY high deductible health plans meet all federal standards to ensure that program enrollees achieve any available federal tax benefits.

10. Compliance Schedule: HMOs and participating insurers are required to comply immediately.

**Regulatory Flexibility Analysis**

1. Effect of rule: This rule will affect small businesses that are seeking to enter the Healthy New York (Healthy NY) program because it will limit the number of Healthy NY coverage options that they can offer to their employees. However, the Department of Financial Services feels that qualifying small businesses that choose to offer the high deductible health plan option to their employees will be able to attract and keep talented workers. This rule will have the greatest impact upon health maintenance organizations (HMOs) and licensed insurers in New York State, none of which fall within the definition of small business as found in section 102(8) of the State Administrative Procedure Act. This rule will not affect local governments.

2. Compliance requirements: There are no compliance requirements for small businesses or local governments. As noted above, this rule will have the greatest impact upon HMOs and licensed insurers in New York State, none of which fall within the definition of small business as found in section 102(8) of the State Administrative Procedure Act.

3. Professional services: No professional services will be necessitated as a result of this rule.

4. Compliance costs: This rule should reduce insurance costs for qualifying small businesses that choose to offer the high deductible health plan to their employees. This rule imposes no compliance costs to local governments.

5. Economic and technological feasibility: The Healthy NY program is designed to make health insurance premiums more affordable for small businesses. Compliance with this rule should be economically and technologically feasible as it requires no action on their part.

6. Minimizing adverse impact: This rule minimizes the impact on small businesses by providing an affordable health insurance option that the businesses can choose to offer to their employees.

7. Small business and local government participation: This notice is intended to provide small businesses, local governments and public and private entities in rural and non-rural areas with an additional opportunity to participate in the rule-making process.

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

1. Types and estimated numbers of rural areas: Health maintenance organizations (HMOs) and participating insurers to which this regulation is applicable do business in every county of the State, including rural areas as defined under section 102(10) of the State Administrative Procedure Act. Small employers and individuals in need of health insurance coverage are located in every county of the State, including rural areas as defined under section 102(10) of the State Administrative Procedure Act.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Healthy New York requires HMOs and participating insurers to report enrollment changes on a monthly basis and also requires an annual request for reimbursement of eligible claims. Twice a year, enrollment reports that discern enrollment on a county by county basis are submitted to the Department of Financial Services. This rule will not add any new reporting requirements, though it will require separate identification of enrollment in the high deductible health plan option. Nothing in this rule distinguishes between rural and non-rural areas. No special type of professional services will be needed in a rural area to comply with this requirement.

3. Costs: HMOs and participating insurers may incur some minor costs as they educate their customer service staff on the changes being made to the program. There are no costs to local governments. This rule has no impact unique to rural areas.

4. Minimizing adverse impact: Because the same requirements apply to both rural and non-rural entities, the rule will have the same impact on all affected entities.

5. Rural area participation: None.

#### **Job Impact Statement**

While this rule may reduce the number of health coverage options available to employees; it will not adversely affect jobs or employment opportunities. A health maintenance organization or a participating insurer shall continue to permit existing Healthy New York (Healthy NY) enrollees to keep their current coverage option. New applicants, for coverage effective January 1, 2012 or later, will be limited to Healthy NY's high deductible health plans only. The Department believes that this approach strikes a balance in protecting existing enrollees from unaffordable rate increases, while maintaining an affordable option for those purchasing new coverage. It is the Department's position that this rule will permit employers enrolled in the program to maintain health insurance coverage for their employees. The ability to offer affordable coverage will allow employers to attract and retain qualified workers. Through this rule the Department of Financial Services intends to better leverage Healthy NY's limited financial resources.

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

### **Special Risk Insurance**

**I.D. No.** DFS-25-12-00003-P

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

**Proposed Action:** Amendment of Part 16 (Regulation 86) of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; and Insurance Law, art. 63 and sections 301, 307 and 308

**Subject:** Special Risk Insurance.

**Purpose:** To revise the parameters established for writing risks in the "free trade zone."

**Substance of proposed rule (Full text is posted at the following State website: <http://www.dfs.ny.gov>):** Section 16.1 is amended by reducing the Class 1 risk minimum billed annual premium from \$200,000 to \$150,000 for more than one kind of insurance where the premium for any one kind of insurance does not exceed \$100,000.

Section 16.2 is amended by simplifying certain of the calculations set forth in the current rule, and reducing the number of compliance calculations from four times each year to annually. This section is also amended by permitting an insurer writing in the free trade zone to request an exemption to exceed the rule's specified limitations if the insurer demonstrates to the Superintendent that it is financially able to write more free trade zone business.

Section 16.3 is amended by revising the circumstances under which the disclosure notice is required and revising the size of the disclosure notice from a minimum height requirement to a fourteen point font type.

Section 16.6 is amended to specify the timeframe for submission of free trade zone renewal applications. The free trade zone licenses expire on August 31 of each year. The revision requires insurers to submit their renewal applications at least 30 days prior to the expiration of the license.

Section 16.9 is amended to include electronic access to the underwriting files.

Section 16.12 is updated by adding the definitions of various risks and exposures that have previously been added to the Class 2 risk list by public notice, pursuant to section 16.8 of the regulation.

**Text of proposed rule and any required statements and analyses may be obtained from:** David Neustadt, Department of Financial Services, One State Street, New York, NY 10004-1511, (212) 709-1691, email: david.neustadt@dfs.ny.gov

**Data, views or arguments may be submitted to:** Hoda Nairooz, Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5587, email: hoda.nairooz@dfs.ny.gov

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

#### **Regulatory Impact Statement**

1. Statutory authority: Financial Services Law (FSL) sections 202 and 302 and Insurance Law Article 63 and sections 301, 307 and 308.

These sections establish the Superintendent's authority to promulgate regulations establishing standards for special risk insurance by exempting insurers from certain rate and policy form approval requirements.

FSL section 202 establishes the office of the Superintendent. FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, and to prescribe regulations interpreting the Insurance Law.

Insurance Law section 307 requires every authorized insurer and fraternal benefit society in New York to file an annual statement (audited financial statement) showing its condition at the last year end. The section establishes specific requirements with respect to annual statements and imposes penalties for failing to timely file an annual statement.

Insurance Law section 308 permits the Superintendent to request information from any insurer with respect to transactions by the insurer, the condition of the insurer, or any matter connected therewith.

Article 63 permits insurers to write special risks that are jumbo in dimension or exotic in nature without having to file with the Superintendent rates or policy forms, commonly referred to as the "free trade zone." Article 63 also permits policies to be written for "large commercial insureds," as that term is defined in section 6303, subject to certain form filing requirements. Insurance Law section 6304 requires the Superintendent to promulgate rules and regulations implementing the provisions of Article 63 by establishing methods, procedures and reports for licensing and for facilitating, monitoring and verifying compliance with this article.

2. Legislative objectives: Article 63 of the Insurance Law establishes

standards for special risk insurance. Section 6303 exempts insurers from certain rate and policy form approval requirements. Section 6304 requires the Superintendent to promulgate rules and regulations implementing the provisions of Article 63 by establishing methods, procedures and reports for licensing and for facilitating, monitoring and verifying compliance with Article 63.

3. Needs and benefits: The free trade zone enables insurers to make certain types of insurance available more quickly without prior approval or review by the Superintendent to facilitate more streamlined economic development in New York. To advance this objective, the Department is reducing one of the premium thresholds for Class 1 risks and is adding more insurance risks that may be written as Class 2 risks in the free trade zone. The proposed rule is also amended to define various risks and exposures that were previously added to the Class 2 risk list by public notice, pursuant to Section 16.8 of the regulation. Additionally, the parameters established for writing risks in the "free trade zone" have not been revised in several years. The proposed rule simplifies certain of the calculations set forth in the current rule.

4. Costs: This rule imposes no compliance costs on state or local governments. Insurers may incur additional costs to comply with the revised limitations, but only if they do not currently meet the standards set forth in present rule. The Department anticipates that there will be more insurers in compliance with the proposed rule than the rule currently in effect.

5. Local government mandates: This amendment does not impose any program, service, duty or responsibility upon a city, town, village, school or fire district.

6. Paperwork: There is no additional paperwork required.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Department received suggestions from various organizations on revising Insurance Regulation 86. The Department reviewed those suggestions and incorporated certain of them into the proposed rule. The Department performed outreach to various trade organizations and received the following three suggestions:

1. to eliminate the free trade zone premium-based cap;

2. to increase the limitations for free trade zone net premiums written to 50% of the surplus to policyholders and increase the limitation for the total premiums written to 300% of surplus to policyholders; and

3. to add wording to allow for credit for reinsurance.

The Department considered eliminating or reducing the free trade zone premium-based cap. However risks written in the free trade zone are jumbo in dimension, exotic in nature or cover large commercial insureds that are inherently more risky. Therefore, the Department believes that eliminating the premium-based cap would be imprudent.

With respect to the second suggestion noted above, the Department decided upon an alternative measure, which is included in the proposed amendment. Under the proposed rule, many large insurers may write a large number of risks in the free trade zone without approaching the cap. Insurers that are more likely to approach the cap would be smaller companies. The proposed limitations are necessary to ensure that a small company's activity in the free trade zone does not adversely affect its financial condition. The proposed rule permits an insurer to request an exemption from the rule, to exceed the limitations specified in section 16.2(a)(1) if the Department determines that, based on the criteria specified in the proposed rule, the insurer is financially able to write additional free trade zone business. Neither the outreach comment nor the current rule provides an exemption request from section 16.2(a)(1).

The formula for net premiums written is direct premiums plus assumed reinsurance premiums less ceded reinsurance premiums. The third comment suggests that the formula is actually direct premiums less ceded reinsurance premiums, which does not add back assumed reinsurance premiums. However, applying the suggested formula would cause the sum to be equal to (if the company had no assumed reinsurance premiums), or less than, net premiums written. The suggested method of calculating the net premiums written would liberalize the limitation established in the proposed rule, and suggested in the second comment. The Department considered the third suggested revision; however, the Department prefers the alternative amendment to the rule, which permits an insurer to request an exemption to exceed the limitations specified in section 16.2(a)(1). This would allow the Department to monitor insurers and determine whether they are financially able to write more free trade zone business.

The Department also received comments requesting further additions to the free trade zone Class 2 list than those proposed by the Department. The Department reviewed those suggested additions and considered whether the risks are genuinely difficult to place or highly unusual in nature. The Department consulted with the underwriting units and reviewed the Department's availability survey for additional information, and concluded that several of the suggested additions merit placement on the free trade zone Class 2 list.

In an earlier draft of the rulemaking, the Department provided an exception to include coverages for disciplinary proceedings against an insured by governmental entities, and criminal and fraudulent actions of an insured for certain professional/errors and omissions liability coverages listed under Class 2 risks in section 16.12(e) of this rule. However, as a general matter, no liability policy may provide these coverages except as permitted in 11 NYCRR Part 262 (Regulation 162). Therefore, these exceptions have been removed from this proposed rule since they are not necessary.

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

10. Compliance schedule: It is anticipated that regulated entities will be able to operate under the proposed rule immediately upon its taking effect.

#### **Regulatory Flexibility Analysis**

**Small businesses:** The Department of Financial Services finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at property/casualty insurance companies licensed to do business in New York State, none of which falls within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Department of Financial Services has monitored annual statements and reports on examination of authorized property/casualty insurers subject to this rule, and believes that none of the insurers falls within the definition of "small business" because no insurer is both independently owned and has fewer than one hundred employees.

**Local governments:** The rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at property/casualty insurance companies, which are not local governments.

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

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

#### **Job Impact Statement**

The Department of Financial Services finds that this rule will have little or no adverse impact on jobs or employment opportunities in New York State. The proposed rule reduces one of the premium thresholds for Class 1 risks and adds more insurance to the Class 2 risks that can be written in the "free trade zone" to facilitate economic development in New York. The parameters established for writing risks in the "free trade zone" have not been revised in several years. The proposed rule simplifies certain of the calculations set forth in the current rule. Insurance companies will not need additional staff, nor incur additional expenses, to comply with revised filing requirements under this rule.

The Department has no reason to believe that this proposed rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities.

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## Department of Law

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

#### Names and Addresses of State Agencies, Disclosure Requirements for Deposit Insurance, Punctuation and Number of Certain Items

I.D. No. LAW-25-12-00004-P

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

**Proposed Action:** This is a consensus rule making to amend Parts 16, 17, 18, 20, 21, 22, 23, 24 and 25 of Title 13 NYCRR.

**Statutory authority:** General Business Law, section 352-e(2)(b)

**Subject:** Names and addresses of state agencies, disclosure requirements for deposit insurance, punctuation and number of certain items.

**Purpose:** Ensure that all of the above are current and consistent.

**Substance of proposed rule (Full text is posted at the following State website: [www.ag.ny.gov](http://www.ag.ny.gov)):** The proposed consensus rule making: (1) corrects the name and address of the New York State Department of Law's

Real Estate Finance Bureau; (2) reflects that the New York State Insurance Department and New York State Banking Department are now the New York State Department of Financial Services; (3) makes capitalization and singular vs. plural of certain terms consistent; (4) updates all references to limits on deposit insurance by the Federal Deposit Insurance Corporation to reflect the fact that those limits are no longer \$100,000; and (5) replaces reference to submission of "six" copies of certain documents with a requirement to submit "three" copies, consistent with current Department of Law practice.

**Text of proposed rule and any required statements and analyses may be obtained from:** Lewis A. Polishook, Chief Counsel for Real Estate Finance, New York State Department of Law, 120 Broadway, 23rd Floor, New York, New York 10271, (212) 416-8372, email: lewis.polishook@ag.ny.gov

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

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

**Consensus Rule Making Determination**

No person is likely to object to the proposed rule as written. The proposed makes the following minor changes: (1) corrects the name and address of the New York State Department of Law's Real Estate Finance Bureau; (2) reflects that the New York State Insurance Department and New York State Banking Department are now the New York State Department of Financial Services; (3) makes capitalization of certain terms and singular vs. plural consistent; (4) updates all references to limits on deposit insurance by the Federal Deposit Insurance Corporation to reflect the fact that those limits are no longer \$100,000; and (5) replaces reference to submission of "six" copies of certain documents with a requirement to submit "three" copies, consistent with current Department of Law practice.

**Job Impact Statement**

1. Nature of impact. The proposed regulations will have no impact on jobs and/or employment opportunities, as it merely corrects name and address information for the Real Estate Finance Bureau of the New York State Department of Law (the "Department") and other agencies, corrects the use of capital letters and singular vs. plural, and updates the Department's disclosure requirements to reflect that the limits for federal deposit insurance have not been \$100,000 for several years.

2. Categories and numbers affected. None.

3. Regions of adverse impact. The proposed amendments will have no adverse impact on any region of the State.

4. Minimizing adverse impact. The proposed amendments will have absolutely no job impact, so there is no way to minimize any adverse impact.

5. Self employment opportunities. The proposed amendments will have no adverse impact on self-employment opportunities.

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## Office of Mental Health

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

**Rates of Reimbursement - Hospitals Licensed by the Office of Mental Health**

**I.D. No.** OMH-25-12-00007-P

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

**Proposed Action:** This is a consensus rule making to amend Part 577 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09 and 43.02

**Subject:** Rates of Reimbursement - Hospitals Licensed by the Office of Mental Health.

**Purpose:** To continue the 2011 rates paid to freestanding psychiatric hospitals for the 2013 rate year, effective January 1, 2013.

**Text of proposed rule:** Subdivision (a) of Section 577.7 of Title 14 NYCRR is amended to read as follows:

(a) Payment rates shall be established on a prospective basis effective

January 1, 1992 and each January 1st thereafter, except that the rate of payment effective January 1, 2012 through December 31, 2012, and *January 1, 2013 through December 31, 2013*, shall be a continuance of the rate of payment effective December 31, 2011, and shall be provisional pending the completion of an audit in accordance with section 577.6 of this Part.

**Text of proposed rule and any required statements and analyses may be obtained from:** Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Sue.Watson@omh.ny.gov

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

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

**Consensus Rule Making Determination**

This rule making is filed as a Consensus rule on the grounds that its purpose is to conform to non-discretionary statutory requirements.

Chapter 53 of the Laws of 2012 includes a series of programmatic changes and cost-containment measures that are expected to generate savings in fiscal year 2012-2013 and restrain growth in future years. The 2012-2013 enacted State Budget prohibits any cost of living adjustments for the purpose of establishing rates of payment, contracts or any other form of reimbursement for mental health providers. This proposed rule ensures consistency with the enacted State Budget by amending 14 NYCRR Part 577 by freezing rates paid to freestanding psychiatric hospitals that are licensed under Article 31 of the Mental Hygiene Law and issued an operating certificate in accordance with 14 NYCRR Part 582. This rate freeze will be effective as of January 1, 2013, and shall continue the rate of payment in effect as of December 31, 2011. This continuation of current rates is consistent with the 2012-2013 enacted State budget and is the result of the serious fiscal condition of the State.

Statutory Authority: Sections 7.09 and 43.02 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his/her jurisdiction and to establish standards and methods for determining rates of payment made by government agencies pursuant to Title 11 of Article 5 of the Social Services Law for services provided by facilities, including hospitals, licensed by the Office of Mental Health pursuant to Article 31 of the Mental Hygiene Law. All payments by such agencies shall be at rates certified by the Commissioner and approved by the Director of the Budget. Chapter 53 of the Laws of 2012 prohibits the application of any cost of living adjustments for the purpose of establishing rates of payments, contracts or any other form of reimbursement for mental health providers.

**Job Impact Statement**

A Job Impact Statement is not submitted with this notice because it is evident from the subject matter of the rule making that there will be no impact upon jobs and employment opportunities. The rule is needed to provide consistency with the enacted State budget by freezing rates of payments to freestanding psychiatric hospitals that are licensed under Article 31 of the Mental Hygiene Law and issued an operating certificate in accordance with 14 NYCRR Part 582. The rate freeze will be effective January 1, 2013.

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## Public Service Commission

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**NOTICE OF WITHDRAWAL**

**LIWC Proposed to Retain a Portion of Property Tax Refunds**

**I.D. No.** PSC-51-11-00018-W

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

**Action taken:** Notice of proposed rule making, I.D. No. PSC-51-11-00018-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on December 21, 2011.

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

**Reason(s) for withdrawal of the proposed rule:** Withdrawn by staff for correction to the amount of property tax refund.

## NOTICE OF ADOPTION

**Authorize Unencumbered Interest Earned on System Benefits Charge Funds to Pay the NYS Cost Recovery Fee**

I.D. No. PSC-02-12-00006-A

Filing Date: 2012-06-01

Effective Date: 2012-06-01

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

**Action taken:** On 5/17/12, the PSC adopted an order authorizing New York State Energy Research & Development Authority to use unencumbered interest earned on System Benefits Charge funds to pay the share of the New York State Cost Recovery Fee that is allocable to EEPS.

**Statutory authority:** Public Service Law, sections 4(1), 5(2), 66(1) and (2)  
**Subject:** To authorize unencumbered interest earned on System Benefits Charge Funds to pay the NYS Cost Recovery Fee.

**Purpose:** Authorize unencumbered interest earned on System Benefits Charge Funds to pay the New York State Cost Recovery Fee.

**Substance of final rule:** The Commission, on May 17, 2012, adopted an order authorizing The New York State Energy Research and Development Authority to use unencumbered interest earned on System Benefits Charge funds to pay the share of the New York State Cost Recovery Fee that is allocable to Energy Efficiency Portfolio Standard programs, 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, 3 Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann.ayer@dps.ny.gov 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.

(08-E-1132SA4)

**PROPOSED RULE MAKING  
HEARING(S) SCHEDULED****LIWC Proposes to Retain a Portion of Property Tax Refunds**

I.D. No. PSC-25-12-00008-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 \$2,961,999 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:** 1:00 p.m., August 7, 2012 at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY. (Evidentiary Hearing)\*

\*On occasion there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website ([www.dps.ny.gov](http://www.dps.ny.gov)) under Case 11-W-0484.

**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:** The Public Service Commission is considering whether to approve or reject, in whole or part, the petition of Long Island Water Corporation d/b/a Long Island American Water (LIWC), pursuant to Public Service Law Section 113(2), for approval of a proposed allocation between shareholders and customers of approximately \$2,961,999 in property tax refunds from the Villages of East Rockaway,

Atlantic Beach, Island Park, Lynbrook, and Valley Stream. LIWC proposes to calculate net refunds by deducting \$546,681.87 in expenses incurred to achieve the approximately \$2,393,833 of refunds received to date and approximately \$568,166 of refunds scheduled for 2012/13 and 2013/14, and retain for shareholders 18% of the remainder. These stated dollar amounts are subject to adjustment without further notice unless the adjustments are material.

**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.ny.gov

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

**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-W-0484SP2)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Petition for the Submetering of Electricity**

I.D. No. PSC-25-12-00009-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 250 North 10th Street, LLC to submeter electricity at 250 North 10th Street, Brooklyn, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

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

**Purpose:** To consider the request of 250 North 10th Street, LLC to submeter electricity at 250 North 10th Street, Brooklyn, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 250 North 10th Street, LLC to submeter electricity at 250 North 10th Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

**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.

(12-E-0255SP1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Waiver of 16 NYCRR Sections 894.1 Through 894.4**

I.D. No. PSC-25-12-00010-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 or reject, in

whole or in part, a petition by the Town of Amboy (Oswego County) and Time Warner Entertainment-Advance/Newhouse Partnership to waive Sections 894.1-4 regarding franchising procedures.

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

**Subject:** Waiver of 16 NYCRR sections 894.1 through 894.4.

**Purpose:** To allow the Town of Amboy 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 Town of Amboy and Time Warner Entertainment-Advance/Newhouse Partnership to waive Sections 894.1, 894.2, 894.3, and 894.4 regarding franchising procedures for the Town of Amboy, Oswego 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.ny.gov

**Data, views or arguments may be submitted to:** Jaelyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

**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.

(12-V-0219SP1)

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

**Order Providing for Lightened Regulation of BGCNY as a Gas Corporation**

**I.D. No.** PSC-25-12-00011-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 Bluestone Gas Corporation of New York, Inc. (BGCNY) for an order providing for lightened regulation.

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

**Subject:** Order providing for lightened regulation of BGCNY as a gas corporation.

**Purpose:** To provide for lightened regulation of BGCNY as a gas corporation.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, the petition filed, May 10, 2012 by Bluestone Gas Corporation of New York (BGCNY) seeking issuance of an order providing for lightened regulation of BGCNY as a gas corporation. As a licensing matter, the petition also seeks approval of the exercise of a municipal consent, pursuant section 68 of the Public Service Law (PSL). The petition is related to BGCNY's application for a Certificate under PSL Article VII.

**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.ny.gov

**Data, views or arguments may be submitted to:** Jaelyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

**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.

(12-G-0214SP1)

## Racing and Wagering Board

### NOTICE OF ADOPTION

**Conforming Horse Racing Rule Amendments to the Provisions of the 2011 Marriage Equality Act**

**I.D. No.** RWB-12-12-00001-A

**Filing No.** 488

**Filing Date:** 2012-05-30

**Effective Date:** 2012-06-20

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

**Action taken:** Amendments of sections 4002.14(b), 4100.1(a)(44), 4102.3(d), 4205.6(b) and 4205.1(g) of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-mutuel Wagering and Breeding Law, sections 101, 301 and 401

**Subject:** Conforming horse racing rule amendments to the provisions of the 2011 Marriage Equality Act.

**Purpose:** To ensure that the Board's rule and regulations do not conflict with the provisions of the 2011 Marriage Equality Act.

**Text or summary was published in:** the March 21, 2012 issue of the Register, I.D. No. RWB-12-12-00001-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 J. Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

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

**Reimbursement of Costs to the State of New York for Associate Judges and Starters at Harness Races**

**I.D. No.** RWB-25-12-00001-P

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

**Proposed Action:** Addition of section 4101.41 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-mutuel Wagering and Breeding Law, sections 101, 301 and 308

**Subject:** Reimbursement of costs to the State of New York for associate judges and starters at harness races.

**Purpose:** To implement reimbursement for the costs of hiring certain harness racing officials.

**Text of proposed rule:** Section 4101.41 of 9 NYCRR is hereby added to read:

*4101.41. Reimbursement for racing officials.*

*(a) All licensed racing corporations shall reimburse the racing and wagering board for the per diem cost to the board to employ one associate judge and the starter at and in relation to racing meetings conducted by the licensed racing corporation. Reimbursement shall include the per diem rate accorded to the title as well as fringe benefits and any indirect costs attributable to the position.*

*(b) The board shall notify each licensed racing corporation of the costs to be reimbursed prior to the beginning of each month.*

*(c) Payment of the reimbursement shall be made to the board no later than the last business day of each month and shall be accompanied by a report, under oath, on a form prescribed by the board. The report shall contain such information as the board may require.*

*(d) A penalty of five percent of the payment due with interest at the rate of one percent per month calculated from the last business date of the month when payment is due to the date of payment shall be payable in the event that any reimbursement or part thereof is not paid when due.*

*(e) The board or its duly authorized representatives shall have the power to examine or cause to be examined the books and records of the corporations required to provide the reimbursement for the purpose of*

examining and checking the same and ascertaining whether the proper amounts are being paid.

(f) If the board determines that any reimbursement received by it was paid in error or exceeded the actual amount required, the board may cause the same to be refunded without interest out of the monies collected or credited to the racing corporation, provided an application therefore is filed with the board within one year from the date the incorrect payment was made.

(g) If the board determines that any reimbursement received by it was insufficient due to an increase in racing days or other circumstance, the board shall direct the racing corporation to provide for such reimbursement by notifying the racing corporation of the obligation and requiring payment by issuance of an assessment fixing the correct amount. Such assessment may be issued within three years from the filing of any report. Any such assessment shall be final and conclusive unless an application for a hearing is filed by the racing corporation within thirty days of the date of the assessment. The action of the board in making such final assessment shall be reviewable in the supreme court in the manner provided by and subject to the provisions of Article 78 of the Civil Practice Law and Rules.

**Text of proposed rule and any required statements and analyses may be obtained from:** John J. Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.ny.gov

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

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

#### Regulatory Impact Statement

1. Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law Sections 101(1), 301(1) and 308(2). Section 101 subdivision (1) vests the Board with general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State. Section 301 subdivision (1) grants the Board the power to supervise generally all harness race meetings in this state at which pari-mutuel betting is conducted, and adopt rules and regulations consistent with provisions of the Racing Law. Section 308 subdivision 2 requires the Board to promulgate rules and regulations to ensure the proper reimbursement of costs related to the employment of one associate judge and one starter at each harness horse race meeting.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This harness racing rule is necessary to comply with the provisions of Chapter 58 of the Laws of 2012 (Part Y), which amended section 308 of the Racing, Pari-Mutuel Wagering and Breeding Law. Under Chapter 58, licensed racing corporations shall reimburse the racing and Wagering Board for the per diem cost to the Board to employ one associate judge and a starter at each harness race meeting.

The rule is also needed to specify costs that comprise the employment compensation for associate judges and starters at harness race meets. Currently, these costs are borne through the budget of the New York State Racing and Wagering Board. Under Chapter 58 of the Laws of 2012, the costs for associate judges and starters will be reimbursed by each licensed racing corporation where the associate judge or starter is employed.

#### 4. COSTS:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule. There are seven harness tracks located in New York State that are subject to the proposed rule and the requirement of Section 308(2) of the Racing Law: Buffalo Raceway, Batavia Downs, Monticello Raceway, Saratoga Harness Raceway, Vernon Downs, Tioga Downs, Yonkers Raceway. Costs will vary among the various tracks due to inconvenience pay, location pay, fringe benefits and indirect costs. The approximate monthly total rate for all tracks combined will be \$100,139, although it should be noted that not all harness tracks are open at the same time and most meets overlap. The monthly cost and daily average rates for each respective track starter and associate judge will be as follows: Buffalo Raceway with 18 days of racing per month for 6.5 months (99 total racing days): starter \$7,982 per month/\$443 per day, associate judge \$7,785 per month/\$432 per day. Monticello with 16 days of racing per month for 12 months (207 total racing days): starter \$7,056 per month/\$441 per day, associate \$6,880 per month/\$430 per day. Saratoga, with 22 days of racing per month for 8.5 months (169 total racing days): starter \$9,759 per month/\$443 per day, associate \$9,518 per month/\$432 per day. Vernon Downs, with 13 days of racing per month for 7.5 months (90 total racing days): starter \$5,774.20 per month/\$444 per day, associate \$5,632 per month/\$433 per day. Yonkers with 20 days of racing per month for 12 months (238 total racing days): starter \$8,864 per month/\$443 per day, associate \$9,069 per month/\$453 per day. Tioga Downs with 14 days of racing for 4.5 months (61 total racing days): starter \$6,206 per month/

\$443 per day, associate \$6,052 per month/\$432 per day. Batavia Downs with 17 days of racing per month for 4.5 months (72 total racing days): starter \$7,550 per month/\$444 per day, associate \$7,364 per month/\$433 per day.

It should be noted that these figures are estimates. The figures are subject to adjustments due to factors that arise from collective bargaining agreements, fringe benefits, holiday pay, and increased number of draws and qualifying races.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. Local governments would bear no costs because the regulation of thoroughbred racing is exclusively regulated by the New York State Racing and Wagering Board. As is apparent from the intent of the statutory amendment, this rule would impose no costs upon the Racing and Wagering Board.

(c) The information related to costs was obtained by the Personnel Office New York State Racing and Wagering Board based upon historical payroll information, projected race dates, current compensation scales for the respective tracks. The total costs include per diem rates, inconvenience pay, location pay, fringe benefits and indirect costs for the various tracks.

5. Paperwork: This rule will require harness track operators to maintain books and records for the purpose of allowing Racing and Wagering Board auditors to examine and check whether proper reimbursement amounts have been made. In order give force and effect to the rule, the Board will use Form RRO-1, which is a "Report of Reimbursement for Racing Officials. Form RRO-1 will be submitted to the harness racetrack operator by the Racing and Wagering Board. The Board will also require the use of Form AC-909 to withdraw funds from the reimbursement fund in instances where the Board determines that a reimbursement was made in error and a refund to the track is due.

6. Local government mandates: Since the New York State Racing & Wagering Board is solely responsible for the regulations of pari-mutuel wagering activities in the State of New York, there is no program, service, duty or responsibility imposed by the rule upon any county, city, town, village, school district, fire district or other special district.

7. Duplication: There are no relevant rules or legal requirements of the state and federal governments that duplicate, overlap or conflict with the rule.

8. Alternative approaches: This Board did not consider an alternative because this rule is based upon the directives of Chapter 58 of the Laws of 2012.

9. Federal standards: There are no federal standards for harness racing.

10. Compliance schedule: This rule will go into effect on the day that it is published in the State Register under a Notice of Adoption.

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

As is evident by the nature of this rulemaking, this proposal affects operations at thoroughbred and harness racetracks and will not adversely impact rural areas, jobs, small businesses or local governments and does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement because it will not impose an adverse impact on rural areas, nor will it affect jobs. This rule is intended to conform with a statutory amendment to Section 308 of the Racing, Pari-Mutuel Wagering and Breeding Law that requires harness track operators to reimburse the New York State Racing and Wagering Board for the salaries and costs of associate judges and starters. A Regulatory Flexibility Statement and a Rural Area Flexibility Statement are not required because the rule does not adversely affect small business, local governments, public entities, private entities, or jobs in rural areas. The rule will have a positive impact on the harness industry by ensuring that proper officiating of pari-mutuel wagering events occurs, thereby ensuring the uninterrupted conduct of harness racing and thousands of jobs that are affiliated with the harness racing industry. A Job Impact Statement is not required because this rule amendment will not adversely impact jobs. This rulemaking does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8) nor does it negatively affect employment. The proposal will not impose adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either.

## New York State Thruway Authority

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Toll Rate Adjustments on the New York State Thruway System

I.D. No. THR-25-12-00013-P

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

**Proposed Action:** Amendment of section 101.2, repeal of section 101.4 and addition of new section 101.4 to Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, sections 354(5), (8) and (15); Public Authorities Law, section 361(1); and Vehicle and Traffic Law, section 1630

**Subject:** Toll rate adjustments on the New York State Thruway system.

**Purpose:** To provide for toll rate adjustments necessary to support the Authority's financial obligations.

**Public hearing(s) will be held at:** 6:00 p.m. – 8:00 p.m., August 16, 2012 at Buffalo & Erie County Public Library, Auditorium (Main Level), One Lafayette Square, Buffalo, NY; 11:00 a.m. – 1:00 p.m., August 17, 2012 at Double Tree by Hilton Hotel, 6301 State Rte. 298, East Syracuse, NY; 10:00 a.m. – 12:00 p.m., August 18, 2012 at Hilton Garden Inn, 15 Crossroads Court, Newburgh, NY.

**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 (Full text is posted at the following State website: [www.thruway.ny.gov](http://www.thruway.ny.gov)):** The Proposed Rule provides for toll rate adjustments on the controlled system and at fixed barriers along the New York State Thruway to provide the funds necessary to finance the New York State Thruway Authority's (Authority) multi-year capital plan, to perform necessary maintenance and operations and to comply with the relevant portions of the Authority's General Revenue Bond Resolution and Fiscal Management Guidelines. These toll rate adjustments will be fully implemented by October 2012.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jonathan Gunther, Assistant Counsel, New York State Thruway Authority, 200 Southern Boulevard, Albany, New York 12209, (518) 436-2840, email: [tollcomments@thruway.ny.gov](mailto:tollcomments@thruway.ny.gov)

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

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

**Additional matter required by statute:** Public Authorities Law section 2804 requires that a detailed financial report be submitted to the Governor, Comptroller and the Chairs and Ranking Members of the Legislative Fiscal Committees.

#### Regulatory Impact Statement

##### 1. Statutory authority:

Public Authorities Law (PAL) section 354 subdivision 5 authorizes the New York State Thruway Authority (Authority) to make rules and regulations for the use of the Thruway and any other facilities under the jurisdiction of the Authority. PAL section 354 subdivision 8, in pertinent part, authorizes the Authority "to fix fees for the use of the Thruway System or any part thereof necessary...to produce sufficient revenue to meet the expense of maintenance and operation and to fulfill the terms of any agreements made with the holders of its notes or bonds..." PAL section 354 subdivision 15 authorizes the Authority to do all things necessary or convenient to carry out its purposes or exercise the powers given in Title 9. Section 1630 of the Vehicle and Traffic Law authorizes the Authority to make rules and regulations to regulate traffic on any highway under its jurisdiction with respect to charging tolls, taxes, fees, licenses or permits for the use of the highway or any property under the Authority's jurisdiction. In addition to the Vehicle and Traffic Law authorization, the Authority is authorized pursuant to section 361 of the PAL to "promulgate such rules and regulations...for the collection of tolls..."

##### 2. Legislative objectives:

In enacting PAL section 353 the legislature found that certain public benefits would accrue from the creation of the Thruway Authority. The Legislature found and declared that the development, operation and maintenance of the Thruway System was a benefit to the people of the State of New York with respect to their health, welfare, safety, recreation, commerce and common defense. That statutory provision declared that the Authority was created for the purpose of and given the power to finance, develop, construct, reconstruct, improve, maintain and operate the Thruway System. As a self-sustaining entity, the proposed toll adjustment will enable the Authority to continue to maintain and operate the Thruway System in furtherance of the health, safety and welfare of the people of the State of New York. The proposed toll adjustment will produce revenues that meet the needs of the multi-year capital program and will allow the Authority to perform necessary operation and maintenance and comply with the relevant portions of the Authority's General Revenue Bond Resolution and Fiscal Management Guidelines.

##### 3. Needs and benefits:

The Authority last adjusted tolls in January 2010. Section 365 of the PAL authorizes the Authority to issue negotiable notes and bonds necessary to provide sufficient moneys for achieving the corporate purposes of the Authority. The Authority has and will continue to issue negotiable notes and bonds pursuant to its General Revenue Bond Resolution, adopted August 3, 1992 (the, Bond Resolution), as amended, which is the contract between the Authority and its bondholders. Pursuant to Section 608 of the Bond Resolution (the Maintenance covenant) the Authority has covenanted to operate and maintain its Facilities (as defined in the Bond Resolution) "in a sound and economical manner and shall maintain, reconstruct and keep the same...and every part and parcel thereof, in good repair, working order and condition, and shall from time to time, make or cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the Facilities may be properly and advantageously conducted..." The continuation of the present toll schedule would result in revenues insufficient to allow the Authority to meet its needs for the required Maintenance covenant under the Bond Resolution.

Section 609 (the Rate covenant) of the Bond Resolution requires that that Authority fix, charge and collect tolls sufficient to equal the Authority's Net Revenue Requirement, as that term is defined in the Bond Resolution. In accordance with the Bond Resolution, the Authority requested a study by an independent consultant to recommend a schedule of tolls, fees and charges to provide sufficient net revenues to comply with the Rate covenant and the Maintenance covenant. The report developed by Jacobs Engineering Group, Inc. examined the financial requirements of the Authority to meet the future maintenance, reconstruction and operational needs of the system, excluding the financial needs of the Tappan Zee Hudson River Crossing Project, which will be addressed separately in the future should a build alternative be selected and upon completion of a financial plan to fund the project. See <http://www.thruway.ny.gov/news/pressrel/index.html> (click on "May 30, 2012 - Download the Independent Traffic Engineer's Report On Thruway Finances"). That report, "New York State Thruway Financial Requirements and Proposed Toll Adjustments" (Jacobs Report), found that current toll levels on the Thruway were insufficient to meet the Thruway's future needs. In order to maintain a serviceable system and a safe facility the Jacobs Report found that a toll adjustment is required to fully implement the Authority's multi-year capital program providing for the needed reconstruction, maintenance and congestion relief improvements. The Jacobs Report concluded that continuation of the present toll schedule will result in operational deficits and very low pay-as-you-go financing. The Jacobs Report further concluded that the continuation of the present toll schedule will result in debt service coverage ratios declining below the limits established in the Authority's Bond Resolution and Fiscal Management Guidelines by the end of 2012. Please see table VI-8 "Flow of Funds with the Existing Toll Schedule," contained in the Jacobs Report, indicating that the Net Balance Available for Working Capital for the period 2012-2016 is projected to be -\$238,200,000 without the proposed toll adjustment.

Table VIII-1 ‘‘Flow of Funds with the Proposed Toll Schedule,’’ contained in the Jacobs Report, indicates that the Net Balance Available for Working Capital for the period 2012-2015 is projected to be \$0.0 with the proposed toll adjustment, and will be -\$3.0 million in 2016.

The Authority established several goals in developing a proposed toll adjustment, including, preserving the Authority’s \$1.5 billion multi-year capital program; preserving all discount programs; eliminating any anticipated operational gaps; maintaining debt service coverage ratios of at least 1.6x in 2012; and avoiding any changes to the toll schedules applicable to certain vehicle classes. Through an aggressive operational streamlining program, the Authority will achieve \$119.5 million in savings from 2013 through 2016. The proposed toll adjustments achieve the Authority’s goals.

#### 4. Costs:

Costs to regulated parties will vary as the Authority employs a multi-classification system for tolls that takes into consideration vehicle class, based upon axles and height, and distance traveled on the Thruway System. Under the proposed plan, tolls for passenger vehicles (class 2L, 3L, 4L) and certain commercial vehicles (class 2H) will remain unchanged. Under the proposed plan, the cash toll for a tractor trailer (class 5H), the most common commercial vehicle, generally will increase by 10.76 cents per mile and the E-ZPass rate will increase by 10.22 cents per mile.

The Authority is mindful of all people who use the Thruway, including those who use the Thruway to commute to work in rural areas and for small businesses and local governments. The Authority encourages all customers to sign up for E-ZPass to receive a discount. This proposed toll adjustment preserves the commercial E-ZPass and volume discounts, which are available to all Authority commercial customers, including small businesses, that enroll and qualify. Additionally, this proposed toll adjustment preserves passenger E-ZPass discount and commuter programs. For certain classes of customers (passenger vehicles- classes 2L, 3L, 4L, commercial vehicles- class 2H) existing toll rates will remain unchanged. The fee for the Annual Permit Plan, which allows free travel on the controlled portion of the Thruway System for the first 30 miles of every trip, will also remain unchanged. Further, the Thruway is a vital transportation corridor for both intrastate and interstate commerce. Failure to properly maintain the highway could negatively affect all of New York State including rural areas, small businesses and local governments.

#### 5. Local government mandates:

Not applicable.

#### 6. Paperwork:

Not applicable.

#### 7. Duplication:

Not applicable.

#### 8. Alternatives:

The Authority review and the Jacobs Report both looked at the alternative of not implementing toll adjustments. The Jacobs Report has indicated that a toll adjustment is required. The Authority is statutorily required to finance, construct, reconstruct, improve, develop, maintain and operate the Thruway System pursuant to PAL section 353. Leaving the current toll structure in place would result in:

- Revenues insufficient to fund the multi-year capital program;
- Insufficient funds for capital improvements to the infrastructure and routine operations and maintenance, resulting in deterioration of pavement and bridge conditions that would negatively affect safety and service to Thruway customers;
- Insufficient funds for the operation and maintenance of Other Authority Projects (as defined in the Bond Resolution), such as the Canal, resulting in deterioration of canal infrastructure;
- Operational deficits;
- Increased reliance on issuing debt and higher costs to finance projects;
- Debt service coverage ratios in the later years of the forecast period declining below the limits established in the Authority’s Bond Resolution and Fiscal Management Guidelines;

- Revenues insufficient to allow the Authority to comply with the relevant portions of the Bond Resolution;

- Deterioration of the Authority’s financial condition to the extent that its bond rating would be reduced, leading to greater costs of future debt issuances.

The Authority intends to conduct an extensive public outreach during the public comment period, including holding three public hearings statewide. Authority staff is in the process of reaching out to several interested parties, including AAA, the Motor Truck Association, Associated General Contractors of America, the Business Council and many elected officials. The Authority expects a continuing dialogue with the parties mentioned above, as well as other interested parties, and will consider all comments during the public comment period.

#### 9. Federal standards:

Not applicable.

#### 10. Compliance schedule:

It is anticipated that all regulatory requirements will be scheduled and completed by September 29, 2012 and that such schedule will comply with all of the State statutory and regulatory requirements. Following implementation of the rule, there will be no additional time required for regulated persons to achieve compliance with the rule.

### *Regulatory Flexibility Analysis*

#### 1. Effect of rule:

An estimate as to the number of small businesses or local governments that will be affected by the toll adjustment cannot be provided. However, the Authority is mindful of all people who use the Thruway, including those who use the Thruway to commute to work for small businesses and local governments. The Authority encourages all customers to sign up for E-ZPass to receive a discount. This proposed toll adjustment preserves the commercial E-ZPass and volume discounts, which are available to all Authority commercial customers, including small businesses, that enroll and qualify. Additionally, this proposed toll adjustment preserves passenger E-ZPass discount and commuter programs. For certain classes of customers (passenger vehicles- classes 2L, 3L, 4L, commercial vehicles- class 2H) existing toll rates will remain unchanged. The fee for the Annual Permit Plan, which allows free travel on the controlled portion of the Thruway System for the first 30 miles of every trip, will also remain unchanged. Further, the Thruway is a vital transportation corridor for both intrastate and interstate commerce. Failure to properly maintain the highway could negatively affect all of New York State, including small businesses and local governments. The Thruway System is a user fee supported system. Therefore, only those who use the Thruway System are affected by the toll adjustment.

#### 2. Compliance requirements:

There are no reporting or recordkeeping requirements necessary to comply with this rule.

#### 3. Professional services:

There are no professional services that a small business or local government is likely to need to comply with this rule.

#### 4. Compliance costs:

Costs to regulated parties will vary as the Authority employs a multi-classification system for tolls that takes into consideration vehicle class, based upon axles and height, and distance traveled on the Thruway System. Under the proposed plan, tolls for passenger vehicles (class 2L, 3L, 4L) and certain commercial vehicles (class 2H) will remain unchanged. Under the proposed plan, the cash toll for a tractor trailer (class 5H), the most common commercial vehicle, generally will increase by 10.76 cents per mile and the E-ZPass rate will increase by 10.22 cents per mile.

For example, a passenger vehicle paying cash traveling between Exit 24 (Albany) and Exit 25 (Schenectady) currently pays \$0.30, and will remain unchanged. Please note, tolls are calculated by multiplying the distance traveled by the per-mile cost and rounded to the nearest nickel for cash tolls. The same trip with E-ZPass currently costs \$0.29 and will remain unchanged. For participants in the Annual Permit Plan, this trip is within thirty miles and therefore has no additional charge. A commercial vehicle (Tractor Trailer-Class 5H) pay-

ing cash for the same trip currently pays \$1.45 and will pay \$2.10 upon adoption of the proposed toll adjustment. With E-ZPass, the same commercial vehicle currently pays \$1.38 and will pay \$2.00 upon adoption of the proposed toll adjustment. A passenger vehicle traveling between Exit 24 (Albany) and Exit 50 (Williamsville) currently pays \$12.85 if paying by cash and \$12.21 if using E-ZPass. These rates will remain unchanged. A commercial vehicle (Tractor Trailer-Class 5H) paying cash for the same trip currently pays \$65.15 and will pay \$94.45 upon adoption of the proposed toll adjustment. With E-ZPass, a commercial vehicle currently pays \$61.89 and will pay \$89.73 upon adoption of the proposed toll adjustment.

5. Economic and technological feasibility:

Technological feasibility is not applicable to the proposed rule. Economic feasibility cannot be assessed as outlined in responses 1 and 4 above.

6. Minimizing adverse impact:

The Authority is mindful of all people who use the Thruway, including those who use the Thruway to commute to work for small businesses and local governments. The Authority encourages all customers to sign up for E-ZPass to receive a discount. This proposed toll adjustment preserves the commercial E-ZPass and volume discounts, which are available to all Authority commercial customers, including small businesses, that enroll and qualify. Additionally, this proposed toll adjustment preserves passenger E-ZPass discount and commuter programs. For certain classes of customers (passenger vehicles-classes 2L, 3L, 4L, commercial vehicles- class 2H) existing toll rates will remain unchanged. The fee for the Annual Permit Plan, which allows free travel on the controlled portion of the Thruway System for the first 30 miles of every trip, will also remain unchanged. Further, the Thruway is a vital transportation corridor for both intrastate and interstate commerce. Failure to properly maintain the highway could negatively affect all of New York State, including small businesses and local governments.

7. Small business and local government participation:

The Authority will be conducting an extensive public outreach process as part of this toll adjustment, including publication in the State Register pursuant to SAPA and publication in two newspapers of daily circulation in each of the areas where public hearings are to be held pursuant to Public Authorities Law Section 2804. In addition to holding three public hearings to be held across the State, the Authority also plans to accept public comment via mail or electronic mail until at least five days after the final public hearing is held. This will permit any interested party, including small businesses and local governments to participate in the rule making process.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

An estimate as to the number of rural areas that will be affected by the toll adjustment cannot be provided. However, the Authority is mindful of all people who use the Thruway, including those who use the Thruway to commute to work in rural areas. The Authority encourages all customers to sign up for E-ZPass to receive a discount. This proposed toll adjustment preserves the commercial E-ZPass and volume discounts, which are available to all Authority commercial customers, including small businesses, that enroll and qualify. Additionally, this proposed toll adjustment preserves passenger E-ZPass discount and commuter programs. For certain classes of customers (passenger vehicles- classes 2L, 3L, 4L, commercial vehicles- class 2H) existing toll rates will remain unchanged. The fee for the Annual Permit Plan, which allows free travel on the controlled portion of the Thruway System for the first 30 miles of every trip, will also remain unchanged. Further, the Thruway is a vital transportation corridor for both intrastate and interstate commerce. Failure to properly maintain the highway could negatively affect all of New York State, including rural areas. The Thruway System is a user fee supported system. Therefore, only those who use the Thruway System are affected by the toll adjustment.

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

There are no reporting, recordkeeping or professional service requirements necessary to comply with this rule.

3. Costs:

Costs to regulated parties will vary as the Authority employs a multi-classification system for tolls that takes into consideration vehicle class, based upon axles and height, and distance traveled on the Thruway System. Under the proposed plan, tolls for passenger vehicles (class 2L, 3L, 4L) and certain commercial vehicles (class 2H) will remain unchanged. Under the proposed plan, the cash toll for a tractor trailer (class 5H), the most common commercial vehicle, generally will increase by 10.76 cents per mile and the E-ZPass rate will increase by 10.22 cents per mile.

For example, a passenger vehicle paying cash traveling between Exit 24 (Albany) and Exit 25 (Schenectady) currently pays \$0.30, and will remain unchanged. Please note, tolls are calculated by multiplying the distance traveled by the per-mile cost and rounded to the nearest nickel for cash tolls. The same trip with E-ZPass currently costs \$0.29 and will remain unchanged. For participants in the Annual Permit Plan, this trip is within thirty miles and therefore has no additional charge. A commercial vehicle (Tractor Trailer-Class 5H) paying cash for the same trip currently pays \$1.45 and will pay \$2.10 upon adoption of the proposed toll adjustment. With E-ZPass, the same commercial vehicle currently pays \$1.38 and will pay \$2.00 upon adoption of the proposed toll adjustment. A passenger vehicle traveling between Exit 24 (Albany) and Exit 50 (Williamsville) currently pays \$12.85 if paying by cash and \$12.21 if using E-ZPass. These rates will remain unchanged. A commercial vehicle (Tractor Trailer-Class 5H) paying cash for the same trip currently pays \$65.15 and will pay \$94.45 upon adoption of the proposed toll adjustment. With E-ZPass, a commercial vehicle currently pays \$61.89 and will pay \$89.73 upon adoption of the proposed toll adjustment.

4. Minimizing adverse impact:

The Authority is mindful of all people who use the Thruway, including those who use the Thruway to commute to work in rural areas. The Authority encourages all customers to sign up for E-ZPass to receive a discount. This proposed toll adjustment preserves the commercial E-ZPass and volume discounts, which are available to all Authority commercial customers, including small businesses, that enroll and qualify. Additionally, this proposed toll adjustment preserves passenger E-ZPass discount and commuter programs. For certain classes of customers (passenger vehicles- classes 2L, 3L, 4L, commercial vehicles- class 2H) existing toll rates will remain unchanged. The fee for the Annual Permit Plan, which allows free travel on the controlled portion of the Thruway System for the first 30 miles of every trip, will also remain unchanged. Further, the Thruway is a vital transportation corridor for both intrastate and interstate commerce. Failure to properly maintain the highway could negatively affect all of New York State, including rural areas.

5. Rural area participation:

The Authority will be conducting an extensive public outreach process as part of this toll adjustment, including publication in the State Register pursuant to SAPA and publication in two newspapers of daily circulation in each of the areas where public hearings are to be held pursuant to Public Authorities Law Section 2804. In addition to holding three public hearings to be held across the State, the Authority also plans to accept public comment via mail or electronic mail until at least five days after the final public hearing is held. This will permit any interested party, including those in rural areas, to participate in the rule making process.

**Job Impact Statement**

1. Nature of impact:

The toll adjustment is designed, among other things, to support the Authority's multi-year \$1.5 billion capital program. According to data from the Federal Highway Administration (FHWA) and the White House Council of Economic Advisors (CEA), each \$1 billion of highway investment supports approximately 13,000 full-time jobs. Applying the FHWA and CEA statistics, it is estimated that the multi-year capital plan will support approximately 19,500 full-time jobs over the course of the multi-year capital plan.

2. Categories and numbers affected:

According to data from the Association of General Contractors, for

every \$1 billion of highway investment approximately 4,400 Direct jobs, 2,100 Indirect jobs and 6,500 Induced jobs are supported. Direct jobs are those held by workers employed at the highway construction site, including laborers, specialists, engineers and managers. Indirect jobs are those held by workers in industries that supply highway construction manufacturers with materials, including those involved in lumber, steel, concrete and cement products, and by offsite construction industry workers, including administrative, clerical and managerial workers. Induced jobs are those jobs supported throughout the economy when highway construction industry employees spend their earnings.

3. Regions of adverse impact:

Not applicable.

4. Minimizing adverse impact:

Not applicable.

5. Self-employment opportunities:

Not applicable.

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## Workers' Compensation Board

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### NOTICE OF ADOPTION

#### Medical, Podiatry, Chiropractic and Psychology Fee Schedules

**I.D. No.** WCB-15-12-00010-A

**Filing No.** 527

**Filing Date:** 2012-06-01

**Effective Date:** 2012-06-20

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

**Action taken:** Amendment of sections 329.3, 333.2, 343.2 and 348.2 of Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 13(a), 13-k, 13-l, 13-m and 117(a)

**Subject:** Medical, Podiatry, Chiropractic and Psychology Fee Schedules.

**Purpose:** Adopt updated Medical, Podiatry, Chiropractic and Psychology Fee Schedules.

**Text or summary was published** in the April 11, 2012 issue of the Register, I.D. No. WCB-15-12-00010-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Heather MacMaster, Associate Attorney, NYS Workers' Compensation Board, 20 Park Street, Office of General Counsel, Albany, NY 12207, (518) 486-9564, email: regulations@wcb.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.