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.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New Rule 359: Role of Probation in Youth Part of Superior Court

I.D. No. CJS-32-18-00004-P

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

Proposed Action: Repeal of Appendix H-10; addition of new Appendix H-10 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 243(1), 257(1), (6)(a) and (b)

Subject: New Rule 359: Role of Probation in Youth Part of Superior Court.

Purpose: Update job specifications and required knowledge, skills, and abilities for probation professionals employed by localities.

Substance of proposed rule (Full text is posted at the following State website: http://www.criminaljustice.ny.gov/): These proposed amendments enact a new Appendix H-10, entitled "Standard Specifications for Professional Probation Positions" which is referenced in Title 9 NYCRR Part 347, the Division of Criminal Justice Services (DCJS) Probation Management Rule, specifically Rule § 347.4(f). By repealing and adding a new Appendix H-10, it updates, clarifies, and strengthens regulatory provisions to accurately reflect current duties and responsibilities, and required knowledge, skills, and abilities of probation professionals. Through updated education and experience requirements in the job specifications, these amendments promote the hiring of appropriate candidates, as well as the professional development and growth of qualified probation professionals. It also provides clear paths of promotional and open competitive ascendancy for qualified probation professionals into leadership positions, while creating opportunities for a broadened pool of candidates eligible for hiring and/or promotion, as applicable.

Revision of Appendix H-10 is necessary to reflect changes in the duties and responsibilities of probation professionals since the existing Appendix was last updated, several decades ago. These revisions also update typical job duties to incorporate best practices in probation and community corrections (e.g. risk/need assessments and cognitive behavioral interventions) which have been developed and supported by research. The revisions further update the required knowledge, skills, and abilities of probation professionals in performance of their increasingly complex work, including investigation and supervision of an increased number of specialized populations, including, but not limited to, young offenders, criminal justice involved females, sex offenders, offenders with mental health diagnoses, DWI offenders.

These amendments also recognize the recent change to Executive Law (EL) § 257(6)(a), which requires non-competitive appointment of probation directors in jurisdictions outside New York City (NYC) with populations over 300,000 (formerly 400,000) and requires one Deputy Director to be classified non-competitively where a jurisdiction's population is over 300,000.

Below is a summary of changes for each subject job title in the revised Appendix as compared to the existing Appendix:

The current version of Appendix H-10 contains fourteen job specifications for probation professional positions ranging from Probation Assistant to Probation Director IV. Changes include:

• The existing Appendix classifies probation departments by number of Probation Officers. In contrast, this proposal groups probation departments as follows, taking into consideration staffing levels and (at certain levels) county population as well:

Proposed Probation Department Groupings

Group A — Employs nineteen or fewer professional probation officer (PO) positions at various levels.

Group B — Employs twenty to forty-nine professional PO positions at various levels.

Group C — Employs fifty or more probation professionals at various levels in a jurisdiction with a population less than 400,000.

OR

Where the population of the jurisdiction served is greater than 300,000 and less than 400,000.

Group D — Serves a jurisdiction having a population of 400,000 or more.

• The current Appendix contains fourteen job specifications for probation professional positions ranging from Probation Assistant to Probation Director IV. This proposal adds and retitles certain positions, including adding and/or updating the Distinguishing Features of the Class, Typical Work Activities, Full Performance Knowledge Skills, and Abilities of all positions, and makes other changes as follows:

Probation Assistant – updates phrasing of the Open Competitive Minimum Qualifications (OCMQ).

Probation Officer 1 Trainee - updates OPMQ and includes a Promotion Qualification (PQ) for persons serving in title of Probation Assistant who also meet educational requirements for the position.

Probation Officer 1 - updates phrasing of the OCMQ.

Probation Officer 2/Senior Probation Officer - updates OCMQ and PQ. In the OCMQ, previous experience as a Probation Officer was relaxed from three years to two years. Previous experience as a Probation Officer was relaxed in the PQ from two years to one year. These changes will expand the pool of eligible candidates.

Probation Supervisor 1 - updates OCMQ. In the OCMQ, two years' experience as a Probation Officer II is now included as acceptable experience.

Probation Supervisor 2 - updates OCMQ and PQ.

Deputy Probation Director (Group B)- While a Deputy Director II position was referenced in the current Appendix as qualifying experience for a higher title, a job specification for the position does not currently exist and has been added with OCMQ and PQ.

Deputy Probation Director (Group C) – Formerly Deputy Probation Director III- updates OCMQ and PQ. As this title may be used in all Group C jurisdictions, the proposed language specifies that OCMQ are to be used for appointment to positions in the non-competitive (NC) class (applies to counties with population greater than 300,000) or by open competitive (OC) appointment (applies to counties with population up to 300,000), while the PQ are to be used for appointment to a competitive class position (applies to counties with population up to 300,000). Replaces general language of "Three (3) years experience in a supervisory or administrative position having responsibility for more than 15 probation officers in a probation agency" found in the OCMQ with specific references to time served in various probation professional titles.

Assistant Probation Director (Group D) – Formerly Assistant Probation Director IV- updates OCMQ and PQ. Replaces general language of "Three (3) years experience in a supervisory or administrative position having responsibility for more than 15 probation officers in a probation agency" found in the OCMQ with specific references to time served in various probation professional titles. In the PQ, required experience as a Probation Supervisor I has been relaxed from three years to two years.

Deputy Probation Director (Group D) – Formerly Deputy Probation Director IV- updates OCMQ and PQ. Specifies that OCMQ are to be used for appointment to positions in the NC class, while the PQ are to be used for appointment to a competitive class position. Replaces general language of "Four (4) years experience in a supervisory or administrative position having responsibility for more than 35 probation officers in a probation agency" found in the OCMQ with specific references to time served in various probation professional titles. Adds service of three (3) years as a Probation Supervisor I as acceptable PQ experience.

Probation Director (Group A) – Formerly Probation Director I- updates phrasing of the OCMQ and PQ. Rather than four years experience as a probation officer found in the current Appendix, the OCMQ in the proposed revision requires two years of experience as a Probation Supervisor I. Similarly in the PQ, experience as a probation officer or senior probation officer/probation officer II was replaced by a minimum requirement of one year experience as a Probation Supervisor I. Experience as a Probation Supervisor was determined by the workgroup to be essential experience for a candidate for this position.

Probation Director (Group B) – Formerly Probation Director II- updates OCMQ and PQ. In the OCMQ, the general phrasing of "Three (3) years experience in a supervisory or administrative position in a probation agency", has been replaced with specific references to time served in various probation professional titles. Two years of experience as a Probation Supervisor I has been added as acceptable minimum PQ experience. These changes ensure that candidates have appropriate experience in the field.

Probation Director (Group C) – Formerly Probation Director III- updates OCMQ and PQ. In the existing Appendix, both Probation Director III and Probation Director IV were described in the same job specification. The proposed revision, splits these titles into distinct job specifications. As this title shall be used in both jurisdictions with populations of 300,000 and below meeting minimum staffing level requirements or with populations greater up to 399,999, new language specifies that the OCMQ are to be used for appointment to positions in the NC class (applies to counties with populations greater than 300,000) or for competitive appointment (applies to other Group C counties with population up to 300,000), while the PQ are to be used for interagency appointment to the competitive class position (applies to Group C counties with population up to 300,000). The proposed revision cites experience in specific probation professional titles to ensure that candidates have appropriate experience in the field.

Probation Director (Group D) – Formerly Probation Director IV- updates OCMQ. In the existing Appendix H-10, both Probation Director III and Probation Director IV were described in the same job specification. The proposed revision, splits these titles into distinct job specifications. The proposed revision cites experience in specific probation professional titles. These changes ensure that candidates have appropriate experience in the field.

Probation Officer 1 (Community Liaison) - Formerly Probation Officer (Minority Group Specialist)- updates OCMQ. Through consultation with the NYS Department of Civil Service and the Division of Human Rights, previous language which stated that the position addressed the under representation of minorities in their respective local probation departments has been eliminated to reflect case law in this area. Among the distinguishing features is language"…identifying and relating to specific problems experienced by a particular minority group(s)." Qualifications detail special education and other experiential requirements, rather than racial or ethnic heritage. This change will still achieve the needs of jurisdictions interested in a specialized title.

Probation Officer 1 (Other Language) - Formerly Probation Officer (Spanish Speaking) -updates phrasing of OCMQ. The re-titling of this position allows local jurisdictions the authority to create and classify positions of Probation Officer I which also require fluency in a language other than the English language in order to enhance probation services and take into account community needs. This additional language skill would be evaluated during the probationary term. This change provides greater flexibility to localities by letting them establish "other language" positions which suit the needs of the community.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin-Locklear, Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: dcjslegalrulemaking@dcjs.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority:

Executive Law (EL) § 243 establishes that the Division of Criminal Justice Services (DCJS) Office of Probation and Correctional Alternatives (OPCA) shall exercise general supervision over the administration of probation services throughout the state, and further establishes the authority of DCJS to promulgate rules regulating methods and procedures of the administration of probation services. Further, EL § 257(1) recognizes the authority of DCJS to require additional minimum qualifications for probation personnel and set forth procedures to be followed in appointment of all probation personnel. EL § 257(6)(b) also recognizes DCJS' statutory rulemaking authority.

2. Legislative objectives:

Statutory law establishes the clear authority of DCJS to establish minimum standards governing probation professional positions. EL § 257(1) further states that, "Probation officers shall be selected because of definite qualifications as to character, ability and training, and primarily with respect to their capacity for rightly influencing human behavior." The existing Appendix H-10 has not been updated in decades, and the proposed amendments will reflect the current duties and responsibilities, as well as the required knowledge, skills, and abilities of probation professionals to perform their duties in the criminal and juvenile justice systems.

3. Needs and benefits:

Rule amendments are necessary to reflect changes in the duties and responsibilities of probation professionals which have occurred since the existing Appendix was last updated decades ago. The proposed revisions also update typical job duties to incorporate best practices in probation and community corrections which have been developed and supported by research. The proposed revision further updates the required knowledge, skills, and abilities of probation professionals in performance of this work. The proposed changes are the culmination of the efforts of a statewide Probation Professional Qualifications, Recruitment, and Retention Workgroup comprised of probation professionals from urban, rural, and suburban counties across New York State (NYS), NYS Department of Civil Service (NYS Civil Service) staff, DCJS staff, and county human resource personnel.

Importantly, workgroup membership included representatives of the New York State Probation Commission, the Council of Probation Administrators (COPA), and the New York State Probation Officers Association (POA) to ensure input from those organizations. The State Probation Commission serves an advisory role to the Director of DCJS' Office of Probation and Correctional Alternatives (OPCA), while COPA and POA are professional probation associations. In addition to workgroup meetings, the proposed revisions, were informed by a statewide job study of all titles found in the existing Appendix, which surveyed all incumbents in the positions. NYS Civil Service further conducted regional focus groups to gather information from incumbents in the various probation professional titles, with participation from urban, suburban, and rural jurisdictions. Additionally, NYS Civil Service representatives visited several probation departments in further developing their recommendations.

Prior drafts of the proposed amendments were shared with all probation directors in June 2015 and December 2016. Responses were received directly from a limited number of probation directors, as well as from COPA. Feedback received from the field was discussed with the State Probation Commission in meetings held on November 19, 2015 and April 19, 2016. Feedback from these sources resulted in several changes being made. There were limited instances where feedback was received on points which had already been considered by the workgroup in the development of the revised specifications. Additionally, a draft of the proposed revision was provided to county civil service agencies by the New York State Department of Civil Service. Responses received were generally procedural, and did not require further revision to the proposal. DCJS, however, did make additional minor changes to the most recently circulated draft

version of this Appendix to provide greater clarity and flexibility in language consistent with our agency intent.

4. Costs:

a. Local civil service agencies may incur minor administrative expenses, resulting in the reclassification of positions, and updating of local civil service exam announcements which will occur following implementation of this revision. These functions are considered typical business activities of a local civil service agency.

b. No additional costs are anticipated to be incurred by DCJS. Upon adoption of the proposed amendments, NYS Civil Service will develop and administer updated examinations to reflect the resulting changes to the probation professional job specifications. However, administrative work is a typical business function of that agency and therefore no additional costs are anticipated.

c. DCJS anticipates that the proposed revision of general group staffing will result at most with minimal costs to probation departments.

5. Local government mandates:

Upon the adoption of the revised job specifications, local civil service agencies will need to review and reclassify positions as necessary to reflect such changes. This is a routine business function of local civil service agencies which will result in only minor administrative costs. The proposed Appendix H-10 would clarify that a Supervisory position is required for every 4-7 probation professionals, even in the Group A departments, was determined to be important for effective management and delivery of probation services, as well as succession planning and therefore incorporated into this proposed new Appendix-10. . No probation department or civil service agency raised objection to changing existing permissive language in this area. This specific change would impact two probation departments to establish a Probation Supervisor position, reclassify another existing position, or request a waiver from DCJS.

6. Paperwork:

DCJS does not anticipate the need for any new reporting requirements, departments, forms, or other paperwork that would be required of local probation. Upon adoption, local civil service agencies will need to issue updated job specifications/classifications, revised examination announcements, and other documents, to reflect the resulting changes as necessary.

7. Duplication:

These amendments do not duplicate any other existing State or Federal requirements.

8. Alternatives:

This proposal takes into account the extensive efforts of the statewide workgroup, NYS Civil Service, DCJS, and probation professional organizations, and reflects input received from probation professionals across the state. Several alternatives were considered throughout this process. Prior drafts of the revised job specifications were distributed to all Probation Directors in June 2015 and December 2016, and was subsequently discussed with the Probation Commission at two Commission meetings. The input received from that dissemination and discussion was taken into consideration, and resulted in the incorporation of certain changes. The modifications to job specifications ensure appropriate experience and qualifications for probation professionals as they enter the field, and ascend through the ranks, while providing flexibility in hiring/promoting to localities through broadening of the candidate pools. Maintaining the current Appendix with no changes is not in the best interest of the field or localities, given the dated material contained therein, and the narrow hiring/promotional requirements which in many cases would still require localities to obtain waivers from DCJS to fill professional probation positions. Repealing the current Appendix H-10 without issuing a revision was deemed inappropriate as it would abdicate our statutory authority to impose additional qualifications and provide no assurance that qualified persons would be placed in probation professional positions, and would lead to inconsistency across the state, thereby creating obstacles to fill positions through transfer or hiring of probation professionals from another jurisdiction.

9. Federal standards:

None.

10. Compliance schedule:

DCJS, in consultation with NYS Civil Service has determined that a minimum of six months is appropriate as an effective implementation date of these revisions to the Appendix and DCJS will solicit their input again prior to final adoption.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed amendments affect all local probation departments in New York State (NYS) and therefore the 57 counties outside of New York City (NYC), as well as NYC. The proposed amendments do not have any impact on small businesses.

2. Compliance requirements:

All local civil service agencies will need to review the job specifications contained within the amendments and proceed with reclassification where necessary, and upon adoption will further need to prepare and issue updated exam announcements reflective of the revisions. Through existing statutory and regulatory submission of an Annual Probation Plan, each probation director certifies compliance with probation laws and applicable rules and regulations, including Appendix H-10.

3. Professional services:

It is not anticipated that any professional services will be required to comply with the proposed regulatory changes.

4. Compliance costs:

The proposed revisions will not result in any additional costs to small businesses. The aforementioned activities which will be required by local civil service agencies are routine business activities for such agencies, and only minor additional costs are anticipated. The proposed revision of general group staffing should result at most with minimal costs to probation departments. Two jurisdictions which do not currently employ a Probation Supervisor would need to add a position, reclassify another existing position, or in the alternative request a waiver from DCJS. However, neither of these two probation departments nor their local civil service agencies communicated opposition of having a Supervisor position after receiving prior drafts of the proposed new Appendix H-10. Clarifying that a Supervisory position is required for every 4-7 probation professionals was determined to be important for effective management and delivery of probation services, as well as succession planning and therefore incorporated into this proposed new Appendix-10.

5. Economic and technological feasibility:

The proposed amendments consist of an adoption of a new Appendix H-10, and does not place any new economic or technological requirements on localities.

6. Minimizing adverse impact:

DCJS does not anticipate that the proposed changes will have any adverse impact on local governments or small businesses. DCJS remains steadfast in its efforts to minimize adverse impact of the existing rule and any proposed changes upon local government. The revision provides clear paths of promotional and open competitive ascendancy for qualified probation professionals into leadership positions, while also creating the opportunity for a broadened pool of persons eligible for selection and promotion for localities to hire/promote from thereby minimizing any potential adverse impact.

The proposed changes are the culmination of the efforts of a statewide Probation Professional Qualifications, Recruitment, and Retention Work group comprised of probation professionals from urban, rural, and suburban counties, NYS Civil Service staff, DCJS staff, and county human resource personnel. Importantly, workgroup membership included representatives of the State Probation Commission, the NYS Council of Probation Administrators (COPA), and the NYS Probation Officers Association (POA). The Probation Commission serves an advisory role to the Director of DCJS' Office of Probation and Correctional Alternatives (OPCA), while COPA and POA are professional probation associations. This collaboration was critical in developing a revised Appendix which both ensures the appropriate experience and qualifications of persons being hired or promoted by probation departments, while providing localities greater flexibility through broadened pools of eligible candidates.

In addition to workgroup meetings, the proposed revisions were informed by a statewide probation job study of all listed titles in the Appendix, which surveyed all incumbents in these positions. NYS Civil Service further conducted regional focus groups to gather information from incumbents in the various probation professional titles, with participation from urban, suburban, and rural jurisdictions. Additionally, NYS Civil Service representatives visited a few selected probation departments in further developing their recommendations. Prior drafts of the proposed amendments were shared with all probation directors in June 2015 and December 2016. Responses were received directly from a limited number of probation directors, as well as from COPA. Feedback from these sources resulted in several changes being made. There were limited instances where feedback was received on points which had already been considered by the workgroup in the development of the revised specifications, and therefore did not result in further changes.

In developing the proposed amendments, the workgroup also took into consideration the pattern of DCJS waivers previously granted to probation departments regarding minimum qualifications for certain probation professional positions, and where possible incorporated the flexibility granted into the proposed revisions.

7. Small business and local government participation:

The proposed amendments do not involve, and will have no impact on small businesses. The proposed amendments were developed through a variety of sources, including the aforementioned workgroup, a statewide job study survey of probation professionals, and focus groups. The NYS Civil Service also conducted site visits to certain probation departments to interview probation professionals. Further, prior drafts of the proposed amendments were shared with all probation directors in June 2015 and

December 2016. Feedback was received from a number of probation directors, as well as from COPA. This feedback was further discussed with the State Probation Commission in meetings held on November 19, 2015 and April 19, 2016. All input, feedback, and discussion were taken into consideration in developing the proposed amendments. As such, ample opportunity was provided to local government to review and participate in the development of the proposed amendments. Additionally, a draft of the proposed revision was provided to county civil service agencies by the New York State Department of Civil Service. Responses received were generally procedural, and did not require further revision to the proposal. DCJS, however, did make additional minor changes to the most recently circulated draft version of this Appendix to provide greater clarity and flexibility in language consistent with our agency intent.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Executive Law § 481(7), defines rural areas as ''counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of two hundred thousand or greater population, 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.'' There are 44 counties in New York State (NYS) that have populations of less than 200,000 people." Accordingly, 44 local probation departments are located in rural areas.

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

With limited exception, DCJS does not anticipate that the proposed revision will result in any changes to reporting, recordkeeping and other compliance requirements of rural counties. Two jurisdictions which do not currently employ a Probation Supervisor would need to add a position, reclassify another existing position, or in the alternative request a waiver from DCJS. However, neither of these two probation departments nor their local civil service agencies communicated opposition of having a Supervisor position after receiving prior drafts of the proposed new Appendix H-10. Clarifying that a Supervisory position is required for every 4-7 probation professionals, even in these smallest departments, was determined to be important for effective management and delivery of probation services, as well as succession planning and therefore incorporated into this proposed new Appendix-10.

All local civil service agencies, regardless of urban, suburban, or rural settings, will need to review the titles found in the amended Appendix H-10: Standard Specifications for Professional Probation Positions and proceed with review and update, including reclassification of positions where necessary. Upon adoption, local civil service agencies will further need to prepare and issue updated exam announcements reflective of the revisions. No professional services are required for these activities.

3. Costs:

Only minor administrative costs will be experienced by rural, and other, areas resulting from proposed regulatory changes. As noted above, local civil service agencies will need to update professional probation position specifications and reclassify titles where necessary upon final adoption. These tasks are routine functions of a local civil service agency and may result in minor administrative costs. The proposed revision of general group staffing should result at most with minimal costs to probation departments.

4. Minimizing adverse impact:

DCJS does not anticipate that the proposed changes will have any adverse impact on rural areas. For many professional probation positions utilized in rural areas, the proposed amendments provide greater flexibility in hiring/promotion by broadening the pool of eligible candidates wherever possible. For the smallest probation departments (formerly referred to as Group I Departments) there will be an added minimum qualification of previous experience as a Probation Supervisor to be eligible for the position of Probation Director (Group A) in the re-groupings found in the proposed amendments. The four (former Group 1) departments did not object regarding this added qualification. Further, the NYS Council of Probation Administrators (COPA) did not express any concern regarding this change in their response to the prior DCJS draft sent to the field. This added qualification was deemed of critical importance by the statewide Probation, Professional Qualifications, Recruitment, and Retention Workgroup, which included representatives of probation departments in rural counties, the State Probation Commission, COPA, and the NYS Probation Officers Association (POA), given the increasingly complex work managed by probation directors in the criminal and juvenile justice systems even in the smallest jurisdictions. In addition to filling the positions via open competitive or promotional examination, the NYS Department of Civil Service (NYS Civil Service)is available to offer guidance to localities regarding the opportunity to fill these positions through transfer, and other means as authorized in Civil Service Law such as non-competitive examination, thereby minimizing any adverse impact which may occur. Following implementation of the revised Appendix H-10, a local application for waiver still can be submitted to DCJS should a jurisdiction require relief from that added qualification.

5. Rural area participation:

Several sources were used in the development of the proposed amendments, including the aforementioned workgroup, a statewide job study survey of probation professionals administered by NYS Civil Service, focus groups, and visits by Civil Service Staff to several probation departments. During its' tenure, probation directors and other probation professionals from rural counties, counties with rural areas, as well as DCJS staff with extensive experience in rural probation departments actively participated in the development of the proposed amendments. Further, participation of COPA and POA representatives ensured a statewide perspective in the process. Probation professionals in rural areas responded to the survey, and participated in the focus groups. Further, prior drafts of the proposed amendments were shared with all probation directors in June 2015 and December 2016, including those in rural areas. Feedback received resulted in certain changes being made to address concerns expressed by constituents. This feedback has been discussed with the State Probation Commission at two Commission meetings. Additionally, a draft of the proposed revision was provided to county civil service agencies by the New York State Department of Civil Service. Responses received were generally procedural, and did not require further revision to the proposal. DCJS, however, did make additional minor changes to the most recently circulated draft version of this Appendix to provide greater clarity and flexibility in language consistent with our agency intent.

Job Impact Statement

1. Nature of impact:

The proposed amendments make substantive and technical changes to Appendix H-10, entitled "Standard Specifications for Professional Probation Positions" which is referred to in DCJS' Probation Management Rule, 9 NYCRR Part 347, specifically § 347.4(f). Overall, it updates, clarifies, and strengthens regulatory provisions to accurately reflect current duties and responsibilities, and required knowledge, skills, and abilities of probation professionals. Through updated education and experience requirements in the job specifications found in the Appendix H-10, the amendments promote the hiring of appropriate candidates, as well as the professional development and growth of qualified probation professionals. The revisions also establish clear paths of promotional and open competitive ascendancy for qualified probation professionals into leadership positions as applicable, while also creating the opportunity for a broadened pool of persons eligible for hire and/or promotion to other probation professional positions. The amendments also recognize the 2015 change to Executive Law § 257(6)(a), which requires non-competitive appointments of probation directors in counties (outside New York City) with populations over 300,000 (formerly 400,000).These changes will not result in any impact to probation professionals serving in their current titles. Upon adoption of this revised Appendix and its' effective date, persons currently serving in one of the Professional Probation Positions will continue to hold their positions without further examination. The Minority Group Specialist position found in the existing Appendix has been retitled Probation Officer 1 (Community Liaison). Through consultation with the NYS Department of Civil Service (NYS Civil Service) and the NYS Division of Human Rights, previous language which stated that the position addressed the under representation of minorities in their respective local probation departments has been eliminated to reflect case law in this area. The distinguishing features of the class for the new title includes "…identifying and relating to specific problems experienced by a particular minority group(s)." Use of this title is permissible, as the qualifications detail special education and other experiential requirements, rather than racial or ethnic heritage. As such, use of the new title will achieve the needs of the jurisdictions which utilize this specialized title. Additionally, the previous title of Probation Officer (Spanish Speaking) has been retitled as Probation Officer 1 (Other Language) which allows local jurisdictions the authority to create and classify positions of Probation Officer I which also require fluency in a language other than the English language in order to enhance probation services and take into account community needs. This additional language skill would be evaluated during the probationary term. This "other language" option will also be available to positions who are the primary probation professionals communicating with the population served.

2. Categories and numbers affected:

The proposed amendments do not affect the more than 2,500 probation professionals currently serving in positions enumerated in the existing Appendix as they will be "held harmless" and will continue to hold their positions without further examination. As to existing promotional and open competitive civil service lists which may exist, individuals on current eligible lists that meet or exceed the revised qualifications may remain

eligible for appointment. However, individuals who do not meet or exceed the revised qualifications will be restricted from appointment and will need to qualify for and participate in a new examination to be eligible for appointment. NYS Civil Service will be available to assist local civil service agencies with any questions relative to an individual's eligibility for appointment. Examinations for positions responsible for probation services are typically offered on an annual basis providing interested probation professionals the ability to qualify for and compete for appointment.

3. Regions of adverse impact:

The revised Appendix will have no adverse or disproportionate impact on jobs or employment opportunities in any region of NYS. However, the smallest probation departments in the state (formerly referred to as Group I Departments) will have an added minimum qualification of previous experience as a Probation Supervisor to be eligible for the position of Probation Director (Group A) in the re-groupings found in the proposed amendments. The four (former Group I) departments did not express any concern regarding this added qualification in response to the draft previously sent to all probation directors by DCJS. Further, the NYS Council of Probation Administrators (COPA) did not express any concern regarding this change in their response to the prior DCJS draft sent to the field. This added qualification was deemed of critical importance by the workgroup, which included representatives of COPA, State Probation Commission, and the NYS Probation Officers Association (POA), given the increasingly complex work managed by probation directors in the criminal and juvenile justice systems even in the smallest jurisdictions, In addition to filling the positions via open competitive or promotional examination, NYS Civil Service is available to offer guidance to localities regarding the opportunity to fill these positions through transfer, and other means as authorized in Civil Service Law such as non-competitive examination, thereby minimizing any adverse impact which may occur. Following implementation of the revised Appendix, an application for waiver still can be submitted to DCJS should a jurisdiction require relief from that added qualification.

4. Minimizing adverse impact:

DCJS does not anticipate that these regulatory amendments will have an adverse impact on jobs or employment opportunities. The proposed changes are the culmination of the efforts of a statewide Probation Professional Qualifications, Recruitment, and Retention Workgroup comprised of probation professionals from urban, rural, and suburban counties, NYS Civil Service staff, DCJS staff, and county human resource personnel. Importantly, workgroup membership included COPA and POA representatives. The Probation Commission serves an advisory role to the Director of DCJS' Office of Probation and Correctional Alternatives (OPCA), while COPA and POA are professional associations which serve in advocacy roles for their members. In addition to workgroup meetings, the proposed revisions, were informed by a statewide job study of all Appendix titles which surveyed all incumbents in the positions. NYS Civil Service further conducted regional focus groups to gather information from incumbents in the various probation professional titles, with participation from urban, suburban, and rural jurisdictions. Additionally, NYS Civil Service representatives visited several selected probation departments in further developing their recommendations. Prior drafts of the proposed amendment were shared with all probation directors in June 2015 and December 2016. Responses were received directly from a limited number of probation directors, as well as from COPA. Feedback received from the field was discussed with the State Probation Commission in meetings held on November 19, 2015 and April 19, 2016. Feedback from these sources resulted in several changes being made. There were limited instances where feedback was received on points which had already been considered by the workgroup in the development of the revised specifications, and therefore did not result in further changes. Additionally, a draft of the proposed revision was provided to county civil service agencies by the New York State Department of Civil Service. Responses received were generally procedural, and did not require further revision to the proposal.

In addition to the open competitive and promotional opportunities described in Appendix H-10, NYS Civil Service is available to provide guidance to localities regarding other means of filling certain positions, including transfers and other options permissible in Civil Service law.

5. Self-employment opportunities:

Probation professionals are employed by New York's 58 probation departments (57 county-based and NYC), and as such, the proposed amendments do not involve self-employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Case Record Management

I.D. No. CJS-32-18-00005-P

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

Proposed Action: Amendment of sections 348.1, 348.4, 348.5, 348.6; addition of section 348.7 to Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1); Criminal Procedure Law, art. 722; Family Court Act, art. 3

Subject: Case Record Management.

Purpose: Update existing rule to reflect services which will be performed by probation departments as a result of Raise the Age Law.

Text of proposed rule: Subdivision (c) of section 348.1 of 9 NYCRR is amended to read as follows:

(c) Probation services include intake, investigation, supervision, *voluntary assessment and case planning services,* and any other special services.

Subdivisions (b) and (e) of section 348.4 of 9 NYCRR are amended to read as follows:

(b) The contents of the case record shall include information and/or documents of:

(1) Intake services, where applicable.

(2) Pretrial services, where applicable.

(3) Pre-dispositional services, where applicable.

(4) *Voluntary assessment and case planning services, where applicable.*

(5) [(4)] Arrest, complaint, appearance ticket, and any other legal information and/or documents obtained or generated.

(6)[(5)] Any probation investigation and report and related information and/or documents.

(7)[(6)] All probation supervision-related information and/or documents, including order and conditions, risk and needs assessment(s), applicable interstate/intrastate transfer records, case plan.

(8) [(7)] Any victim impact statement and information, where available.

(9) [(8)] All correspondence received relating to or associated with the case.

(e) Each probation department shall establish an index filing system for all cases which may be established and maintained in an automated system. The minimum data in any file shall include:

(1) Individual's name and date of birth.

(2) Identifying case information:

(i) Probation*, pre-dispositional supervision,* or interim probation supervision period.

(ii) Court Control/Criminal Justice Tracking Number.

(iii) New York State Identification (NYSID), where applicable.

(iv) Social Security number, where available.

(3) Type of complaint or conviction/adjudication.

(4) Court's disposition and date.

(5) [Probation discharge] *Discharge* date and type of discharge.

Sections 348.5- 348.6 of 9 NYCRR are renumbered Sections 348.6 -348.7 respectively.

New Section 348.5 to 9 NYCRR is added to read as follows:

§ 348.5 Investigation Record Keeping Requirements

Investigation records shall include the following:

(a) Court order for the Investigation.

(b) Supportive documentation in the preparation of the investigation including but not limited to:

(i) Accusatory instruments, indictment, and/or petition

(ii) Defendant/respondent statements

(iii) Victim statements

(iv) Arrest report(s)

(v) Related correspondence

(vi) Release of information requests and responses

(vii) Related records

(viii) Criminal history record information

(ix) Certificate of Conviction

(x) any investigation worksheet and/or notes

(c) Completed investigation report.

Subparagraphs (vi) and (vii) of paragraph 1 of subdivision (a) of Section 348.6 of 9 NYCRR are amended to read as follows:

(vi) any modification of case plan, conditions of probation*, pre-dispositional supervision,* or interim probation supervision and reclassification of the supervision level; and

(vii) summary of the use of graduated [sanctions] *responses*, any violation of probation*, pre-dispositional supervision,* or interim probation supervision, re-arrest/reconviction information, and any other probation and/or court action(s) and outcome(s).

Paragraphs 4-10 of subdivision (c) of Section 348.7 of NYCRR are renumbered paragraphs 5-11 respectively.

New paragraph 4 of subdivision (c) of Section 348.7 of 9 NYCRR is added to read as follows:

(4) Voluntary assessment and case planning services. When preparing a pre-sentence investigation report of any adolescent offender or juvenile offender, the probation department shall incorporate a summary of

any assessment findings, referrals and progress with respect to mitigating risk and addressing any identified needs. The department may make a recommendation regarding completion of the case plan to the Youth Part and provide such information as it shall deem relevant.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin-Locklear, Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: dcjslegalrulemaking@dcjs.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority:

Executive Law (EL) § 243 establishes that the Division of Criminal Justice Services (DCJS) Office of Probation and Correctional Alternatives (OPCA) shall exercise general supervision over the administration of probation services throughout the state, and further establishes the authority of DCJS to promulgate rules regulating methods and procedures of the administration of probation services. Further, EL§ 257 (6) (b) also recognizes DCJS' statutory rulemaking authority.

2. Legislative objectives:

Statutory law establishes the clear authority of DCJS to establish minimum standards governing probation practice. The proposed amendments to the Case Record Management rule will reflect the justice system process points created by or emphasized in "raise the age" legislation.

3. Needs and benefits:

Rule amendments are necessary to reflect changes in the record keeping function of the duties and responsibilities of probation professionals which will occurred due to "Raise the Age" legislation, effective October 1, 2018.

The proposed changes are the culmination of the efforts of a statewide Probation RTA Rule revision Workgroup comprised of probation professionals from urban, rural, and suburban counties across New York State (NYS) and DCJS staff.

Importantly, workgroup membership included representatives of the New York State Council of Probation Administrators (COPA), and the New York State Probation Officers Association (POA) to ensure input from those organizations. COPA and NYSPOA are professional probation associations. The proposed revisions evolved through a series of workgroup meetings.

Prior drafts of the proposed amendments were shared with all probation directors in March 2018. Responses were received directly from a limited number of probation directors, as well as from COPA. Feedback from these sources resulted in few changes being made. DCJS, however, did make additional minor changes to the most recently circulated draft version of this rule to provide greater clarity and flexibility in language consistent with our agency intent.

4. Costs:

a. Local probation departments will not incur any additional expenses due to the proposed revisions. As part of the State's efforts to streamline and support cost efficiencies in recordkeeping, DCJS-OPCA has long supported the deployment of web-based case management software, known as Caseload Explorer. Currently, 56 departments participate, and one additional department is in the process of implementation. As to any anticipated in-service costs of educating staff, DCJS believes orientation can be readily accomplished through memoranda and supervisory oversight without incurring any direct costs.

b. No additional costs are anticipated to be incurred by DCJS.

c. DCJS anticipates that the proposed revision of this rule will result in no costs to probation departments.

5. Local government mandates:

DCJS-OPCA always had agency rules governing Probation Case Record Management, and therefore DCJS does not anticipate that these new requirements will be burdensome. Upon the adoption of the revised job specifications, local probation departments will need to review local policy and adjust as necessary to reflect such changes. This is a routine business function of local probation departments which will result in only minor administrative costs.

6. Paperwork:

DCJS does not anticipate the need for any new reporting requirements, departments, forms, or other paperwork that would be required of local probation.

7. Duplication:

These amendments do not duplicate any other existing State or Federal requirements.

8. Alternatives:

This proposal takes into account the extensive efforts of the statewide workgroup, DCJS, and probation professional organizations, and reflects input received from probation professionals across the state. The input received from that dissemination and discussion was taken into consideration, and resulted in the incorporation of certain minor changes. The modifications to this rule ensures clarity for probation departments in handling of case records.

9. Federal standards:

None.

10. Compliance schedule:

Through prompt dissemination to staff of the new rule and its summary, local departments should be able to implement these amendments and comply with the provisions as soon as they are adopted.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed amendments affect all local probation departments in New York State (NYS) and therefor the 57 counties outside of New York City (NYC) as well as NYC. The proposed amendments do not have any impact on small business.

The Division of Criminal Justice Services (DCJS) does not anticipate that these new requirements will be burdensome upon probation departments as current regulation prescribes requirements for probation case record management.

2. Compliance Requirements:

This rule does not substantially change the methods of case record management, only some of the content as is necessary to conform with "Raise the Age" legislative changes that become effective October 1, 2018. There are no small business compliance requirements imposed by these proposed rule amendments.

3. Professional Services:

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

4. Compliance Cost:

DCJS does not foresee these reforms leading to any additional costs, and does not anticipate that these new requirements will be burdensome or require additional staffing above and beyond current needs.

Additionally, the Office of Probation and Correctional Alternatives (OPCA) within DCJS provided leadership in the development and deployment of Caseload Explorer case management software, which is streamlining paper requirements by avoiding duplication of effort. Currently, 57 probation departments use this case management software to achieve record-keeping cost efficiencies.

5. Economic and Technological Feasibility:

DCJS has supported the development and deployment of Caseload Explorer case management software for interested probation departments. DCJS does not anticipate any economic problems experienced by probation departments as a result of these rule changes. There are no economic or technological issues faced by small businesses as these proposed rules do not affect them.

6. Minimizing Adverse Impact:

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In September 2017, OPCA commenced the aforementioned RTA Rule Revision workgroup with representatives from across the state representing small, medium, and large jurisdictions including urban and rural jurisdictions; 2) In March 2018, OPCA circulated a refined draft to all probation directors/commissioners; and 3) throughout the Workgroup sessions, a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA), reviewed the proposed Rule and provided feedback.

7. Small Business and Local Government Participation:

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

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:

DCJS does not anticipate that the proposed revision will result in any changes to reporting, record keeping and other compliance requirements of rural counties. Probation departments are currently governed by existing rule. DCJS does not believe that these regulatory changes will prove difficult to achieve. There are no additional professional services necessitated in any rural area to comply with this rule. Through prompt dissemination to staff of this new rule and its summary, local probation departments should be able to implement these amendments and comply with the provisions as soon as they are adopted. This rule does not change the monthly workload reporting requirements to our state agency, DCJS.

3. Costs:

DCJS anticipates no additional costs in adhering to these regulatory amendments beyond what is currently required in law and regulation. As part of the State's efforts to streamline recordkeeping, avoid duplication and achieve cost savings, OPCA has supported the deployment of a web-based case management software, known as Caseload Explorer. Currently, 57 of 58 probation departments currently utilize and many rural counties benefit from this software. The one county that does not utilize the Caseload Explorer system will submit reports using its current system. Many rural counties are and will continue to benefit from this deployment.

Any anticipated in-service costs of educating staff, can be readily accomplished through memoranda and supervisory oversight without incurring any direct costs.

4. Minimizing adverse impact:

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

5. Rural area participation:

These revisions were developed by an OPCA working committee comprised of OPCA staff and several local probation departments representing all geographic regions of the state, including rural, and involving all levels of probation staff, including director, deputy director, supervisor, senior probation officer, and probation officer. OPCA circulated drafts to all probation directors/commissioners, the Council of Probation Administrators or COPA (the statewide professional association of probation administrators), which assigned it to a specific committee for review, with rural representation. The proposed regulatory amendments incorporate verbal and written suggestions gathered from probation professionals, including rural entities, across the state to address problems which probation departments have experienced in the area of case record management.

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In September 2017, OPCA commenced the aforementioned RTA Rule Revision workgroup with representatives from across the state representing small, medium, and large jurisdictions including urban and rural jurisdictions; 2) In March 2018, OPCA circulated a refined draft to all probation directors/commissioners; and 3) throughout the Workgroup sessions, a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA), reviewed the proposed Rule and provided feedback.

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

Job Impact Statement

1. Nature of impact:

A job impact statement is not being submitted with these proposed regulations because it will have no adverse effect on private or public jobs or employment opportunities. These regulatory changes insert process points that correspond with "raise the age" legislation requirements, but are not onerous, and can be implemented through correspondence and in-service training of probation staff.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Investigations and Reports

I.D. No. CJS-32-18-00006-P

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

Proposed Action: Amendment of sections 350.3, 350.6, 350.7, 350.8, 350.9 and 350.10 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1); Criminal Procedure Law, art. 722; Family Court Act, art. 3

Subject: Investigations and Reports.

Purpose: Update existing rule to reflect services which will be performed by probation departments as a result of Raise the Age Law.

Text of proposed rule: Section 350.3 of Part 350 of 9 NYCRR is amended to read as follows:

Section 350.3 Objective.

The objective of the investigation and report is to provide the court with relevant and reliable information, in a succinct, analytical presentation for decision-making. Also, to provide dispositional and regulatory agencies that are entitled to access with information for immediate and future decision-making purposes with respect to placement/incarceration, services and program delivery. These dispositional agencies shall include probation, social services, New York State Office of Children and Family Services (OCFS), [Division of Parole (DOP),] Department of *Corrections and Community Supervision* [Correctional Services (DOCS)] *(DOCCS)*, and any other public institution or agency.

Subdivision (a) of Section 350.6 of 9 NYCRR is amended to read as follows:

(a) Order for Investigation and Report. The court order for investigation and report shall include, at a minimum, the same information and attachments, as applicable [, and as provided for in form DPCA-2.2 Court Order For Investigation And Report]. The receipt of a court order for an investigation and report shall be entered in either a paper or electronic departmental case record management system which shall include but not be limited to the date received, the name of the person subject to the investigation, the date of birth, the final conviction charge/finding, disposition/sentencing date, and the name of the person assigned to conduct the investigation and prepare the report. In the case of fingerprintable offenses (juvenile and adult), the Criminal Justice Tracking Number (CJTN) and NYSID shall also be recorded to positively identify the subject of the investigation and obtain a complete criminal history.

The introductory paragraph of subdivision (b) of Section 350.6 of 9 NYCRR is amended to read as follows:

(b) Scope of Investigation Process. The investigation process shall consist of the gathering of all information *required for inclusion in the* [provided for in form DPCA-221] pre-dispositional/pre-plea/pre-sentence investigation report [worksheet] and as deemed relevant by the probation department conducting the investigation that may have a bearing upon the recommendation or court disposition/sentencing, as well as any additional information directed by the court.

Subparagraph (vi) of paragraph (3) of subdivision (b) of Section 350.6 of 9 NYCRR is amended to read as follows:

(vi) any reimbursement received or anticipated by the victim(s), whether from the [Crime Victims' Board] *Office of Victims Services*, or the victim(s)' insurance;

Subparagraph (ii) of paragraph (1) of subdivision (c) of Section 350.6 of 9 NYCRR is amended to read as follows:

(ii) Probation and Parole History: relevant legal history information related to prior contact(s) with the courts, probation and parole, detention, pretrial release, and supervision concerning the respondent's/defendant's previous and present compliance with diversion/supervision plans and conditions*, and participation in voluntary assessment and case planning services*.

Paragraph (2) of subdivision (c) of Section 350.6 of 9 NYCRR is amended to read as follows:

(2) Interviews [With] *with* Respondent/Defendant, or Subject(s) of the Court Order for Investigation.

Following the receipt of a court order, an in-person interview shall be held with the respondent/defendant, or subject(s) of the court order for investigation. All in-person interviews shall be directed toward obtaining and clarifying relevant information and making observations of the respondent/defendant's behavior, attitudes and character. During or prior to the in-person interview, probation personnel shall obtain the appropriate consent(s) for release of information and shall gather relevant information identified by and available through such consent for release. In cases where the defendant is in the custody of [NYS DOCS] *DOCCS* and is not accessible for an in-person interview with the probation department, the Institutional Probation Investigation Interview and Protocols executed by the Division of [Probation and Correctional Alternatives] *Criminal Justice Services* and [the Division of Parole] *DOCCS* shall be followed. On a case-by-case basis, where the respondent/defendant resides in a distant jurisdiction and exigent circumstances exist, as determined by the probation director, an interview may be substituted for an in- person interview.

Subdivision (a) of Section 350.7 of 9 NYCRR is amended to read as follows:

(a) Format and Scope of Report. The report shall be typed and all required identifying personal and legal information shall be set forth on the face sheet. For pre-dispositional/pre-plea/pre-sentence reports, the face sheet shall include, at a minimum, information as set forth in [form DPCA-220] *the DCJS probation* Pre- dispositional/pre-plea/presentence Investigation Report Face sheet *standardized template*. The report may not necessarily include all information obtained through the investigation process as specified in Section 350.6. However, the report shall contain relevant and reliable information that may have a bearing upon the recommendation or court disposition/sentence as well as any information directed by the court.

New subparagraphs (iii)-(v) are added to paragraph (1) of subdivision (b) of Section 350.7 of 9 NYCRR to read as follows:

(iii) Family Court pre-dispositional supervision compliance in present case.

(iv) Criminal court pretrial service(s) compliance in present offense.

(v) Voluntary assessment and case planning services: where a youth has engaged in such services, probation shall provide a summary of these efforts to the court within the pre-sentence investigation, as follows:

(a) Summary of any assessment findings;

(b) Referrals and progress with respect to mitigating risk;

(c) Addressing any identified criminogenic needs; and

(d) Progress of the youth with respect to achieving case plan goals.

Subparagraphs (vii)-(viii) of paragraph (4) of subdivision (b) of Section 350.7 of 9 NYCRR are renumbered subparagraphs (viii)-(ix), respectively, and a new subparagraph (vii) is added to read as follows:

(vii) analysis of any current or prior participation in services to address criminogenic needs;

The last paragraph of subparagraph (i) of paragraph (5) of subdivision (b) of Section 350.7 of 9 NYCRR is amended to read as follows:

DNA sample collection shall be recommended as a special condition for all designated offenders. Further, DNA sample collection shall be considered for all non-designated offenders, except where the defendant, pursuant to a plea agreement has already signed a waiver authorizing DNA collection, or where youthful offender status is mandatory [or likely to be granted].

Subparagraph (iii) of paragraph (5) of subdivision (b) of Section 350.7 of 9 NYCRR is renumbered subparagraph (iv) and is amended to read as follows:

(iv) Restitution: shall be recommended as part of any disposition/sentence where it is sought, up to maximum amounts permitted by law: for PINS--$1000; JD--$1,500; family offense--$10,000; and in all criminal cases as permitted under Penal Law Section 60.27. At a minimum, monetary conditions for restitution specified shall include the specific amount of restitution sought.

- Community-Based Disposition/Sentence: where a community-based disposition/sentence is recommended, including a split sentence of jail and probation, or will likely be imposed, a special condition shall include the rate of payment and a date prior to expiration of the term of sentence that restitution must be satisfied.
- Jail-Bound Disposition/Sentence: where jail is recommended or will likely be imposed, restitution shall be recommended.
- Prison-Bound Disposition/Sentence: where prison is recommended or will likely be imposed, a rate of payment shall not be specified; the start date for payments shall not be recommended for deferral; and the recommendation to the court shall recognize that [DOCS] *DOCCS* may collect restitution from income received during the period of incarceration.

New subparagraph (iii) to paragraph (5) of subdivision (b) of Section 350.7 of 9 NYCRR is added to read as follows:

(iii) Flexible term of probation supervision: where a variable term of probation supervision may be ordered, the department may make a recommendation regarding the length of the term of probation supervision.

Paragraph (8) of subdivision (b) of Section 350.7 of 9 NYCRR is amended to read as follows:

(8) HIV-Related Information. Where there is HIV-related information, this must be submitted in accordance with [DPCA's] *DCJS* AIDS/Confidentiality and Access to HIV-Related Information Rule, specifically Section 367.6.

Subparagraph (i) of paragraph (10) of subdivision (b) of Section 350.7 of 9 NYCRR is amended to read as follows:

(i) Intrastate Transfer: where the respondent/defendant is living in another jurisdiction in NewYork State at the time of preparation of the report, the probation officer shall secure all required information to complete the transfer packet, pursuant to [DPCA's] *DCJS's* Interstate and Intrastate Transfer of Probation Supervision For Adults And Juveniles Rule, Part 349, and provide form [DPCA] *DCJS OPCA* 16 or [DPCA] *DCJS OPCA* 16A, whichever is applicable, to the court for consideration and signature.

Subdivision (b) of Section 350.8 of 9 NYCRR is amended to read as follows:

(b) Scope of Investigation and Report. The investigation and report shall conform to requirements specified in the court order/request. In the absence of any such specification, the investigation and report shall consist of the gathering of information with respect to the applicant's legal history, the applicant's current social circumstances, including current employment and economic status. It shall also include the nature of the relief requested as it relates to employment, rehabilitation, and public interest/safety. It shall include a recommendation as to the granting of the state of New York certificate of relief from disabilities ([DPCA] *DCJS OPCA*-53) and the relief to be granted.

Subdivision (a) of Section 350.9 of 9 NYCRR is amended to read as follows:

(a) Order and Authorization to Conduct Investigation. The probation department shall conduct a pre-plea investigation only upon a court order and written authorization by the defendant, defendant's attorney, and the prosecuting attorney. Such written authorization and waiver for Pre-Plea Probation and Investigation and report (such as [DPCA] *DCJS OPCA*-2.2A) shall include statements that no probation department personnel will be called to testify regarding information acquired by the probation department, that information obtained by the probation department may not be used in a subsequent trial, and that this exemption does not apply to defense or prosecutorial investigation material which may be included in the report.

Paragraph (4) of subdivision (a) of Section 350.10 of 9 NYCRR is amended to read as follows:

(4) Where probation supervision is recommended the probation department may transmit the recommended conditions of probation supervision. [in an order such as form DPCA 10-A order and conditions of adult probation, DPCA 10-C orders and conditions of probation pins/juvenile, and DPCA-IPS order and conditions of ips.]

Subdivisions (b) and (c) of Section 350.10 of 9 NYCRR are amended to read as follows:

(b) Transmittal of Pre-sentence Reports to Professional Licensing Agencies. Probation departments shall accumulate and transmit, *at a minimum,* once every three months, a copy of all pre-sentence reports prepared in the case of defendants who are known to be licensed pursuant to Title 8 of the Education Law to the State Department of Health if the licensee is a physician, a specialist's assistant, or a physician's assistant, and to the State Education Department with respect to all other such licenses. *Such reports may be submitted in hard copy or electronically, and shall contain such other information as required by Criminal Procedure Law 390.50(6).*

(c) Confidentiality. Accessibility of probation reports is limited to those authorized by law or court order, and as specified in Part 348, [DPCA] *DCJS*'s Case Record Management Rule.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin-Locklear, Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: dcjslegalrulemaking@dcjs.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority:

Executive Law (EL) § 243 establishes that the Division of Criminal Justice Services (DCJS) Office of Probation and Correctional Alternatives (OPCA) shall exercise general supervision over the administration of probation services throughout the state, and further establishes the authority of DCJS to promulgate rules regulating methods and procedures of the administration of probation services. Further, EL§ 257 (6) (b) also recognizes DCJS' statutory rulemaking authority.

2. Legislative objectives:

Statutory law establishes the clear authority of DCJS to establish minimum standards governing probation practice. The proposed amendments to the Investigation and Reports rule will reflect the justice system process points created by or emphasized in "Raise the Age" legislation.

3. Needs and benefits:

Rule amendments are necessary to reflect changes to probation functions which will occurred due to "Raise the Age" legislation, effective October 1, 2018. Since this rule was last amended in 2007, edits are also made to reflect updated sentencing reform and state agency names as appropriate.

The proposed changes are the culmination of the efforts of a statewide Probation RTA Rule revision workgroup comprised of probation professionals from urban, rural, and suburban counties across New York State (NYS) and DCJS staff.

Importantly, workgroup membership included representatives of the New York State Council of Probation Administrators (COPA), and the New York State Probation Officers Association (POA) to ensure input from those organizations. COPA and NYSPOA are professional probation associations. The proposed revisions evolved through a series of workgroup meetings.

Prior drafts of the proposed amendments were shared with all probation directors in March 2018. Responses were received directly from a limited number of probation directors, as well as from COPA. Feedback from these sources resulted in further edits being made. DCJS did make additional minor changes to the most recently circulated draft version of this rule to provide greater clarity and flexibility in language consistent with our agency intent.

4. Costs:

a. It is expected that increased volumes of 16 and 17-year-old JD youth

in the family court process will result in increased staffing needs in each probation jurisdiction so that they may perform this statutorily required function or report writing.

b. DCJS-OPCA will increase juvenile operations staffing levels to provide technical assistance to localities in the implementation of the regulatory changes.

c. DCJS anticipates that the proposed revision of this rule will result in additional costs to probation departments due to the increase in volumes of youth that will be required to have probation reports ordered by family court subsequent to adjudication as a Juvenile Delinquent (JD). Per section 246.4 of the Executive Law, such additional state aid shall be made in an amount necessary to pay one hundred percent other expenditures for evidence-based practices and juvenile risk and evidence-based intervention services provided to youth sixteen years of age or older when such services would not otherwise have been provided absent the provisions of a chapter of the laws of two thousand seventeen that increased the age of juvenile jurisdiction.

5. Local government mandates:

DCJS-OPCA always had agency rules governing Investigations and Reports, and therefore DCJS does not anticipate that these new requirements will be burdensome. Upon the adoption of the revised job specifications, local probation departments will need to review local policy and adjust as necessary to reflect such changes. This is a routine business function of local probation departments which will result in only minor administrative costs.

6. Paperwork:

DCJS does not anticipate the need for any new reporting requirements, departments, forms, or other paperwork that would be required of local probation.

7. Duplication:

These amendments do not duplicate any other existing State or Federal requirements.

8. Alternatives:

This proposal takes into account the extensive efforts of the statewide workgroup, DCJS, and probation professional organizations, and reflects input received from probation professionals across the state. The input received from informal dissemination and discussion was taken into consideration, and resulted in the incorporation of certain minor changes. The modifications to this rule ensures clarity for probation departments in preparation of Investigations and Reports.

9. Federal standards:

None.

10. Compliance schedule:

Through prompt dissemination to staff of the new rule and its summary, local departments should be able to implement these amendments and comply with the provisions as soon as they are adopted.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed amendments affect all local probation departments in New York State (NYS) and therefor the 57 counties outside of New York City (NYC) as well as NYC. The proposed amendments do not have any impact on small business.

The Division of Criminal Justice Services (DCJS) does not anticipate that these new requirements will be burdensome upon probation departments as current regulation prescribes requirements for probation case record management.

2. Compliance Requirements:

This rule does not substantially change the content of the Investigations and Reports rule, but amends the material to represent newly defined probation services, as is necessary to conform with "Raise the Age" legislative changes that become effective October 1, 2018. There are no small business compliance requirements imposed by these proposed rule amendments.

3. Professional Services:

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

4. Compliance Cost:

This regulatory amendment addresses the statutory function of report writing that probation departments are responsible to perform in the juvenile and criminal justice system. Due to the "Raise the Age" (RTA) legislation that becomes effective October 1, 2018, probation departments can expect increased report volumes. RTA legislation shifts court processing of most 16 and 17-year-old youth into the family court jurisdiction as juvenile delinquent (JD) cases where a report from probation is required on each adjudication. The existing criminal court process has a lesser requirement for probation reports. Funding reimbursement for the incremental probation staffing costs associated with Raise the Age is included in the NYS Budget.

5. Economic and Technological Feasibility:

DCJS has supported the development and deployment of Caseload Explorer case management software for interested probation departments. DCJS does not anticipate any economic challenges will be experienced by probation departments as a result of these rule changes. There are no economic or technological issues faced by small businesses as these proposed rules do not affect them.

6. Minimizing Adverse Impact:

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In September 2017, OPCA commenced the aforementioned RTA Rule Revision workgroup with representatives from across the state representing small, medium, and large jurisdictions including urban and rural jurisdictions; 2) In March 2018, OPCA circulated a refined draft to all probation directors/commissioners; and 3) throughout the Workgroup sessions, a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA), reviewed the proposed Rule and provided feedback.

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

1. Types and estimated numbers 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:

DCJS does not anticipate that the proposed revision will result in any changes to reporting, record keeping and other compliance requirements of rural counties. Probation departments are currently governed by existing rule. DCJS does not believe that these regulatory changes will prove difficult to achieve. Through prompt dissemination to staff of this new rule and its summary, local probation departments should be able to implement these amendments and comply with the provisions as soon as they are adopted. This rule does not change the monthly workload reporting requirements to our state agency, DCJS.

3. Costs:

DCJS anticipates an increased need for probation staffing in most jurisdictions. It is expected that there will be an increase in demand for probation reports ordered from courts due to the "Raise the Age" (RTA) legislation that becomes effective October 1, 2018. Probation departments can expect increased report volumes because RTA legislation shifts court processing of all misdemeanors and many non-violent felonies alleged to have been committed by 16 and 17-year-old youth into the family court jurisdiction as juvenile delinquent (JD) cases, where a report from probation is statutorily required on each adjudication. The existing criminal court process has a lesser requirement for probation reports. Funding reimbursement to support the incremental staffing costs associated with the implementation of Raise the Age is included in the NYS Budget.

As part of the State's efforts to streamline recordkeeping, avoid duplication and achieve cost savings, OPCA has supported the deployment of a web-based case management software, known as Caseload Explorer. Currently, 57 probation departments currently utilize and many rural counties benefit from this software. Many rural counties are and will continue to benefit from this deployment.

Any anticipated in-service costs of educating staff, can be readily accomplished through memoranda and supervisory oversight without incurring any direct costs.

4. Minimizing adverse impact:

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

5. Rural area participation:

These revisions were developed by an OPCA working committee comprised of OPCA staff and several local probation departments representing all geographic regions of the state, including rural, and involving all levels of probation staff, including director, deputy director, supervisor, senior probation officer, and probation officer. OPCA circulated drafts to all probation directors/commissioners, the NYS Council of Probation Administrators or COPA (the statewide professional association of probation administrators), which assigned it to a specific committee for review, with rural representation. The proposed regulatory amendments incorporate verbal and written suggestions gathered from probation professionals, including rural entities, across the state to address problems which probation departments have experienced in the area of case record management.

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In September 2017, OPCA commenced the aforementioned RTA Rule Revision workgroup with representatives from across the state representing small, medium, and large jurisdictions including urban and rural jurisdictions; 2) In March 2018, OPCA circulated a refined draft to all probation directors/commissioners; and 3) throughout the Workgroup sessions, a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA), reviewed the proposed Rule and provided feedback.

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

Job Impact Statement

1. Nature of impact:

This regulatory amendment recognizes and incorporates the critical function of probation services to carry out the intent of a more fair, equitable and safe youth justice system reflected in "Raise the Age" (RTA) legislation, that becomes effective October 1, 2018. It is expected that increased volumes of 16 and 17-year-old juvenile delinquent (JD) youth in the family court process will require a pre-dispositional investigation and report for submission to the Court. Funding reimbursement for localities related to new Raise the Age probation functions is appropriated in the New York State budget to meet the estimated need for increased probation professional staffing.

2. Categories and numbers affected:

The proposed amendments do not adversely affect the more than 2,500 probation professionals currently serving in positions throughout NYS. Most localities will require additional probation staff to perform the report writing functions statutorily required in "Raise the Age" (RTA) legislation, becoming effective October 1, 2018.

3. Regions of adverse impact:

The revised amendments will have no adverse or disproportionate impact on jobs or employment opportunities in any region of NYS.

4. Minimizing adverse impact:

The proposed changes are the culmination of the efforts of a statewide Probation RTA Rule Revision Workgroup comprised of probation professionals from urban, rural, and suburban counties across New York State (NYS) and DCJS staff. Importantly, workgroup membership included representatives of the New York State Council of Probation Administrators (COPA), and the New York State Probation Officers Association (POA) to ensure input from those organizations. COPA and NYSPOA are professional probation associations. The proposed revisions evolved through a series of workgroup meetings.

DCJS does not anticipate that these regulatory amendments will have an adverse impact on existing jobs or employment opportunities, if additional probation positions are funded. DCJS anticipates that the proposed revision of this rule will result in additional costs to probation departments for staffing needs due to the increase in volumes of reports ordered by family court. Funding reimbursement to support the incremental costs for probation staffing associated with the implementation of Raise the Age is included in the NYS Budget.

5. Self-employment opportunities:

Probation professionals are employed by New York's 58 probation departments (57 county-based and NYC), and as such, the proposed amendments do not involve self-employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Probation Supervision

I.D. No. CJS-32-18-00007-P

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

Proposed Action: Amendment of sections 351.6 and 351.7 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1); Criminal Procedure Law, art. 722; Family Court Act, art. 3

Subject: Probation Supervision.

Purpose: Update existing rule to reflect services which will be performed by probation departments as a result of Raise the Age Law.

Text of proposed rule: Subdivision (c) of section 351.6 of 9 NYCRR is amended by amending paragraphs 9 and 10 and adding a new paragraph 11 to read as follows:

(9) Residential programming or treatment; [or]

(10) In Immigration and Customs Enforcement (ICE) custody or deported[.]*; or*

(11) United States military deployment.

Section 351.7 of 9 NYCRR is amended by relettering subdivision (a) to subdivision (g).

A new subdivision (a) to section 351.7 of 9 NYCRR is added to read as follows:

(a) Probationer Engagement

(1) Engage the probationer by using motivational interviewing and other evidence-based tools to prompt an understanding for the need to change criminal thinking and behavior, and to lead a law-abiding life.

(2) Document in the case file the probationer's progress in changing his/her thinking and behavior.

(3) Advocate for the probationer's timely commencement of services and work closely through on-going communication with the service provider(s) and monitor the probationer's motivation, participation, and progress in services that address the criminogenic needs identified in the case plan.

(4) Document in the case file the probationer's initiation of services.

Subdivision (b) of section 351.7 of 9 NYCRR is amended to read as follows:

(b) Probationer Referrals *and services*:

(1) *Advocate for the probationer's timely commencement of services and work closely, through on-going communication, with the service provider(s) to monitor a probationer's participation and progress in completing the services that address the criminogenic needs identified in the case plan.*

(2) Document in the case file the probationer's participation in services, the nature of their progress, and completion of services.

(3)[2] Probation officers shall refer probationers and/or their families to services available in the community. Probation officer efforts *to engage probationers and* to manage *service* referrals are intended to increase probationer motivation, identify incentives and/or barriers for behavior change, and help the probationer find solutions to reduce resistance to change.

(4)[(3)] Probation officers should be knowledgeable of the services that are available in the jurisdiction and, based on information from the assessment and case plan, shall match the probationer to services that can specifically address the targeted criminogenic needs.

(5)[(4)] Probationers with higher risk and needs shall be referred, if available, to more intensive interventions which target those risk and needs.

(6)[(5)] Probation officers shall provide information to the service provider about the probationer's criminogenic needs so that services may be more targeted to those criminogenic needs.

Paragraphs (2)-(7) of subdivision (d) of section 351.7 of 9 NYCRR are renumbered paragraphs (3)-(8) respectively, and a new paragraph (2) is added to read as follows:

(2) *Reviewing and documenting stages of change, participation in services, and progress in addressing criminogenic needs.*

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin-Locklear, Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: dcjslegalrulemaking@dcjs.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority:

Executive Law (EL) § 243 establishes that the Division of Criminal Justice Services (DCJS) Office of Probation and Correctional Alternatives (OPCA) shall exercise general supervision over the administration of probation services throughout the state, and further establishes the authority of DCJS to promulgate rules regulating methods and procedures of the administration of probation services. Further, EL§ 257 (6) (b) also recognizes DCJS' statutory rulemaking authority.

2. Legislative objectives:

Statutory law establishes the clear authority of DCJS to establish minimum standards governing probation practice. The proposed amendments to the Graduated Responses rule will reflect certain evidence based practices necessary to implement the "Raise the Age" legislation.

3. Needs and benefits:

Certain rule amendments are necessary to reflect refinements in the practice of probation professionals in the supervision of persons receiving probation services, which will be necessary to implement the "Raise the Age" legislation, effective October 1, 2018. Importantly, the revisions emphasize evidence based practices related to probationer engagement, service referrals, stages of change; as well as victims services.

4. Costs:

Probation Departments will need to prepare updated policies and procedures to reflect these revisions. This task is a routine function of a local Probation Department and may result in minor administrative costs. Costs associated with the larger implementation of Raise the Age are addressed in Subdivision 4 of Section 246 of the Executive Law, and the new Section 54-m of the State Finance Law. Funding reimbursement for incremental staffing costs associated with Raise the Age has been included in the NYS Budget.

5. Local government mandates:

DCJS has always maintained rules governing Probation Supervision, and therefore it is not anticipated that these new requirements will be burdensome. Upon the adoption of the revised regulation, local probation departments will need to review local policy and adjust as necessary to reflect such changes. This is a routine business function of local probation departments which will result in only minor administrative costs.

6. Paperwork:

DCJS does not anticipate the need for any new reporting requirements, departments, forms, or other paperwork that would be required of local probation. Any revisions to data collection will be accomplished on a statewide level through the use of Caseload Explorer and other technologies.

7. Duplication:

These amendments do not duplicate any other existing State or Federal requirements.

8. Alternatives:

This proposal takes into account the extensive efforts of the statewide workgroup, DCJS, and probation professional organizations, and reflects input received from probation professionals across the state. The input received from that dissemination and discussion was taken into consideration, and resulted in the incorporation of certain minor changes. The modifications to this rule ensures clarity for probation departments in promoting positive behavioral changes through effective client engagement and supervision strategies.

9. Federal standards:

None.

10. Compliance schedule:

Through prompt dissemination to staff of the new rule and its summary, local departments should be able to implement these amendments and comply with the provisions as soon as they are adopted.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed amendments affect all 57 county probation departments in New York State (NYS), as well as the City of New York. The proposed amendments make certain changes to Title 9 NYCRR Part 351, "Probation Supervision". It updates, clarifies, and strengthens existing regulatory provisions regarding the practice of probation professionals in the supervision of persons receiving probation services, which will be necessary to implement the "Raise the Age" legislation, effective October 1, 2018.

Notably, the revisions emphasize evidence based practices related to probationer engagement, service referrals, and stages of change theory and practice, as well as victims' services. While the regulation specifies minimum requirements, localities maintain certain flexibilities and discretions within those requirements. The proposed amendments do not have any impact on small business.

The Division of Criminal Justice Services (DCJS) does not anticipate that these new requirements will be burdensome upon probation departments as they provide simple revision to current regulation which prescribes requirements in this area. In addition, funding reimbursement to support incremental probation staffing associated with the implementation of Raise the Age is included in the NYS Budget.

2. Compliance Requirements:

This rule makes minimal revision to the existing content as is necessary to conform with "Raise the Age" legislative changes that become effective October 1, 2018. Accordingly, Probation Departments will be required to update their policies and procedures to reflect these changes, which is a routine function of a local Probation Department. There are no small business compliance requirements imposed by these proposed rule amendments.

3. Professional Services:

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

4. Compliance Cost:

As noted above, Probation Departments will need to prepare updated policies and procedures to reflect these revisions. This task is a routine function of a local Probation Department and may result in minor administrative costs. Costs associated with the larger implementation of Raise the Age are addressed in Subdivision 4 of Section 246 of the Executive Law, and the new Section 54-m of the State Finance Law.

5. Economic and Technological Feasibility:

The proposed amendments consist of an adoption of a revised Part 351, and does not place any new economic or technological requirements on localities. There are no economic or technological issues faced by small businesses as these proposed rules do not affect them.

6. Minimizing Adverse Impact:

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In September 2017, OPCA commenced the aforementioned RTA Rule Revision workgroup with representatives from across the state representing small, medium, and large jurisdictions including urban and rural jurisdictions; 2) In March 2018, OPCA circulated a refined draft to all probation directors/commissioners; and 3) throughout the Workgroup sessions, a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA), reviewed the proposed Rule and provided feedback.

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Executive Law § 481(7), defines rural areas as ''counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of two hundred thousand or greater population, 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.'' There are 44 counties in New York State (NYS) that have populations of less than 200,000 people." Accordingly, 44 local probation departments are located in rural areas.

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

DCJS anticipates that the proposed revisions will result in minimal change to reporting, recordkeeping and other compliance requirements of rural counties; 57 of 58 probation departments in the state currently use, or are in the process of implementing the Caseload Explorer (CE) case management system. As such, any revised or new data fields will be coordinated at the state level by DCJS. Additionally, DCJS will be working with the Caseload Explorer System vendor to develop the ability for DCJS to extract required information from the CE installations which are installed and hosted at the local level. For the remaining county, which does not use CE, at most a minimal revision to their local recordkeeping system may be necessary to reflect these changes. Accordingly, DCJS does not believe that these regulatory changes will prove difficult to achieve.

Probation Departments will need to prepare updated policies and procedures which reflect the proposed revisions.

3. Costs:

In general, counties will experience little cost related to these revisions. Costs associated with the larger implementation of Raise the Age are addressed in Subdivision 4 of Section 246 of the Executive Law, and the new Section 54-m of the State Finance Law.

As noted above, Probation Departments will need to prepare updated policies and procedures to reflect these revisions. This task is a routine function of a local Probation Department and may result in minor administrative costs.

4. Minimizing adverse impact:

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

5. Rural area participation:

These revisions were developed by a DCJS working committee comprised of staff from OPCA, OJRP, OLS, 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. OPCA circulated drafts to all probation directors/commissioners, the New York State Probation Officers Association, the NYS Council of Probation Administrators or COPA (the statewide professional association of probation administrators), which assigned it to a specific committee for review, with rural representation. The proposed regulatory amendments incorporate recommendations gathered from probation professionals, including rural entities, through this process.

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In September 2017, OPCA commenced the aforementioned RTA Rule Revision workgroup with representatives from across the state representing small, medium, and large jurisdictions including urban and rural jurisdictions; 2) In March 2018, OPCA circulated a refined draft to all probation directors/commissioners; and 3) throughout the Workgroup sessions, a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA), reviewed the proposed Rule and provided feedback.

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

Job Impact Statement

1. Nature of impact:

The proposed amendments make certain changes to Title 9 NYCRR Part 351, "Probation Supervision". It updates, clarifies, and strengthens existing regulatory provisions regarding the practice of probation professionals in the supervision of persons receiving probation services, which will be necessary to implement the "Raise the Age" legislation, effective October 1, 2018. Funding reimbursement for localities related to new Raise the Age probation functions is included in the NYS Budget.

Notably, the revisions emphasize evidence based practices related to probationer engagement, service referrals, understanding and utilizing the stages of change, as well as victims' services.

2. Categories and numbers affected:

The proposed amendments will be utilized by the approximately 2,500 probation professionals currently serving across the state, as well as other staff anticipated to be hired as the result of the implementation of the Raise the Age legislation.

3. Regions of adverse impact:

Given the existence of current regulation in this area, no adverse impacts are anticipated. In general, many counties will experience little cost related to these revisions. All Probation Departments will need to prepare updated policies and procedures to reflect these revisions. This task is a routine function of a local Probation Department and may result in minor administrative costs. Costs associated with the larger implementation of Raise the Age are addressed in Subdivision 4 of Section 246 of the Executive Law, and the new Section 54-m of the State Finance Law.

4. Minimizing adverse impact:

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In September 2017, OPCA commenced the aforementioned RTA Rule Revision workgroup with representatives from across the state representing small, medium, and large jurisdictions including urban and rural jurisdictions; 2) In March 2018, OPCA circulated a refined draft to all probation directors/commissioners; and 3) throughout the Workgroup sessions, a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA), reviewed the proposed Rule and provided feedback.

5. Self-employment opportunities:

Probation professionals are employed by New York's 58 probation departments (57 county-based and NYC), and as such, the proposed amendments do not involve self-employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Graduated Sanctions and Violations of Probation, Retitled To: Graduated Responses

I.D. No. CJS-32-18-00008-P

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

Proposed Action: Amendment of Part 352 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1); Criminal Procedure Law, art. 722; Family Court Act, art. 3

Subject: Graduated Sanctions and Violations of Probation, retitled to: Graduated Responses.

Purpose: Update existing rule to reflect services which will be performed by probation departments as a result of Raise the Age Law.

Substance of proposed rule (Full text is posted at the following State website: http://www.criminaljustice.ny.gov/): The title of Part 352 of Title 9 NYCRR is changed from Graduated Sanctions and Violations of Probation to Graduated Responses. This rule amendment begins with retitling to better represent the role of Probation in responding to Probationer noncompliance through a variety of measures.

In Section 352.1 the term "Graduated Responses" is redefined. In Section 352.2 the rule Objective is expanded to better represent the role probation plays in affecting behavior change in probationers. This includes adding incentives to the conventional methods of sanctioning to achieve behavioral change. In Section 352.3 the rules applicability is clarified to include addressing behaviors in addition to and other than violations of probation. In Section 352.4 Graduated Responses, local policy and procedures will be expanded to include the uniform use of incentives to reinforce pro-social behavior and interventions, as well as services to address non-compliance. This includes early advisement to probationers of the departments application of incentives, interventions and sanctions to encourage pro-social behavior, as well as consideration as to which are most suitable for behavioral change, support probationer accountability and may also reduce the need for formal court intervention. Additional consideration of the probationer's history of non-compliance, gravity of the non-compliant behaviors, dangerousness to self and/or others, and other case specific circumstances will be considered in decision making.

Section 352.5 describes procedures for the use of incentives and rewards in criminal and family court cases. These will be implemented in such a way to support positive behavioral change and be swift, certain, fair, and tailored to the individual. Procedures incentivize pro-social behavior and successful completion of case plan goals, referrals to service providers and responsivity principles. Section 352.6 outlines procedures for noncompliant behavioral response including Supervisor notification and consultation, and required action. Where the probationer is a 16 or 17-year-old, the Probation Officer should include the parent or other person(s) legally responsible for his/her care, where feasible.

Section 352.7 addresses procedures for new offense violations for criminal supervision cases. This retains procedures to be taken upon a probationer's arrest for a new offense and conviction of a new crime. Section 352.8 updates agency name from the Division of Probation and Correctional Alternatives to NYS DCJS.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin-Locklear, Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: dcjslegalrulemaking@dcjs.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority:

Executive Law (EL) § 243 establishes that the Division of Criminal Justice Services' (DCJS) Office of Probation and Correctional Alternatives (OPCA) shall exercise general supervision over the administration of probation services throughout the state, and further establishes the authority of DCJS to promulgate rules regulating methods and procedures of the administration of probation services. Further, EL§ 257 (6) (b) also recognizes DCJS' statutory rulemaking authority.

2. Legislative objectives:

Statutory law establishes the clear authority of DCJS to establish minimum standards governing probation practice. The proposed amendments to the Graduated Responses rule will reflect certain evidence based practices necessary to implement the "Raise the Age" legislation.

3. Needs and benefits:

Rule amendments are necessary to reflect refinements in the practice of probation professionals to reduce reliance on detention and promote positive changes in persons receiving probation services, which will be necessary to implement the "Raise the Age" legislation, effective October 1, 2018.

Importantly, the revisions emphasize encouragement and incentivization of positive behavior, while also ensuring appropriate response to negative behavior. The revisions promote the development of standardized Graduated Response protocols by localities, which will provide that jurisdiction an objective basis for the use of incentives and sanctions. Such protocols will promote behavioral change in an evidence based manner, while limiting the possibility of any racial or ethnic disparities in the application of incentives and sanctions.

The revision empowers probation departments to address behaviors where possible without having to unnecessarily involve the courts.

4. Costs:

In general, counties will experience little cost related to these revisions. Probation Departments will need to prepare updated policies and procedures to reflect these revisions. This task is a routine function of a local Probation Department and may result in minor administrative costs. Costs associated with the larger implementation of Raise the Age are addressed in Subdivision 4 of Section 246 of the Executive Law, and the new Section 54-m of the State Finance Law.

5. Local government mandates:

DCJS maintained rules for probation departments governing Graduated

Sanctions and Violations of Probation (now Graduated Responses), and therefore it is not anticipated that these new requirements will be burdensome. Upon the adoption of the revised regulation, local probation departments will need to review local policy and adjust as necessary to reflect such changes. This is a routine business function of local probation departments which will result in only minor administrative costs.

6. Paperwork:

DCJS does not anticipate the need for any new reporting requirements, departments, forms, or other paperwork that would be required of local probation. Any revisions to data collection will be accomplished on a statewide level through the use of Caseload Explorer and other technologies.

7. Duplication:

These amendments do not duplicate any other existing State or Federal requirements.

8. Alternatives:

This proposal takes into account the extensive efforts of the statewide workgroup, DCJS, and probation professional organizations, and reflects input received from probation professionals across the state. The input received from that dissemination and discussion was taken into consideration, and resulted in the incorporation of certain minor changes. The modifications to this rule ensures clarity for probation departments in promoting positive behavioral changes through Graduated Responses.

9. Federal standards:

None.

10. Compliance schedule:

Through prompt dissemination to staff of the new rule and its summary, local departments should be able to implement these amendments and comply with the provisions as soon as they are adopted.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed amendments affect all local county probation departments in NYS as well as the City of New York. While the regulation specifies minimum requirements, it provides localities with flexibility as to how Graduated Responses are utilized within a given jurisdiction. The proposed amendments do not have any impact on small business.

The Division of Criminal Justice Services (DCJS) does not anticipate that these new requirements will be burdensome to probation departments as they provide simple revision to current regulation which prescribes requirements in this area.

2. Compliance Requirements:

This rule makes minimal revision to the existing content as is necessary to conform with "Raise the Age" legislative changes that become effective October 1, 2018. Accordingly, Probation Departments will be required to update their policies and procedures to reflect these changes, which is a routine function of a local Probation Department. There are no small business compliance requirements imposed by these proposed rule amendments.

3. Professional Services:

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

4. Compliance Cost:

In general, counties will experience little cost related to these revisions. As noted above, Probation Departments will need to prepare updated policies and procedures to reflect these revisions. This task is a routine function of a local Probation Department and may result in minor administrative costs. Costs associated with the larger implementation of Raise the Age are addressed in Subdivision 4 of Section 246 of the Executive Law, and the new Section 54-m of the State Finance Law.

5. Economic and Technological Feasibility:

The proposed amendments consist of an adoption of a revised Part 352, and does not place any new economic or technological requirements on localities. There are no economic or technological issues faced by small businesses as these proposed rules do not affect them.

6. Minimizing Adverse Impact:

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In September 2017, OPCA commenced the aforementioned RTA Rule Revision workgroup with representatives from across the state representing small, medium, and large jurisdictions including urban and rural jurisdictions; 2) In March 2018, OPCA circulated a refined draft to all probation directors/commissioners; and 3) throughout the Workgroup sessions, a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA), reviewed the proposed Rule and provided feedback.

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Executive Law § 481(7), defines rural areas as ''counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of two hundred thousand or greater population, 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.'' There are 44 counties in New York State (NYS) that have populations of less than 200,000 people." Accordingly, 44 local probation departments are located in rural areas.

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

DCJS anticipates that the proposed revisions will result in minimal change to reporting, recordkeeping and other compliance requirements of rural counties.

57 of 58 probation departments in the state currently use, or are in the process of implementing the Caseload Explorer (CE) case management system. As such, any revised or new data fields will be coordinated at the state level by DCJS. Additionally, DCJS will be working with the Caseload Explorer System vendor, to develop the ability for DCJS to extract required information from the CE installations which are installed and hosted at the local level. For the remaining county, which does not use CE, at most a minimal revision to their local recordkeeping system may be necessary to reflect these changes. Accordingly, DCJS does not believe that these regulatory changes will prove difficult to achieve.

Probation Departments will need to prepare updated policies and procedures which reflect the proposed revisions.

3. Costs:

In general, counties will experience little cost related to these revisions. Costs associated with the larger implementation of Raise the Age are addressed in Subdivision 4 of Section 246 of the Executive Law, and the new Section 54-m of the State Finance Law.

As noted above, Probation Departments will need to prepare updated policies and procedures to reflect these revisions. This task is a routine function of a local Probation Department and may result in minor administrative costs.

4. Minimizing adverse impact:

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

5. Rural area participation:

These revisions were developed by a DCJS working committee comprised of staff from OPCA, OJRP, OLS, 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. OPCA circulated drafts to all probation directors/commissioners, the New York State Probation Officers Association, the NYS Council of Probation Administrators or COPA (the statewide professional association of probation administrators), which assigned it to a specific committee for review, with rural representation. The proposed regulatory amendments incorporate recommendations gathered from probation professionals, including rural entities, through this process.

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In September 2017, OPCA commenced the aforementioned RTA Rule Revision workgroup with representatives from across the state representing small, medium, and large jurisdictions including urban and rural jurisdictions; 2) In March 2018, OPCA circulated a refined draft to all probation directors/commissioners; and 3) throughout the Workgroup sessions, a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA), reviewed the proposed Rule and provided feedback.

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

Job Impact Statement

1. Nature of impact:

The proposed amendments make certain changes to Title 9 NYCRR Part 352, "Graduated Responses". Overall, it updates, clarifies, and strengthens regulatory provisions regarding the practice of probation

professionals to promote positive changes in persons receiving probation services, which will be necessary to implement the "Raise the Age" legislation, effective October 1, 2018.

Importantly, the revisions emphasize encouragement and incentivization of positive behavior, while also ensuring appropriate response to negative behavior. The revisions promote the development of standardized Graduated Response protocols by localities, which will provide that jurisdiction an objective basis for the use of incentives and sanctions. Such protocols will promote behavioral change in an evidence based manner, while limiting the possibility of any racial or ethnic disparities in the application of incentives and sanctions.

The revision empowers probation departments to encourage and support pro-social behaviors and address non-compliant behaviors, where possible, without having to unnecessarily involve the courts.

2. Categories and numbers affected:

The proposed amendments will be utilized by the approximately 2,500 probation professionals currently serving across the state, as well as other staff anticipated to be hired as the result of the implementation of the Raise the Age legislation.

3. Regions of adverse impact:

Given the existence of current regulation in this area, no adverse impacts are anticipated. In general, counties will experience little cost related to these revisions. All Probation Departments will need to prepare updated policies and procedures to reflect these revisions. This task is a routine function of a local Probation Department and may result in minor administrative costs. Costs associated with the larger implementation of Raise the Age are addressed in Subdivision 4 of Section 246 of the Executive Law, and the new Section 54-m of the State Finance Law.

4. Minimizing adverse impact:

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In September 2017, OPCA commenced the aforementioned RTA Rule Revision workgroup with representatives from across the state representing small, medium, and large jurisdictions including urban and rural jurisdictions; 2) In March 2018, OPCA circulated a refined draft to all probation directors/commissioners; and 3) throughout the Workgroup sessions, a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA), reviewed the proposed Rule and provided feedback.

5. Self-employment opportunities:

Probation professionals are employed by New York's 58 probation departments (57 county-based and NYC), and as such, the proposed amendments do not involve self-employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Preliminary Procedure for Article 3 JD Intake, Retitled To: Probation Services for Article 3 Juvenile Delinquency (JD)

I.D. No. CJS-32-18-00009-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 356 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1); Criminal Procedure Law, art. 722; Family Court Act, art. 3

Subject: Preliminary Procedure for art. 3 JD Intake, retitled to: Probation Services for art. 3 Juvenile Delinquency (JD).

Purpose: Update existing rule to reflect services which will be performed by probation departments as a result of Raise the Age Law.

Substance of proposed rule (Full text is posted at the following State website: http://www.criminaljustice.ny.gov/): The title of Part 356 of Title 9 NYCRR is changed from "Preliminary Procedure for Article 3 Juvenile Delinquency (JD) Intake" to "Probation Services for Article 3 Juvenile Delinquency (JD)". This rule retitling reflects the role Probation may serve in addressing JD matters from Intake and Adjustment through Pre-Dispositional Supervision in the Family Court.

Section 356.1 revises and adds several key definitions applicable to this rule. Section 356.2 expands and clarifies the objective of this rule to provide screening, assessment, engagement and evidence-based services to youth, for the non-judicial resolution of JD complaints. Section 356.3 expands the applicability of this rule for JD cases to also include when probation department perform pre-dispositional supervision of a youth alleged to be a juvenile delinquent with a case pending in Family Court. Section 356.4 on jurisdiction of this rule clarifies the handling of pre-dispositional supervision of youth by probation departments.

Section 356.5 expands the General Requirements for Juvenile Delinquency Preliminary Procedure including the role of the probation officer in engaging youth and effecting behavioral change and the use of graduated responses consistent with Part 352 titled Graduated Responses.

Section 356.5 expands to include probation conveying the benefits of the youth engaging in and successfully completing adjustment services where the youth is eligible and suitable. For youth removed from the Youth Part to Family Court for intake/adjustment services under Article 3 of the Family Court Act, the probation department will conduct the initial conference within eight (8) business days of notification/receipt of the complaint.

Section 356.6 expands the role of probation in screening youth for release from detention if eligible and suitable for Probation Intake and Adjustment services, as well as the appropriateness of the use of alternatives to detention. Consistent with law, edits in this rule propose changing the use of "parent/guardian" to be "parent or other person legally responsible for his/her care" throughout the rule.

Section 356.7 provides procedure for an Initial Conference that may be conducted in two parts with an Initial Intake Conference by a probation assistant as a pre-screening meeting. This rule also proposes probation conduct a mental health screen at the initial conference, for youth cases opened for adjustment services. For youth removed from the Youth Part of Superior Court to the Family Court to receive intake and adjustment services under Article 3, the probation department may consider and credit the youth's participation in Voluntary Assessment and Case Planning services while in the Youth Part, which may reduce the time needed for adjustment services, depending upon the progress made by the youth.

Section 356.8 addresses the process for assessment, case planning, and client engagement. This includes expediting the development of an initial case plan within 10 business days of the initial conference, instead of the previously required 30 calendar days. This change supports the prompt engagement of youth in needed services given the limited 2- 4 month adjustment period. This language also encourages Probation advocate for timely commencement of targeted services, engage youth in cognitive-behavioral programming, plan for the appropriate dosage of interventions based upon the youth's risk and needs, and consider issues of responsivity. This rule structures probation contact frequency and types according to assessed risk level of the youth. Section 356.9 addresses where probation refers a complaint to the presentment agency when a victim may insist that the matter be sent to petition for the purpose of obtaining an Order of Protection. New section 356.11 outlines procedures for when a case is Removed from Youth Part of the Superior Court to Family Court for Probation Intake. A new section 356.14 is added to outline procedures for when Probation may provide Pre-Dispositional Supervision in Family Court.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin-Locklear, Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: dcjslegalrulemaking@dcjs.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority:

Executive Law (EL) § 243 establishes that the Division of Criminal Justice Services (DCJS) Office of Probation and Correctional Alternatives (OPCA) shall exercise general supervision over the administration of probation services throughout the state, and further establishes the authority of DCJS to promulgate rules regulating methods and procedures of the administration of probation services. Further, EL§ 257 (6) (b) also recognizes DCJS' statutory rulemaking authority.

2. Legislative objectives:

Statutory law establishes the clear authority of DCJS to establish minimum standards governing probation practice. These regulatory amendments are consistent with legislative intent regarding critical probation functions and the promotion of professional standards which govern administration and delivery of probation services in probation intake (preliminary procedure) for family court involving any alleged Juvenile Delinquent (JD) matter. These regulatory amendments also recognize and incorporate the critical function of probation services to carry out the intent of a more fair, equitable and safe youth justice system reflected in "Raise the Age" (RTA) legislation, that becomes effective October 1, 2018. The overarching goal of these amendments is to reduce unnecessary and costly reliance on detention and residential placement with local commissioners of departments of social services or the Office of Children and Family Services (OCFS). To better represent the scope of these essential functions by probation departments, the edited rule title is proposed to be "Probation Services for Article 3 Juvenile Delinquency". By vesting the Commissioner of DCJS with rule-making authority, the Legislature authorized DCJS to set minimum standards in this area.

These amendments are necessary to: 1) incorporate legislative process changes that become effective October 1, 2018 due to RTA legislation; 2)

incorporate contemporary evidence-based (research-supported) practice principles for effective interventions; 3) recognize best probation practice in the area of preliminary probation procedures involving youth; and 4) ensure consistent statewide application of key intervention strategies to youth receiving JD intake services.

3. Needs and benefits:

In accordance with Family Court Act (FCA) article 3, probation is responsible for conducting JD preliminary procedure. Rule amendments are necessary at this time not only to reflect changes to probation services which will occur in October, 2018 with RTA legislation, but also as is consistent with national practice that continues to evolve in this area emphasizing evidence-based principles. These amendments promote consistent application of statutory requirements through statewide standardization of terms by updating terminology, and updating definitions.

Consistent with good practice and/or certain legal provisions, these amendments affirm effective probation practices. Achieving effective probation practice includes: 1) an enhanced engagement process; 2) a standardized protocol for the structure of contact with youth and their families based on assessed risk levels; 3) expedited case planning and referral to targeted interventions; 4) application of graduated responses including incentives, interventions, and responses to behavior; 5) improved recognition of the behavioral health needs of justice-involved youth with evidence-based screening; and 6) codifying existing practice for probation's role in detention screening for release to probation intake, and pre-dispositional supervision.

While some changes are prescriptive, there is flexibility for jurisdictions to develop policies and procedures that meet local needs and resources. These amendments incorporate nationally recognized evidence-based practice principles demonstrated in research to reduce risk of recidivism (continuing in a JD pattern of behavior), by addressing needs underlying the JD behaviors. These principles include actuarial risk and needs screening and assessment; prompt termination of adjustment efforts with minimal intervention services where youth present as low risk for continuing in JD behaviors; and full assessments for all JD youth at moderate or high risk for continued JD behavior. These changes build upon existing statute to prescribe the prompt probation screening to determine eligibility and suitability for probation intake of those youths for whom detention is imminent (or are already detained) by facilitating safe release through alternatives to detention and away from costly detention, as appropriate, and expedited probation conferencing at intake.

Adjustment services are to be prioritized for moderate and high risk youth, with a focus on addressing youth criminogenic needs in the community to reduce costly detention and placement outside the home and improve long term outcomes for youth and their families.

It is estimated that due to RTA legislation more than 14,000 youth charged with misdemeanor offenses, and another 4,500-youth charged with felony offenses will be shifted into the probation JD intake process annually, by full implementation of RTA.

The proposed changes are the culmination of the efforts of a statewide Probation RTA Rule Revision Workgroup comprised of probation professionals from urban, rural, and suburban counties across New York State (NYS) and DCJS staff. Importantly, workgroup membership included representatives of the New York State Council of Probation Administrators (COPA), and the New York State Probation Officers Association (POA) to ensure input from those organizations. COPA and NYSPOA are professional probation associations. The proposed revisions evolved through a series of workgroup meetings.

Prior drafts of the proposed amendments were shared with all probation directors in February and April 2018. Responses were received directly from probation directors, as well as from COPA. Feedback from these sources resulted in edits being made. DCJS, however, did make additional minor changes to the most recently circulated draft version of this rule to provide greater clarity and flexibility in language consistent with our agency intent.

4. Costs:

a. While some changes are prescriptive, there is flexibility for jurisdictions to develop policies and procedures that meet local needs and resources. It is expected that increased volumes of 16 and 17-year-old JD youth in the probation intake process will result in increased staffing needs in each probation jurisdiction so that they may perform this statutorily required function.

b. DCJS-OPCA will increase juvenile operations staffing levels to provide technical assistance to localities in the implementation of the regulatory changes. As part of the State's efforts to support uniformity, implementation of evidence-based tools, and cost efficiencies, OPCA intends to support the state-wide cost to obtain licensing for use and deployment of a selected evidence-based mental health screening tool.

c. DCJS anticipates that the proposed revision of this rule will result in additional costs to probation departments due to the increase in volumes of youth that will enter the JD intake and adjustment process (JD preliminary procedure). Per section 246.4 of the Executive Law, such additional state aid shall be made in an amount necessary to pay one hundred percent other expenditures for evidence- based practices and juvenile risk and evidence-based intervention services provided to youth sixteen years of age or older when such services would not otherwise have been provided absent the provisions of a chapter of the laws of two thousand seventeen that increased the age of juvenile jurisdiction. Increased JD youth volumes will require additional probation staff. Increased JD youth volumes will also draw from local interventions and services designed to reduce risk of recidivism, resulting in a need for probation departments to expand the availability of expected service needs.

5. Local government mandates:

DCJS-OPCA rules govern the probation delivery of JD intake and adjustment services (JD preliminary procedure). Local probation departments are required to provide JD intake and adjustment services to all JD youth, including the additional 16 and 17-year-old youth shifting into the juvenile justice system due to RTA legislation. DCJS believes more effective JD adjustment services can reduce long-term state and local governmental costs for youth at risk of continued involvement with the juvenile justice or criminal justice system. By strategically focusing targeted interventions based on the criminogenic needs of justice-involved youth, localities will realize cost savings in the long-term by increasing youth capacity to lead productive, law-abiding lives.

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

6. Paperwork:

Probation departments would be expected to report outcomes data for youth who are engage in the juvenile justice system as well as interventions or services program outcomes for these youth. This process is expected to be automated through the Caseload Explorer case management system and changes to this system are expected to be funded by New York State.

7. Duplication:

These amendments do not duplicate any other existing State or Federal requirements.

8. Alternatives:

This proposal takes into account the extensive efforts of the statewide workgroup, DCJS, and probation professional organizations, and reflects input received from probation professionals across the state. The input received from that dissemination and discussion was taken into consideration, and resulted in the incorporation of certain modifications.

9. Federal standards:

None.

10. Compliance schedule:

Probation departments in many jurisdictions will need to hire additional probation officers and staff to build capacity to manage increased caseload sizes due to the influx of 16-year-old youth in 2018, and 17-year-old youth in 2019. Thereafter, through prompt dissemination to staff of the new rule and its summary, local departments should be able to implement these amendments and comply with the provisions as soon as they are adopted.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed amendments affect all local probation departments in New York State (NYS) and therefor the 57 counties outside of New York City (NYC) as well as NYC. The proposed amendments do not have any impact on small business.

2. Compliance Requirements:

This rule does not substantially change the methods of service delivery provided by probation departments to youth alleged to be juvenile delinquent (JD). Rule content has been modified as is necessary to conform with "Raise the Age" legislative changes that become effective October 1, 2018. Those departments that are not currently performing mental health screening will add such service to the JD adjustment process. These regulations codify current probation practice in providing pre-dispositional supervision services, and promote screening of youth in order to lessen the dependence and use of detention services. There are no small business compliance requirements imposed by these proposed rule amendments.

3. Professional Services:

No professional services are required beyond statutorily defined probation functions, to comply with the proposed rule changes. There are no professional services required of small business associated with these proposed rule amendments.

4. Compliance Cost:

It is estimated that due to RTA legislation more than 14,000 youth charged with misdemeanor offenses, and another 4,500-youth charged

with felony offenses will be shifted into the probation JD intake process annually, by full implementation of RTA. It is expected that increased volumes of 16 and 17-year-old JD youth in the probation intake process will result in increased staffing needs so that probation departments can perform this statutorily required function to the standard of this rule.

Per section 246.4 of the Executive Law, such additional state aid shall be made in an amount necessary to pay one hundred percent other expenditures for evidence- based practices and juvenile risk and evidence-based intervention services provided to youth sixteen years of age or older when such services would not otherwise have been provided absent the provisions of a chapter of the laws of two thousand seventeen that increased the age of juvenile jurisdiction.

5. Economic and Technological Feasibility:

DCJS has supported the development and deployment of Caseload Explorer case management software for interested probation departments. DCJS does not anticipate any economic or technological problems will be experienced by probation departments as a result of these rule changes. There are no economic or technological issues faced by small businesses as these proposed rules do not affect them.

6. Minimizing Adverse Impact:

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In September 2017, OPCA commenced the aforementioned RTA Rule Revision workgroup with representatives from across the state representing small, medium, and large jurisdictions including urban and rural jurisdictions; 2) In February and April 2018, OPCA circulated a refined draft to all probation directors/commissioners; and 3) throughout the Workgroup sessions, a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA), reviewed the proposed Rule and provided feedback.

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

1. Types and estimated numbers 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:

DCJS does not anticipate that the proposed revision will result in any changes to reporting, or recordkeeping requirements by rural counties. This rule does not change the monthly workload reporting requirements to our state agency, DCJS. There are no professional services required of small business associated with these proposed rule amendments.

This amendment will impact compliance requirements for probation departments as they will need staffing resources to manage increased intake and adjustment caseload sizes due to the influx of 16-year-old youth in 2018, and 17-year-old youth in 2019.

3. Costs:

DCJS believes that while some changes are prescriptive, there is flexibility for jurisdictions to develop policies and procedures that meet local needs and resources. It is expected that increased volumes of 16 and 17-year-old JD youth in the probation intake process will result in incremental staffing to perform this statutorily required function. Per section 246.4 of the Executive Law, such additional state aid shall be made in an amount necessary to pay one hundred percent other expenditures for evidence-based practices and juvenile risk and evidence-based intervention services provided to youth sixteen years of age or older when such services would not otherwise have been provided absent the provisions of a chapter of the laws of two thousand seventeen that increased the age of juvenile jurisdiction.

Increased JD youth volumes will also draw from local interventions and services designed to reduce risk of recidivism. It is expected that this will result in a need for probation departments to expand the availability of targeted interventions. OPCA has continued to encourage smaller, rural localities to pursue regional service delivery designs for specialized youth interventions so that they may be available and sustainable to rural JD youth.

As part of the State's efforts to streamline recordkeeping, avoid duplication and achieve cost savings, OPCA has supported the deployment of a web-based case management software, known as Caseload Explorer. Currently, 57 probation departments currently utilize and many rural counties benefit from this software. Many rural counties are and will continue to benefit from this deployment.

Any anticipated in-service costs of educating staff, can be readily accomplished through webinars, memoranda and supervisory oversight without incurring any direct costs.

4. Minimizing adverse impact:

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

5. Rural area participation:

These revisions were developed by an OPCA working committee comprised of OPCA staff and several local probation departments representing all geographic regions of the state, including rural, and involving all levels of probation staff, including director, deputy director, supervisor, senior probation officer, and probation officer. OPCA circulated drafts to all probation directors/commissioners, the Council of Probation Administrators or COPA (the statewide professional association of probation administrators), which assigned it to a specific committee for review, with rural representation. The proposed regulatory amendments incorporate verbal and written suggestions gathered from probation professionals, including rural entities, across the state.

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In September 2017, OPCA commenced the aforementioned RTA Rule Revision workgroup with representatives from across the state representing small, medium, and large jurisdictions including urban and rural jurisdictions; 2) In February and April 2018, OPCA circulated a refined draft to all probation directors/commissioners; and 3) throughout the Workgroup sessions, a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA), reviewed the proposed Rule and provided feedback.

Moreover, aside from probation officer staffing needs, DCJS did not find significant differences among urban, rural, and suburban jurisdictions as to issues raised or suggestions for change in content in this amendment. DCJS is confident that these regulatory changes have the flexibility to accommodate rural jurisdictional needs.

Job Impact Statement

1. Nature of impact:

This regulatory amendment recognizes and incorporates the critical function of probation services to carry out the intent of a more fair, equitable and safe youth justice system reflected in "Raise the Age" (RTA) legislation, that becomes effective October 1, 2018. It is expected that increased volumes of 16 and 17-year-old juvenile delinquent (JD) youth in the probation intake process will result in increased staffing needs to perform this statutorily required function. Funding reimbursement for localities related to new Raise the Age probation functions is appropriated in the New York State budget to meet the estimated need for the incremental probation professional staffing.

2. Categories and numbers affected:

The proposed amendments do not adversely affect the more than 2,500 probation professionals currently serving in positions throughout NYS. Most localities will require additional probation staff to perform the functions statutorily required in "Raise the Age" (RTA) legislation, becoming effective October 1, 2018. Local civil service agencies are responsible to offer examinations for positions in each county/NYC.

3. Regions of adverse impact:

The revised amendments will have no adverse or disproportionate impact on jobs or employment opportunities in any region of NYS. In addition to filling the positions via open competitive or promotional examination, NYS Civil Service is available to offer guidance to localities regarding the opportunity to fill these positions through transfer, and other means as authorized in Civil Service Law such as non-competitive examination, thereby minimizing any adverse impact which may occur.

4. Minimizing adverse impact:

The proposed changes are the culmination of the efforts of a statewide Probation RTA Rule Revision Workgroup comprised of probation professionals from urban, rural, and suburban counties across New York State (NYS) and DCJS staff. Importantly, workgroup membership included representatives of the New York State Council of Probation Administrators (COPA), and the New York State Probation Officers Association (POA) to ensure input from those organizations. COPA and NYSPOA are professional probation associations. The proposed revisions evolved through a series of workgroup meetings.

DCJS does not anticipate that these regulatory amendments will have an adverse impact on existing jobs or employment opportunities, if additional probation positions are funded. DCJS anticipates that the proposed revision of this rule will result in additional costs to probation departments for staffing needs due to the increase in volumes of youth that will enter the JD intake and adjustment process (JD preliminary procedure). Per sec-

tion 246.4 of the Executive Law, such additional state aid shall be made in an amount necessary to pay one hundred percent other expenditures for evidence- based practices and juvenile risk and evidence-based intervention services provided to youth sixteen years of age or older when such services would not otherwise have been provided absent the provisions of a chapter of the laws of two thousand seventeen that increased the age of juvenile jurisdiction. Increased JD youth volumes will require additional probation staff. Increased JD youth volumes will also draw from local interventions and services designed to reduce risk of recidivism, resulting in a need for probation departments to expand the availability of expected service needs.

5. Self-employment opportunities:

Probation professionals are employed by New York's 58 probation departments (57 county-based and NYC), and as such, the proposed amendments do not involve self-employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New Rule 359: Role of Probation in Youth Part of Superior Court

I.D. No. CJS-32-18-00010-P

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

Proposed Action: Addition of Part 359 to Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1); Criminal Procedure Law, art. 722

Subject: New Rule 359: Role of Probation in Youth Part of Superior Court.

Purpose: Update existing rule to reflect services which will be performed by probation departments as a result of Raise the Age Law.

Substance of proposed rule (Full text is posted at the following State website: http://www.criminaljustice.ny.gov/): The passage of the Raise the Age legislation becoming effective October 1, 2018 establishes a new Youth Part of Superior Court and a newly established statutory role for probation departments to provide Voluntary Assessment and Case Planning services to Adolescent Offenders and Juvenile Offenders with matters before this court. This new Part 359 - Role of Probation in Youth Part of the Superior Court addresses the role for Probation in this legislation. Section 359.1 provides definitions that support a better understanding of the content of this rule. Section 359.2 states the Objective of this rule in defining probation's role in offering Voluntary Assessment and Case Planning services as well as when probation departments deliver pretrial release services, to the Adolescent Offender and Juvenile Offender charged with a crime in the Youth Part.

Applicability of the rule is addressed in Section 359.3. Jurisdiction is addressed in Section 359.4 where it clarifies to probation departments how a case may be handled when a youth resides in a jurisdiction other than that where the alleged crime occurred. Sections 359.5 and 359.6 outline the general requirements and provision of service for Probation departments in delivering Voluntary Assessment and Case Planning Services in Youth Part. This includes the establishment of the required service. This section also outlines minimum elements for and adoption of probation department policy and procedures. It describes the timeframes for notification to youth of services available to them, advisements to the youth of the voluntary nature of the Voluntary Assessment and Case Planning service, protocols and timeframes for conducting interviews and assessments of youth, case planning and referral to targeted interventions, and re-assessment. It also addresses involvement of parents or other persons legally responsible for the youth's care. Section 359.7 discusses the reporting of youth progress and providing summaries to the court during the pendency of a case as well as when proceeding to a Pre-Sentence Investigation. Section 359.8 addresses how Probation shall handle cases that have been removed from Youth Part to Family Court jurisdiction.

Section 359.9 of this rule discusses the role of probation when providing Pretrial services in Youth Part of Superior Court. It requires that if a probation department provides such a service, the department shall have written policies and procedures for the provision of such service. The content of this section addresses screening of youth, interview and assessment for pretrial release services, advisement to the court of available alternatives to detention, procedures and timeframes for monitoring and reporting to the court regarding compliance of the youth released for this purpose.

Section 359.10 outlines case record keeping requirements by probation for services provided in Youth Part.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin-Locklear, Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: dcjslegalrulemaking@dcjs.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority:

Executive Law (EL) § 243 establishes that the Division of Criminal Justice Services (DCJS) Office of Probation and Correctional Alternatives (OPCA) shall exercise general supervision over the administration of probation services throughout the state, and further establishes the authority of DCJS to promulgate rules regulating methods and procedures of the administration of probation services. Further, EL§ 257 (6) (b) also recognizes DCJS' statutory rulemaking authority.

2. Legislative objectives:

Statutory law assigns the clear authority of DCJS to establish minimum standards governing probation practice. This new regulation is created to define the statutory responsibility of probation departments in Youth Part of Superior Court, as it becomes effective October 1, 2018 due to "Raise the Age" (RTA) legislation. This rule-making is consistent with legislative intent regarding critical probation functions and the promotion of professional standards which govern administration and delivery of probation services in the newly established Youth Part of Superior Court. To represent the scope of these statutorily-required and essential functions by probation departments, this rule title is "Role of Probation in Youth Part of the Superior Court". By vesting the Commissioner of DCJS with rule-making authority, the Legislature authorized DCJS to set minimum standards in this area.

The overarching goal of this rule is to define the functions performed by probation departments in the newly established Youth Parts of Superior Court. These new courts will be established pursuant to legislative requirements in each jurisdiction in New York State. Probation departments will perform important functions in each court. This rule-making is necessary to: 1) define legislative processes that become effective October 1, 2018 due to RTA legislation; 2) incorporate contemporary evidence-based (research-supported) practice principles for effective interventions; 3) incorporate best probation practice in the area of Voluntary Assessment and Case Planning services; 4) ensure consistent statewide application of key intervention strategies to youth receiving Voluntary Assessment and Case Planning services; and 5) reduce unnecessary and costly reliance on detention and incarceration of youth.

3. Needs and benefits:

In accordance with Criminal Procedure Law (CPL) section § 722, probation will become responsible to provide Voluntary Assessment and Case Planning services to youth with cases in Youth Part. Rule-making is necessary at this time not only to reflect this new role, but to also address other functions probation departments may provide in the newly established Youth Part of Superior Court, as a criminal court. This rule-making prescribes the role of probation for the statutorily required functions as well as those functions for which probation is authorized to serve the court.

Consistent with good practice and/or certain legal provisions, this rule affirms model probation practices. Achieving uniform probation understanding of RTA provisions, as well as model probation practice includes 1) definitions that will be used in Youth Part of Superior Court; 2) an engagement process that will maximize potential for positive youth outcomes; 3) assessment, case planning and referral to targeted interventions when a youth consents to Voluntary Assessment and Case Planning services; 4) summary and reports to court; and 5) pretrial release services in Youth Part of Superior Court.

While some content is prescriptive, there is flexibility for jurisdictions to develop policies and procedures that meet local needs and resources. This rule incorporates nationally recognized evidence-based practice principles demonstrated in research to reduce risk of recidivism, by addressing needs underlying the alleged offending behaviors. It is estimated that due to RTA legislation more than 6,700 youth (ages 16 and 17) charged with felony offenses will be handled in the Youth Part of Superior Court annually, by full implementation of RTA.

The proposed rule is the culmination of the efforts of a statewide Probation RTA Rule Revision Workgroup comprised of probation professionals from urban, rural, and suburban counties across New York State (NYS) and DCJS staff. Importantly, workgroup membership included representatives of the New York State Council of Probation Administrators (COPA), and the New York State Probation Officers Association (POA) to ensure input from those organizations. COPA and NYSPOA are professional probation associations. The proposed revisions evolved through a series of workgroup meetings.

Prior drafts of the proposed amendments were shared with all probation directors in February and April 2018. Responses were received directly from probation directors, as well as from COPA. Feedback from these sources resulted in edits being made. DCJS, however, did make additional minor changes to the most recently circulated draft version of this rule to

provide greater clarity and flexibility in language consistent with our agency intent.

4. Costs:

a. It is expected that probation departments will incur an increased cost to deliver Voluntary Assessment and Case Planning services as it becomes statutory assigned to probation departments due to RTA legislative mandate effective October 1, 2018. This will result in increased additional probation staffing associated with providing Voluntary Assessment and Case Planning services whenever a 16-17 year old is arraigned in the Youth Part of Superior Court.

b. DCJS-OPCA will increase juvenile operations staffing levels to provide technical assistance to localities in the implementation of the regulatory requirements.

c. DCJS anticipates that this rule will result in additional costs to probation departments due to the newly mandated Voluntary Assessment and Case Planning service, by probation in Youth Parts located in each jurisdiction. Per section 246.4 of the Executive Law, such additional state aid shall be made in an amount necessary to pay one hundred percent other expenditures for evidence- based practices and juvenile risk and evidence-based intervention services provided to youth sixteen years of age or older when such services would not otherwise have been provided absent the provisions of a chapter of the laws of two thousand seventeen that increased the age of juvenile jurisdiction. These additional probation functions in Youth Part will require additional probation staffing. Increased volumes of youth referred to and consuming local interventions and services designed to reduce risk of recidivism, will likely result in a need for probation departments to expand the availability of expected service needs.

5. Local government mandates:

DCJS-OPCA rule will guide probation's delivery of Voluntary Assessment and Case Planning services as well as other Youth Part functions that probation departments may provide to the criminal court. Local probation departments are required to provide Voluntary Assessment and Case Planning services to youth with matters in Youth Part, if those youth consent to such services. DCJS believes effective assessment and case planning services can reduce long-term state and local governmental costs for youth at risk of continued involvement with the juvenile justice or criminal justice system. By strategically focusing targeted interventions based on the criminogenic needs of justice-involved youth, localities will realize cost savings in the long-term by increasing youth capacity to lead productive, law-abiding lives.

DCJS has made available, at no cost to jurisdictions, the Youth Assessment and Screening Instrument (YASI) tools and software for youth intake, investigation and supervision services. Fifty-seven counties currently use YASI. Consistent application and sharing of screening, assessment, and case planning protocols and results will further add savings by avoiding duplication of efforts within and across probation departments. Assessment has been a routine business function of local probation departments. NYC utilizes the Youth Level of Service Inventory (YLSI) Instrument.

6. Paperwork:

DCJS anticipates that the proposed rule will result in the need for additional reporting fields that will represent new probation functions in Youth Part, into the existing OP30 probation workload reporting. This rule does not otherwise change the monthly workload reporting requirements to our state agency, DCJS. DCJS does not anticipate any other substantive changes to reporting, or record keeping requirements by rural counties. There are no professional services required of small business associated with these proposed rule amendments. Additionally, some forms applicable to probation services in the Youth Part will be provided as templates. Fifty seven probation departments utilize the Caseload Explorer automated case management system.

7. Duplication:

These amendments do not duplicate any other existing State or Federal requirements.

8. Alternatives:

This proposal takes into account the extensive efforts of the statewide workgroup, DCJS, and probation professional organizations, and reflects input received from probation professionals across the state. The input received from that dissemination and discussion was taken into consideration, and resulted in the incorporation of certain modifications.

9. Federal standards:

None.

10. Compliance schedule:

Probation departments in many jurisdictions will need to hire additional probation officers and staff to build capacity to manage increased workload due to the new probation Voluntary Assessment and Case Planning services in Youth Part. Thereafter, through prompt dissemination to staff of the new rule and its summary, OPCA-sponsored webinars and Youth Part Practice Guidance for Probation, local departments should be able to implement these amendments and comply with the provisions when adopted.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed amendments affect all local probation departments in New York State (NYS) and therefor the 57 counties outside of New York City (NYC) as well as NYC. The proposed amendments do not have any impact on small business.

2. Compliance Requirements:

This rule reflects the new service delivery that must be provided by probation departments to youth with cases pending in Youth Part of Superior Court. Rule content is necessary to conform with "Raise the Age" (RTA) legislative changes that become effective October 1, 2018. There are no small business compliance requirements imposed by this rule.

3. Professional Services:

No professional services are required beyond statutorily defined probation functions, to comply with this rule. There are no professional services required of small business associated with this rule.

4. Compliance Cost:

Due to RTA legislation, effective October 1, 2018, probation departments will become responsible to provide Voluntary Assessment and Case Planning Services in Youth Part of Superior Court in every jurisdiction in the state. It is estimated that due to this legislation more than 6,700 youth (ages 16 and 17) charged with felony offenses will be handled in the Youth Part annually when the law is fully implemented. The requirement for each probation department to perform this new statutory function in Youth Part will result in increased staffing needs in each probation jurisdiction in order for each department to be able to perform this function to the standard of this rule.

DCJS anticipates that the RTA legislation and this corresponding rule, will result in additional costs to probation departments due to the new statutory responsibilities of probation departments. Per section 246.4 of the Executive Law, such additional state aid shall be made in an amount necessary to pay one hundred percent other expenditures for evidence-based practices and juvenile risk and evidence-based intervention services provided to youth sixteen years of age or older when such services would not otherwise have been provided absent the provisions of a chapter of the laws of two thousand seventeen that increased the age of juvenile jurisdiction.

5. Economic and Technological Feasibility:

DCJS has supported the development and deployment of Caseload Explorer case management software for all probation departments. DCJS does not anticipate any technological problems will be experienced by probation departments as a result of these rule changes. Automation will be expected to enhance the efforts of probation officers and assist them in their efforts to perform the new Youth Part voluntary assessment and case planning activities. There are no economic or technological issues faced by small businesses as these proposed rules do not affect them.

DCJS has made available, at no cost to jurisdictions, the Youth Assessment and Screening Instrument (YASI) tools and software for youth intake, investigation and supervision services. Fifty-seven counties currently use YASI. Consistent application and sharing of screening, assessment, and case planning protocols and results will further add savings by avoiding duplication of efforts within and across probation departments. Assessment has been a routine business function of local probation departments at existing justice system process points. RTA legislation creates a new process point in Voluntary Assessment and Case Planning Services in Youth Part.

6. Minimizing Adverse Impact:

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In September 2017, OPCA commenced the aforementioned RTA Rule Revision workgroup with representatives from across the state representing small, medium, and large jurisdictions including urban and rural jurisdictions; 2) In February and April 2018, OPCA circulated a refined draft to all probation directors/commissioners; and 3) throughout the Workgroup sessions, a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA), reviewed the proposed Rule and provided feedback.

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

1. Types and estimated numbers 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:

DCJS anticipates that the proposed rule will result in the need for additional reporting data fields that will represent new probation functions in

Youth Part. These fields will be created in the Caseload Explorer case management system which will automate the entry of data related to the engagement of Adolescent and Juvenile Offenders in the Youth Part and track voluntary assessment and case planning activities as well as capture outcomes for youth and the interventions and/or program services in which they have volunteered. This rule does not otherwise change the monthly workload reporting requirements to DCJS. DCJS does not anticipate any other substantive changes to reporting, or record keeping requirements by rural counties. There are no professional services required of small business associated with these proposed rule amendments.

3. Costs:

DCJS anticipates that the proposed rule will result in additional costs to probation departments due to the newly mandated Voluntary Assessment and Case Planning services be performed by probation in the Youth Parts of Superior Courts. Per section 246.4 of the Executive Law, such additional state aid shall be made in an amount necessary to pay one hundred percent other expenditures for evidence- based practices and juvenile risk and evidence-based intervention services provided to youth sixteen years of age or older when such services would not otherwise have been provided absent the provisions of a chapter of the laws of two thousand seventeen that increased the age of juvenile jurisdiction. These additional probation functions in Youth Part will require additional probation staffing.

Increased volumes of youth referred to and consuming local interventions and services designed to reduce risk of recidivism, will likely result in a need for probation departments to expand the availability of such targeted services/interventions.

DCJS believes that while this rule is prescriptive, there is flexibility for jurisdictions to develop policies and procedures that meet local needs and resources. OPCA has continued to encourage smaller, rural localities to pursue regional intervention/service delivery designs for specialized youth interventions so that they may be available and sustainable to rural youth.

As part of the State's efforts to streamline recordkeeping, avoid duplication and achieve cost savings, OPCA has supported the deployment of a web-based case management software, known as Caseload Explorer. Currently, 57 probation departments currently utilize and many rural counties benefit from this software. DCJS will support the development and roll-out of necessary changes to Caseload Explorer to conform with RTA. Many rural counties are and will continue to benefit from this deployment. DCJS has also made available, at no cost to jurisdictions, the Youth Assessment and Screening Instrument (YASI) tools and software for youth intake, investigation and supervision services. Fifty-seven counties currently use YASI and NYC uses the Youth Level of Service Inventory or YSLI.

4. Minimizing adverse impact:

DCJS foresees that these regulatory amendments will have minimal adverse impact on rural areas in that probation departments will be able to understand their new role in Youth Part and design services that conform to the legislative intent. It is noted that the legislative mandate will create additional workload to probation departments. As noted in more detail below, OPCA collaborated with jurisdictions across the state, including rural areas, and probation professional associations with rural membership in developing the proposed rule and incorporated numerous suggestions to clarify or address issues raised and to reflect good probation practice across the state. To OPCA's knowledge, no adverse impact on rural areas were identified, and DCJS embraced flexibility where it was found to be consistent with good probation practice. Additionally, funding reimbursement for localities related to new Raise the Age probation functions is appropriated in the New York State budget to meet the estimated need for increased probation professional staffing.

5. Rural area participation:

These revisions were developed by an OPCA working committee comprised of OPCA staff and several local probation departments representing all geographic regions of the state, including rural, and involving all levels of probation staff, including director, deputy director, supervisor, senior probation officer, and probation officer. OPCA circulated drafts to all probation directors/commissioners, the Council of Probation Administrators or COPA (the statewide professional association of probation administrators), which assigned it to a specific committee for review, with rural representation. The proposed regulatory amendments incorporate verbal and written suggestions gathered from probation professionals, including rural entities, across the state.

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In September 2017, OPCA commenced the aforementioned RTA Rule Revision workgroup with representatives from across the state representing small, medium, and large jurisdictions including urban and rural jurisdictions; 2) In February and April 2018, OPCA circulated a refined draft to all probation directors/commissioners; and 3) throughout the Workgroup sessions, a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA), reviewed the proposed Rule and provided feedback.

Moreover, aside from probation officer staffing needs, DCJS did not find significant differences among urban, rural, and suburban jurisdictions as to issues raised or suggestions for change in content in this amendment. DCJS is confident that these regulatory changes have the flexibility to accommodate rural jurisdictional needs.

Job Impact Statement

1. Nature of impact:

This rule recognizes and incorporates the critical function of probation services to carry out the intent of a more fair, equitable and safe youth justice system reflected in "Raise the Age" (RTA) legislation, that becomes effective October 1, 2018. It is expected that this rule will result in additional costs to probation departments due to the newly mandated service, Voluntary Assessment and Case Planning services, by probation present in Youth Parts of Superior Courts located in each jurisdiction. These additional probation functions in Youth Part will require additional probation staffing in jurisdictions so that they may perform this statutorily required function. Funding reimbursement for localities related to new Raise the Age probation functions is appropriated in the New York State budget to meet the estimated need for increased probation professional staffing.

2. Categories and numbers affected:

The proposed amendments do not adversely affect the more than 2,500 probation professionals currently serving in positions throughout NYS, if staffing allocations are apportioned. Most localities will require additional probation staff or support for overtime to perform the functions statutorily required in RTA legislation. Local civil service agencies are responsible to offer examinations for positions in each county/NYC. The existing promotional and open competitive civil service lists which may exist, and the individuals on current eligible lists are a locally driven process.

3. Regions of adverse impact:

The rule will have no adverse or disproportionate impact on jobs or employment opportunities in any region of NYS. In addition to filling the positions via open competitive or promotional examination, NYS Civil Service may offer guidance to localities regarding the opportunity to fill these positions through transfer, and other means as authorized in Civil Service Law such as non-competitive examination, thereby minimizing any adverse impact which may occur.

4. Minimizing adverse impact:

The proposed changes are the culmination of the efforts of a statewide Probation RTA Rule Revision Workgroup comprised of probation professionals from urban, rural, and suburban counties across New York State (NYS) and DCJS staff. Importantly, workgroup membership included representatives of the New York State Council of Probation Administrators (COPA), and the New York State Probation Officers Association (POA) to ensure input from those organizations. COPA and NYSPOA are professional probation associations. The proposed revisions evolved through a series of workgroup meetings.

DCJS does not anticipate that these regulatory amendments will have an adverse impact on existing jobs or employment opportunities, provided additional probation positions are funded to address the incremental work and costs associated with the implementation of Raise the Age. Per section 246.4 of the Executive Law, such additional state aid shall be made in an amount necessary to pay one hundred percent other expenditures for evidence- based practices and juvenile risk and evidence-based intervention services provided to youth sixteen years of age or older when such services would not otherwise have been provided absent the provisions of a chapter of the laws of two thousand seventeen that increased the age of juvenile jurisdiction.

5. Self-employment opportunities:

Probation professionals are employed by New York's 58 probation departments (57 county-based and NYC), and as such, the proposed amendments do not involve self-employment opportunities.

Department of Financial Services

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-32-18-00001-E
Filing No. 675
Filing Date: 2018-07-18
Effective Date: 2018-07-18

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

Action taken: Addition of Part 419 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers' response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers' performance.

In addition to addressing the pressing issue of mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees. The rule also sets forth prohibited practices such as engaging in deceptive practices or placing homeowners' insurance on property when the servicers has reason to know that the homeowner has an effective policy for such insurance.

Subject: The business conduct of mortgage loan servicers.

Purpose: To implement the purpose and provisions of the Mortgage Lending Reform Law of 2008 with respect to mortgage loan servicers.

Substance of emergency rule (Full text is posted at the following State website: http://www.dfs.ny.gov/legal/regulations/emergency/banking/emergbanking.htm): Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including "Servicer", "Qualified Written Request" and "Loan Modification".

Section 419.2 establishes a duty of fair dealing for Servicers in connection with their transactions with borrowers, which includes a duty to pursue loss mitigation with the borrower as set forth in Section 419.11.

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

Section 419.4 describes the requirements and procedures for handling to consumer complaints and inquiries.

Section 419.5 describes the requirements for a servicer making payments of taxes or insurance premiums for borrowers.

Section 419.6 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.

Section 419.8 requires a late payment notice be sent to a borrower no later than 17 days after the payment remains unpaid.

Section 419.9 describes the required provision of a payoff statement that contains a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date.

Section 419.10 sets forth the requirements relating to fees permitted to be collected by Servicers and also requires Servicers to maintain and update at least semi-annually a schedule of standard or common fees on their website.

Section 419.11 sets forth the Servicer's obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This Section includes requirements relating to procedures and protocols for handling loss mitigation, providing borrowers with information regarding the Servicer's loss mitigation process, decision-making and available counseling programs and resources.

Section 419.12 describes the quarterly reports that the Superintendent may require Servicers to submit to the Superintendent, including information relating to the aggregate number of mortgages serviced by the Servicer, the number of mortgages in default, information relating to loss mitigation activities, and information relating to mortgage modifications.

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may require Servicers to file in order to determine whether the Servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received, communications with borrowers, financial reports and audited financial statements.

Section 419.14 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and placing insurance on a mortgage property without written notice when the Servicer has reason to know the homeowner has an effective policy in place.

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 October 15, 2018.

Text of rule and any required statements and analyses may be obtained from: George Bogdan, New York State Department of Financial Services, One State Street, New York, New York 10004-1417, (212) 480-4758, email: george.bogdan@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Mortgage Lending Reform Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent. The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. The functions and powers of the banking board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89.

New Paragraph (d) was added to Subsection (5) of Section 590 by the Mortgage Lending Reform Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be promulgated by the Banking Board or prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Mortgage Lending Reform Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Mortgage Lending Reform Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Mortgage Lending Reform Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Mortgage Lending Reform Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Mortgage Lending Reform Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Mortgage Lending Reform Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for mortgage loan servicer registration and branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative Objectives.

The Mortgage Lending Reform Law was intended to address various problems related to residential mortgage loans in this State. The law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

The Mortgage Lending Reform Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The new law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board and the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Collectively, the provisions of Part 418 and 419 implement the intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and Benefits.

The Mortgage Lending Reform Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry, particularly with respect to servicing and foreclosure. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Until July 1, 2009, when the mortgage loan servicer registration provisions first became effective, the Department regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; erroneously force-placing insurance when borrowers already have insurance; and failing to engage in prompt and appropriate loss mitigation efforts.

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 9% were seriously delinquent as of the first quarter of 2012. Despite various initiatives adopted at the state level and the creation of federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified, have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It was intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers. It also provided for the suspension, revocation and termination of licensees involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower's account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer's compliance with applicable laws, its financial condition and the status of its servicing portfolio.

Since the adoption of Part 418, 67 entities have been approved for registration or have pending applications and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and are required to comply with the conduct of business and consumer protection rules applicable to mortgage loan servicers.

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

4. Costs.

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local Government Mandates.

None.

6. Paperwork.

Part 419 requires mortgage loan servicers to keep books and records related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations. The various federal laws that touch upon aspects of mortgage loan servicing are noted in Section 9 "Federal Standards" below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created federal bureau of consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan.

Additionally, the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may soon propose additional regulations for mortgage loan servicers.

10. Compliance Schedule.

Similar emergency regulations first became effective on October 1, 2010.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. The functions and powers of the Banking Board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89. Of the 67 entities which have been approved for registration or have pending applications and the nearly 400 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers who are not a bank, mortgage banker, mortgage broker or other exempt organizations (the "MLS Registration Regulations") , and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, sets for the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Professional Services:

None.

4. Compliance Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publishes quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and

reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

For the reasons noted in Section 4 above, the rule should impose no adverse economic or technological burden on mortgage loan servicers that are small businesses.

6. Minimizing Adverse Impacts:

As noted in Section 1 above, most servicers are not small businesses. Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by Fannie Mae and Freddie Mac and best industry practices.

Moreover, the ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

The Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule reflects the input received from both industry and consumer groups.

Rural Area Flexibility Analysis

Types and Estimated Numbers:

Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 67 entities have pending applications or have been approved for registration and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 400 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations") , and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 67 entities that have been approved for registration or that have pending applications, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impacts:

As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas.

In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than $5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation:

The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from federal or state laws and reflect existing best industry practices.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Blazing 7s Progressive Wager

I.D. No. SGC-32-18-00002-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 5324.11(q) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(g), 1335(5), (6) and (11)

Subject: Blazing 7s Progressive Wager.

Purpose: To set forth the practices and procedures for the operation of Blazing 7s Progressive Wager as a casino table game.

Text of proposed rule: A new subdivision 5324.11(q) of Title 9 NYCRR would be added to read as follows:

§ 5324.11 Blackjack

* * *

(q) Blazing 7s progressive wager. The gaming facility may provide a blazing 7s progressive wager as an additional side wager in the game of blackjack.

(1) All blazing 7s progressive wagers shall be made in the designated betting space or coin slot on the layout, in an amount that shall be established by the gaming facility prior to the commencement of a round of play. Once all wagers are made, the dealer shall announce "no more bets." Simultaneously with such announcement, the dealer shall activate the blazing 7s progressive wager lock-out feature by depressing the coin-in button or collecting the wagers from the designated betting space. No blazing 7s progressive wager shall be accepted after a card has been dealt in the underlying blackjack game.

(2) Each blazing 7s progressive wager shall increase the game's progressive jackpot meter and entitle a player to win that progressive jackpot prize upon obtaining a hand comprising three sevens of the same suit or three sevens of diamonds, depending on the pay table used. The amount of the initial blazing 7s progressive prize, which shall be established by the gaming facility, shall be reset to that amount following each 100% blazing 7s progressive payout. The blazing 7s progressive shall be augmented upon each wager in increments established by the gaming facility's approved system of internal controls, without regard to the outcome of the blazing 7s progressive wager. The initial and reset amounts shall be at least $2,000, if the required blazing 7s progressive wager is $1, and at least $10,000, if the required blazing 7s progressive wager is $5.

(3) If other optional wagers in the game of blackjack are offered on the same table as the blazing 7s progressive wager, the dealer shall first settle those optional wagers.

(4) If a player splits the first two sevens the player is dealt, for purposes of the underlying game, blazing 7s progressive wager shall be based on the two sevens and the third card dealt to the player.

(5) A blazing 7s progressive wager loses if a player is not dealt two sevens in the player's initial two cards.

(6) In the case of dealer blackjack, the player shall receive a third card if the first two cards dealt to the player are sevens but will still lose the player's blackjack wager regardless of outcome.

(7) Each gaming facility shall pay a winning blazing 7s progressive wager at odds no less than the following (with the gaming facility choosing pay table A or pay table B), to a player who receives:

Hand	*Pay table A*	*Pay table B*
Three 7s of the same suit	*100% of meter*	*not applicable*
Three 7s of diamonds	*not applicable*	*100% of meter*
Three 7s of clubs, hearts or spades	*not applicable*	*10% of meter*
Three 7s of same color	*10% of meter*	*500:1*
Three 7s	*200:1*	*200:1*
Two 7s as the first two cards	*25:1*	*25:1*
One 7 among the first two cards	*2:1*	*2:1*

(8) When a player has a blazing 7s progressive hand that requires a change to the meter:

(i) the gaming facility supervisor shall notify the surveillance department and any other department, as appropriate; and

(ii) pit management shall insert the jackpot key into the jackpot computer, verify the amount of the payout to the winning player or players and secure the key in accordance with the gaming facility's approved system of internal controls.

(9) Upon completion of each round of play, the dealer shall press the game-over button and commence a new round of play.

(10) Notwithstanding the requirements in paragraph (4) of this subdivision, if the first two cards of the player are sevens, the gaming facility may use a dealing procedure wherein the dealer's up card, rather than a player's drawn card, shall be used to determine whether the player receives a payout for three sevens in accordance with paragraph (7) of this subdivision. The gaming facility shall provide notice to the commission of this change in dealing procedure prior to its implementation on the gaming floor.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carrying out the provisions of Racing Law Article 13.

Racing Law section 1307(2)(g) authorizes the Commission to regulate the devices permitted for use at a table game.

Racing Law section 1335(5) authorizes the Commission to regulate the wagers and pay-offs of winning wagers as may be necessary to assure the vitality of casino operations and fair odds to patrons.

Racing Law section 1335(6) authorizes the Commission to regulate the posting of gaming rules, pay-offs of winning wagers and the odds of winning for each wager.

Racing Law section 1335(11) authorizes the Commission to regulate a dealer's ability to deal cards by hands or by use of a machine.

2. LEGISLATIVE OBJECTIVES: The above referenced statutory provisions carry out the legislature's stated goal "to tightly and strictly" regulate casinos "to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state," as set forth in Racing Law section 1300(10).

3. NEEDS AND BENEFITS: The proposed rule implements the above-listed statutory directives regarding table game rules and equipment. Best practices addressed in the proposed rule include detailing the rules of play for the Blazing 7s Progressive Wager, as well as relevant pay tables.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and/or continuing compliance with this rule: The anticipated cost of implementing and complying with the proposed regulation for those gaming facilities who wish to offer the wager will be approximately $7,500 per year for each gaming facility, based on the estimated license fee charged by Bally Gaming, Inc. d/b/a Bally Technologies for the game. There will be no additional costs for any gaming facility that chooses not to offer the wager.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The costs to the Commission for the implementation of and continued administration of the rule will be negligible given that all such costs are the

responsibility of the gaming facility. These rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. LOCAL GOVERNMENT MANDATES: There are no local government mandates associated with these rules.

6. PAPERWORK: The rule is not expected to impose any significant paperwork or reporting requirements on the regulated entities.

7. DUPLICATION: The rule does not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulation. These included the rules for similar table games and the appropriate pay tables. The Commission is also required to promulgate these rules pursuant to Racing Law sections 1307(2)(g), and 1335(5), (6) and (11).

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

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

The proposed rule will not have any adverse impact on small businesses, local governments, jobs or rural areas. This rule is intended to promote public confidence and trust in the credibility and integrity of casino gambling in New York State. The rule will ensure that licensed gaming facilities follow game rules that are authorized and trustworthy.

The proposed rule does not impact local governments or small businesses as it is not expected that any local government or small business will hold a gaming facility license.

The proposed rule imposes no adverse impact on rural areas. The rule applies uniformly throughout the state and solely applies to licensed gaming facilities.

The proposed rule will have no adverse impact on job opportunities.

This rule will not adversely impact small businesses, local governments, jobs, or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement are not required and have not been prepared.

Justice Center for the Protection of People with Special Needs

NOTICE OF WITHDRAWAL

Protocols for Interviewing Service Recipients

I.D. No. JCP-21-18-00030-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. JCP-21-18-00030-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on May 23, 2018.

Subject: Protocols for interviewing service recipients.

Reason(s) for withdrawal of the proposed rule: Due to deficiencies in the proposal as initially submitted a new proposed rule making was subsequently submitted.

Office for People with Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Telehealth

I.D. No. PDD-32-18-00003-EP
Filing No. 677
Filing Date: 2018-07-19
Effective Date: 2018-07-19

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

Proposed Action: Amendment of Part 679 and Subpart 635-13 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 16.00; Public Health Law, sections 2999-cc and 2999-dd

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

Specific reasons underlying the finding of necessity: The emergency adoption of regulations that authorizes telehealth as a new mechanism to deliver clinical services is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system. The proposed/emergency regulation will allow individuals to receive clinical services via telehealth, pursuant to recent legislative amendments to Public Health Law §§ 2999-cc and 2999-dd.

Telehealth will increase individuals access to care by allowing them to receive services remotely, rather than in the home or another costlier and more restrictive settings. The regulations must be filed on an emergency basis to ensure that OPWDD establishes telehealth regulations by, July 11, 2018, the date prescribed by the amendments to Public Health Law §§ 2999-cc and 2999-dd. If the regulations are not adopted by July 11, 2018, OPWDD will not meet the amended statutory requirement and voluntary and state-operated facilities will not be able to deliver clinical services to individuals via telehealth on the effective date of the statute. The regulatory updates are minimal, and when weighed against the significant loss of the ability to provide clinical services via telehealth on the statutory start date, the limit of full public notice is less significant.

Subject: Telehealth.

Purpose: To authorize telehealth as a new modality for the delivery of clinical services.

Text of emergency/proposed rule: New paragraph 679.1(c)(4) is added as follows, and all remaining paragraphs are renumbered accordingly:

(4) Providing access to clinical services to a person located in his/her residence or other temporary location via telehealth (see glossary) while the provider is located either at a main clinic site certified by OPWDD or at a certified satellite site (see glossary).

New subdivision 679.2(c) is added as follows, and all remaining paragraphs are renumbered accordingly:

(c) Section 367-u of the Social Services Law provides that the commissioner shall not exclude from the payment of medical assistance funds the delivery of healthcare services through telehealth when the services are provided pursuant to section 2999-cc(3) of the Public Health Law and meet the requirements of federal law, rules and regulations.

New subdivision 679.2(f) is added as follows:

(e) Section 2999-cc of the Public Health Law provides that health care services, which must include the assessment, diagnosis, consultation, treatment, education, care management, and/or self-management of a patient, may be provided via the use of electronic information and communication technologies between qualifying providers located at a distant site and a patient located at an originating site.

New subdivision 679.2(g) is added as follows:

(f) Section 4406-g of the Public Health Law provides that a health maintenance organization shall not exclude from coverage a service that is covered under an enrollee contract of a health maintenance organization because the service is delivered via telehealth.

New subdivision 679.2(h) is added as follows:

(g) Sections 3217-h and 4306-g of the Insurance Law provide that under an insurance policy that provides comprehensive coverage for hospital,

medical or surgical care, said services shall not be excluded from coverage because the service is delivered via telehealth.

Existing subdivision 679.5(c) is amended as follows:

(c) A clinic visit may include face-to-face service as defined by allowable Current Procedural Terminology (CPT)/Healthcare Common Procedure Coding System (HCPCS) and/or Current Dental Terminology (CDT) codes, or *such allowable services provided via telehealth*.

Existing subdivision 679.6(b) is amended as follows:

(b) Each agency that operates a clinic treatment facility shall provide OPWDD information it requests, including but not limited to the following: services provided by CPT/HCPCS and/or CDT codes, where such services were delivered*, including the location of both the provider and the individual when services are delivered via telehealth,* (i.e., on-site or at a certified satellite site, or, prior to April 1, 2016, off-site) and revenues by funding source or payee. These data shall correspond to the identical time period of the cost report.

New subdivision 679.99(w) is added as follows, and all remaining subdivisions are renumbered accordingly:

(w) Telehealth. The use of electronic information and communication technologies by a health care provider to deliver health care services to an individual while such individual is located at a site that is different from the site where the health care provider is located.

New subdivision 635-13.4(c) is added as follows, and all remaining subdivisions are renumbered accordingly:

(c) IPSIDD services are prohibited from being delivered via telehealth.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 16, 2018.

Text of rule and any required statements and analyses may be obtained from: Office of Counsel, Bureau of Policy and Regulatory Affairs, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd Floor, Albany, NY 12229, (518) 474-7700, email: rau.unit@opwdd.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs, supports, and services in the areas of care, treatment, habilitation, rehabilitation, and other education and training of persons with developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law Section 13.07.

b. OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the NYS Mental Hygiene Law Section 13.09(b).

c. OPWDD has the statutory authority to adopt regulations concerned with the operation of programs and the provision of services, as stated in the NYS Mental Hygiene Law Section 16.00.

d. OPWDD has the statutory authority to enact regulations relating to the use of telehealth, as stated in Public Health Law Sections 2999-cc and 2999-dd.

2. Legislative Objectives: The proposed regulations further legislative objectives embodied in sections 13.07, 13.09(b) and 16.00 of the Mental Hygiene Law and sections 2999-cc and 2999-dd of the Public Health Law. The regulations expand the way individuals can receive clinical services by authorizing telehealth as a new mechanism to deliver clinical services.

3. Needs and Benefits: The proposed regulations amend Title 14 NYCRR Part 679 and Subpart 635-13 to authorize telehealth as a new modality for the delivery of clinical services.

The proposed regulations are necessary to allow individuals to receive clinical services via telehealth pursuant to recent legislative amendments to the Public Health Law.

The proposed regulations are beneficial to individuals because they provide individuals with greater access to community providers which reduces the potential need for higher cost services, such as emergency room services.

The proposed regulations are beneficial to providers because individuals can receive services remotely, rather than costlier services in a more restrictive setting.

4. Costs:

a. Costs to the Agency and to the State and its local governments:

There is no anticipated impact on Medicaid expenditures as a result of these proposed regulations. Medicaid expenditures should go down over time because the regulation improves access to clinical services and reduces the need for costlier, higher levels of care.

These regulations will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

There are no anticipated costs to OPWDD in its role as a provider of services to comply with the new requirements. These regulations with provide a new modality for the delivery of current OPWDD services.

b. Costs to private regulated parties:

There are no anticipated costs to regulated providers to comply with the proposed regulations. The amendments merely authorize telehealth as a new mechanism to deliver clinical services.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: Providers will not experience an increase in paperwork as a result of the proposed regulations.

7. Duplication: The proposed regulations do not duplicate any existing State or Federal requirements on this topic.

8. Alternatives: OPWDD did not consider any other alternatives to the proposed regulations. The regulations are necessary to allow telehealth as a new modality to deliver clinical services pursuant to recent statutory amendments.

9. Federal Standards: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: OPWDD is planning to adopt the proposed amendments on an emergency basis, within the timeframes mandated by the State Administrative Procedure Act. The proposed regulations were discussed with and reviewed by representatives of providers in advance of this proposal.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not being submitted because these amendments will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses. There are no professional services, capital, or other compliance costs imposed on small businesses as a result of these amendments.

The proposed regulations amend Title 14 NYCRR Part 679 and Subpart 635-13 to authorize telehealth as a new modality for the delivery of clinical services. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers of small business and local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

The proposed regulations amend Title 14 NYCRR Part 679 and Subpart 635-13 to authorize telehealth as a new modality for the delivery of clinical services. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers in rural areas and local governments.

Job Impact Statement

A Job Impact Statement for the proposed amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

The proposed regulations amend Title 14 NYCRR Part 679 and Subpart 635-13 to authorize telehealth as a new mechanism to deliver clinical services. The amendments will not result in costs, including staffing costs, or new compliance requirements for providers and consequently, the amendments will not have a substantial impact on jobs or employment opportunities in New York State.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-32-13-00010-P	August 7, 2013
PSC-29-15-00018-P	July 22, 2015
PSC-06-16-00012-P	February 10, 2016
PSC-49-16-00005-P	December 7, 2016
PSC-29-17-00006-P	July 19, 2017
PSC-46-17-00006-P	November 15, 2017
PSC-46-17-00012-P	November 15, 2017
PSC-46-17-00014-P	November 15, 2017
PSC-02-18-00008-P	January 10, 2018
PSC-05-18-00008-P	January 31, 2018

NOTICE OF ADOPTION

Petition for Waiver of Under-Grounding Requirements

I.D. No. PSC-04-18-00008-A
Filing Date: 2018-07-18
Effective Date: 2018-07-18

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

Action taken: On 7/12/18, the PSC adopted an order denying Lost Lake Resort Company's (Lost Lake) petition for a waiver of the requirements for under-grounding of electric distribution facilities in new subdivisions.

Statutory authority: Public Service Law, sections 31(4), 51, 65(1) and 66(1)

Subject: Petition for waiver of under-grounding requirements.

Purpose: To deny Lost Lake's petition for a waiver of under-grounding requirements.

Substance of final rule: The Commission, on July 12, 2018, adopted an order denying Lost Lake Resort Company's petition for a waiver of Commission regulation 16 NYCRR § 100.1, which requires that electric infrastructure in new residential developments be installed underground, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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.

(17-E-0653SA1)

NOTICE OF ADOPTION

Submetering of Electricity and Waiver Request

I.D. No. PSC-12-18-00009-A
Filing Date: 2018-07-18
Effective Date: 2018-07-18

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

Action taken: On 7/12/18, the PSC adopted an order approving Halletts Building 1 SPE LLC's (Halletts) notice of intent to submeter electricity at 1-02 26th Avenue, Queens, New York and request for waiver of 16 NYCRR section 96.5(k)(3).

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: Submetering of electricity and waiver request.

Purpose: To approve Halletts' notice of intent to submeter electricity and request for waiver of 16 NYCRR section 96.5(k)(3).

Substance of final rule: The Commission, on July 12, 2018, adopted an order approving Halletts Building 1 SPE LLC's notice of intent to submeter electricity at 1-02 26th Avenue, Queens, New York, located in the service territory of Consolidated Edison Company of New York, Inc., and request for waiver of the energy audit and energy efficiency plan requirements in 16 NYCRR § 96.5(k)(3), 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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.

(18-E-0001SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-13-18-00020-A
Filing Date: 2018-07-18
Effective Date: 2018-07-18

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

Action taken: On 7/12/18, the PSC adopted an order approving ERY Retail Podium LLC's (ERY) notice of intent to submeter electricity at 560 West 33rd Street, New York, 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: Submetering of electricity.

Purpose: To approve ERY's notice of intent to submeter electricity.

Substance of final rule: The Commission, on July 12, 2018, adopted an order approving ERY Retail Podium LLC's notice of intent to submeter electricity at 560 West 33rd Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc., 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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.

(18-E-0135SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-13-18-00021-A
Filing Date: 2018-07-18
Effective Date: 2018-07-18

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

Action taken: On 7/12/18, the PSC adopted an order approving Harmony Mills South LLC's (Harmony Mills) notice of intent to submeter electricity at 90 State Street, Albany, 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: Submetering of electricity.

Purpose: To approve Harmony Mills' notice of intent to submeter electricity.

Substance of final rule: The Commission, on July 12, 2018, adopted an order approving Harmony Mills South LLC's notice of intent to submeter electricity at 90 State Street, Albany, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid, 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: John Pitucci, Public Service Commis-

sion, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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.

(18-E-0136SA1)

NOTICE OF ADOPTION

Terms of a Water Service Agreement and Waiver of Tariff Provisions

I.D. No. PSC-14-18-00004-A

Filing Date: 2018-07-18

Effective Date: 2018-07-18

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

Action taken: On 7/12/18, the PSC adopted an order approving the terms and conditions of the Agreement for the Provision of Water Service between Saratoga Water Services Inc. and Saratoga Blvd. Apartments, Inc. and a waiver of tariff provisions.

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

Subject: Terms of a water service agreement and waiver of tariff provisions.

Purpose: To approve the terms and conditions of the Agreement for the Provision of Water Service and a waiver of tariff provisions.

Substance of final rule: The Commission, on July 12, 2018, adopted an order approving the terms and conditions of the Agreement for the Provision of Water Service, dated June 5, 2014 by and between Saratoga Water Services Inc. and Saratoga Blvd. Apartments, Inc. as they are reasonable and in the public interest and the waiver of tariff provisions: Sections XI (1) and XIII, on Leaves 44 and 45 of Saratoga Water Services, Inc.'s tariff (PSC No. 3 – Water) and 16 NYCRR §§ 501.2, 501.3, 501.4, 501.6, 501.9, and 502.3, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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.

(14-W-0220SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Request of the New York Independent System Operator, Inc. to Incur Indebtedness

I.D. No. PSC-32-18-00012-P

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

Proposed Action: The Commission is considering a petition filed on July 13, 2018, by the New York Independent System Operator, Inc. (NYISO), to incur indebtedness for a term in excess of 12 months.

Statutory authority: Public Service Law, sections 2(12), (13), 4(1), 5(2), 65(1), 66(1), (2), (4), (5) and 69

Subject: Request of the New York Independent System Operator, Inc. to incur indebtedness.

Purpose: To ensure that debt financing is used reasonably and appropriately.

Substance of proposed rule: The Public Service Commission is considering a petition filed by the New York Independent System Operator, Inc. (NYISO) on July 13, 2018, seeking approval to incur indebtedness, for a term in excess of twelve months. The petition seeks to: (i) extend the term of its currently-approved $30 million credit facility dedicated to funding the multi-year project for replacing NYISO's Energy Management System and Business Management System for a maximum of an additional one-year period until December 31, 2019, with all other terms and conditions remaining the same; (ii) replace its expiring revolving credit facility with a new five-year revolving line of credit of up to $30,000,000 with an additional $20,000,000 available under the loan agreement upon the NYISO's request ("Accordion Feature"); and, (iii) replace its expiring term loan with a new five-year unsecured term loan facility of a maximum, aggregate principal amount of $90,000,000 dedicated to funding capital investments, software development projects, and other strategic initiatives. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, modify, or reject, in whole or in part, the action proposed and may resolve related matters.

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.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, 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: 60 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.

(18-E-0439SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Energy Efficiency Programs and Targets for Investor-Owned Utilities

I.D. No. PSC-32-18-00013-P

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

Proposed Action: The Commission is considering the actions necessary to continue and expand the efforts of New York's investor-owned utilities to encourage the delivery and procurement of energy efficiency services, including the proposals in New Efficiency: New York.

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

Subject: Energy efficiency programs and targets for investor-owned utilities.

Purpose: To encourage energy conservation and the delivery and procurement of energy services by investor-owned utilities.

Substance of proposed rule: The Public Service Commission (Commission) is considering the actions necessary to continue and expand the efforts of New York's investor-owned utilities to encourage the delivery and procurement of energy efficiency services in New York's buildings and the industrial sector. This includes, in part, consideration of Commission jurisdictional components of "New Efficiency: New York" whitepaper (the Whitepaper) filed by the New York State Department of Public Service (DPS staff) and the New York State Energy Research and Development Authority on April 26, 2018. The Whitepaper, which identifies a portfolio of New York State actions and recommendations that could be deployed to achieve the statewide 2025 energy efficiency target of 185 trillion British thermal units (TBtu) of cumulative annual site energy savings relative to forecasted energy consumption in 2025. The Commission is considering increasing the scale of utility energy efficiency portfolio funding and targets to achieve at least 77 TBtu of cumulative annual energy efficiency savings in 2025. 1) Portfolio Mix Criteria – To achieve this level of savings, the Commission is considering identifying energy efficiency portfolio criteria or requirements to establish the right balance of cost-effective and market-responsive approaches to set the State on a path to meet its longer-term energy and carbon goals, anticipating that both new approaches and the most cost-effective and market-responsive existing approaches will compose the portfolio and can provide tangible benefits in the near-term. The Commission is interested in developing guidelines toward achievement of a cost effective portfolio mix of utility approaches that: (1) identify and appropriately compensate for energy effi-

ciency that provides heightened locational and temporal value; (2) help achieve scale and growth of energy efficiency markets; (3) incorporate and support more comprehensive measure mixes to deliver greater and deeper energy savings; (4) enable innovative utility and third party business models that leverage partnerships, data and information, contracting mechanisms, new cost and benefit sharing models, or other approaches that demonstrate potential for reducing the costs of achieving energy savings; (5) employ business and finance models that increasingly leverage public and private dollars with multiples of private dollars; (6) includes a minimum allocation of 20% of additional levels of investment toward the low- and moderate- income sector; and (7) includes criteria and guidelines regarding the delivery of cost-effective cross-fuel programs. The Commission is interested in information on the per unit costs (i.e., $/ MMBtu) associated with individual approaches and cost reducing opportunities and potential. 2) Allocation of Target – To support the achievement of the collective investor-owned utility target of 77 TBtu of cumulative annual site energy savings relative to forecasted energy consumption in 2025, the Commission is considering approaches for allocating this target among the individual gas and electric investor-owned utilities, as well as the potential for sub-allocation guidelines. The Commission is interested in information on the factors that should be considered, including geographic equity, conditions specific to utility service territories, sector equity, the projected timing of realized savings, allocation across fuels, relative per unit costs (i.e., $/ MMBtu), and likelihood of uptake and scale, and how these factors and costs should be balanced, as it considers target allocations and associated guidelines. 3) Utility Earning Adjustment Mechanisms (EAMs) – The Commission is considering EAM structures that would reward utilities for improvement in outcomes in ways that drive more market-responsive and also innovative programs of all kinds -- from novel approaches that seek and drive new ways into the market, to deployment of new technology, to improvements in execution. The Commission is interested in identifying a select few outcome metrics that should be used as well as how higher levels of EAMs could be used in constructs that provide net benefits to ratepayers over the long term and achieve greater levels of market penetration. The full text of the "New Efficiency: New York" paper and the full record of the proceeding may be viewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed, and may resolve related matters.

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.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, 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: 60 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.

(18-M-0084SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Clarification and Rehearing of the Rate Order

I.D. No. PSC-32-18-00014-P

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

Proposed Action: The Commission is considering a petition filed by Central Hudson Gas & Electric Corporation for clarification and rehearing of the Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan (Rate Order) issued June 14, 2018.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Petition for clarification and rehearing of the Rate Order.

Purpose: To encourage energy efficiency measures and right of way maintenance and to ensure just and reasonable rates.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Central Hudson Gas and Electric Corporation (Central Hudson) on July 12, 2018, requesting clarification or rehearing of the June 14, 2018, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan for Central Hudson (Rate Order), issued in Cases 17-E-0459 and 17-G-0460. Among other things, Central Hudson alleges that the Rate Order is founded on errors of fact in that the Commission (1) failed to properly calculate the conversion of electric and gas energy efficiency earnings adjustment mechanism savings targets from net to gross savings and (2) inadvertently used the word "distribution" when it should have used the word "transmission." The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. Upon conducting its evaluation of the petition, the Commission may reaffirm its initial decision or adhere to it with additional rationale in denying the petition, modify or reverse the decision in granting the petition in whole or in part, or take such other or further action as it deems necessary with respect to the petition. However, the Commission will limit its review to the issues raised by the above-referenced petition.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, 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: 60 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.

(17-E-0459SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Establishment of the Regulatory Regime Applicable to an Approximately 126 MW Wind Electric Generating Facility

I.D. No. PSC-32-18-00015-P

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

Proposed Action: The Commission is considering a petition filed by Cassadaga Wind LLC for approval of a lightened regulatory regime regarding a 126 MW wind electric generating facility in Chautauqua County, New York.

Statutory authority: Public Service Law, sections 2(12), (13), (22), 5(1)(b), 64-69, 69-a, 70-72, 72-a, 78, 79, 105-114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Establishment of the regulatory regime applicable to an approximately 126 MW wind electric generating facility.

Purpose: To ensure appropriate regulation of a new electric corporation.

Substance of proposed rule: The New York State Public Service Commission (Commission) is considering a petition filed by Cassadaga Wind LLC (Cassadaga) on July 9, 2018 requesting approval of a lightened regulatory regime in connection with the approximately 126 MW wind electric generating facility that Cassadaga is developing in Chautaqua County, New York. Cassadaga requests an order providing that it will be regulated as an electric corporation under a lightened regulatory regime consistent with that imposed on the owners-operators of other competitive wholesale generators. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, 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: 60 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.

(18-E-0399SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Assets, Rate Recovery of the Costs of Those Assets, and Lightened Ratemaking Regulatory Regime

I.D. No. PSC-32-18-00016-P

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

Proposed Action: The Commission is considering a joint petition of EmKey Transportation, Inc. and the City of Jamestown Board of Public Utilities to transfer pipeline facilities from EmKey to the City of Jamestown Board of Public Utilities and for lightened regulation.

Statutory authority: Public Service Law, sections 2(10)-(13), 5(1)(b), 64-69, 70-72, 72-a, 105-114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Transfer of assets, rate recovery of the costs of those assets, and lightened ratemaking regulatory regime.

Purpose: To ensure safety and reliability, just and reasonable rates and appropriate regulation.

Substance of proposed rule: The Public Service Commission is considering a joint petition (Petition) filed by EmKey Transportation, Inc. (EmKey) and the City of Jamestown Board of Public Utilities (Board) on July 10, 2018, seeking authorization to transfer certain pipeline facilities and approval of a lightened ratemaking regulatory regime for the Board, with regard to its proposed ownership and operation of the pipeline facilities. Specifically, the petition seeks authority for EmKey to sell to the Board certain pipeline and related facilities used to deliver gas from Mayville to the Board's electric generating facility (Mayville Line). The petition states that the Board does not transport, distribute, deliver or sell gas to any customers, but rather will use the facilities solely to supply natural gas to its own gas-fired generating facilities. The petition also requests that the Commission approve the Board 's proposed accounting and rate treatment for the transaction and find that the Board will be subject to lightened ratemaking regulation in relation to its ownership and operation of the Mayville Line, so long as it does not use the Mayville Line to serve any customers. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, 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: 60 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.

(18-M-0401SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rules for Value Stack Compensation of Hybrid Storage and Distributed Generation

I.D. No. PSC-32-18-00017-P

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

Proposed Action: The Commission is considering the Joint Utilities' Proposed Model Tariff for Compensation of a Hybrid Energy Storage System and Distributed Generation System, which proposes rules consistent with VDER for the compensation of such systems.

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

Subject: Rules for Value Stack compensation of hybrid storage and distributed generation.

Purpose: To ensure just and reasonable rates, including compensation, for distributed energy resources.

Substance of proposed rule: The Public Service Commission is considering the Joint Utilities' Proposed Model Tariff for Compensation of a Hybrid Energy Storage System and Distributed Generation System (Model Tariff), filed by the Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (collectively, the Joint Utilities) on June 19, 2018. The Model Tariff describes proposed compensation rules for projects interconnected behind a distribution utility meter that include a Value of Distributed Energy Resources (VDER)-eligible distributed generation system and an energy storage system, based on the VDER compensation rules and principles determined by the Commission in the March 9, 2017 Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters and the September 14, 2017 Order on Phase One Value of Distributed Energy Resources Implementation Proposals, Cost Mitigation Issues, and Related Matters. The full text of the Model Tariff and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, 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: 60 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.

(15-E-0751SP16)

Urban Development Corporation

EMERGENCY RULE MAKING

Life Sciences Initiative Program

I.D. No. UDC-32-18-00011-E

Filing No. 684

Filing Date: 2018-07-23

Effective Date: 2018-07-23

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

Action taken: Addition of Part 4255 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, sections 5(4), 9-c and 16-aa; L. 2017, ch. 58, part TT

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 statutory changes contained in Part TT of Chapter 58 of the Laws of 2017. The emergency rule implements the Capital Assistance component of the Life Sciences Initiative Program as well as the second component of the Program, the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program.

The Capital Assistance component is designed to attract new life sciences technologies to New York State, promote critical public and private sector investment in emerging life sciences fields in New York State and create and expand life sciences related businesses and employment. It also

includes securing established accelerator firms to facilitate the creation and implementation of a statewide Bio-accelerator initiative. The Bio-accelerator will provide scientists with entrepreneurial training, access to venture capital and a network of mentors to help expedite the translation of their scientific insights into commercially viable products. In addition, the Capital Assistance program allows for the establishment of a collaboration among three upstate research institutions to accelerate the pathway from discovery research to commercialization.

NYFIRST is intended to encourage the recruitment and retention of exceptional life science researchers and world-class talent at the state's medical schools to accelerate translational research by supporting the establishment or upgrading of their laboratories.

The rule creates the administrative procedures of the program. It is critical to implement this program immediately because life science companies interested in locating or expanding their activities in New York state are approaching UDC in an effort to access funding for their proposed projects. By waiting for the standard rulemaking process to unfold, the State risks losing important economic development opportunities to states with competing life sciences incentive programs.

Subject: Life Sciences Initiative Program.

Purpose: Implement Capital Assistance and NYFIRST components of the Life Sciences Initiatives program.

Substance of emergency rule (Full text is posted at the following State website: www.esd.ny.gov): 21 NYCRR Part 4255 is hereby created and summarized as follows:

21 NYCRR Part 4255 begins by summarizing the purpose of the Life Sciences Initiative, namely to nurture, grow and retain new life sciences companies in New York State, attract existing companies from outside New York State, promote critical public and private sector investment in emerging life sciences fields in the State, and create and expand life sciences related businesses and employment.

Next, the regulation explains that the Initiative currently has two components – 1) the Capital Assistance component which endeavors to attract new life sciences technologies to the State, promote critical public and private sector investment in emerging life sciences fields in New York and create and expand life sciences related businesses and employment throughout the State; and 2) the New York Fund for Innovation In Research and Scientific Talent ("NYFIRST") which is intended to encourage the recruitment and retention of exceptional life science researchers and world-class talent at the State's medical schools to accelerate translational research by supporting the establishment or upgrading of their laboratories.

The regulation then (in 21 NYCRR 4255.2) begins by establishing relevant definitions for the first component, the Capital Assistance program. Key definitions include "life science entity" and "life science economic development benefits."

The regulation next clarifies that the Capital Assistance component makes available financial assistance in the form of grants or loans, or a combination of such assistance, or contracts for services in the Corporation's discretion, for use by life sciences entities for eligible uses.

Next, the application process is described in detail. Importantly, applications may include a request for funding for single or multiple life sciences projects or activities. The Corporation may issue a request for proposals for contracts for services in lieu of an application where it deems it appropriate.

Next, the Corporation's evaluation process for the Capital Assistance component of the Program is described in detail. It includes a review (1) of the financial condition of the entity undertaking the project, including its profitability or potential to generate profits; liquidity; ability to service debt and its leverage ratio; (2) of the management experience, ability and relevant knowledge and the relevant entity's general ability to carry out the project; (3) of satisfactory credit references; (4) of the absence of state or local tax judgments (5) of whether the applicant clearly demonstrates how the proposal will result in life sciences economic development benefits and the likelihood that the project will result in life sciences economic development benefits to the State; (6) of the availability of other sources of funding, including offers of assistance from locations outside of the State, including the federal government, and the amount of private financing leveraged by Program funds; and (7) whether there is any other economic development assistance available as an incentive for the location of the proposed project outside the State.

The regulation then covers eligible uses of the Capital Assistance Component which include: new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; working capital, including, without limitation, workforce development; feasibility or planning studies related to the development of commercial life sciences in the State; and contracts for services to support New York life sciences' ecosystem.

In contrast, institutions that are exclusively health care providers and/or requests for the purchase of equipment associated with standard healthcare delivery are not eligible for Capital Assistance Program funding.

The first half of the regulation concludes by discussing the reporting requirements for applicants. It requires the submission of an annual report satisfactory to the Corporation on the operation and accomplishments of the project including, without limitation, a description of the activities undertaken, the economic impact of the project, the number and amount of other sources of funding for the project including federal funds, jobs employing full time permanent employees created and retained, and the average salary of such jobs.

21 NYCRR 4255.3 covers the second component of the Initiative, the newly created New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program. It begins by describing the purpose of this component. It is intended to encourage the recruitment and retention of prominent life science researchers and world-class talent at the state's medical schools to accelerate translational research by supporting the establishment or upgrading of their laboratories. Further, the Program is intended to: (1) increase the number of patent applications and patentable discoveries at medical schools; (2) increase the number of patents licensed from these schools; and (3) increase the recruitment/retention rate of medical school faculty focused on translational research.

Next, the regulation lays out key definitions of this component including "life sciences economic development benefits" and "translational research."

The regulation then describes the core requirements of the program. It states that the NYFIRST Program is a grant program with a maximum grant amount for any eligible project of $1 million. It requires grantees to provide $2 of matching funds for every $1 of NYFIRST Program assistance. The Match the grantee provides may be cash, including federal assistance, or in-kind services. Program grant funds will be disbursed on a semiannual reimbursement basis. Grantees shall submit quarterly invoices and supporting documentation satisfactory to the Corporation, as work is performed and costs incurred.

Next, the regulation discusses eligibility criteria for the NYFIRST program. Program grants may be awarded to create new laboratory space or to upgrade existing laboratory space at recipient institutions to attract and retain principal investigator(s) to head such laboratories and engage in translational research. The Corporation will make no more than one award per applicant per year. Next, the regulation identifies specific requirements that the scientific talent recruited or retained to head these laboratories must possess including, but not limited to, a demonstrable record of translational research with clear potential for commercialization and research focusing on the development of an innovative solution for an identified healthcare-related problem, with the potential to result in significant life sciences economic development benefits in New York State.

The regulation next covers specifics of the application and the evaluation process for NYFIRST grants. The specific selection criteria are delineated in the regulation. Importantly, the Corporation intends to make Program grant awards through a competitive grant solicitation to qualifying Applicants, once annually for up to three years or until the funds under this Program are fully committed.

Eligible uses for the funds are then discussed. Program grants must be used for capital expenses directly related to the project including, but not limited to, 1) costs relating to the design, acquisition, construction, reconstruction and rehabilitation of laboratory space; 2) the purchase of equipment; and 3) other capitalizable expenses.

The regulation concludes by reminding applicants that the Corporation will establish periodic reporting requirements for Program grantees to provide information to the Corporation so that the Corporation may accomplish its statutory reporting obligations. Failure by a grantee to provide the required information in a manner that is timely and otherwise satisfactory to the Corporation may subject the grantee to full or partial recapture of their grant.

The full text of the regulations is available at: www.esd.ny.gov

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 October 20, 2018.

Text of rule and any required statements and analyses may be obtained from: Thomas P. Regan, Urban Development Corporation, 625 Broadway, Albany, NY 12245, (518) 292-5123, email: thomas.regan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Part TT of Chapter 58 of the Laws of 2017 requires the New York State Urban Development Corporation ("UDC") to establish criteria for the Life Sciences Initiatives Program via rulemaking.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance since it implements both the Capital Assistance component of the Life Sciences Initiative Program as well as the second component of the Program, the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program.

NEEDS AND BENEFITS:

The Capital Assistance component is designed to attract new life sciences technologies to New York State, promote critical public and private sector investment in emerging life sciences fields in New York State and create and expand life sciences related businesses and employment. It also includes securing established accelerator firms to facilitate the creation and implementation of a statewide Bio-accelerator initiative. The Bio-accelerator will provide scientists with entrepreneurial training, access to venture capital and a network of mentors to help expedite the translation of their scientific insights into commercially viable products. In addition, the Capital Assistance program allows for the establishment of a collaboration among three upstate research institutions to accelerate the pathway from discovery research to commercialization.

In addition, NYFIRST is intended to encourage the recruitment and retention of exceptional life science researchers and world-class talent at the state's medical schools to accelerate translational research by supporting the establishment or upgrading of their laboratories.

The rule creates the administrative procedures of the Life Sciences Initiative program. It is critical to implement this program immediately because life science companies interested in locating or expanding their activities in New York state are approaching UDC in an effort to access funding for their proposed projects. By waiting for the standard rulemaking process to unfold, the State risks losing important economic development opportunities to states with competing life sciences incentive programs.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Life Sciences Initiaitve Program, only voluntary participants.

B. Costs to the agency, the state, and local governments: UDC does not anticipate substantial extra costs associated with running the program outlined in this rulemaking. The program appropriation makes funding available for the Corporation's administrative costs. There is no additional cost to local governments.

C. Costs to the State government: The money to fund this grant program is part of the Governor's $320 million Life Sciences Initiative passed in FY 2018 budget. The Corporation believes the costs of this program will be offset by the positive economic impact of the program.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not eligible to participate in the Life Sciences Initiatives Program.

PAPERWORK:

The emergency rule will require applicants to fill out an application to participate in the Life Sciences Capital Assistance program and the NYFIRST program. These applications will require applicants to provide certain business financial information to the Corporation. In addition, the Capital Assistance component requires applicant to submit an annual report to the Corporation while the NYFIRST program requires periodic reporting as well. Under NYFIRST, quarterly invoices are required to be submitted prior to the Corporation disbursing grant payments on a semiannual basis.

DUPLICATION:

The emergency rule conforms to provisions of section 16-aa of the New York State Urban Development Corporation Act and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to implementing this rulemaking.

FEDERAL STANDARDS:

There are no federal standards with regard to the Life Sciences Initiatives 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.

Regulatory Flexibility Analysis

The Life Sciences Initiative is composed of the Capital Assistance Program and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program which are both statewide grant programs. Although there are small businesses in New York State that are eligible to participate in the program, participation by the businesses is entirely at their discretion. The emergency rule will not have a substantial adverse economic impact on small businesses and local governments. On the contrary, because the rule creates a grant program designed to attract business and jobs to New York State, it will have a positive economic impact on the State. Accordingly, a regulatory flexibility analysis for small business and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

The Life Sciences Initiative is composed of the Capital Assistance Program and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program, both of which are statewide programs. Although there are businesses in rural areas of New York State that are eligible to participate in the programs, participation by the businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or 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 proposed rule relates to both the Capital Assistance component and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") component of the Life Sciences Initiative Program. This Program will enable New York State to provide financial assistance to life sciences companies that commit to create or retain jobs and/or to make significant capital investment in the State. This Program, given its design and purpose, will have a substantial positive impact on job retention and creation, and employment opportunities. Because this rule will authorize the Corporation to immediately begin offering financial incentives to life sciences businesses that commit to creating or retaining jobs, it will only have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.