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

Handling of Ignition Interlock Cases Involving Certain Criminal Offenders

I.D. No. CJS-31-17-00004-P

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

Proposed Action: Amendment of sections 358.1-358.3, 358.4(a), (c), (d) and 358.5-358.8; and addition of section 358.10 to Title 9 NYCRR.

Statutory authority: L. 2009, ch. 486; specifically Vehicle and Traffic Law, sections 1193(1)(g) and 1198(5)(a)

Subject: Handling of Ignition Interlock Cases Involving Certain Criminal Offenders.

Purpose: To promote public/traffic safety, offender accountability and quality assurance through the establishment of minimum standards.

Substance of proposed rule (Full text is posted at the following State website:http://www.criminaljustice.ny.gov/): These proposed amendments make substantive and technical changes to the Division of Criminal Justice Services rule, entitled "Handling of Ignition Interlock Cases Involving Certain Criminal Offenders". Overall, it updates, clarifies, and strengthens regulatory provisions to better enhance public/traffic safety, achieve greater offender accountability, and guarantee quality assurance with respect to Ignition Interlock Device (IID) program service delivery.

Rule Sections 358.1 and 358.2 are amended to update the objectives and applicability regulatory language to reflect recent statutory changes.

Rule Section 358.3 governing definitions, is amended to refine and/or reinforce certain definitional terms. Two new definitions of "Emergency Notification Program" and "real time reporting" are also added to reflect new programmatic features which are now operational.

Several proposed amendments are made to Rule Section 358.4 governing Ignition Interlock Program Plans. Plan content is updated to incorporate recent statutory changes as to imposition of IIDs in advance of sentencing and to better ensure that plans reflect handling of interim probation supervision cases. Additional proposed language will facilitate timely notification procedures to monitors where a court approves reduction in a breath sample in accordance with new regulatory provisions.

Rule Section 358.5, governing the Approval Process and Responsibilities of Qualified Manufacturers, is amended with respect to application procedures, including but not limited to, updating outdated language, and establishing parameters surrounding open application process and contractual term to promote consistency. Other proposed changes are sought to achieve greater offender and service delivery accountability. For example, new reporting language is proposed with respect to test results to better guarantee serious failed tests by operators are timely reported. Other changes strengthen provisions to establish timely DCJS notification of significant operational service delivery problems. Significantly, a new regulatory provision establishes a mechanism consistent with National Highway Traffic Safety Administration standards which will permit court authorization of a reduced breath sample for certain operators with certain health issues which prevent them from regular operational usage of the IID.

Rule Section 358.6 governing cancellation, suspension, and revocation of qualified manufacturers, installation and service providers and IIDs, is modified to clarify that verbal and/or written notification or communication of disapproval, suspension in whole or in part, of revocation or cancellation of a manufacturer's device, services, and/or operations by another state or jurisdiction, may result in revocation of a certified IID or suspension or removal of a qualified manufacturer or installation/service provider in New York State.

Proposed changes to Rule Section 358.7 governing monitoring and Rule Section 358.8 governing installation and costs, would update these regulatory provisions to reflect recent statutory changes and reference interim probation supervision. Additionally, Rule Section 358.7 sets forth revised intrastate and interstate monitoring procedures to establish that for intrastate conditional discharge cases, the sentencing county monitor shall contact the monitor in the county of residence to determine the class of IID available and the sentencing county monitor shall perform monitor services. Further where there is an Emergency Notification Program, the monitor shall notify the IID Manufacturer so that the designated law enforcement agency within the county of residence shall receive all applicable communications/notifications. Further, where an IID is to be imposed in advance of sentencing, the monitor in the county of residence is to be similarly contacted by the monitor in the county where the court orders installation to determine the specific class and features of the IID available and an identical procedure will be required for Emergency Notification Programming in the county of residence. With respect to interstate transfer, regulatory language is streamlined.

Among proposed regulatory changes are the following:

- Reflects the imposition and monitoring of IIDs installed in conjunction with interim probation supervision and in cases prior to sentencing pursuant to a court order.
- Clarifies that the period of IID restriction will commence from the earlier of the date of sentencing, or the date of installation in advance of sentencing and that a court may not authorize the operation of a motor vehicle by any individual whose license or privilege to operate a motor vehicle has been revoked.
- Establishes that monitors select the class and features of IIDs available from an available manufacturer in the region where an operator resides.
- Requires that the applicable monitor coordinate monitoring with the NYS Department of Corrections and Community Supervision (DOCCS) where the operator is under DOCCS supervision and promptly provide such agency with reports of any failed tasks or failed reports.

• Requires a court authorization for a reduction in breath sample to be consistent with NHTSA requirements and that every county plan establishes a procedure whereby the probation department and any other monitor be notified no later than five (5) business days from any such court approval.

• Requires all jurisdictions to submit an IID plan reflective of all operators who may be subject to IID installation and maintenance with monitoring ordered by a court in advance of sentencing or at sentencing, and to make modifications or updates, as required by DCJS. DCJS has required since 2014 that plans have procedures in this area and to amend plans to be consistent with law and regulatory provisions.

• Clarifies recent statutory changes to better ensure that youth adjudicated as Youthful Offenders of DWI and/or other alcohol related offenses are subject to IID installation and related compliance provisions.

• Clarifies recent statutory change that affected operators provide proof of installation compliance with the IID requirement to the court and the applicable monitor where such person is under probation or conditional discharge supervision.

• Requires that manufacturers:

o Provide documentation and verification of their respective Standby Letter of Credit (SLOC) as specified in the manufacturer's contract with New York State;

o The SLOC was previously incorporated in DCJS 2013 contracts with manufacturers.

o Adhere to any county plan real time reporting and emergency notification program requirements.

o Provide immediate written notice to DCJS and the DOH whenever their IID devices, services, and/or operations has been compromised or does not function as intended in NYS or any other state or jurisdiction or disapproved or suspended in whole or in part, revoked or otherwise cancelled by another state or jurisdiction or has received notice or communication from another state or jurisdiction that any such actions are imminent.

Additionally, as existing DOH regulations require prior approval with respect to any operational modification of IIDs, new regulatory language reiterates this requirement and for any manufacturer to provide necessary documentation to DOH and that any such manufacturer notify DCJS of any intent to do so and provide a written summary of any requested or approved modification.

Lastly, a new Section 358.10 is added which incorporates by reference the National Highway Traffic Safety Administration's Standards governing Model Specifications for Breath Alcohol Ignition Interlock Devices and cites where these may be found.

Text of proposed rule and any required statements and analyses may be obtained from: Linda J. Valenti, DCJS Assistant Counsel, NYS DIvision of Criminal Justice Services, Alfred E. Smith Office Building, Room 832, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: linda.valenti@dcjs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority:

Chapter 496 of the Laws of 2009, commonly referred to as Leandra's Law was a groundbreaking measure which strengthened various laws specifically relative to driving while intoxicated (DWI) or while impaired by drugs. The purpose of the law was to achieve greater offender accountability, promote public safety, combat and deter drunk driving, and better safeguard the welfare of child passengers. Among its provisions were requirements of rulemaking to the former Division of Probation and Correctional Alternatives, which was merged in 2010 with the Division of Criminal Justice Services (DCJS). Specifically, pursuant to Vehicle and Traffic Law (VTL) § 1193(1)(g) DCJS is responsible for promulgating regulations governing the monitoring of compliance by persons ordered to install and maintain ignition interlock devices to provide standards for monitoring by probation departments, and options for monitoring of compliance by such persons, that counties may adopt as an alternative to monitoring by a probation department. Further, VTL § 1198(5)(a) establishes that in the event of a court waiving the cost of any operator subject to the Leandra's Law requirement of installation and maintenance of an ignition interlock device (IID), "the cost of the device shall be borne in accordance with regulations issued [by DCJS] …or pursuant to such other agreement as may be entered into for provision of the device."

2. Legislative objectives:

The proposed rule amendments serves both the Governor's and the Legislature's underlying objective of "Leandra's Law" and its subsequent amendment, Chapter 169 of the Laws of 2013, to further strengthen DWI laws and penalties through statewide implementation of IID conditions so as to better enhance public/traffic safety, achieve greater offender accountability, and guarantee quality assurance through the establishment of minimum standards for the usage and monitoring of IIDs following a conviction of or adjudication as a Youthful Offender arising from a violation of VTL § 1192(2), (2-a), (3) or any crime defined by the VTL or Penal Law of which an alcohol-related violation of any provision of § 1192 is an essential element, or where ordered by a court in advance of sentence following an individual's arrest for one of the specified offenses.

3. Needs and benefits:

Rule amendments are necessary to reflect Chapter 169 of the Laws of 2013, as well as to incorporate particular changes of the revised National Highway Traffic Safety Administration (NHTSA) specifications for IIDs, and achieve certain operational refinements deemed appropriate following programmatic experience.

The proposed regulatory changes are beneficial to better safeguard the public, optimize traffic safety, and to promote greater offender and service delivery accountability.

4. Costs:

a. DCJS does not anticipate that proposed rule revisions will result in any additional costs to local government. The proposed regulatory changes continue to allow each jurisdiction with the flexibility to choose one or more persons or entities responsible for monitoring conditional discharge cases where a defendant has been required to install and maintain a functioning IID in any vehicle which they own or operate and affords the same flexibility as to cases involving individuals who agree or are ordered to install and maintain an IID in advance of sentencing. Since 2010, DCJS has annually applied for and received grant funding from the NYS Governor's Traffic Safety Committee (GTSC) in NHTSA monies to help offset local government costs in performing monitoring services. Currently, monies are distributed to the localities pursuant to a formula based on recent statistics of DWI conviction rates. DCJS is unaware of any local government concerns with this formula. DCJS has recently received approval of approximately 1.2 million dollars for Federal fiscal year 2018, similar to the prior Federal fiscal year award.

The revised regulation is not expected to result in any additional costs to two of the three qualified manufacturers, nor to their installation/service providers. One manufacturer, CST/Intoxalock, may have additional expenses as well as additional income as a result of operators having to visit their installation/service providers rather than the past practice of mailing in the handsets without service visits. This practice prevented monthly inspection of the IID installation and the opportunity for technicians to detect any attempted tampering or circumvention by the operator, allowing for a potential public safety risk.

In accordance with existing regulations, all manufacturers applied for undertaking IID service delivery in conformity with NYS statutory and regulatory provisions. DCJS has contracts with all manufacturers as to operational performance and approve their maximum fee/charge schedule which takes into account a 10% fee waiver cost.

Existing statutory and regulatory provisions govern IID costs. Amendments do not change provisions in this area. Statutorily, where a court, determines financial "unaffordability", it may impose a payment plan or waive the fee. Where waived, jurisdictions have established a procedure whereby costs are proportionately borne among manufacturers utilized at the local level.

b. Through grant funding received from GTSC, DCJS employs a full-time Community Correction Representative 2 assigned to the IID program. DCJS as noted earlier has received a GTSC award of NHTSA monies to help offset monitor costs of local government incurred. DCJS does not anticipate additional state and/or local costs from proposed revisions.

5. Local government mandates:

The existing rule established that every jurisdiction must submit for DCJS approval an ignition interlock plan for monitoring the use of IIDs. This revised rule states that a county may submit an amended plan on its own initiative; and that DCJS may require modifications or updates as it deems necessary to be consistent with law or regulatory provisions. In 2014, DCJS requested that localities submit amended IID Plans to reflect any changes which may have occurred since the filing of the original plans, including those resulting from aforementioned Chapter 169. The County Plan content is straightforward, simple, and largely prescriptive to ease any burden on localities. Monitoring functions associated with IID operators are statutorily required. DCJS' rule and proposed amendments have been carefully streamlined to afford considerable flexibility, yet require swift and certain court and district attorney notification as to certain failed tasks and failed tests. Additionally, it places specific responsibilities upon qualified manufacturers, installation/service providers, as well as operators to provide timely information and/or reports to monitors so as to assist them in managing their caseload.

6. Paperwork:

As noted above, this revised rule clarifies that jurisdictions may submit an amended County IID Plan on its own initiative; and that DCJS may require modifications or updates as it deems necessary to be consistent

with law or regulatory provisions. As part of receiving Federal award monies, DCJS requires and jurisdictions agree to have their monitors provide quarterly statistical information regarding IID program operations to DCJS. These statistical reports can be automatically generated by probation departments which use the Caseload Explorer system; 55 are using the Caseload Explorer System at this time and template reporting forms are available for the remaining monitors.

IID Manufacturers wishing to conduct business in NYS are required to apply to DCJS through a standardized application format. Currently three manufacturers have contracts with DCJS. DCJS recently issued a Request for Applications seeking additional interested manufacturers and/or distributors and is in the process of contracting with another company which has received necessary certification from the Department of Health and agrees to adhere to regulatory and contractual requirements. Other data reporting requirements imposed upon qualified manufacturers and installation/service providers are routine business activities and essential to offender accountability and community safety. DCJS, in conjunction with the Department of Motor Vehicles and Office of Court Administration, and other partners, has developed approximately fifteen (15) reporting forms to facilitate exchange of information and promote consistency, which greatly benefit all jurisdictions in program implementation and compliance. The Financial Disclosure Report is available in both English and Spanish.

7. Duplication:

While DOH certifies IIDs, this revision does not duplicate any other existing State or Federal requirements.

8. Alternatives:

This proposal takes into account changes in law, and NHTSA standards, and certain other refinements which can only be accomplished through revising the existing regulation. In developing the proposal, DCJS considered feedback provided by the localities, qualified manufacturers, and other state and local entities. Additionally DCJS distributed an earlier rule proposal and made additional revisions based on feedback received from stakeholders to address certain operational issues raised. This proposal was discussed with and received support from the Probation Commission at its meeting in April 2017. Overall, DCJS received positive support as to proposed regulatory changes.

9. Federal standards:

There are no federal standards governing the monitoring of offenders ordered to use an IID Notably, NHTSA published final updated Model Specifications for Breath Alcohol IIDs and this rule requires that any IID used meets these revised Specifications. As NYS law requires monitoring and DOH regulations require manufacturers with DOH approved certified IIDs satisfy DCJS regulations, it is necessary that DCJS' rule and proposed amendments be more comprehensive than Federal specifications, which are guidelines for the performance and uniform testing of IIDs.

10. Compliance schedule:

In light of DCJS previously disseminating proposed regulatory changes to all affected parties, positive feedback received, and that revisions are not substantial in nature, DCJS anticipates a 60 day maximum time from adoption to rule amendments becoming effective.

Regulatory Flexibility Analysis

1. Effect of rule:

These proposed regulatory amendments affect every county and the city of New York, qualified ignition interlock manufacturers doing business in New York State (NYS), their approved installation/service providers. There are three (3) approved Ignition Interlock Device (IID) manufacturers which also have contracts with the Division of Criminal Justice Services (DCJS) to provide services throughout NYS. DCJS recently issued a Request for Applications seeking additional interested manufacturers and/or distributors and is in the process of contracting with one additional company which has received certification of their IIDs by the Department of Health (DOH), and agrees to adhere to applicable regulatory and contractual requirements. There are approximately 250 approved installation/service providers in NYS.

2. Compliance requirements:

The existing rule implemented Chapter 469 of the Laws of 2009, commonly referred to as "Leandra's Law", provides for the monitoring of the use of court-ordered IIDs ordered upon defendants sentenced for a DWI misdemeanor or felony. It also established various reporting, recordkeeping, and other compliance requirements. The proposed regulatory amendments, (i) make minor modifications to incorporate certain statutory changes resulting from enactment of Chapter 169 of the Laws of 2013, (ii) establishes parameters with respect to reduced breath samples for certain operators and testing requirements consistent with revised National Highway Traffic Safety Administration (NHTSA) Breath Alcohol IID Model Specifications, (iii) makes limited revisions to improve program integrity and operational acceptability based on the experience of the field since implementation of the original rule, and (iv) addresses service delivery and individual accountability issues which have arisen. Among proposed regulatory changes are the following:

• Reflects the imposition and monitoring of IIDs installed in conjunction with interim probation supervision and in cases prior to sentencing pursuant to a court order.

• Clarifies that the period of IID restriction will commence from the earlier of the date of sentencing, or the date of installation in advance of sentencing and that a court may not authorize the operation of a motor vehicle by any individual whose license or privilege to operate a motor vehicle has been revoked.

• Establishes that monitors select the class and features of IIDs available from an available manufacturer in the region where an operator resides.

• Requires that the applicable monitor coordinate monitoring with the NYS Department of Corrections and Community Supervision (DOCCS) where the operator is under DOCCS supervision and promptly provide such agency with reports of any failed tasks or failed reports.

• Requires a court authorization for a reduction in breath sample to be consistent with NHTSA requirements and that every county plan establishes a procedure whereby the probation department and any other monitor be notified no later than five (5) business days from any such court approval.

• Requires all jurisdictions to submit an IID plan reflective of all operators who may be subject to IID installation and maintenance with monitoring ordered by a court in advance of sentencing or at sentencing, and to make modifications or updates, as required by DCJS. DCJS has required since 2014 that plans have procedures in this area and to amend plans to be consistent with law and regulatory provisions.

• Clarifies recent statutory changes to better ensure that youth adjudicated as Youthful Offenders of DWI and/or other alcohol related offenses are subject to IID installation and related compliance provisions.

• Clarifies recent statutory change that affected operators provide proof of installation compliance with the IID requirement to the court and the applicable monitor where such person is under probation or conditional discharge supervision.

• Requires manufacturers:

o Provide documentation and verification of their respective Standby Letter of Credit (SLOC) as specified in the manufacturer's contract with New York State;

o The SLOC was previously incorporated in DCJS 2013 contracts with manufacturers.

o Adhere to any county plan real time reporting and emergency notification program requirements.

o Report a confirmatory failed test or re-test where the BAC is .05 percent or higher; and provide immediate written notice to DCJS and the DOH whenever their IID devices, services, or any other state or jurisdiction or disapproved or suspended in whole or in part, revoked or otherwise cancelled by another state or jurisdiction or has received notice or communication from another state or jurisdiction that any such actions are imminent.

Additionally, as existing DOH regulations require prior approval with respect to any operational modification of IIDs, new regulatory language reiterates this requirement and for any manufacturer to provide necessary documentation to DOH and that any such manufacturer notify DCJS of any intent to do so and provide a written summary of any requested or approved modification.

3. Professional services:

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

4. Compliance costs:

DCJS does not anticipate that the proposed rule revisions will result in any additional costs to local governments or small businesses. The proposed regulatory changes continue to allow each jurisdiction with the flexibility to choose one or more persons or entities responsible for monitoring conditional discharge cases where a defendant has been required to install and maintain a functioning IID in any vehicle which they own or operate. It also affords the same flexibility to cases involving individuals who agree, or are ordered, to install and maintain an IID in advance of sentencing. Since 2010, DCJS has annually applied for and received grant funding from the NYS Governor's Traffic Safety Committee (GTSC) in NHTSA monies to help offset local government costs in performing monitoring services. Currently, monies are distributed to the localities pursuant to a formula based on recent statistics of DWI conviction rates. DCJS is unaware of any local government concerns with this formula. DCJS has recently received approval of approximately 1.2 million dollars for Federal fiscal year 2018, similar to the prior Federal fiscal year award.

Effective May, 8, 2014, NHTSA implemented revised Breath Alcohol IID Model Specifications refining performance criteria and test methods for IIDs. NHTSA encourages States to determine how best to implement these Model Specifications to strengthen the quality of IIDs used and therefore each qualified manufacturer has submitted updated certifications regarding devices in use in New York.

There may be limited additional costs to one of the three qualified manufacturers, in that it will now require all operators with any IIDS to undergo service visits on a monthly basis through an operator service visit. Under NYS law, unless a court waives the IID cost upon an operator who claims inability to pay, the cost is borne by the operator. Previously, such operators removed and mailed the IID "data-head" to the IID manufacturer monthly. This practice prevented monthly inspection of the IID installation and the opportunity for technicians to detect any attempted tampering or circumvention by the operator, allowing for a potential public safety risk.

5. Economic and technological feasibility:

Proposed amendments do not require any additional technological requirements beyond those currently being utilized in NYS.

As of November 1, 2013, DCJS revised IID classification system requires that all Class 1, 2, and 3 devices to include the integration of a camera. This change was made effective prospectively with the installation of new devices. Additionally, many monitoring entities require Class II devices with advanced features of Global Positioning System (GPS) location of a vehicle and Real Time Reporting (RTR). The Rule amendments propose a new RTR definition to mean the contemporaneous transmission of data of particular events, as defined in Rule Section 358.5(c)(6), to a specified monitoring entity as the event occurs or as soon as cellular reception permits. Lastly, four counties require Class III devices, which have all the minimum required features of Classes I (camera) and II (GPS and RTR), also contain an emergency notification feature. Accordingly, proposed amendments include a new definitional term "Emergency Notification Program".

6. Minimizing adverse impact:

DCJS does not anticipate that the proposed changes, which among its provisions revises or adds regulatory language to be consistent with Chapter 169 of the Laws of 2013, and current NHTSA specifications of IIDs, 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, and has considered IID manufacturers input in crafting amendments to ensure any changes do not adversely impact service delivery or increase costs.

Since 2010 DCJS has annually submitted applications and been awarded grants from GTSC of NHTSA monies to help offset local government costs in performing monitoring services. The existing and proposed revised rule language have both been crafted to offer guidance and structure in plan development and implementation. Other features with respect to monitoring continue to afford considerable flexibility as to particular actions where feasible, yet ensure swift and certain action where necessary to achieve uniformity in the handling of certain failed tasks and failed tests, safeguard the public, and better guarantee offender accountability. The proposed regulatory revisions retain several regulatory provisions as to operator responsibility to assist the judiciary's consideration of financial "unaffordability" and minimize unnecessary waivers, and to ensure operators convey timely information to monitors, the courts, and installation/service providers. Further, the proposed regulatory amendments contains language that in the event of judicial waiver of an operator's IID cost, a manufacturer designated by the monitor bears the costs associated with installation and maintenance of the IID.

While DCJS regulatory language establishes that IID qualified manufacturers may elect to do business in one, two, three, or all four regions of NYS, all of the IID manufacturers have elected to do business throughout NYS. Rural and non-rural counties exist in three regions and proposed regulatory revisions do not alter the requirement that a manufacturer must be able to do business with all other counties within the region upon the same favorable terms which guarantee service availability of installation/service providers within 50 miles of any operators' residence statewide. Notably, operator IID costs do not vary from region to region.

DCJS continues to make model forms available which assist jurisdictions in application of Leandra's Law and its amendments. These forms are of particular assistance to those rural counties with limited staff resources to undertake form development independently. These forms also have been disseminated to all courts by the Office of Court Administration.

7. Small business and local government participation:

The existing rule was developed with the input of a workgroup which included local government representation. DCJS has considered feedback on the existing rule since its implementation provided by qualified manufacturers, and local jurisdictions, including county IID monitors. Opportunities for feedback included regular communications with qualified manufacturers, involving quarterly conference calls with the manufacturers and an annual manufacturers' conference hosted by DCJS. These annual conferences have been attended by both manufacturers and probation/CD monitoring agencies. Additionally, DCJS has communicated on the existing rule and proposed changes with local probation departments during probation professional association meetings and conferences. DCJS has (i) discussed changes with and received support of proposed revisions from the NYS Probation Commission, most recently on April 18, 2017, (ii) distributed a draft copy of the proposed revision to all Probation Directors and CD Monitors and all qualified manufacturers, (iii) discussed proposed revisions with qualified manufacturers, probation and CD monitors, and other interested State and local entities at the Annual IID Manufacturers Conferences held, and (iv) made additional revisions based on feedback received from these stakeholders to address certain service delivery issues raised. Overall, feedback was positive as to proposed regulatory changes.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Forty-three (43) of the 57 local probation departments outside of New York City are located in rural areas and will be affected by the proposed revised rule.

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

The existing rule implemented Chapter 469 of the Laws of 2009, commonly referred to as "Leandra's Law", in relation to the monitoring of the use of court-ordered ignition interlock devices (IIDs) ordered upon defendants sentenced for a DWI misdemeanor or felony. It established various reporting, recordkeeping, and other compliance requirements. The proposed regulatory amendments make minor modifications to incorporate certain statutory changes resulting from enactment of Chapter 169 of the Laws of 2013, establishes parameters with respect to reduced breath samples for certain operators consistent with revised National Highway Traffic Safety Administration (NHTSA) Breath Alcohol Ignition Interlock Device Model Specifications, as well as limited revisions to improve practice based on the experience of the field since implementation of the original rule as well as address program and individual accountability issues which have arisen. Among proposed regulatory changes are the following:

- Reflects the imposition and monitoring of IIDs installed in conjunction with interim probation supervision and in cases prior to sentencing pursuant to a court order.
- Clarifies that the period of IID restriction will commence from the earlier of the date of sentencing, or the date of installation in advance of sentencing and that a court may not authorize the operation of a motor vehicle by any individual whose license or privilege to operate a motor vehicle has been revoked.
- Establishes that monitors select the class and features of IIDs available from an available manufacturer in the region where an operator resides.
- Requires that the applicable monitor coordinate monitoring with the NYS Department of Corrections and Community Supervision (DOCCS) where the operator is under DOCCS supervision and promptly provide such agency with reports of any failed tasks or failed reports.
- Requires a court authorization for a reduction in breath sample to be consistent with NHTSA requirements and that every county plan establish a procedure whereby the probation department and any other monitor be notified no later than five (5) business days from any such court approval.
- Requires all jurisdictions to submit an IID plan reflective of all operators who may be subject to IID installation and maintenance with monitoring ordered by a court in advance of sentencing or at sentencing, and to make modifications or updates, as required by DCJS. Since 2014 DCJS has required that plans have procedures in this area and to amend plans to be consistent with law and regulatory provisions.
- Clarifies recent statutory changes to better ensure that youth adjudicated as Youthful Offenders of DWI and/or other alcohol related offenses are subject to IID installation and related compliance provisions.
- Clarifies recent statutory change that affected operators provide proof of installation compliance with the IID requirement to the court and the applicable monitor where such person is under probation or conditional discharge supervision.
- Requires that manufacturers:

o Provide documentation and verification of and maintain a Standby Letter of Credit (SLOC) as specified in the manufacturer's contract with New York State;

o The SLOC was previously incorporated in DCJS 2013 contracts with manufacturers.

o Adhere to real time reporting and emergency notification program requirements where such is required in any county plan.

o Report a confirmatory failed test or re-test where the BAC is .05 percent or higher and provide immediate written notice to DCJS and the Department of Health (DOH) whenever their IID device, services, and/or operations has been compromised or does not function as intended in New York State or any other state or jurisdiction or disapproved or suspended in whole or in part, revoked or otherwise cancelled by another state or jurisdiction or has received notice or communication from another state or jurisdiction that any such actions are imminent.

Additionally, as existing DOH regulations require prior approval with respect to any operational modification of IIDs, new regulatory language reiterates this requirement and for any manufacturer to provide necessary documentation to DOH and that any such manufacturer notify DCJS of any intent to do so and to provide a written summary of any requested or approved DOH modification.

3. Costs:

DCJS does not anticipate any additional costs experienced by rural areas resulting from proposed regulatory changes. The proposed regulatory changes continue to allow each county and the city of New York as a whole, with the flexibility to choose one or more persons or entities responsible for monitoring conditional discharge cases where a defendant has been required to install and maintain a functioning IID in any vehicle which they own or operate and affords the same flexibility as to cases involving individuals who agree and are ordered to install and maintain an IID in advance of sentencing. Since 2010, DCJS has annually applied for and received grant funding from the NYS Governor's Traffic Safety Committee (GTSC) in NHTSA monies to help offset local government costs in performing monitoring services. Currently, monies are distributed to the localities pursuant to a formula based on recent statistics of DWI conviction rates. DCJS is unaware of any local government concerns with this formula. DCJS has recently received approval of approximately 1.2 million dollars for Federal fiscal year 2018, similar to the prior Federal fiscal year award.

As to operator costs associated with IID devices Vehicle and Traffic Law (VTL) § 1198(5) establishes that the court, upon determining financial "unaffordability" to pay the cost of the device, may impose a payment plan with respect to the device or waive the fee. Additionally, this VTL provision requires that where the cost is waived, DCJS through regulation shall determine who bears the costs of the device or through such other agreement which may be entered into. The proposed rule revision retains existing language which states manufacturers and not local governments bear such costs. Statistics from August 15, 2010 through December 31, 2016, indicate that 27,053 operators (90.4%) were ordered to pay all IID costs associated with the installation and monthly charges; 1,191 operators (4.0%) paid the IID costs through payments plans; and 1,677 or 5.6% of operators had costs waived.

4. Minimizing adverse impact:

DCJS does not anticipate that the proposed changes, which among its provisions revises or adds regulatory language to be consistent with Chapter 169 of the Laws of 2013, and current NHTSA specifications of IIDs, will have any adverse impact on rural areas. DCJS remains steadfast in its efforts to minimize adverse impact of the existing rule and any proposed changes upon local government, especially rural counties. As noted earlier, since 2010 DCJS has annually submitted applications and been awarded grants from GTSC of NHTSA monies to help offset local government costs in performing monitoring services. The existing and proposed revised rule language have both been crafted to offer guidance and structure in plan development and implementation. Other features with respect to monitoring continue to afford considerable flexibility as to particular actions where feasible, yet ensure swift and certain action where necessary to achieve uniformity in handling of certain failed tasks and failed tests, safeguard the public and better guarantee offender accountability. The proposed regulatory revisions retain several regulatory provisions as to operator responsibility to assist the judiciary's consideration of financial "unaffordability" and minimize unnecessary waivers, and to ensure operators convey timely information to monitors, the courts, and installation/service providers. Further, proposed regulatory amendments retain language that in the event of judicial waiver of an operator's IID cost, monitors will use the established procedures to ensure costs are proportionately borne among manufacturers.

While DCJS regulatory language establishes that IID manufacturers may elect to do business in one, two, three or all four regions of NYS, all three IID manufacturers with DOH certified IIDs have elected to do business throughout NYS. Through the prior establishment of regions, which include both rural and non-rural counties in three regions, proposed regulatory revisions continue to establish that a manufacturer doing business with a non-rural county must do business with rural counties within the region upon the same favorable terms which guarantee service availability of installation/service providers within 50 miles of any operators residence statewide.

DCJS continues to make model forms available which assist jurisdictions in application of Leandra's Law and its amendments. These forms are of particular assistance to those rural counties with limited staff resources to undertake form development independently. These forms also have been disseminated to all courts by the Office of Court Administration.

5. Rural area participation:

The existing rule was developed with the input from a workgroup which included rural probation representatives. DCJS has considered feedback on the existing rule since its implementation provided by qualified manufacturers, and local jurisdictions, including county IID monitors. Opportunities for feedback included regular communications with qualified manufacturers, involving quarterly conference calls with the manufacturers, and an annual manufacturers' conference hosted by DCJS. These annual conferences have been attended by both manufacturers and probation/CD monitoring agencies. Additionally, DCJS has communicated on the existing rule and proposed changes with local probation departments during probation professional association meetings and conferences. DCJS has discussed changes with and received support of the proposed revisions from the NYS Probation Commission, most recently on April 18, 2017, distributed a draft copy of the proposed revision to all Probation Directors and CD Monitors and all qualified manufacturers, further discussed the proposed revisions with qualified manufacturers, probation and CD monitors, and other interested State and local entities at the Annual IID Manufacturers Conferences held, and made additional revisions based on feedback received from these stakeholders to address certain service delivery issues raised. Overall, feedback was positive as to proposed regulatory changes.

Job Impact Statement

1. Nature of impact:

The revised rule will continue employment opportunities for those manufacturers of ignition interlock devices (IIDs) certified by the New York State (NYS) Department of Health (DOH), and approved as qualified manufacturers by the Division of Criminal Justice Services (DCJS) and for the more than 200 businesses in NYS which are designated installation/service providers of these devices. Between August 15, 2010 and December 31, 2016, over 111,000 IID orders were received by monitoring entities from courts statewide and approximately 30,000 (27.0%) IIDs were installed within 10 days of the time of sentencing, release from incarceration, or in advance of sentencing. There were approximately 250 approved installation/service providers, mainly small automotive or electronic shops specializing in the installation of automobile stereo systems, remote starters, mufflers, automobile repair, as well as some automobile dealers. Three (3) manufacturers are currently approved as qualified manufacturers in NYS and DCJS is in the process of contracting with one additional company. It is anticipated that the demand for devices, installation, and maintenance-related services will continue, leading to increased employment opportunities in our state.

2. Categories and numbers affected:

This regulatory rule affects manufacturers of certified IID's and their respective installation/service providers in NYS and monitors of IID cases. During 2016, there were 44,414 defendants arrested for Vehicle and Traffic Law (VTL) § 1192 Felony and Misdemeanor Driving While Intoxicated (DWI) crimes. That same year there were 19,219 convictions for VTL § 1192 Felony and Misdemeanor DWIs. Statutory provisions require defendants convicted of or adjudicated a youthful offender involving certain DWI-related crimes in NYS to install IIDs in any vehicle which they own or operate as a condition of probation or conditional discharge (CD). Additionally, there are an increasing number of defendants who are willing to be subject to IID's and court ordered to do so in advance of sentencing. As a result, it is anticipated that there will be continued and expanded employment opportunities for manufacturers and installation/service providers. Recently, DCJS issued a Request for Applications (RFA) for additional interested manufacturers and/or distributors who seek to do business in New York State and whose IIDs have been certified by DOH and have met RFA requirements. DCJS is now in the process of contracting with one other company. This RFA outcome, coupled with DCJS authority to resume an Open and Continuous Application, creates the potential to increase the number of qualified manufacturers and installation/service providers in the future.

DCJS does not foresee that counties, including New York City, or probation departments who monitor probation cases, and any probation departments and other alternative monitors who are designated to handle CD cases, will be adversely affected by the proposed revised rule. The existing rule and proposed amendments are designed to ensure consistency with state law and recommended federal National Highway Traffic Safety Administration (NHTSA) Specifications and provide flexibility, wherever feasible and/or appropriate, consistent with public safety and accountability in order to minimize any effects upon local government. DCJS has annually applied for and received grant funding from the NYS Governor's Traffic Safety Committee (GTSC) in NHTSA monies to help offset local government costs in performing monitoring services. Currently, monies are distributed to the localities pursuant to a formula based on recent statistics of DWI conviction rates. DCJS is unaware of any local government concerns with this formula. DCJS has recently received approval of approximately 1.2 million dollars for Federal fiscal year 2018, similar to the prior Federal fiscal year award.

3. Regions of adverse impact:

The revised rule will have no adverse or disproportionate impact on jobs or employment opportunities in any region of NYS. At the present

time, all three manufacturers have been approved by DCJS to operate throughout NYS.

4. Minimizing adverse impact:

DCJS does not anticipate that these regulatory amendments will have an adverse impact on jobs or employment opportunities.

DCJS' Office of Probation and Correctional Alternatives (OPCA) has: (i) discussed changes with and received support of the proposed revisions from the NYS Probation Commission, most recently on April 18, 2017; (ii) distributed a draft copy of the proposed regulatory rule revision to all Probation Directors and CD Monitors and all qualified manufacturers; further discussed the proposed regulatory revisions with qualified manufacturers, probation and CD monitors, and other state and local entities at the Annual IID Manufacturers Conferences held; (iv) made additional revisions based on feedback received from these stakeholders to address certain issues raised. Overall, feedback was positive as to these proposed regulatory changes.

5. Self-employment opportunities:

Although manufacturers of IIDs are generally large national and/or international businesses, their respective installation/service providers are typically small, owner-operated businesses doing business in NYS. There continues to be a potential for self-employment opportunities where such businesses can meet manufacturer agreements and NYS regulatory requirements governing training, installation, maintenance of services, and other operational provisions.

The proposed revision may create additional job opportunities for installation/service providers, as additional manufacturers apply to DCJS and receive certification of their devices from DOH. Further, expanded employment opportunities exist for installation/service providers as our proposed amendments will require all operators with IID(s) to undergo service visits. Under the current regulation, service visit requirements can be accomplished by operators, with a removable IID head, mailing the IID component back to the manufacturer -a practice applicable and utilized by only one manufacturer. Actual service visits to an installation/service provider are critical in detecting attempted/actual tampering and therefore a beneficial change.

Education Department

ERRATUM

The following Notices of Emergency Rule Making, I.D. No. EDU-21-17-00007-E, pertaining to Unit of Study Requirements for Career and Technical Education in Grades 7 and 8, and I.D. No. EDU-21-17-00008-E, pertaining to Education of Homeless Children and Youths (McKinney-Vento Homeless Assistance Act), both published in the July 19, 2017 issue of the *State Register* contained an incorrect effective date. The effective date of both emergencies is July 1, 2017.

NOTICE OF ADOPTION

School Health Services

I.D. No. EDU-04-17-00012-A

Filing No. 517

Filing Date: 2017-07-18

Effective Date: July 1, 2018 for sections 136.1, 136.2 and 136.3; August 2, 2017 for section 136.6

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

Action taken: Amendment of sections 136.1, 136.2, 136.3 and 136.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 901(1), (2), 902(1), (2), 903(1), (2), (3), 904(1), 906(1), (2), (3), 921(1), (2), 3208(1), (2), (3), (4) and (5); Public Health Law, section 2164(7)

Subject: School Health Services.

Purpose: To conform school health regulations to ch. 58 of the Laws of 2006, ch. 57 of the Laws of 2013, and ch. 373 of the Laws of 2016.

Text or summary was published in the January 25, 2017 issue of the Register, I.D. No. EDU-04-17-00012-P.

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

Revised rule making(s) were previously published in the State Register on May 24, 2017.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 138, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

State Aid for Library Construction, and School Library Systems

I.D. No. EDU-14-17-00006-A

Filing No. 519

Filing Date: 2017-07-18

Effective Date: 2017-08-02

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

Action taken: Amendment of sections 90.12 and 90.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 215(not subdivided), 273-a(1)-(7), 282(not subdivided), 283(not subdivided) and 284(not subdivided)

Subject: State Aid for Library Construction, and School Library Systems.

Purpose: To implement Education Law section 273-a and to Update Terminology Related to the Functions of school library systems.

Text or summary was published in the April 5, 2017 issue of the Register, I.D. No. EDU-14-17-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Since publication of Emergency Adoption and Proposed Rule Making in the State Register on April 5, 2017, the State Education Department (SED) received one comment:

1. COMMENT:

Currently the NYSL Construction Grants provide a welcome source of funding for bricks and mortar projects that are sorely needed by our libraries. Many libraries in our area have well endowed foundations and patrons that provide the match through their benefactors to support preconstruction design and feasibility studies- these are essential to long-range capital planning.

Libraries in economically challenged communities have patrons who certainly support their libraries, but are unable due to circumstance to donate funding for pre-construction initiatives through similar financial largesse. This puts libraries serving economically challenged communities at a disadvantage in two ways: they are unable to provide the program planning to select the correct teams that perform the studies necessary to formulate and validate their capital program plans- and unlikely to raise the funds to perform master planning and feasibility studies prior to the engagement of architectural and engineering consultants for specific project design.

An innovation would be to enhance the seed funding programs that exist to encourage libraries in this regard and provide a clerk of the works to assist libraries regionally who need overall program planning assistance.

DEPARTMENT RESPONSE:

Since this comment is unrelated to the proposed amendment, no response is necessary. However, the State Education Department agrees that additional seed funding programs and a clerk of the works would help libraries in economically challenged communities. However, SED does not have the resources for a clerk of the works and would need additional funding to increase seed grants. Therefore, SED recommends that the commenter contact his/her local Legislator to request legislative actions for these purposes.

NOTICE OF ADOPTION

Eligible Score Band of an Appeal of the English Language Arts Regents Examination for Eligible English Language Learners (ELLS)

I.D. No. EDU-16-17-00008-A
Filing No. 522
Filing Date: 2017-07-18
Effective Date: 2017-08-02

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

Action taken: Amendment of section 100.5(d)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 215(not subdivided), 305(1), (2), 2117(1), 3204(2) and (2-a)

Subject: Eligible Score Band of an Appeal of the English Language Arts Regents Examination for Eligible English Language Learners (ELLS).

Purpose: To align with the recent expansion of the eligible score band for appeals for certain regents examinations for all students.

Text or summary was published in the April 19, 2017 issue of the Register, I.D. No. EDU-16-17-00008-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Residency Certificates

I.D. No. EDU-16-17-00009-A
Filing No. 518
Filing Date: 2017-07-18
Effective Date: 2017-08-02

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

Action taken: Amendment of section 80-5.23 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(not subdivided), 3001(2), 3004(1) and 3009(1)

Subject: Residency certificates.

Purpose: To establish requirements for candidates seeking a residency certificate.

Text or summary was published in the April 19, 2017 issue of the Register, I.D. No. EDU-16-17-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Reporting Requirements Relating to Sexual Assault on College Campuses

I.D. No. EDU-21-17-00009-A
Filing No. 523
Filing Date: 2017-07-18
Effective Date: 2017-08-02

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

Action taken: Addition of Part 48 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 305 and 6439 through 6449, as added by L. 2015, ch. 76

Subject: Reporting Requirements relating to Sexual Assault on College Campuses.

Purpose: To implement chapter 76 of the Laws of 2015.

Text of final rule: A new Part 48, is added to the Regulations of the Commissioner of Education, to read as follows:

Part 48

Annual Aggregate Data Reporting by New York State Institutions of Higher Education Related to Reports of Domestic Violence, Dating Violence, Stalking and Sexual Assault

§ 48.1 Definitions. For purposes of this Part:

(a) Accused shall mean a person accused of a violation who has not yet entered an institution's judicial or conduct process.

(b) Domestic violence, dating violence, stalking and sexual assault shall be defined by each institution in its code of conduct in a manner consistent with applicable federal definitions.

(c) Incident shall mean an incident of domestic violence, dating violence, stalking or sexual assault, where the reporting individual and/or the accused were subject to the code of conduct at the time of the incident.

(d) Institution shall mean any college or university chartered by the Board of Regents or incorporated by special act of the Legislature and that maintains a campus in New York.

(e) Reporting individual shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation.

(f) Respondent shall mean a person accused of a violation who has entered an institution's judicial or conduct process.

(g) Title IX coordinator shall mean the Title IX Coordinator and/or his or her designee or designees.

(h) On campus shall be defined as campus is defined in the Higher Education Act (Clery Act), 20 U.S.C. § 1092(f)(6)(A)(ii).

(i) Off campus shall be defined as any location not included in the definition of on campus.

§ 48.2 Annual Aggregate Data Reporting.

On or before October 1, 2019, and by October 1 of each subsequent year thereafter, institutions shall report to the Department the following information concerning incidents that were reported during the prior calendar year in a form and manner prescribed by the Commissioner:

(a) the following numbers of incidents reported to the Title IX Coordinator (which shall be established based upon the number of reporting individuals, not by the number of the accused or respondents):

(1) the number of incidents that occurred on campus;

(2) the number of incidents that occurred off campus; and

(3) the total of incidents in paragraphs (1) and (2) of this subdivision;

(i) of those incidents reported in this paragraph:

(a) the number of incidents that the Title IX Coordinator is aware of, that were reported to law enforcement, which shall include, but not be limited to, the State Police;

(b) the number of incidents reported to campus police/campus security/campus public safety; and

(c) the number of incidents that the Title IX Coordinator is aware of, for which the reporting individual requested referral to additional services through the institution, including counseling, mental health, medical or legal services, whether those services were provided on-campus or through outside service providers.

(b) of those incidents reported in paragraph (a)(3) of this section:

(1) the number of incidents for which the reporting individual sought the institution's judicial or conduct process (which includes incidents for which a reporting individual made a request, in writing or orally, to engage the judicial or conduct process, whether an investigator or hearing model, and those incidents where, pursuant to section 6446(4) of the

Education Law, the institution made a determination to pursue the judicial or conduct process without the consent of the reporting individual); and

(2) the number of incidents that are not included in paragraph (1) of this subdivision, including those for which there was no institutional jurisdiction over the accused or respondent, and those incidents for which the judicial or conduct process could not otherwise go forward.

(3) the number of incidents for which the reporting individual sought an order of "no contact" with the respondent(s), and the number of "no contact" orders issued.

(c) of those incidents reported in paragraph (b)(1) of this section, the number of cases processed through the institution's judicial or conduct process, (which process shall commence upon a respondent's receipt of a notice of charges pursuant to section 6444(5)(b) of the Education Law);

(d) of those cases in subdivision (c) of this section, the number of respondents who were found responsible through the institution's judicial or conduct process after all levels of appeal were exhausted, which number shall include those cases in which the respondent accepted responsibility at any point in the process;

(e) of those cases in subdivision (c) of this section, the number of respondents who were found not responsible through the institution's judicial or conduct process, or whose finding of responsibility was overturned on appeal;

(f) a description of the final sanctions imposed by the institution for each incident for which a respondent was found responsible for sexual assault, dating violence, domestic violence or stalking, as provided in subdivision (d) of this section, through the institution's judicial or conduct process, which shall be defined as:

(1) the number of respondents found responsible who were expelled/dismissed from the institution;

(2) the number of respondents found responsible who were suspended from the institution;

(3) the number of respondents found responsible who received sanctions other than expulsion/dismissal or suspension;

(4) the number of respondents found responsible who received a notation added to their official transcript noting a violation of the institutions' code of conduct; and

(5) the number of respondents found responsible who received a notation added to their official transcript noting withdrawal from the institution with conduct charges pending.

(g) the number of cases in the institution's judicial or conduct process that were closed prior to a final determination after the respondent withdrew from the institution and declined to complete the disciplinary process; and

(h) the number of cases in the institution's judicial or conduct process that were closed because the complaint was withdrawn by the reporting individual prior to a final determination or an informal resolution was reached. Such number shall include all cases, regardless of the stage at which the reporting individual withdrew the complaint or the informal resolution was reached.

(i) Additional training information. Institutions may additionally report the number of trainings held by the institution, the number of staff trained, and the number of students trained during the reporting period.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 48.2(a)(3)(i).

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on May 24, 2017, the following substantial revisions were made to the proposed rule:

Section 48.2(a)(3)(i)(a) was amended to clarify that of the total incidents reported to the Title IX Coordinator, institutions must report the number of incidents that the Title IX Coordinator is aware of, that were reported to law enforcement, which shall include, but not be limited to, the State Police.

The above changes do not require any changes to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on May 24, 2017, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

These revisions to the proposed rule do not require any revisions to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Since publication of a Proposed Rule Making in the State Register on May 24, 2017, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule do not require any revisions to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 24, 2017, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revised proposed rule will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the revised proposed rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on May 24, 2017, the State Education Department (SED) received the following comments from one commenter:

1. COMMENT:

Section 48.2(a)(i)(a-c).This section of the proposed regulations is referenced nowhere in the authorizing statute (Article 129-B) nor was it contained in the original proposed regulations by the Department. Inclusion of these requirements is beyond the scope of the legislation and would create an undue recordkeeping burden on colleges and universities.

Moreover, the information sought is not easily defined. Recording the exact time at which law enforcement is notified versus when the Title IX Coordinator is notified can become clouded. In addition, inclusion of this provision could create a situation on campus where college staff members, particularly during off-hours, are debating whom to notify first rather than attend to the needs of students. Ultimately this could do a disservice to a student in distress and lead to less timely notification to law enforcement.

Finally, the data collected for 48.2(a)(i)(c) may not be an accurate reflection of services being utilized by a reporting individual. In many circumstances, colleges and universities automatically refer reporting individuals to the services outlined in this section, therefore the reporting individual does not need to request such services which makes collection of this data not valuable.

The commenter recommends that this section not be included in the final regulations due to administrative overreach and the incomplete and questionable value of that data that would be collected. Resources expended to respond to this section could better be spent ensuring responsiveness to students.

DEPARTMENT RESPONSE:

The Department believes that including this information in the annual aggregate data reports is consistent with the legislative intent of the statute and will provide information that will help to inform practices and policies on campuses designed to prevent incidents of domestic violence, dating violence, stalking and sexual assault, as well as assist institutions in developing policies and practices designed to facilitate the reporting of such incidents that do take place and the provision of services to reporting individuals. There is no requirement that an institution track the time of notification to law enforcement or to the Title IX Coordinator, or that the Title IX Coordinator know or report whether a report to law enforcement was made prior to or after a report was made to the Title IX Coordinator. No regulatory revision is necessary.

2. COMMENT:

Section 48.2(a)(i) and 48.2(b). Wording is inconsistent between these two parts with (a)(i) reading "of those incidents reported in paragraph (a)(3) of this subdivision" and (b) reading "of those incidents reported in subdivision (a)(3) of this section" [emphasis added]. It appears he wording is inconsistent and should be corrected.

DEPARTMENT RESPONSE:

The Department agrees with this comment and will make the technical change requested.

3. COMMENT:

Section 48.2(b). The data requested by this section could get overly granular, especially at more suburban and rural colleges and universities with smaller populations, leading to the possibility of potential exposure of parties involved. The commenter urges the Department to exercise extreme caution when handling this information and deciding what to make public in its report to the Executive and Legislature. As always, student safety and privacy should be at the forefront of any decision made.

DEPARTMENT RESPONSE:

The Department agrees with this comment and has processes and procedures in place to ensure that all information and data reported is done in accordance with all applicable privacy laws and regulations. No regulatory revision is necessary.

4. COMMENT:
Section 48.2(b)(3). This requirement for schools to report the number of times a reporting individual sought a "no contact" order by the school is above and beyond the language and scope of the statute. The final legislation that was voted on by the Legislature came after exhaustive deliberations and consultations with a multitude of organizations, including all sectors of higher education, culminating in a detailed piece of legislation with myriad implementation and reporting requirements. To include requirements that go beyond the scope of legislative intent and the actual statute itself leads to legislating via the regulatory process. Accordingly, the commenter urges this part of the proposed regulation be struck.
DEPARTMENT RESPONSE:
The Department believes that including this information in the annual aggregate data reports is consistent with the legislative intent of the statute and will provide information that will help to inform practices and policies on campuses designed to prevent incidents of domestic violence, dating violence, stalking and sexual assault. No regulatory revision is necessary.
5. COMMENT:
Section 48.2(f). As the commenter suggested earlier for section 48.2(b), the exhaustive data requested by this section could get overly granular, especially at smaller colleges and universities, leading to the possibility of exposure of parties involved. The commenter urges the Department to exercise extreme caution when handling this information.
DEPARTMENT RESPONSE:
The Department agrees with this comment and has processes and procedures in place to ensure that all information and data reported is done in accordance with all applicable privacy laws and regulations. No regulatory revision is necessary.
6. COMMENT:
Section 48.2(f)(1-5) and (h). The commenter recommends that the Department combine these categories into one: "cases not closed" and include a drop down menu of choices from which the school can choose.
DEPARTMENT RESPONSE:
The Department will consider this recommendation as it completes the creation of the data reporting system. No regulatory revision is necessary.
7. COMMENT:
Section 48.2(i). The commenter recommends that this part not be included in the final regulations because it goes beyond the statutory language. Additionally, as written this section is subjective and provides no context for the information that may be given. Qualitative responses allow for more discussion and context. For example, a school may have two trainings each year, but those trainings could be for one week each and encompass the entire campus community. The result would be a school reporting two trainings per year but without context it could give the appearance that the school is not taking training seriously.
Responding quickly and appropriately to potential cases of sexual assault is of paramount importance. If the data requested in the proposed regulations, particularly those not contemplated in statute, cannot be shown to demonstrably improve campus safety, the commenter urges they be dropped from the final regulations. Time spent collecting data of questionable value could better be spent serving student needs.
DEPARTMENT RESPONSE:
Whether or not to report information concerning trainings held by an institution is up to each institution and is not required by this section. Institutions can opt not to respond to this section. No regulatory revision is necessary.
8. COMMENT:
Responding quickly and appropriately to potential cases of sexual assault is of paramount importance. If the data requested in the proposed regulations, particularly those not contemplated in statute, cannot be shown to demonstrably improve campus safety, the commenter urges they be dropped from the final regulations. Time spent collecting data of questionable value could better be spent serving student needs.
DEPARTMENT RESPONSE:
The Department believes that the information required by this regulation to be included in the annual data reports is consistent with the legislative intent of the statute and will provide information that will help to inform practices and policies on campuses designed to prevent incidents of domestic violence, dating violence, stalking and sexual assault, as well as assist institutions in developing policies and practices designed to facilitate the reporting of such incidents that do take place and the provision of services to reporting individuals. No regulatory revision is necessary.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Members on the Library and Museum Council

I.D. No. EDU-31-17-00006-P

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

Proposed Action: Amendment of section 3.12 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 206(not subdivided), 207(not subdivided), 214(not subdivided), 232(not subdivided), 305(1) and (2)

Subject: Members on the Library and Museum Council.

Purpose: The purpose of the proposed amendment is to increase the membership of the Library and Museum Councils.

Text of proposed rule: Paragraphs (3) and (4) of subdivision (a) of section 3.12 of the Rules of the Board of Regents shall be amended to read as follows:

(3) Library, [nine] *15* members. [The terms of the four newly created members shall be so arranged that one shall expire on September 30, 1969, one on September 30, 1970, one on September 30, 1971, and one on September 30, 1972. The terms of the five existing members shall not be disturbed. Thereafter, all] *All* members shall be appointed to serve for a term of five years beginning with the first day of October next following the ending of the term to which each, respectively, is to succeed, except that an appointment to fill a vacancy created otherwise than by the expiration of a term shall be for the unexpired term.

(4) Museum, [5] *15* members. One member shall be appointed yearly to serve for a term of five years beginning with the first day of October next following the ending of the term to which each, respectively, is to succeed, except that an appointment to fill a vacancy created otherwise than by the expiration of a term shall be for the unexpired term.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, 89 Washington Avenue, Room 142, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Christina Pillips, State Education Department, Cultural Education Building, Albany, NY 12234, (518) 485-8845, email: REGCOMMENTS@NYSED.GOV

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

Regulatory Impact Statement
1. STATUTORY AUTHORITY:
Education Law § 101(not subdivided) charges the education department with all general management and supervision of all public schools and all the educational work of the State.
Education Law § 206(not subdivided) grants the regents, or any committee thereof, the authority to take testimony or hear proofs relating to their official duties.
Education Law § 207(not subdivided) grants general rule-making authority to the Board of Regents to carry into effect State educational laws and policies.
Education Law § 214(not subdivided) provides that the institutions in the university shall include all secondary and higher education institutions which are now or may hereafter be incorporated in this state, and such other libraries, museums, institutions, schools, organizations and agencies for education as may be admitted or incorporated by the university.
Education Law § 232(not subdivided) establishes the State Museum and State Library as Departments of the University.
Education Law 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies. Section 305(2) provides the Commissioner with general supervision over schools and authority to advise and guide school district officers in their duties and the general management of their schools.
2. LEGISLATIVE OBJECTIVES:
Currently, section 3.12 of the Rules of the Board of Regents states that the Museum Council shall be comprised of five members and the Library Council shall be comprised of nine members; which shall be appointed for a five-year term. However, in May 2017, the Cultural Education Committee recommended that the Museum Advisory Council be comprised of 15 members. By increasing the membership of both the Museum and Library Councils to 15 members each, all Office of Cultural Education Councils will have an equal number of members.
3. NEEDS AND BENEFITS:
Currently, section 3.12 of the Rules of the Board of Regents states that the Museum Council shall be comprised of five members and the Library Council shall be comprised of nine members; which shall be appointed for a five-year term. However, in May 2017, the Cultural Education Committee recommended that the Museum Advisory Council be comprised of 15 members. By increasing the membership of both the Museum and Library Councils to 15 members each, all Office of Cultural Education Councils will have an equal number of members.
4. COSTS:
a. Costs to State government: The amendment does not impose any costs on State government, including the State Education Department.
b. Costs to local government: The amendment does not impose any costs on local government, including institutions of higher education.

c. Costs to private regulated parties: The amendment does not impose any costs on private regulated parties.

d. Costs to regulating agency for implementation and continued administration: See above.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon any local government.

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be presented for permanent adoption at the October 2017 Regents meeting and will take effect as a permanent rule on November 1, 2017.

Regulatory Flexibility Analysis

Currently, section 3.12 of the Rules of the Board of Regents states that the Museum Council shall be comprised of five members and the Library Council shall be comprised of nine members; which shall be appointed for a five-year term. However, in May 2017, the Cultural Education Committee recommended that the Museum Advisory Council be comprised of 15 members. By increasing the membership of both the Museum and Library Councils to 15 members each, all Office of Cultural Education Councils will have an equal number of members. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

Currently, section 3.12 of the Rules of the Board of Regents states that the Museum Council shall be comprised of five members and the Library Council shall be comprised of nine members; which shall be appointed for a five-year term. However, in May 2017, the Cultural Education Committee recommended that the Museum Advisory Council be comprised of 15 members. By increasing the membership of both the Museum and Library Councils to 15 members each, all Office of Cultural Education Councils will have an equal number of members. Because it is evident from the nature of the proposed amendment that it does not affect rural areas, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

Currently, section 3.12 of the Rules of the Board of Regents states that the Museum Council shall be comprised of five members and the Library Council shall be comprised of nine members; which shall be appointed for a five-year term. However, in May 2017, the Cultural Education Committee recommended that the Museum Advisory Council be comprised of 15 members. By increasing the membership of both the Museum and Library Councils to 15 members each, all Office of Cultural Education Councils will have an equal number of members.

Because it is evident from the nature of the proposed amendment that it will have no impact on the number of jobs or employment opportunities in New York State, and no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Financial Services

NOTICE OF ADOPTION

Statement of Actuarial Opinion and Actuarial Opinion Summary for Property/Casualty Insurers

I.D. No. DFS-18-17-00018-A
Filing No. 513
Filing Date: 2017-07-14
Effective Date: 2017-08-02

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

Action taken: Addition of Part 111 (Regulation 207) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 307, 316 and 4117

Subject: Statement of Actuarial Opinion and Actuarial Opinion Summary for Property/Casualty Insurers.

Purpose: To incorporate section 2A and B of the NAIC's Property and Casualty Actuarial Opinion Model Law.

Text of final rule: *111.1 Definitions.*

As used in this Part:

(a) Domestic property/casualty insurer means a property/casualty insurer incorporated or organized under the Insurance Law and includes a licensed United States branch of an alien insurer entered through this State.

(b) Domiciliary state means the state in which a property/casualty insurer was incorporated or organized or, in the case of a licensed United States branch of an alien insurer, the state through which the alien insurer has entered.

(c) Foreign property/casualty insurer means a property/casualty insurer incorporated or organized under the laws of any state, other than this State, and includes a licensed United States branch of alien insurer entered through a state other than this State.

(d) Property/casualty insurer means an insurer licensed in this State pursuant to Insurance Law Articles 41, 61, 64, 65, 66, 67, or 69.

(e) State means any state of the United States, the commonwealth of Puerto Rico, the District of Columbia, and any United States territory.

111.2 Statement of actuarial opinion and actuarial opinion summary.

(a) A property/casualty insurer shall submit with the annual statement, by March 1 of each year, the opinion of an appointed actuary entitled "statement of actuarial opinion" in accordance with the National Association of Insurance Commissioners ("NAIC") property and casualty annual statement instructions as of September 2016[1], unless, with respect to a foreign property/casualty insurer, the insurer's domiciliary state has exempted the insurer from filing the statement of actuarial opinion with the domiciliary state.

(b)(1) A domestic property/casualty insurer, other than a corporation organized as a title insurance corporation under Insurance Law article 64, that is required to submit a statement of actuarial opinion shall submit electronically to the superintendent by March 15 of each year an actuarial opinion summary, written by the insurer's appointed actuary. The insurer shall file the actuarial opinion summary in accordance with the actuarial opinion summary supplement to the NAIC property and casualty annual statement instructions as of September 2016. The actuarial opinion summary shall be considered a document supporting the statement of actuarial opinion required by subdivision (a) of this section.

(2) A foreign property/casualty insurer that submits a statement of actuarial opinion shall submit electronically to the superintendent an actuarial opinion summary within 15 days of the superintendent's request.

Section 111.3 Exemptions from electronic filing and submission requirements.

(a) A property/casualty insurer required to make an electronic filing or a submission pursuant to this Part may apply to the superintendent for an exemption from the requirement that the filing or submission be made electronically by submitting a written request to the superintendent for approval at least 30 days before the insurer must submit to the superintendent the particular filing or submission that is the subject of the request, except that with respect to a filing or submission made pursuant to section 111.2(b)(2) of this Part, an insurer may apply for the exemption by submitting promptly a written request to the superintendent for approval upon receipt of the superintendent's request for an actuarial opinion summary.

(b) The request for an exemption shall:

(1) set forth the insurer's NAIC number;

(2) identify the specific filing or submission for which the insurer is applying for the exemption;

(3) specify whether the insurer is making the request for an exemption based upon undue hardship, impracticability, or good cause, and set forth a detailed explanation as to the reason that the superintendent should approve the request; and

(4) specify whether the request for an exemption extends to future filings or submissions, in addition to the specific filing or submission identified in paragraph (2) of this subdivision.

(c) The insurer requesting an exemption shall submit, upon the superintendent's request, any additional information necessary for the superintendent to evaluate the insurer's request for an exemption.

(d) The insurer shall be exempt from the electronic filing or submission requirement upon the superintendent's written determination so exempting the insurer, where the determination specifies the basis upon which the superintendent is granting or denying the request and to which filings or submissions the exemption applies.

(e) If the superintendent approves an insurer's request for an exemption from the electronic filing or submission requirement, then the insurer shall make a filing in a form and manner acceptable to the superintendent.

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[1] OFFICIAL NAIC ANNUAL STATEMENT INSTRUCTIONS, PROPERTY/CASUALTY, FOR THE 2016 REPORTING YEAR. Printed September 2016. © Copyright 1984 - 2016 by National Association of Insurance Commissioners, in Kansas City, Missouri.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 111.2(a) and (b)(1).

Text of rule and any required statements and analyses may be obtained from: Joana Lucashuk, Associate Attorney, NYS Department of Financial Services, One State Street, 20th Floor, New York, NY 10004, (212) 480-2125, email: Joana.Lucashuk@dfs.ny.gov

Revised Regulatory Impact Statement

1. Statutory authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 307, 316, and 4117.

Financial Services Law Section 202 establishes the office of the Superintendent of Financial Services ("Superintendent").

Financial Services Law Section 302 and Insurance Law Section 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other applicable law, and to prescribe regulations interpreting the Insurance Law, the Financial Services Law, or any other applicable law.

Insurance Law Section 307 requires an insurer to submit an annual statement to the Superintendent showing the insurer's condition at last year end, and permits the Superintendent to prescribe the form of the annual statement.

Insurance Law Section 316 permits the Superintendent to promulgate regulations to require an insurer to make a filing or submission with the Superintendent electronically, and requires the Superintendent to allow an insurer to submit a request for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause.

Insurance Law Section 4117 requires that in any financial statement or report of a property/casualty insurer, there shall be included in the liabilities of such insurer loss reserves and loss expense reserves in an amount at least equal to the amounts required by that section. Section 4117 also requires every licensed property/casualty insurer that is required to file an annual statement with the superintendent to engage a qualified independent loss reserve specialist to render an opinion as to the adequacy of the insurer's loss and loss adjustment expense reserves when two of three of the insurer's results of its loss and loss adjustment expense ratios, as indicated in Insurance Law Section 4117(g)(1)(A)-(C), are outside of the indicated acceptable ranges.

2. Legislative objectives: Insurance Law Section 4117 requires every licensed property/casualty insurer that must file an annual statement to engage a qualified independent loss reserve specialist to render an opinion as to the adequacy of its loss and loss adjustment expense reserves under certain conditions. Insurance Law Section 307 requires an insurer to submit an annual statement, and permits the Superintendent to prescribe the form of the statement. The Superintendent has adopted the National Association of Insurance Commissioners ("NAIC") annual statement blank and has encouraged insurers to file their annual statements electronically with the NAIC. See Ins. Circular Letter No. 4 (2001) and 11 NYCRR § 83.2 (Insurance Regulation 172). The NAIC property and casualty annual statement instructions as of September 2014 (the "statement instructions") require an insurer to attach or include in page one of the annual statement a statement of actuarial opinion ("SAO"), which sets forth the actuary's opinion relating to reserves. The statement instructions permit an insurer to apply to its domiciliary state for an exemption from the SAO filing requirement if the insurer (i) has less than one million dollars total direct plus assumed written premiums during a calendar year and less than one million dollars total direct plus assumed loss and loss adjustment expenses at year-end; (ii) based upon the nature of its business written; or (iii) based upon a financial hardship.

The statement instructions also state that each insurer required by its domiciliary state to submit an actuarial opinion summary ("AOS") must file the AOS in the insurer's domiciliary state annually and with any other state upon request. The AOS must include certain information pertaining to loss and loss adjustment expense reserves, among other things.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law Sections 307 and 4117 by requiring an authorized property/casualty insurer to submit annually to the Superintendent an SAO (unless exempted from filing by the insurer's domiciliary state); requiring a domestic property/casualty insurer that must submit an SAO to submit to the Superintendent an annual AOS; and requiring a foreign insurer to submit to the Superintendent an AOS within 15 days of the Superintendent's request.

3. Needs and benefits: Section 2A of the NAIC's Property and Casualty Actuarial Opinion Model Law (the "Model Law") requires an authorized property/casualty insurer to submit an annual SAO unless otherwise exempted by the insurer's domiciliary state. Section 2B of the Model Law requires a domestic property/casualty insurer that must submit an SAO to submit an annual AOS written by the insurer's appointed actuary. An insurer must file the SAO and the AOS in accordance with the statement instructions. A foreign property/casualty insurer must submit the AOS upon request.

Sections 2A and B of the Model Law currently are NAIC accreditation standards. The purpose of the NAIC's accreditation program is for state insurance regulatory agencies to meet certain minimum standards of solvency regulation in order to promote effective insurer financial solvency regulation. Since the New York State Department of Financial Services ("DFS") has adopted the statement instructions, DFS receives an SAO as part of an insurer's annual statement. In addition, DFS issues an annual insurance circular letter that advises all domestic property/casualty insurers that are required to file an SAO that they also should file an AOS with DFS. See e.g., Supplement No. 9 to Insurance Circular Letter No. 22 (2005) dated February 27, 2017. However, DFS has been criticized for its reliance on circular letters for meeting accreditation standards.

This rule would incorporate Sections 2A and B of the Model Law to ensure that DFS meets NAIC accreditation standards and relieve DFS of the need to continue reissuing circular letters each year.

The rule also would require an authorized property/casualty insurer to submit an AOS electronically unless the Superintendent grants the insurer an exemption from filing electronically.

4. Costs: This rule should not impose any cost on authorized property/casualty insurers to implement or continue compliance with this rule because insurers who are not exempt from the filing requirements already are submitting an annual SAO and AOS to DFS. The electronic filing requirement should not impose any financial burden on most insurers, which already file electronically. Smaller insurers that have to file may seek an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause. DFS should not incur any additional costs in connection with the implementation of this rule because DFS already receives annual SAO and AOS filings.

This rule does not impose compliance costs on state or local governments.

5. Local government mandates: This rule does not impose any requirement upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The rule requires an authorized property/casualty insurer to submit with its annual statement an SAO, and requires a domestic property/casualty insurer that files an SAO to file electronically an annual AOS. The rule also requires a foreign property/casualty insurer to submit an AOS electronically within 15 days of the Superintendent's request. However, because the rule merely codifies current practices, the rule does not impose any new or additional paperwork requirements.

7. Duplication: This rule will not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: DFS considered not requiring an authorized property/casualty insurer to file an AOS electronically. However, DFS decided to require such an insurer to file an AOS electronically because it will reduce paperwork and create greater efficiency, though an insurer may request an exemption from the electronic filing requirement based upon a demonstration of undue hardship, impracticability, or good cause consistent with Insurance Law Section 316.

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

10. Compliance schedule: The rule, once adopted, would take effect upon publication in the State Register.

Revised Regulatory Flexibility Analysis

1. Effect of rule: The rule requires an authorized property/casualty insurer to submit with its annual statement a statement of actuarial opinion ("SAO") in accordance with the National Association of Insurance Commissioners property and casualty annual statement instructions as of September 2016 (the "statement instructions"), and requires a domestic property/casualty insurer that files an SAO to file with the Superintendent of Financial Services ("Superintendent") an annual actuarial opinion summary ("AOS") electronically in accordance with the statement instructions. The rule also requires a foreign property/casualty insurer to submit an AOS electronically within 15 days of the Superintendent's request. As such, it should not affect local governments. Since the New York State Department of Financial Services ("DFS") has adopted the statement instructions, DFS receives an SAO as part of an insurer's annual statement. In addition, DFS issues an annual insurance circular letter that advises all domestic property/casualty insurers that are required to file an SAO that they also should file an AOS with DFS. See e.g., Supplement No. 9 to Insurance Circular Letter No. 22 (2005) dated February 27, 2017. Therefore, this rule merely codifies current practice.

This rule is directed at property/casualty insurers, which do not fall within the definition of a "small business" as defined by State Administrative Procedure Act section 102(8) because in general they are not independently owned and do not have fewer than 100 employees.

Industry has asserted that certain property/casualty insurers, in particular co-op insurers and mutual insurers, are small businesses. DFS believes that the language in the statement instructions that permit an authorized property/casualty insurer to apply to its domiciliary state for an exemption from the SAO filing requirement if it is (i) an insurer that has less than one million dollars total direct plus assumed written premiums during a calendar year and less than one million dollars total direct plus assumed loss and loss adjustment expenses at year-end; (ii) based upon the nature of its business written; or (iii) based upon a financial hardship, will exclude any insurers that may be small businesses from being subject to the SAO and AOS filing requirements. In fact, DFS granted approximately 19 exemption requests for the filing due in 2014 and approximately 15 exemption requests for the filing due in 2015. In addition, there are co-op insurers and mutual insurers who have not requested exemptions and are already making the SAO and AOS filings.

The electronic filing requirement should not impose any financial burden on small insurers because these insurers may seek an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause.

2. Compliance requirements: Because the rule merely codifies current practices, there are no new or additional compliance requirements placed on small businesses. Additionally, a small business may apply for an exemption from the rule's filing requirements. A local government will not have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the rule since the rule does not apply to any local government.

3. Professional services: Because the rule merely codifies current practices, a small business should not need new or additional professional services to comply. Additionally, a small business may apply for an exemption from the rule's filing requirements. A local government will not need any professional services to comply with this rule since the rule does not apply to any local government.

4. Compliance costs: Because the rule merely codifies current practices, a small business should not be subject to any new or additional compliance costs to comply. Additionally, a small business may apply for an exemption from the rule's filing requirements. A local government will not incur any costs to comply with this rule since the rule does not apply to any local government.

5. Economic and technological feasibility: Because the rule merely codifies current practices, the rule does not impose any new or additional economic or technological requirements on small businesses. Additionally, a small business may apply for an exemption from the rule's filing requirements. The rule does not impose any economic or technological requirements on a local government because the rule does not apply to any local government.

6. Minimizing adverse impact: Because the rule merely codifies current practices, the rule will not have an adverse impact on any small businesses. Additionally, a small business may apply for an exemption from the rule's filing requirements. There will not be an adverse impact on a local government because the rule does not apply to any local government.

7. Small business and local government participation: Small businesses and local government will have an opportunity to participate in the rule making process when the proposed rule is published in the State Register.

Revised Rural Area Flexibility Analysis and Job Impact Statement

Changes made to the last published proposed rule have no bearing on the last published Rural Area Flexibility Analysis and Job Impact Statement. Therefore, no changes have been made to the Rural Area Flexibility Analysis and Job Impact Statement.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The New York State Department of Financial Services ("Department") received comments from a state trade association representing property/casualty insurers ("trade association") in response to the publication of its proposed rule in the New York State Register. The trade association stated that it does not have substantive objections to the proposed rule but had two suggestions.

The trade association suggested including language in the regulation from Supplement No. 9 to Insurance Circular Letter No. 22 (2005) that makes clear that an insurer may request that the Department exempt from disclosure records it considers to be trade secrets under Public Officers Law Article 6.

The Department did not make this change because insurers already legally have the right to request that the Department exempt from disclosure records they consider to be trade secrets and therefore the Department does not believe that the change is necessary.

The trade association also asked that the Department update the current Department property/casualty statutory checklist to account for the rule if the rule is adopted. The Department did not make any changes to the rule in light of this comment since this comment does not pertain to the rule.

Office of Mental Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Early and Periodic Screening, Diagnostic and Treatment Services for Children

I.D. No. OMH-31-17-00001-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 511 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, Part 511

Subject: Early and Periodic Screening, Diagnostic and Treatment Services for Children.

Purpose: To promote the expansion of behavioral health services for children and youth under 21 years of age.

Substance of proposed rule (Full text is posted at the following State website:www.omh.ny.gov): The New York State Office of Mental Health (OMH), Office of Alcoholism and Substance Abuse Services (OASAS), Office of Children and Family Services (OCFS), and the Department of Health (DOH) have worked in collaboration to promote the expansion of behavioral health services for children and youth under 21 years of age by identifying six services to be offered under the Early and Periodic Screening, Diagnosis and Treatment Benefits, commonly known as EPSDT. These six services will be available to any child eligible for Medicaid who meets relevant medical necessity criteria.

The main goals of the additional services as identified in New York State's Medicaid Plan is to:

- Identify needs early on in a child's life;
- Maintain the child at home with support and services;
- Maintain the child in the community in the least restrictive settings possible;
- Prevent the need for long-term and/or more expensive services; and
- To increase the delivery of services following trauma-informed care principles.

To accomplish these goals, the following services will be implemented:

- Other Licensed Practitioner;
- Crisis Intervention;
- Community Psychiatric Support and Treatment;
- Psychosocial Rehabilitation;
- Family Peer Support; and
- Youth Peer Advocacy and Training.

To facilitate the delivery of these services, DOH, OMH, OASAS, and OCFS will designate licensed, certified, or approved providers under their respective jurisdictions to offer these services under the Medicaid program. OMH is proposing a new Part 511 to Title 14 NYCRR to establish the process under which providers of mental health services that are

operated, licensed, or funded may obtain designation to offer any or all of these six services.

A provider of mental health services is eligible to apply for designation if it is enrolled in the Medicaid program prior to commencing service delivery; have a history of compliance with federal and state laws and regulations governing the provision of mental health services; and satisfy requisite criteria identified in the New York State Plan Amendment Designation Application and standards of care identified in the Children's Health and Behavioral Health Services Transformation Medicaid State Plan Provider Manual. Requests for designation must be in writing, in a form and format identified by OMH. The proposed regulations also include a process for revocation of a designation, establish a requirement for OMH to publish guidelines for service provision on its public website, and indicate that the aforementioned standards of care are incorporated by reference.

Text of proposed rule and any required statements and analyses may be obtained from: Julie Rodak, NYS Office of Mental Health, 44 Holland Avenue, 8th floor, Albany, NY 12229, (518) 474-1331, email: julie.rodak@omh.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs.

3. Needs and benefits: Federal law requires state Medicaid programs to offer Early and Periodic Screening, Diagnosis and Treatment (EPSDT) to all Medicaid-eligible children under age 21. Within the scope of EPSDT benefits, states are required to cover any service that is medically necessary to "correct or ameliorate a defect, physical or mental illness, or a condition identified by screening" and which are recommended by a licensed practitioner of the healing arts. New York State has obtained an amendment to its Medicaid State Plan that authorizes the provision of six new children's behavioral and health services under the EPSDT program. When recommended by a practitioner of the healing arts, these six services will be made available to any child eligible for Medicaid who meets relevant medical necessity criteria, and include: Crisis Intervention Services; Family Peer Support Services; Youth Peer Advocacy and Training; Psychosocial Rehabilitation Services; Community Psychiatric Support and Treatment; and Other Licensed Practitioner. This Part establishes a process to obtain designation from the Office of Mental Health to offer EPSDT behavioral health services.

4. Costs: Costs to implement these EPSDT behavioral health services in general, are significantly offset by the cost savings that can result from its use. These services will be provided in the home or community settings with the goal of identifying needs early, maintaining the child at home with support and services, and preventing longer term need for costly higher-end services. All services are intended to be delivered in a culturally competent manner and to be trauma-informed. Service planning will consider the child and his or her family's strengths, assets, needs and any history of adverse experiences.

(a) Cost to State government: There are no new costs to State government as a result of these amendments.

(b) Cost to local government: There are no new costs to local government as a result of these amendments.

(c) Cost to regulated parties: For providers that obtain designation and offer these services, there are no new costs to providers as a result of these amendments.

5. Local government mandates: The provision of this service is not required. These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school, or fire districts.

6. Paperwork: For providers that wish to be designated to provide this service, written plans must be submitted for approval by the Office.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: Although regulations are not required to establish the standards and process for designation, the regulation ensures the requirements and process for designation, as well as the due process requirements for removing designation, are clearly established.

9. Federal standards: There are currently no federal standards specific to the provision of these EPSDT behavioral health services. However, the regulatory amendments are consistent with the definition of EPSDT services issued by the Centers for Medicare and Medicaid Services. (42 U.S.C. §§ 1396d(r)(5).

10. Compliance schedule: The amendments would be effective upon adoption.

Regulatory Flexibility Analysis

The amendments to 14 NYCRR Part 511 are intended to establish a designation process to obtain Office authorization to deliver children's behavioral services under the EPSDT program by providers that are operated, licensed, or funded by the Office. Participation in the program by such providers is not mandatory. As there will be no adverse economic impact on small businesses or local governments as a result of these amendments, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

The amendments to 14 NYCRR Part 511 are intended to establish a designation process to obtain Office authorization to deliver EPSDT children's behavioral services by providers that are operated, licensed, or funded by the Office. Participation in this program by such providers is not mandatory. The proposed rule will not impose any adverse economic impact on rural areas; therefore, a Rural Area Flexibility Analysis is not submitted with this notice.

Job Impact Statement

The amendments to 14 NYCRR Part 511 are intended to establish a designation process to obtain Office authorization to deliver EPSDT children's behavioral services by providers that are operated, licensed, or funded by the Office. Participation in this program by such providers is not mandatory. Because it is evident from the subject matter that there will be no adverse impact on jobs and employment opportunities as a result of these amendments, a Job Impact Statement is not submitted with this notice.

Office for People with Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Representative Payee

I.D. No. PDD-31-17-00003-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 633.9; and amendment of section 633.15 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Representative Payee.

Purpose: To regulate the management of benefit funds received by facility directors acting as representative payees.

Text of proposed rule: A new Section 633.9 is added as follows:

Section 633.9 Facility Directors as Representative Payees

(a) Applicability. This section applies to OPWDD operated and certified residential facilities, including family care homes.

(b) Definitions.

(1) Beneficiary means an individual who is receiving Social Security or other federal or state benefits.

(2) Facility means an OPWDD operated or certified residential facility. As used in this section, facility also means the agency that sponsors a Family Care home.

(3) Facility director means the executive director, administrator, CEO, or its equivalent of an OPWDD operated or certified residential facility. As used in this section, facility director also means the executive director, administrator, CEO, or its equivalent of an agency that sponsors a family care home.

(4) Health care professional means physician, psychologist, or other qualified medical practitioner whose statements are acceptable to the benefit paying agencies for the purposes of determining the beneficiary's ability to handle his or her benefits.

(5) Lump sum retroactive benefit means a lump sum retroactive payment of a federal or state benefit that exceeds the expected monthly recurring amount for a reason other than a delay in processing an application, changing a representative payee, or similar administrative delay.

(6) Medicaid exception trust means a trust that contains the assets of the beneficiary in which both the principal and income of the trust are considered exempt for purposes of determining the beneficiary's eligibility for Medicaid and/or Supplemental Security Income.

(7) Representative payee means a party designated by a benefit-paying organization to receive an individual's benefit payments in a fiduciary capacity and in compliance with federal and state laws and regulations. This includes, but is not limited to, a party specifically designated by the Social Security Administration (SSA) to handle benefits on behalf of a beneficiary.

(c) Determination of need for representative payee.

(1) The beneficiary does not have a representative payee. If an individual does not have a representative payee, then within ten (10) business days of a beneficiary's move into a facility, the facility director, in consultation with the beneficiary's planning team, must conduct a review to determine whether the appointment of a representative payee to manage the individual's benefits is advisable. The basis for the determination must be documented in the beneficiary's record. If the facility director and the planning team question whether an individual is able to manage his or her benefits, then the individual must be evaluated by a health care professional. If, in the health care professional's opinion, the beneficiary cannot manage his or her benefits, then the facility director may apply to become the beneficiary's representative payee. If, in the health care professional's opinion, the beneficiary is capable of managing his or her own benefits, then the facility director may not apply to become the beneficiary's representative payee.

(2) The beneficiary has a representative payee. If an individual has a representative payee, then within ten (10) business days of a beneficiary's move into a facility, the facility director, in consultation with the beneficiary's planning team, must conduct a review to determine whether there is a continuing need for the appointment of a representative payee for the beneficiary.

(i) If the facility director and the planning team determine that the beneficiary continues to require a representative payee, then the facility director may apply to become the beneficiary's representative payee.

(ii) If the facility director and/or the planning team determine that a beneficiary may no longer require a representative payee, or are unsure, then the individual must be evaluated by a health care professional. If the health care professional's opinion is that the beneficiary cannot manage his or her benefits, then the facility director may apply to become the beneficiary's representative payee. If the health care professional's opinion is that the beneficiary can manage his or her benefits, then the facility director may not apply to become the beneficiary's representative payee. The facility director must notify the benefit paying agency of any change.

(iii) The basis for the determination of the beneficiary's need or continuing need for a representative payee, as set forth in subparagraphs (i) and (ii) of this paragraph, must be documented in the beneficiary's record.

(3) A determination of a beneficiary's need for a representative payee must also be made under the following circumstances and must be documented in the beneficiary's record:

(i) when there is a significant change in the beneficiary's physical or mental condition;

(ii) in response to a circumstance that affects the beneficiary's ability to manage his or her benefits;

(iii) upon request of the beneficiary or a party making a request on behalf of the beneficiary;

(iv) when a beneficiary transfers from one certified residence to another and both residences are operated by the same agency, and the person needs different supports, then the facility director must follow the requirements of paragraphs (1) and (2) of this subdivision; and

(v) when a beneficiary transfers from one certified residence to another, and the residences are operated by different agencies, then the facility director must follow the requirements of paragraphs (1) and (2) of this subdivision.

(4) If the facility director applies to be representative payee, the Director must provide notification in accordance with subdivision (d) of this section. If notice is not provided, then the reason must be documented in the beneficiary's record.

(d) Notice to qualified persons of intent and application for representative payee status.

(1) Whenever a facility director intends to apply to be representative payee of a beneficiary who is receiving services from an OPWDD operated or certified residential facility, the facility director must give concurrent written notice to the qualified parties as set forth in Mental Hygiene Law 33.16(a)(6) and any other party designated by the beneficiary, of the facility director's intent to make such application.

(i) A facility director is not required to provide notice pursuant to this section if the beneficiary is a "person, capable adult" as defined in subdivision 633.99(bp) of this Part, and the beneficiary objects to such notice; if such notice is prohibited by Court order; or, if the facility director, in consultation with the planning team, determine that it would cause substantial and identifiable harm to the beneficiary. This determination must be documented in the beneficiary's record.

(ii) The notice will be deemed to have been provided if hand delivered, mailed by first class mail to the last known address of the recipient(s) of the notice, or mailed electronically to the last known email address of the recipient(s).

(iii) The notice to beneficiaries must include information that the Mental Hygiene Legal Service is available to advise beneficiaries regarding the application process.

(2) During the application process or following the appointment of a facility director as a beneficiary's representative payee, the facility must ensure that the beneficiary is apprised of his or her right at any time to request to receive benefits directly, or to request a change in representative payee. Such request must be directed to the Social Security Administration or the federal or state entity that made the appointment.

(e) Policies and procedures.

(1) If a facility director serves or may serve as representative payee, then the residential services agency must establish policies and procedures for the management and use of funds paid to the facility director as representative payee. These policies and procedures must be in compliance with all applicable federal and state laws and regulations. At a minimum, such policies and procedures must include provisions for:

(i) establishment and maintenance of beneficiary accounts in interest bearing accounts;

(ii) individual accounting to segregate balances and permit the application of interest earned, if any, on a pro-rated basis, for collective accounts;

(iii) internal controls to keep the beneficiary accounts and funds secure, prevent identity theft, provide specific authorization for banking transactions, and document receipts and disbursements;

(iv) response to a request to review the representative payee account;

(v) designation of an appropriate staff member to act as a liaison between the facility director and the beneficiary;

(vi) management of the personal allowance derived from the benefit referenced in 633.15; and

(vii) consideration of the use of a Medicaid exception trust, Supplemental Needs Trust, or similar device to protect a lump sum retroactive benefit, inheritance or any other funds which would affect eligibility for benefits.

(2) If the representative payee is the facility director, then the representative payee must:

(i) manage the benefits without charging a fee;

(ii) manage the personal allowance portion of the income without a charging a fee;

(iii) maintain a record of all funds received, including earned income, and report to the benefit paying organization(s) on these funds as required, and;

(iv) maintain a record of all resources, with current values, to meet all benefit paying organization(s) reporting requirements and to ensure that the entitlements are not jeopardized by a beneficiary's resources exceeding regulatory limits.

(3) When a beneficiary does not have a representative payee, the agency or sponsoring agency must offer to assist with:

(i) reporting both earned and unearned income to benefit paying organization(s), as required;

(ii) reporting resource amounts to benefit paying organization(s), as required;

(iii) monitoring resource amounts to ensure that the beneficiary's entitlements are not jeopardized by having excess resources; and

(iv) reporting any changes that may affect a beneficiary's entitlements to benefit paying organizations, as required.

(4) When the facility director is not the representative payee, the agency or sponsoring agency must offer to manage the beneficiary's personal allowance. The offer must be in writing and made within ten (10) business days of the beneficiary's move or change of representative payee.

(f) Transfer of Funds. When a beneficiary moves to a new residence:

(1) If the beneficiary moves to a facility operated or sponsored by the same agency, the agency may retain all funds and the facility director will continue to serve as the beneficiary's representative payee unless, in accordance with subdivision (c) of this section, the beneficiary no longer needs a representative payee. Cash maintained on behalf of the beneficiary at the facility must be forwarded to the new residential facility.

(2) If the beneficiary moves to a facility operated or sponsored by another agency:

(i) Personal allowance funds derived from payments made by SSA must either be returned to SSA within 10 business days of the person's departure or, if specifically permitted by SSA, forwarded to the new repre-

sentative payee. Encumbered funds will be retained by the agency and appropriately disbursed. Funds derived from other sources must be forwarded to the new representative payee within 10 business days of the person's departure. If funds derived from SSA have been combined with funds from other sources, then the amount returned to SSA must be the percentage of the current total that represents the SSA portion. The percentage must be calculated based on the historical payments received over the last six months from SSA and non-SSA sources.

(ii) The former agency must notify the successor representative payee in writing of the return of the beneficiary's funds to SSA immediately following such return or transfer of funds. The notification must include the amount returned or transferred and the date it was returned or transferred.

(iii) On or before the date of the move, the former agency must disburse to the new facility a sum equivalent to one month's minimum statutory personal allowance or the total of the person's funds, whichever is less, prior to returning to SSA the remainder (if any) of the person's funds that were derived from payments made by SSA.

(iv) The facility director of the new agency shall apply to the benefit paying agency to become the person's representative payee no later than ten (10) business days after the person's admission unless a determination has been made that the beneficiary no longer needs a representative payee.

(v) Upon the appointment of the facility director of the new agency as representative payee by the benefit paying agency and receipt of the person's accrued funds, the new agency shall consider the funds to be accrued personal allowance, except for any amount which is due and payable to the new agency for the provider payment(s) derived from the benefits at the time of the receipt of funds.

(vi) All funds in a burial reserve account, noted as such, regardless of the origin of the funds, shall be forwarded to the new representative payee within ten (10) business days of the beneficiary's discharge or change of representative payee.

(vii) Except for funds received from SSA, when the facility director of the former agency is the representative payee, the ongoing monthly personal allowance shall be forwarded to the successor representative payee within five (5) business days of receipt of the benefit check. This arrangement shall continue until a new payee is designated.

(g) Record Retention. Each agency or sponsoring agency must keep records documenting compliance with this section for four (4) years.

• Paragraph 633.15(b)(3) is amended as follows:

(3) Account, payee. An *account* [record] maintained by [a person who is his or her own payee, or by a payee for earnings,] a representative payee [, or a designated payee] to receive and maintain monies from a benefit paying organization.

• Existing paragraph 633.15(b)(21) is deleted and a new paragraph 633.15(b)(21) is added as follows:

(21) Payee, representative. A party designated by a benefit-paying organization to receive an individual's benefit payments in a fiduciary capacity and in compliance with federal and state laws and regulations. This includes, but is not limited to, a party specifically designated by the Social Security Administration (SSA) to handle benefits on behalf of a beneficiary.

• Paragraph 633.15(i)(9) is amended as follows:

(9) On a quarterly basis, the agency or sponsoring agency shall send a copy of each person's personal allowance account ledger card or equivalent to payees, other than the chief executive officer. [or a payee for earnings.]

• Subdivision 633.15(n) is amended as follows:

(n) Transfer of funds. *This subdivision is superseded by subdivision 633.9(f) of this Part, effective October 1, 2017.*

Note: Paragraphs (n)(1) and (2) remain unchanged.

• Subdivision 633.15(r) is amended as follows:

(r) Payee designation and responsibilities. *This subdivision is superseded by section 633.9 of this Part, effective October 1, 2017.*

Note: Paragraphs (r)(1) - (6) remain unchanged.

Text of proposed 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: 45 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 intellectual and 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. As this matter concerns the provision of services pursuant to provisions of NYS Mental Hygiene Law sections 29.23 and 33.07 in relation to the receipt of federal and state benefits received by individuals supported in facilities certified or operated by OPWDD, the proposed regulations are necessary to satisfy these statutory provisions. The regulation also ensures compliance by OPWDD certified and operated residences with the proper provision of services.

2. Legislative objectives: The proposed regulations further legislative objectives embodied in sections 13.07, 13.09(b), 16.00 and 16.05 of the Mental Hygiene Law. The regulations add a new part and amend existing regulations on representative payees.

3. Needs and benefits: The proposed regulations amend 14 NYCRR Part 633 by adding a new section 633.9 concerning representative payees for individuals receiving services in residential facilities operated and/or certified by OPWDD, and by making conforming changes to existing regulations in section 633.15 concerning the management of personal allowance of residents who reside in such facilities.

The proposed regulations are necessary to satisfy provisions of sections 29.23 and 33.07 of the NYS Mental Hygiene Law that require OPWDD to promulgate regulations regarding the management and protection of individuals' funds where a facility director is appointed or may be appointed as an individual's representative payee.

The proposed regulations in 633.9 require facility directors, in consultation with an individual's planning team, to determine their need or continuing need for a representative payee to handle their funds. The regulations require documentation of the basis for that determination in the individual's record. This provides management benefits and protection to the individuals we serve.

The proposed regulations in 633.9 require facility directors to follow policies and procedures when acting as representative payee, which benefit the individuals we serve by providing management and protection of the individual's funds.

The proposed regulations amend definitions in 633.15 to correspond with the addition of 633.9.

In addition, the proposed regulations supersede certain requirements for the management of personal funds for people who are receiving services in facilities operated and/or certified by OPWDD.

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 the proposed regulations. The regulations require a facility director, in consultation with the beneficiary's planning team to determine a beneficiary's need or continuing need for a representative payee, to document the basis for that determination in the beneficiary's record, and to follow guidelines when a facility director is acting as representative payee. Consequently, there are no anticipated costs for the State in its role of paying for Medicaid costs.

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.

The regulations may result in minimal costs to OPWDD in its role as a provider of services to comply with the new requirements. Consequently, there may be costs associated with developing policies and procedures and with subsequent training. However, these costs will be satisfied with existing resources.

b. Costs to private regulated parties:

OPWDD expects that the costs to develop new policies and procedures will be minimal and be satisfied with existing resources. Costs to have a healthcare professional certify a beneficiary's competency to handle his/her benefits will be minimal because most facilities will take the beneficiary to the beneficiary's treating healthcare professional for certification.

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 experience a minimal increase in paperwork as a result of the proposed regulations. The regulations will require facility directors to document the determination of whether a beneficiary needs or continues to need a representative payee and to provide notice to appropriate parties.

7. Duplication: These regulations mirror federal benefit paying agency regulations concerning representative payees/fiduciaries. The duplicative impact of the proposed state regulations is minimal as documentation showing compliance with federal benefit paying agencies can also be used to meet OPWDD requirements.

8. Alternatives: OPWDD did not consider any other alternatives to the proposed regulations. The regulations are necessary to comply with MHL 33.07.

9. Federal standards: The proposed rule exceeds minimum standards of the federal government, as benefit paying agencies do not require a review of the person's need or continuing need for a representative payee when the person has life changes. Given the unique population served by OPWDD, and the ramifications of the representative payees' decisions, this is in accordance with current New York State statutes.

10. Compliance schedule: OPWDD is planning to adopt the proposed amendments as soon as possible within the timeframes mandated by the State Administrative Procedure Act. The proposed regulations were reviewed by Mental Hygiene Legal Services. The proposed regulations were discussed with and reviewed by representatives of providers in advance of this proposal. Additionally, OPWDD will be mailing a notice of the proposed amendments to providers in advance of the effective date.

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that many OPWDD-funded services are provided by not-for-profit agencies which employ more than 100 people. Smaller agencies that employ fewer than 100 employees are classified as small businesses. OPWDD is unable to estimate the number of agencies that may be considered to be small businesses.

The proposed amendments have been reviewed by OPWDD in light of their impact on small businesses. The proposed amendments require facility directors in consultation with the beneficiary's planning team to determine a beneficiary's need or continuing need for a representative payee, to document the basis for that determination, and to follow policies and procedures when a facility director is acting as representative payee.

2. Compliance requirements: The proposed amendments will impose some additional compliance requirements on facilities. OPWDD expects that the compliance costs to develop new policies and procedures will be minimal and satisfied with existing staff. Additionally, costs to have a healthcare professional certify a beneficiary's competency to handle his/her benefits will be minimal because most facilities will take the beneficiary to the beneficiary's treating healthcare professional for certification.

The amendments will have no effect on local governments.

3. Professional services: The proposed amendments will affect facilities that need to have a healthcare professional certify a beneficiary's competency to handle his/her benefits. This will be minimal because most facilities will take the beneficiary to the beneficiary's treating healthcare professional for certification.

4. Compliance costs: OPWDD expects that the compliance costs to develop new policies and procedures will be minimal and satisfied with existing staff. Additionally, costs to have a healthcare professional certify a beneficiary's competency to handle his/her benefits will be minimal because most facilities will take the beneficiary to the beneficiary's treating healthcare professional for certification.

5. Economic and technological feasibility: The proposed amendments do not impose the use of any new technological processes on regulated parties.

6. Minimizing adverse impact: The purpose of these proposed amendments is to require facilities to determine whether a beneficiary needs or continues to need a representative payee, to document the basis for that determination, and to follow policies and procedures when a facility director is acting as representative payee. The amendments will result in costs to facilities, including facilities that are small businesses. However, OPWDD does not expect that such costs will result in an adverse impact to providers because costs will be minimal.

OPWDD has reviewed and considered the approaches for minimizing adverse impacts as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act (SAPA). However, since the representative payee determination and documentation requirements are needed to ensure beneficiaries receive a representative payee when appropriate, OPWDD did not establish different compliance, reporting requirements or timetables from these requirements and timetables on small businesses or exempt facilities that are small businesses.

7. Small business participation: The proposed regulations were discussed with and reviewed by representatives of providers, some being small businesses, in advance of this proposal. OPWDD also plans to inform all facilities, including small business providers, of the proposed amendments in advance of their scheduled effective date.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: 44 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

The proposed amendments have been reviewed by OPWDD in light of their impact on entities in rural areas. The proposed amendments require a facility director in consultation with the beneficiary's planning team to determine a beneficiary's need or continuing need for a representative payee, to document the basis for that determination and to follow policies and procedures when acting as representative payee.

2. Compliance Requirements: The proposed amendments will impose some additional compliance requirements on facilities. OPWDD expects that the compliance costs to develop new policies and procedures will be minimal and satisfied with existing staff. Additionally, costs to have a healthcare professional certify a beneficiary's competency to handle his/her benefits will be minimal because most facilities will take the beneficiary to the beneficiary's treating healthcare professional for certification.

The amendments will have no effect on local governments.

3. Professional Services: The proposed amendments will affect facilities that need to have a healthcare professional certify a beneficiary's competency to handle his/her benefits. However, most facilities will take the beneficiary to the beneficiary's treating healthcare professional for certification.

4. Compliance Costs: OPWDD expects that the compliance costs to develop new policies and procedures will be minimal and satisfied with existing staff. Additionally, costs to have a healthcare professional certify a beneficiary's competency to handle his/her benefits will be minimal because most facilities will take the beneficiary to the beneficiary's treating healthcare professional.

5. Minimizing Adverse Impact: The purpose of these proposed amendments is to require facility directors to determine whether a beneficiary needs or continues to need a representative payee, to document that determination in the beneficiary's record, and to follow policies and procedures when acting as representative payee. The amendments will result in costs to facilities, including facilities in rural areas. However, OPWDD does not expect that such costs will result in an adverse impact to providers as the costs will be minimal.

OPWDD has reviewed and considered the approaches for minimizing adverse impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act (SAPA). However, since the determination and documentation requirements are needed to ensure beneficiaries receive a representative payee when appropriate, OPWDD did not establish different compliance, reporting requirements, or timetables on providers in rural areas or local governments or exempt providers in rural areas or local governments from these requirements and timetables.

6. Rural Area Participation: The proposed regulations were discussed with and reviewed by representatives of providers, including some in rural areas, in advance of this proposal. OPWDD also plans to inform all providers, including providers in rural areas, of the proposed amendments in advance of their scheduled effective date.

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 require facility directors in consultation with the beneficiary's planning team to determine a beneficiary's need or continuing need for a representative payee, and document that determination in the beneficiary's record. The amendments also require facility directors to follow policies and procedures when acting as the representative payee. The amendments will not result in staffing costs, and compliance requirements for facilities are minimal. Consequently, the amendments will not have a substantial impact on jobs or employment opportunities in New York State.

Public Employment Relations Board

NOTICE OF ADOPTION

Rules and Regulations to Effectuate the Purposes of the Public Employees' Fair Employment Act (Civil Service Law Art. 14)

I.D. No. PRB-16-17-00002-A
Filing No. 516
Filing Date: 2017-07-18
Effective Date: 2017-08-02

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

Action taken: Amendment of Parts 200-215 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 205.5(l)

Subject: Rules and Regulations to Effectuate the Purposes of the Public Employees' Fair Employment Act (Civil Service Law Art. 14).

Purpose: Codify existing practices; modernize pleadings; remove outdated rules.

Substance of final rule: Rules §§ 205.4(a) and 205.14 have been modified to delete the phrase "provided, however, that no such petition will be processed absent completion of the mediation process."

Rules §§ 205.4(b), 205.5(b), 205.14(b) and 205.16(b) have been modified so that proposed contract language must be attached only if such language was presented during negotiations.

Part 214, "Misconduct Before the Agency," has been modified to remove the inadvertent reference to "disbarment" in Rule § 214.2.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 205.4, 205.5, 205.14, 205.16 and 214.

Text of rule and any required statements and analyses may be obtained from: Sarah Coleman, Deputy Chair, Public Employment Relations Board, PO Box 2074, Empire State Plaza, Bldg. 2, Floor 20, Albany, NY 12220-0074, (518) 457-0956, email: scoleman@perb.ny.gov

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement is not required because changes made to the last published rules do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Electronic Filing and Service:

A comment suggested that the proposed Rules allowing the Public Employment Relations Board (hereinafter "PERB") to adopt electronic filing and service are premature because e-filing is still "an experiment."

No changes to the proposed Rules were made in response to this comment. The authorization in proposed Rule § 200.12(b) and other Rules allowing electronic filing and service are flexible enough to allow PERB to begin a voluntary pilot program that will be limited to proceedings before the board (and thus will not involve filing of potentially voluminous exhibits and other evidentiary matters which are received by administrative law judges). Upon successful completion of a pilot program, e-filing will be gradually expanded. The proposed Rules are flexible enough to allow PERB to develop a functional and accessible e-filing methodology and protocol that will meet the needs of the agency and the parties.

Another comment raised concern that continuing to require the submission of a single paper copy of a filing seemed to defeat the purpose of electronic filing and suggested that, if there is a need for a paper copy in a given matter, PERB could change its proposed Rules to permit it to require the filing of a paper copy upon notice to the party or parties, after electronic filing, rather than requiring it in every case.

No changes to the proposed Rules were made in response to this comment. Requiring one paper copy is designed to preserve the verification requirement, ensure the maintenance of a paper file in case of technical failures in the digital library, and remind all signatories that pleadings (especially sworn pleadings) and papers are legally significant and binding documents.

Another comment questioned why the proposed Rules require that electronic filings be in a searchable format.

No changes to the proposed Rules were made in response to this comment. The proposed Rules are consistent with the requirements of certain courts within the New York State Unified Court System, which require that documents be filed electronically in searchable pdf format. The proposed Rules recognizes that not all parties may have the ability to submit papers in searchable format and provides an exception to accommodate such parties.

Expedited Determinations:

A comment suggested that the proposed Rules allowing for expedited determination of disputes involving primarily a disagreement as to the scope of negotiations should be deleted because the process is rarely used and results in even more delay in case disposition than does normal case processing.

No changes to the proposed Rules were made in response to this comment. The existing Rules concerning expedited determination of scope of negotiations disputes continue to function as intended. The board has indicated that it will use this power sparingly "to encourage the parties to resolve their disputes through collective negotiations." (Bd of the City Sch Dist, City of NY, 46 PERB ¶ 3012 (2013)).

PERB does not agree that bypassing administrative law judge review will add time to the process of determining such matters, and, in any event, believes that these rules provide an appropriate vehicle for the determination of arbitrability and scope matters, especially when interest arbitration or fact-finding are at issue.

Injunctive Relief:

A comment suggested that changing the time frame to respond to an application for injunctive relief from five calendar days to five working days could alleviate attempts to potentially disadvantage the responding party by, for example, delivering an application late on a Friday to truncate the usefulness of the five calendar days.

No changes to the proposed Rules were made in response to this comment. Section 209-a.4(b) of the Public Employees' Fair Employment Act (hereinafter "the Act") requires PERB to petition in Albany County Supreme Court for an injunction or to deny an application for injunctive relief within ten calendar days of PERB's receipt of the application. Adopting the commenter's proposal would result in PERB having insufficient time to give due consideration to a response to an application for injunctive relief, particularly in the scenario outlined by the commenter. That is, if an application were received by PERB on a Friday, and the response was received by the close of business the following Friday (five working days later), PERB would have no working days to consider the response before it was required to either apply for an injunction in Supreme Court or deny the application on Monday (ten calendar days from filing of the application).

Public Arbitration Panels:

With respect to proposed Rule § 205.4(a), which amended the filing requirements for a petition requesting the director of conciliation to refer an impasse to a public arbitration panel, a comment suggested that denying processing of a petition "absent completion of the mediation process" is contrary to the terms of the Act, which requires only a fifteen-day hold period running from the appointment of a mediator, and raises additional questions about who would make the determination as to whether mediation has been completed, what the indicia of completion would be, and whether a party can challenge a determination that mediation has been completed. These additional questions generate litigation by employers seeking to deny or delay the arbitration process.

After consideration, PERB agrees that this proposed amended Rule was not consistent with this provision of the Act and has decided to adopt the commenter's suggestion that proposed Rule § 205.4(a) not include the phrase "provided, however, that no such petition will be processed absent completion of the mediation process." Section 209.4(b) of the Act provides that, "if the mediator is unable to effect settlement of the controversy within fifteen days after his appointment, either party may petition the board to refer the dispute to a public arbitration panel." The other proposed revisions in Rule 205.4(a) remain unchanged. An identical requirement was eliminated from § 205.14 under the Rules related to section 209.5 of the Act.

Compulsory Interest Arbitration:

With respect to provisions in proposed Rules § 205.4(b), § 205.5(b), § 205.16(b) which required that petitions requesting appointment of a public arbitration panel and responses to such petitions must contain proposed contract language, a comment raised concern that parties often do not have contract language developed during negotiations and recommended that the submission of language should remain optional or that the proposed Rules should require submission of contract language only if such language was presented during negotiations.

PERB believes that the commenter has raised a valid and reasonable concern. After consideration, PERB has decided to adopt the suggestion

that proposed contract language must be attached only if such language was presented during negotiations. Rules 205.4(b), 205.5(b), and 205.16(b) have been modified accordingly. An identical provision in Rule § 205.14(b) has also been modified.

Expenses and Fees:

A comment suggested that proposed Rule § 207.15(d) is unnecessary and could be used as a justification by PERB to inject itself into a billing dispute between the chair of a public arbitration panel and a party.

No changes to the proposed Rules were made in response to this comment. The proposed Rule states only that "[s]ince the designated arbitrator is not an agent or representative of the board, all matters involving arbitrator payments and compensation are to be resolved between the parties and the arbitrator directly." This language is intended to prevent parties from endeavoring to draw PERB into billing disputes, as has occurred in the past, and provides no basis for PERB's assertion of any role in such a dispute.

Misconduct before the Agency:

A comment suggested there should be some identification and specification of what is sanctionable misconduct in proposed Rules Part 214.

No changes to the proposed Rules were made in response to this comment. The proposed rule has been modified, however, to remove an inadvertent reference to "disbarment" in Rule § 214.2. The proposed Rule merely extends the long-standing rule applicable to all proceedings before PERB and/or its designees, codifying PERB's established practice of interpreting the rule as "prohibit[ing] misconduct at all stages of case processing, including conferences." Matter of Munafo, 31 PERB ¶ 3012 (1998); see also Matter of Halley, 30 PERB ¶ 3023 (1997). The proposed Rules also provide due process lacking in the prior articulation of the rule by creating a process by which any sanction imposed by an administrative law judge may be appealed to the board.

Historically, the board has construed this section as providing a basic enforcement mechanism of enforcing the well-established notion that "[t]he privilege of representing individuals or entities before this agency carries with it a certain set of responsibilities, not the least one of which is a simple duty to observe ordinary principles of civility, courtesy and decorum during appearances, even when frustrated or upset." Munafo, supra. Likewise, in Halley, the board found misconduct to include "nonresponse where response is required, selective disclosure of facts with an intent to mislead and cause delay, or the persistent raising of issues and arguments lacking any good faith basis in law or fact." These well-established rules, universally applicable to advocates before PERB, have been enunciated and applied since 1998 and 1997 respectively, and are not abstruse or vague.

PERB also received comments pointing out a number of typographical errors. The proposed Rules have been amended to correct these errors.

Public Service Commission

NOTICE OF ADOPTION

Use of Socket AP Device

I.D. No. PSC-33-16-00003-A

Filing Date: 2017-07-17

Effective Date: 2017-07-17

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

Action taken: On 7/13/17, the PSC adopted an order approving, subject to limitations, the Silver Springs Networks Inc. (Silver Springs) Socket Access Point (Socket AP) device for use in metering applications in New York State.

Statutory authority: Public Service Law, section 67(1)

Subject: Use of Socket AP device.

Purpose: To approve, subject to limitations, Silver Springs Socket AP device for use in metering applications in New York State.

Substance of final rule: The Commission, on July 13, 2017, adopted an order approving, subject to limitations, the Silver Springs Networks Inc. (Silver Springs) Socket Access Point (Socket AP) device for use in metering applications in New York State. Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and any New York State utility intending to use the Silver Springs Socket AP shall inspect all installations and maintain records of such inspections, 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.

(16-E-0376SA1)

NOTICE OF ADOPTION

Allocation of Property Tax Refunds

I.D. No. PSC-36-16-00005-A

Filing Date: 2017-07-13

Effective Date: 2017-07-13

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

Action taken: On 7/13/17, the PSC adopted an order approving the terms of a joint proposal executed by New York American Water Company, Inc. (NYAW) and the Department of Public Service (DPS) Staff and denied NYAW's petition for the proposed allocation of tax refunds.

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

Subject: Allocation of property tax refunds.

Purpose: To adopt the terms of a joint proposal between NYAW and DPS Staff and deny NYAW's petition.

Substance of final rule: The Commission, on July 13, 2017, adopted an order approving the terms of a joint proposal executed by New York American Water Company, Inc. (NYAW) and the Department of Public Service (DPS) Staff and denied NYAW's petition seeking approval of a proposed allocation of tax refunds. NYAW shall pass back to customers (a) $672,617, representing 88 percent of the total net refund remaining after deduction of $219,721 in legal and other expenses, as shown in Attachment A of the Joint Proposal; (b) $7,564 in interest accrued on the above $672,617 through January 31, 2017; and (c) interest accrued on items (a) and (b) above, calculated using the Other Customer Provided Capital Rate, until those items have been refunded to customers, 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.

(16-W-0384SA1)

NOTICE OF ADOPTION

Disposition of Property Tax Benefits

I.D. No. PSC-45-16-00012-A

Filing Date: 2017-07-17

Effective Date: 2017-07-17

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

Action taken: On 7/13/17, the PSC adopted an order denying Consolidated Edison Company of New York, Inc. (Con Edison) and Orange & Rockland Utilities, Inc.'s (O&R) joint petition to retain 14% of estimated future property tax savings.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Disposition of property tax benefits.

Purpose: To deny Con Edison and O&R's joint petition to retain 14% of estimated future property tax savings.

Substance of final rule: The Commission, on July 13, 2017, adopted an order denying Consolidated Edison Company of New York, Inc. and

Orange & Rockland Utilities, Inc.'s joint petition to retain 14% of the estimated future property tax savings related to the settlement with the Town of Ramapo, 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.

(16-M-0300SA2)

NOTICE OF ADOPTION

Disposition of Property Tax Benefits

I.D. No. PSC-45-16-00014-A

Filing Date: 2017-07-17

Effective Date: 2017-07-17

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

Action taken: On 7/13/17, the PSC adopted an order denying Orange & Rockland Utilities, Inc.'s (O&R) petition to retain 14% of estimated future property tax savings.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Disposition of property tax benefits.

Purpose: To deny O&R's petition to retain 14% of estimated future property tax savings.

Substance of final rule: The Commission, on July 13, 2017, adopted an order denying Orange & Rockland Utilities, Inc.'s joint petition to retain 14% of the estimated future property tax savings related to settlements with the Towns of Clarkstown and Orangetown, 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.

(16-M-0362SA2)

NOTICE OF ADOPTION

Minor Rate Filing

I.D. No. PSC-45-16-00015-A

Filing Date: 2017-07-13

Effective Date: 2017-07-13

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

Action taken: On 7/13/17, the PSC adopted an order denying the request of Arbor Hills Waterworks, Inc. (Arbor Hills) to increase its annual revenues, the maximum balance in its escrow account and the associated quarterly surcharge.

Statutory authority: Public Service Law, sections 4(1), 5(1)f, 89-c(1), (3), (10)(a), (b) and (f)

Subject: Minor rate filing.

Purpose: To deny Arbor Hills' request to increase annual revenues, escrow account and quarterly surcharge.

Substance of final rule: The Commission, on July 13, 2017, adopted an order denying the request of Arbor Hills Waterworks, Inc. (Arbor Hills) to increase its annual revenues by about $36,500 or 45%, and to increase the maximum balance in its escrow account from $25,000 to $50,000 and the associated quarterly surcharge from $150 to $300. Arbor Hills is directed to file a cancellation supplement on not less than one day's notice, to become effective July 28, 2017, cancelling the tariff amendment and Escrow Account Statement No. 5 listed in the Appendix. Arbor Hills is also directed to notify its customers of the Commission's decision in this proceeding within 30 days of the issuance of this order and is directed to file with the Secretary to the Commission within 45 days of the issuance of this Order, a copy of the customer notifications identified in Ordering Clause No. 8 and an attestation that the customer notification has been distributed, 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.

(16-W-0606SA1)

NOTICE OF ADOPTION

Minor Rate Filing

I.D. No. PSC-45-16-00016-A

Filing Date: 2017-07-13

Effective Date: 2017-07-13

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

Action taken: On 7/13/17, the PSC adopted an order denying the request of Boniville Water Company, Inc. (Boniville) to increase its annual revenues, the maximum balance in its escrow account and the associated quarterly surcharge.

Statutory authority: Public Service Law, sections 4(1), 5(1)f, 89-c(1), (3), (10)(a), (b) and (f)

Subject: Minor rate filing.

Purpose: To deny Boniville's request to increase annual revenues, escrow account and quarterly surcharge.

Substance of final rule: The Commission, on July 13, 2017, adopted an order denying the request of Boniville Water Company, Inc. (Boniville) to increase its annual revenues by about $25,000 or 45%, and to increase the maximum balance in its escrow account from $10,000 to $20,000 and the associated quarterly surcharge from $100 to $200. Boniville is directed to file a cancellation supplement on not less than one day's notice, to become effective July 28, 2017, cancelling the tariff amendment and Escrow Account Statement No. 4 listed in the Appendix. Boniville is also directed to notify its customers of the Commission's decision in this proceeding within 30 days of the issuance of this order and is directed to file with the Secretary to the Commission within 45 days of the issuance of this Order, a copy of the customer notifications identified in Ordering Clause No. 8 and an attestation that the customer notification has been distributed, 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.

(16-W-0607SA1)

NOTICE OF ADOPTION

Minor Rate Filing

I.D. No. PSC-45-16-00017-A

Filing Date: 2017-07-13

Effective Date: 2017-07-13

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

Action taken: On 7/13/17, the PSC adopted an order denying the request of Knolls Water Co., Inc. (Knolls) to increase its annual revenues, the maximum balance in its escrow account and the associated quarterly surcharge.

Statutory authority: Public Service Law, sections 4(1), 5(1)f, 89-c(1), (3), (10)(a), (b) and (f)

Subject: Minor rate filing.

Purpose: To deny Knolls' request to increase annual revenues, escrow account and quarterly surcharge.

Substance of final rule: The Commission, on July 13, 2017, adopted an order denying the request of Knolls Water Co., Inc. (Knolls) to increase its annual revenues by about $26,600 or 45%, and to increase the maximum balance in its escrow account from $10,000 to $20,000 and the associated quarterly surcharge from $50 to $100. Knolls is directed to file a cancellation supplement on not less than one day's notice, to become effective July 28, 2017, cancelling the tariff amendment and Escrow Account Statement No. 5 listed in the Appendix. Knolls is also directed to notify its customers of the Commission's decision in this proceeding within 30 days of the issuance of this order and is directed to file with the Secretary to the Commission within 45 days of the issuance of this Order, a copy of the customer notifications identified in Ordering Clause No. 8 and an attestation that the customer notification has been distributed, 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.

(16-W-0608SA1)

NOTICE OF ADOPTION

Request for Reconsideration of Meter Test Methods

I.D. No. PSC-01-17-00021-A

Filing Date: 2017-07-13

Effective Date: 2017-07-13

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

Action taken: On 7/13/17, the PSC adopted an order approving Quadlogic Controls Corporation's (Quadlogic) petition for reconsideration of the requirement that One Vandam Condominium, LLC (One Vandam) utilize the periodic test method in its meter test plan.

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: Request for reconsideration of meter test methods.

Purpose: To approve Quadlogic's petition for reconsideration of One Vandam's meter test methods.

Substance of final rule: The Commission, on July 13, 2017, adopted an order approving Quadlogic Controls Corporation's petition for reconsideration of the requirement that One Vandam Condominium, LLC (One Vandam) utilize the periodic test method in its meter test plan, allowing One Vandam to choose any of the four meter test methods outlined in the Part 92 Operating Manual when filing its meter test plan, 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.

(15-E-0594SA2)

NOTICE OF ADOPTION

Minor Rate Tariff Filing on Annual Revenues

I.D. No. PSC-05-17-00002-A

Filing Date: 2017-07-13

Effective Date: 2017-07-13

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

Action taken: On 7/13/17, the PSC adopted an order approving, with modifications, the Village of Fairport Electric Department's (Fairport) minor rate tariff filing in P.S.C. No. 1—Electricity, providing for annual revenues of $1,311,670 or 6.37%.

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

Subject: Minor rate tariff filing on annual revenues.

Purpose: To approve, with modifications, Fairport's minor rate filing providing for annual revenues.

Substance of final rule: The Commission, on July 13, 2017, adopted an order approving, with modifications, the Village of Fairport Electric Department's (Fairport) minor rate tariff filing in P.S.C. No. 1 – Electricity, providing for annual revenues of $1,311,670 or 6.37%. Fairport is also directed to file a cancellation supplement, effective on not less than one day's notice, on or before July 28, 2017, cancelling the tariff amendments and supplement listed in Appendix A, and to file further tariff revisions, to become effective on August 1, 2017, establishing the approved rates as shown in Appendix C, 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-0009SA1)

NOTICE OF ADOPTION

Extension of the BQDM Program

I.D. No. PSC-06-17-00013-A

Filing Date: 2017-07-13

Effective Date: 2017-07-13

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

Action taken: On 7/13/17, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Edison) petition to extend the Brooklyn/Queens Demand Management (BQDM) Program.

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

Subject: Extension of the BQDM Program.

Purpose: To approve Con Edison's petition to extend the BQDM Program.

Substance of final rule: The Commission, on July 13, 2017, adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Edison) petition to extend its Brooklyn/Queens Demand Management (BQDM) Program indefinitely, but shall not exceed the existing $200 million budget cap and shall be subject to the existing shareholder incentive mechanism. Costs incurred by Con Edison for utility-side non-traditional solutions in the BQDM Program shall not exceed $50 million, inclusive of such expenditures. Con Edison is also directed to file quarterly reports regarding BQDM Program activities and expenditures after the end of each quarter, semi-annual benefit cost analysis reports after the end of the second and fourth quarters of each year and an Implementation and Outreach Plan for the BQDM Program, which shall be updated at least annually thereafter, 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-E-0302SA4)

NOTICE OF ADOPTION

Compliance Payment Modifications

I.D. No. PSC-07-17-00012-A
Filing Date: 2017-07-14
Effective Date: 2017-07-14

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

Action taken: On 7/13/17, the PSC adopted an order modifying compliance payments of Liberty Power Holdings, LLC (Liberty) approved in the November 17, 2016 Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles (Order).

Statutory authority: Public Service Law, sections 4(1), 5(1), 5(2) and 66(2); Energy Law, section 6-104(5)(b)

Subject: Compliance payment modifications.

Purpose: To modify compliance payments of Liberty approved in the Order.

Substance of final rule: The Commission, on July 13, 2017, adopted an order modifying compliance payments of Liberty Power Holdings, LLC (Liberty) approved in the November 17, 2016 Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles (Order). The New York State Energy Research and Development Authority (NYSERDA) is directed to suspend 35% of Liberty's April 1, 2017 through March 31, 2018 Zero Emissions Credits (ZEC) compliance obligation monthly payments beginning with the August 2017 payment. NYSERDA is also directed to absorb the ZEC revenue shortfall that will result from the suspension of a portion of Liberty's ZEC obligation until the ZEC reconciliation occurs in September 2018. Upon the close of the first reconciliation period for the Zero Emissions Credit Program, Staff, in consultation with NYSERDA, shall review the results of the reconciliations to determine if programmatic changes in calculating load serving entity (LSE) loads for future compliance periods are warranted, 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.
(15-E-0302SA26)

NOTICE OF ADOPTION

Transfer of Real Property Interests

I.D. No. PSC-11-17-00011-A
Filing Date: 2017-07-14
Effective Date: 2017-07-14

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

Action taken: On 7/13/17, the PSC adopted an order approving Alcoa Power Generating Inc.'s (APGI) petition for the transfer of real property interests between APGI and Arconic Inc. (Arconic).

Statutory authority: Public Service Law, sections 2(13), (26), (27), 5(1)(b), 70, 89-b, 89-c, 89-d, 89-f, 89-g and 89-h

Subject: Transfer of real property interests.

Purpose: To approve APGI's petition for the transfer of real property interests between APGI and Arconic Inc.

Substance of final rule: The Commission, on July 13, 2017, adopted an order approving Alcoa Power Generating Inc.'s (APGI) petition for the transfer of real property interests between APGI and Arconic Inc. APGI's request for an exemption from regulation as a water-works corporation is denied, 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-0069SA1)

NOTICE OF ADOPTION

Petition for Deferral Accounting and Recovery of Costs

I.D. No. PSC-14-17-00018-A
Filing Date: 2017-07-13
Effective Date: 2017-07-13

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

Action taken: On 7/13/17, the PSC adopted an order approving, with modifications, Central Hudson Gas & Electric Corporation's (Central Hudson) petition for deferral accounting and recovery of $1,829,537 of Distributed System Platform related costs.

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

Subject: Petition for deferral accounting and recovery of costs.

Purpose: To approve, with modifications, Central Hudson's petition for deferral accounting and recovery of costs.

Substance of final rule: The Commission, on July 13, 2017, adopted an order approving, with modifications, Central Hudson Gas & Electric Corporation's (Central Hudson) petition for an accounting deferral and recovery of $1,829,537 of Distributed System Platform costs related to policies set forth in Case 14-M-0101, Reforming the Energy Vision, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework issued May 19, 2016. Central Hudson shall recover the $1,829,537, plus carrying charges, through its new Miscellaneous Charges Factor III under its Energy Cost Adjustment Mechanism. These costs shall be allocated based on Transmission and Distribution revenues amongst all its service classifications. The costs shall be recovered on a volumetric basis for non-demand metered customers and on a demand basis for demand metered customers for a period of 24 months, 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-0113SA1)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-16-17-00005-A
Filing Date: 2017-07-14
Effective Date: 2017-07-14

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

Action taken: On 7/13/17, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) tariff amendments to General Information Section (GIS) No. 14—Form of Application for Service, contained in P.S.C. No. 3—Electricity.

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

Subject: Tariff amendments.

Purpose: To approve O&R's tariff amendments to GIS No. 14, contained in P.S.C. No. 3—Electricity.

Substance of final rule: The Commission, on July 13, 2017, adopted an order approving Orange and Rockland Utilities, Inc.'s tariff amendments to General Information Section No. 14 – Form of Application for Service, contained in P.S.C. No. 3 – Electricity, to amend several of its Forms of Application for Service, to add a new Application Form for outdoor lighting and to update its electric connection fee for residential and non-residential customers requesting temporary service, 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-0174SA1)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-16-17-00006-A

Filing Date: 2017-07-14

Effective Date: 2017-07-14

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

Action taken: On 7/13/17, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) tariff amendments to General Information Section (GIS) No. 13—Form of Application for Service, contained in P.S.C. No. 4—Gas.

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

Subject: Tariff amendments.

Purpose: To approve O&R's tariff amendments to GIS No. 13, contained in P.S.C. No. 4—Gas.

Substance of final rule: The Commission, on July 13, 2017, adopted an order approving Orange and Rockland Utilities, Inc.'s tariff amendments to General Information Section No. 13 – Form of Application for Service, contained in P.S.C. No. 4 – Gas, to amend several of its Forms of Application for Service, to add new Application Forms for conversion to natural gas and standby natural gas generators to its gas schedule and a new Application Form for gas non-residential service, 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-G-0175SA1)

NOTICE OF ADOPTION

Tariff Cancellation

I.D. No. PSC-16-17-00007-A

Filing Date: 2017-07-17

Effective Date: 2017-07-17

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

Action taken: On 7/13/17, the PSC adopted an order approving Roosevelt Drive Water Users Association's (Roosevelt Drive) petition to cancel its tariff schedule, P.S.C. No. 1—Water.

Statutory authority: Public Service Law, section 89-c

Subject: Tariff cancellation.

Purpose: To approve Roosevelt Drive's petition to cancel its tariff schedule, P.S.C. No. 1—Water.

Substance of final rule: The Commission, on July 13, 2017, adopted an order approving Roosevelt Drive Water Users Association's petition to cancel its tariff schedule, P.S.C. No. 1—Water, filing a cancellation supplement, 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-W-0183SA1)

NOTICE OF ADOPTION

Alternative Protocol for the Comparative Emission Test

I.D. No. PSC-17-17-00009-A

Filing Date: 2017-07-14

Effective Date: 2017-07-14

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

Action taken: On 7/13/17, the PSC adopted an order approving the recommendations in a report filed by the Department of Public Service Staff (Staff) for an alternative protocol to the Comparative Emission Test for biomass gasification technologies in the RES program.

Statutory authority: Public Service Law, sections 4(1), 5(1), (2) and 66(2); Energy Law, section 6-104(5)(b)

Subject: Alternative protocol for the Comparative Emission Test.

Purpose: To approve recommendations in Staff's report for alternative protocol for the Comparative Emission Test.

Substance of final rule: The Commission, on July 13, 2017, adopted an order approving recommendations in An Alternative Compliance Protocol to the Comparative Emission Testing Requirements for Gasification of Adulterated Biomass (Report), prepared by the ANTARES Group and filed by Department of Public Service Staff (Staff) on March 31, 2017, to provide for an alternative protocol to the Comparative Emission Test criterion related to the eligibility of certain biomass gasification technologies in the Renewable Energy Standard (RES) program. The Commission also directs the New York State Energy and Research Development Authority, after consultation with Staff, to file a revised Biomass Power Guide within 60 days of the issuance of this Order, to incorporate the recommendations in the Report, 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.

(15-E-0302SA27)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-31-17-00007-P

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

Proposed Action: The Public Service Commission is considering the notice of intent of 685 First Realty Company, LLC, to submeter electricity at 685 1st Avenue, 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: Notice of intent to submeter electricity.

Purpose: To consider the notice of intent of 685 First Realty Compamy, LLC to submeter electricity at 685 1st Avenue, New York, New York.

Substance of proposed rule: The Commission is considering the notice of intent of 685 First Realty Company, LLC filed on June 20, 2017, to submeter electricity at 685 1st Avenue New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The full text of the notice of intent 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 relief 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: 45 days after publication of this notice.

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

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

(17-E-0358SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition to Submeter Electricity and Waiver Request

I.D. No. PSC-31-17-00008-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 petition of RCB 1NOMINEE LLC c/o GID Development Group, to submeter electricity at 30 Riverside Boulevard, New York, New York and request for a 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: Petition to submeter electricity and waiver request.

Purpose: To consider the petition to submeter electricity and waiver request of 16 NYCRR section 96.5(k)(3).

Substance of proposed rule: The Commission is considering the petition of RCB 1NOMINEE LLC c/o GID Development Group, filed on April 6, 2017, to submeter electricity at 30 Riverside Boulevard, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission is also considering RCB 1NOMINEE LLC c/o GID Development Group request for a waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. The full text of the petition and waiver request 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 relief 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: 45 days after publication of this notice.

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

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

(17-E-0190SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Issuance of Promissory Notes

I.D. No. PSC-31-17-00009-P

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

Proposed Action: The Commission is considering the petition of National Fuel Gas Distribution Corp. to issue promissory notes up to $400 million for construction programs and for general corporate purposes and to enter into derivative instruments through December 31, 2020.

Statutory authority: Public Service Law, section 69

Subject: Issuance of promissory notes.

Purpose: To consider the petition of National Fuel Gas Distribution Corp. to issue up to $400 million in promissory notes.

Substance of proposed rule: The Public Service Commission is considering a petition filed by National Fuel Gas Distribution Corporation (Petitioner), on June 30, 2017, authorizing the issuance of long-term indebtedness for the purposes authorized under Public Service Law Section 69. Specifically, the Petitioner proposes to issue, as part of this financing, secured promissory notes to National in the principal amount of not more than $400,000,000 applying the proceeds from the sale of such notes to: (i) fund, in part, Petitioner's construction programs for calendar years 2018, 2019 and 2020, (ii) to repay short-term debt obligations outstanding and promissory notes issued by Distribution to National in exchange for loans from National to Distribution in connection with Distribution's 6.69% promissory note issued April 11, 2008 and due April 15, 2018, or as otherwise agreed by the parties and Distribution's 8.93% promissory note issued April 6, 2009 and due May 1, 2019, or as otherwise agreed by the parties, and (iii) use for general corporate purposes. The full text of the petition 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 relief 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: 45 days after publication of this notice.

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

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

(17-G-0414SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-31-17-00010-P

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

Proposed Action: The Public Service Commission is considering the notice of intent of 11737 Owners Corp. to submeter electricity at 117 East 37th 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: Notice of intent to submeter electricity.

Purpose: To consider the notice of intent of 11737 Owners Corp. to submeter electricity at 117 East 37th Street, New York, New York.

Substance of proposed rule: The Commission is considering the notice of intent of 11737 Owners Corp. filed on June 27, 2017, to submeter electricity at 117 East 37th Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The full text

of the notice of intent 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 relief 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: 45 days after publication of this notice.

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

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

(17-E-0367SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity and Waiver Request

I.D. No. PSC-31-17-00011-P

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

Proposed Action: The Public Service Commission is considering the notice of intent of ERY Retail Podium LLC to submeter electricity at 15 Hudson Yards, New York, New York and request for a 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: Notice of intent to submeter electricity and waiver request.

Purpose: To consider the notice of intent to submeter electricity and waiver request of 16 NYCRR section 96.5(k)(3).

Substance of proposed rule: The Commission is considering the notice of intent of ERY Retail Podium LLC (ERY Retail), filed on June 1, 2017, to submeter electricity at 15 Hudson Yards, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission is also considering ERY Retail's request for a waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. The full text of the notice of intent and waiver request 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 relief 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: 45 days after publication of this notice.

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

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

(17-E-0301SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minor Rate Filing

I.D. No. PSC-31-17-00012-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 proposal filed by Bath Electric, Gas & Water Systems to increase its annual gas revenues by approximately $304,629 or 14%, in P.S.C. No. 4—Gas.

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

Subject: Minor rate filing.

Purpose: To consider an increase in annual revenues of about $304,629 or 14%.

Substance of proposed rule: The Commission is considering a proposal filed by Bath Electric, Gas & Water Systems (Bath), on July 16, 2017, to increase its annual gas revenues for the rate year ending October 31, 2018, by approximately $304,629, or 14%, in P.S.C. No. 4—Gas. Bath's requested increase in gas revenues results in a monthly bill increase of about $8.90, or 13.2%, for a residential customer using approximately 100 CCF of gas per month. Bath also proposed charges for the disconnection and reconnection of service, work at a customer's request and for returned checks. The proposed amendments have an effective date of November 1, 2017. The full text of the filing 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 relief 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: 45 days after publication of this notice.

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

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

(17-G-0423SP1)

Department of State

NOTICE OF ADOPTION

State Uniform Fire Prevention and Building Code (Uniform Code)

I.D. No. DOS-14-17-00004-A

Filing No. 520

Filing Date: 2017-07-18

Effective Date: 90 days after publication

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

Action taken: Amendment of sections 1220.1, 1221.1, 1222.1, 1223.1, 1224.1, 1225.1, 1226.1, 1227.1, 1228.4, 1228.17, 1264.4 and 1265.3; repeal of section 1226.1(d) of Title 19 NYCRR.

Statutory authority: Executive Law, sections 377, 382-a and 382-b

Subject: State Uniform Fire Prevention and Building Code (Uniform Code).

Purpose: To amend the existing Uniform Code and to make conforming changes to 19 NYCRR Parts 1264 and 1265.

Substance of final rule: This rule making would amend the current versions of Parts 1220, 1221, 1222, 1223, 1224, 1225, 1226, and 1227 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York by replacing references to the 2016 Uniform Code Supplement with the new publication entitled the 2017 Uniform Code Supplement. The individual Parts pertain to specified portions of the Uniform Fire Prevention and Building Code and are summarized below:

Part 1220 Residential Construction

The construction, alteration, movement, replacement, repair, equipment, use, maintenance, removal and demolition of applicable residential structures and their accessory structures shall comply with the requirements of the "2015 International Residential Code" published by the International Code Council, Inc. (hereinafter the 2015 IRC), incorporated

herein by reference, as amended in the manner specified in the "2017 Uniform Code Supplement," published in July 2017, by the NYS Department of State and incorporated herein by reference.

Applicable residential structures include detached one- and two-family dwellings and multiple single-family dwellings (townhouses), not more than three stories in height above grade with a separate means of egress; such one-family dwellings converted to bed and breakfast dwellings; and certain specified such dwellings under the supervision or jurisdiction of a department or agency of New York State (NYS).

Certain published standards are incorporated by reference into 19 NYCRR Part 1220.

Part 1221 Building Construction

The construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, maintenance, removal and demolition of every building or structure, or appurtenance connected or attached to any building or structure, shall comply with the requirements of the publication entitled "2015 International Building Code" published by the International Code Council, Inc. (hereinafter the 2015 IBC), incorporated herein by reference, as amended in the manner specified in the "2017 Uniform Code Supplement," published in July 2017, by the NYS Department of State and incorporated herein by reference.

Certain published standards are incorporated by reference into 19 NYCRR Part 1221.

Part 1222 Plumbing Systems

The erection, installation, alteration, repair, relocation, replacement, addition to, use or maintenance of plumbing systems, nonflammable medical gas systems, and sanitary and condensate vacuum collection systems, shall comply with the requirements of the "2015 International Plumbing Code" published by the International Code Council, Inc. (hereinafter the 2015 IPC), incorporated herein by reference, as amended in the manner specified in the "2017 Uniform Code Supplement," published in July 2017, by the NYS Department of State and incorporated herein by reference.

Certain published standards are incorporated by reference into 19 NYCRR Part 1222.

Part 1223 Mechanical Systems

The design, installation, maintenance, alteration and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings shall comply with the requirements of the publication entitled "2015 International Mechanical Code" published by the International Code Council, Inc. (hereinafter the 2015 IMC), incorporated herein by reference, as amended in the manner specified in the "2017 Uniform Code Supplement," published in July 2017, by the NYS Department of State and incorporated herein by reference.

Certain published standards are incorporated by reference into 19 NYCRR Part 1223.

Part 1224 Fuel Gas Equipment and Systems

The design, installation, maintenance, alteration and inspection of fuel gas piping and equipment, fuel gas-fired appliances and fuel gas fired appliance ventilating systems shall comply with the requirements of the publication entitled "2015 International Fuel Gas Code" published by the International Code Council, Inc. (hereinafter the 2015 IFGC), incorporated herein by reference, as amended in the manner specified in the "2017 Uniform Code Supplement," published in July 2017, by the NYS Department of State and incorporated herein by reference.

Certain published standards are incorporated by reference into 19 NYCRR Part 1224.

Part 1225 Fire Prevention

Structures, processes and premises; the storage, handling or use of structures, materials or devices; the occupancy and operation of structures and premises; and the construction, extension, repair, alteration or removal of fire suppression and alarms systems, shall comply with the requirements of the publication entitled "2015 International Fire Code" published by the International Code Council, Inc. (hereinafter the 2015 IFC, incorporated herein by reference, as amended in the manner specified in the "2017 Uniform Code Supplement," published in July 2017, by the NYS Department of State and incorporated herein by reference.

Certain published standards are incorporated by reference into 19 NYCRR Part 1225.

Part 1226 Property Maintenance

All existing residential and nonresidential structures, premises, equipment and facilities, owners, operators and occupants of existing structures and premises, and the occupancy of existing structures and premises, shall comply with the requirements of the publication entitled "2015 International Property Maintenance Code" published by the International Code Council, Inc. (hereinafter the 2015 IPMC), and incorporated herein by reference, as amended in the manner specified in the "2017 Uniform Code Supplement," published in July 2017, by the NYS Department of State and incorporated herein by reference.

Certain published standards are incorporated by reference into 19 NYCRR Part 1226.

Part 1227 Existing Buildings

The repair, alteration, change of occupancy, addition and relocation of existing buildings shall comply with the requirements of the "2015 International Existing Building Code" published by the International Code Council, Inc. (hereinafter the 2015 IEBC), incorporated herein by reference, as amended in the manner specified in the "2017 Uniform Code Supplement," published in July 2017, by the NYS Department of State and incorporated herein by reference.

Certain published standards are incorporated by reference into 19 NYCRR Part 1227.

19 NYCRR Parts 1228, 1264, and 1265

This rule making would amend 19 NYCRR Parts 1228, 1264, and 1265 to reference the 2017 Uniform Code Supplement, as opposed to the 2016 Uniform Code Supplement.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 1220.1(b), 1221.1(b), 1222.1(b), 1223.1(b), 1224.1(b), 1225.1(b), 1226.1(b), 1227.1(b) and 1228.17(e).

Text of rule and any required statements and analyses may be obtained from: Gerard Hathaway, Department of State, 99 Washington Avenue, Suite 1160, Albany, NY 12231, (518) 474-4073, email: Gerard.Hathaway@dos.ny.gov

Additional matter required by statute: Executive Law § 378(15)(a) provides that except as otherwise provided by statute, no change to the Uniform Fire Prevention and Building Code ("Uniform Code") shall become effective until at least ninety days after the date on which notice of such change has been published in the State Register, unless the State Fire Prevention and Building Code Council ("Code Council") finds that (i) an earlier effective date is necessary to protect health, safety and security; or (ii) the change to the code will not impose any additional compliance requirements on any person.

At its meeting held July 13, 2017, the Code Council voted to adopt a rule to amend the Uniform Code and the Code Council did not find that an earlier effective was necessary to protect health, safety, and security or that the change to the Uniform Code would not impose any additional compliance requirements on any person. Therefore, the rule and the changes to the Uniform Code made by the rule will become effective ninety days after the date on which notice of such change has been published in the State Register.

Pursuant to Executive Law § 377(1), Secretary of State Rosanna Rosado reviewed the amendment of the Uniform Code to be implemented by this rule, found that such amendment effectuates the purposes of Article 18 of the Executive Law, and therefore approved said amendment.

Revised Regulatory Impact Statement

The Department of State has determined that the changes made to the last published rule are non-substantive and do not necessitate a revision of the original Regulatory Impact Statement published in the Notice of Proposed Rule Making.

Those changes made to the rule are summarized as follows:

Parts 1220 through 1228 of Title 19 NYCRR were changed to update the date that the 2017 Supplement was published from March to July. Changes were made throughout the 2017 Uniform Code Supplement to clarify certain code language and to delete duplicative code language. The majority of the changes were to Chapter 11 of the 2015 International Residential Code (IRC).

The legally binding provisions of the State Energy Conservation Construction Code (Energy Code) are as set forth in 19 NYCRR Part 1240, and consist, primarily, of the 2015 International Energy Conservation Code (IECC) and ASHRAE 90.1-203, as amended by the 2016 Supplement to the New York State Energy Conservation Construction Code (Revised August 2016) (ECS). Chapter 11 of the 2015 IRC, as amended by the 2017 Uniform Code Supplement, is intended to be a restatement of the provisions of the Energy Code applicable to residential buildings. However, in the event of a conflict between provisions of Part 1240 and the provisions in Chapter 11, the provisions of Part 1240 will control. To address any discrepancies, the 2017 Uniform Code Supplement has been revised to align the Chapter 11 provisions with the corresponding provisions of the IECC/ECS.

Revised Regulatory Flexibility Analysis

The Department of State has determined that the changes made to the last published rule are non-substantive and do not necessitate a revision of the original Regulatory Flexibility Analysis for Small Businesses and Local Governments published in the Notice of Proposed Rule Making.

The changes made to the previously published rule text provide clarification as to the application of the proposed text and do not alter or increase any effect of the rule upon small businesses or local governments.

This rule making would amend the current version of the Uniform Fire Prevention and Building Code (Uniform Code) by replacing the 2016 Uniform Code Supplement with a new publication entitled the 2017 Uniform Code Supplement. The proposed new text of the Uniform Code

is based upon the new modifications to the 2015 editions of model codes developed by the International Code Council, Inc. (ICC), as set forth in the 2017 Uniform Code Supplement. The Uniform Code is applicable in all areas of the State with the exception of the City of New York.

Revised Rural Area Flexibility Analysis

The Department of State has determined that the changes made to the last published rule are non-substantive and do not necessitate a revision of the original Rural Area Flexibility Analysis published in the Notice of Proposed Rule Making.

The changes made to the previously published rule text provide clarification as to the application of the proposed text and do not alter or increase any effect of the rule upon rural areas in New York State.

The rule would amend the current version of the Uniform Fire Prevention and Building Code (Uniform Code), by replacing the 2016 Uniform Code Supplement with a new publication entitled the 2017 Uniform Code Supplement. The proposed new text of the Uniform Code is based upon the new modifications to the 2015 editions of model codes developed by the International Code Council, Inc. (ICC), as set forth in the 2017 Uniform Code Supplement. The Uniform Code is applicable in all areas of the State with the exception of the City of New York. Therefore, adoption of this rule making will apply to all rural areas of the State.

The following changes were made to sections in the Revised 2016 Energy Code Supplement:

Changes in Part 1

In Item 1.7, the terms "commercial building," "historic building," and "2015 International Property Maintenance Code (as amended)" were added to the list of definitions added or amended by section 1.7.

In Item 1.8, which amends section C302.2 of the 2015 IECC Commercial Provisions, a note was added to clarify that Item 1.8 does not delete or amend section C303.2.1 of the 2015 IECC Commercial Provisions.

In Item 1.9, which amends section C401.2 of the 2015 IECC Commercial Provisions, a note was added to clarify that Item 1.9 does not delete or amend section C401.2.1 of the 2015 IECC Commercial Provisions.

Item 1.10 was revised to correct the numbering of the new section added by section 1.10 ("C402.2.6" was changed to "C402.6.7"). In addition, a note was added to clarify that Item 1.10 does not delete or amend sections C402.2.1, C402.2.3, C402.2.4, C402.2.5 or C402.2.6 of the 2015 IECC Commercial Provisions.

In Item 1.12, the caption was revised to correct the reference to the section in the 2015 IECC Commercial Provisions amended by section 1.13 ("C402.4.1" was changed to "C402.4.2").

In Item 1.13, the caption was revised and word "stove" was changed to "stoves."

In Item 1.18, the description of the publication known as "ASHRAE Appendix G Excerpt – 2015" was changed to reflect more accurately the manner in which that publication is referenced in the 2015 IECC Commercial Provisions (as amended).

In Item 1.19, the word "paragraphs" was changed to "Items."

Changes in Part 2

Item 2.2, which amends section 4.2.1.1 of ASHRAE 90.1-2013, was revised to clarify that the new item "c" added by Item 2.2 is one of three paths permitted by section 4.2.1.1 of ASHRAE 90.1-2013; to correct the formula for "PCIt" (the second equal sign was changed to a plus sign); and to add a new description of how "regulated energy cost" and "unregulated energy cost" are to be calculated.

Item 2.3 was revised to correct the reference to the section in ASHRAE 90.1-2013 that is amended by section 2.3 ("4.1.2.3" was changed to "4.2.1.3" in two places).

Item 2.5 was revised to correct the reference to the section in ASHRAE 90.1-2013 that is amended by Item 2.5 ("8.41" was changed to "8.4.1" in two places), to add the exception for circuits used for emergency services (the exception was inadvertently omitted from the Original 2016 Energy Code Supplement), and to clarify the fact that sections 8.4.1.1 and 8.4.1.2 of ASHRAE 90.1-2013 are not included in section 8.4.1 of ASHRAE 90.1-203 as amended by Item 2.5 of the Revised 2016 Energy Code Supplement.

In Item 2.7, the word "paragraphs" was changed to "Items."

Changes in Part 3

Item 3.3 amends and restates Chapter 1 of the 2015 IECC Residential Provisions. In the portion of Item 3.3 that amends and restates section R101.1 of the 2015 IECC Residential Provisions, a reference in the final line to the "2015 IECC" was corrected to be a reference to the "2016 Energy Code Supplement."

In Item 3.5, the terms "historic building" and "2015 International Property Maintenance Code (as amended)" were added to the list of definitions added or amended by Item 3.5, and the definition of "residential building" was corrected by changing the reference to the "2010 Building Code of New York State" to a reference to the "2015 International Building Code (as amended)."

In Item 3.6, which amends section R303.2 of the 2015 IECC Residential Provisions, a note was added to clarify that Item 3.6 does not delete or amend section R303.2.1 of the 2015 IECC Residential Provisions.

Item 3.7 of the Revised 2016 Energy Code Supplement amends sections R402.1, R402.1.1, and R402.1.2 of the 2015 IECC Residential Provisions. The amendments of sections R402.1 and R402.1.1 are the same as the amendments made in items 7 and 8 of Part 3 of the Original 2016 Energy Code Supplement. The amendment of section R402.1.2 is new. Amended section R402.1.2 provides that buildings in climate zone 6 may comply with either of the two rows for climate zone 6 in Table R402.1.2. In addition, a note was added to Item 3.7 to clarify that Item 3.7 does not delete or amend sections R402.1.3, R402.1.4 or R402.1.5 of the 2015 IECC Residential Provisions.

Item 3.8 adds a new row for Climate Zone 6 to Table R402.1.2 of the 2016 IECC Residential Provisions. The new row provides a new option for Climate Zone 6, which allows the use of R-25 cavity-only insulation in wood frame walls, provided that (1) the fenestration U-factor is reduced to 0.28 and (2) the R-value of the insulation in the basement wall and in the crawl space wall is increased from 15/19 to 15/20. Based on recently developed studies and information relating to the Vermont Residential Building Energy Standards (RBES), the Department of State now believes that this additional option for buildings in climate zone 6 meets the REScheck compliance path and does not constitute a substantial change to the Original Rule.

In Item 3.10, a note was added to refer to Item 3.14 for a more complete description of the effect of Items 3.10 through 3.14 on Section R402.4 (including sections R402.4.1, R402.4.1.1, R402.4.1.2, R402.4.1.3, R402.4.2, R402.4.3, R402.4.4, R402.4.5, and R402.4.6) of the 2015 IECC Residential Provisions.

In Item 3.14, references to section numbers were corrected ("C402.4" was changed to "R402.4" and "C402.4.6" was changed to "R402.4.6"). In addition, a note was added to clarify that sections R402.4.1, R402.4.1.1, R402.4.3, R402.4.4, and R402.4.5 of the 2015 IECC Residential Provisions were not deleted or amended by Items 3.10 through 3.14 of the Revised 2016 Energy Code Supplement, and to summarize the effect of Items 3.10 through 3.14 on Section R402.4 (including sections R402.4.1, R402.4.1.1, R402.4.1.2, R402.4.1.3, R402.4.2, R402.4.3, R402.4.4, R402.4.5, and R402.4.6) of the 2015 IECC Residential Provisions.

In Item 3.15, which amends section R403.3.2 of the 2015 IECC Residential Provisions, a note was added to clarify that Item 3.15 does not delete or amend section R403.3.2.1 of the 2015 IECC Residential Provisions.

In Item 3.16, which amends section R403.6 of the 2015 IECC Residential Provisions, a note was added to clarify that section 3.16 does not delete or amend Item R403.6.1 of the 2015 IECC Residential Provisions.

Item 3.20 was revised to clarify its meaning ("Compliance with this section requires that the mandatory provisions identified in Sections R401.2 and R403.5.3 be met" was changed to "Compliance with this section requires that (1) the provisions in Sections R401 through R404 labeled as 'mandatory' and (2) the provisions of Section R403.5.3 be met").

Revised Job Impact Statement

The Department of State has determined that the changes made to the last published rule are non-substantive and do not necessitate a revision of the original Job Impact Statement published in the Notice of Proposed Rule Making.

The changes made to the previously published rule text provide clarification as to the application of the proposed text and will not have a substantial adverse impact on jobs and employment opportunities in New York State.

The rule would amend the current version of the Uniform Fire Prevention and Building Code (Uniform Code). The current version of the Uniform Code (19 NYCRR Parts 1220 through 1227) became fully effective on October 3, 2016. It is based upon the 2015 editions of model codes developed by the International Code Council (ICC), with some New York modifications as set forth in the 2016 Uniform Code Supplement. If adopted, this rule would replace the 2016 Uniform Code Supplement with a new publication entitled the 2017 Uniform Code Supplement. The 2017 Supplement is intended to make corrections to the 2016 Supplement and address topics specific to New York.

The ICC model codes incorporate the most current technology in the areas of building construction and fire prevention. The ICC codes are updated on a three-year cycle to stay current with industry practice and technical and life-safety evolution. The Department of State concludes that this update, which is based upon the current edition of the ICC model codes with some New York modifications as set forth in the 2017 Uniform Code Supplement, will continue to provide a greater incentive to construction of new buildings and rehabilitation of existing buildings. Therefore, this rule making will not have a substantial adverse impact on jobs and employment opportunities within New York.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Comments were received requesting deletion of certain New York State (NYS)-specific amendments to the International Code Council's (ICC) model code requirements in favor of adopting the model codes without amendment, including but not limited to: assistive listening systems, the definition of the terms "dwelling unit" and "story above grade plane", water reducing plumbing fixtures, flame safeguard devices; IRC Sections R303.10 (required heating), R306.1 (toilet facilities), R306.2 (kitchen), R322.1.4 (establishing the design flood elevation), R322.1.4.1 (determination of design flood elevations, R322.1.7 (protection of water supply and sanitary sewage systems), R324.3 (Photovoltaic systems), R324 (Solar energy systems), E3609.7 (bonding other metal piping), AJ604.3 (Automatic sprinkler systems), and Table P2903.2 (Maximum flow rates and consumption for plumbing fixtures and fixture fittings); IPC Table 604.4 (Maximum flow rates and consumption for plumbing fixtures and fixture fittings); IBC Sections 1108.2.7 (Assistive listening systems) and 716.6.7.1 (Where 3/4-hour fire protection window assemblies permitted); IFGC Sections 404.7 (Protection against physical damage), 404.7.1 (Shield plates), and 602.2 (Flame safeguard device); modifications to IFC Sections 605.11 (Solar photovoltaic power systems), and 5306.2 (Interior supply location); IPMC Section 302.8 (Motor vehicles); and IEBC Section 805.3.1.1 (Single-exit buildings). Because these requested modifications were either substantive or would not comply with NYS statutory requirements or a directive of the State Fire Prevention and Building Code Council (Code Council), these changes were not made at this time.

Comments were received requesting deletion of the following NYS-specific code requirements that are in addition to the ICC model code requirements, including but not limited to: 2017 Uniform Code Supplement Chapter 1 Sections 102.2.1, 107, 108, and 109; IBC Sections 427 (health care facilities), 907.2.1 (Group A), 1107.2.1 (Type B unit doors), and 1107.2.2 (Type B unit toilet and bathing facilities), IBC Appendix N; IRC Sections R314.9 (Portable smoke alarms in lodging houses), R314.8 (Lodging house evacuation notices), and M1401 (General); IMC Section 901 (General); IFGC Section 631.1.1 (Other standards); IFC Sections 403.2.5 (Education Law requirements for Groups A college and university buildings), 403.4.1 (Education Law requirements for Group B college and university buildings), 403.12.2 (Public safety plans for gatherings), 603.10 (Solid fuel-burning heating appliances, chimneys and flues), 806.1.1 (Restricted occupancies), 1031.10 (Capacity of means of egress), 1031.11 (Posting of occupant load), 1031.12 (Overcrowding), and Table 901.6.1 (Fire Protection System Maintenance Standards); IPMC Sections 302.3.1 (Off-street parking lots), 304.2.1 (Lead-based paint), 305.3.1 (Lead-based paint), and 608 (assistive listening systems); and IEBC Section 202 (definition of the term "international symbol of accessibility"). Because these requested modifications were either substantive or would not comply with NYS statutory requirements or a directive of the Code Council, these changes were not made at this time.

Comments were received requesting modifications to certain provisions of the Uniform Code, including but not limited to: IRC Sections 324.7.3 (Ground access areas), R324.7 (Access and pathways), R324.7.2 (Roof access points), R324.7.4 (Single ridge roofs), R324.7.6 (Roofs with valleys), and R324.7.7 (Allowance for smoke ventilation operations); IRC and IFC rooftop solar provisions to address residential flat roofs, clarifications of vertical ventilation techniques and alternative ventilation methods (applicable to the IRC and IFC rooftop solar provisions); automatic fire sprinkler system in townhouses; IPC Section 1002.6 (Building traps) and 2015 IRC Section P3201.4 (Building traps); request for adoption of Article 555 from the updated 2017 National Electrical Code; IFC Section 605.11.1.3 (Other than Group R-3 Buildings); IRC Table P2903.2 (maximum flow rates and consumption for plumbing fixtures and fixture fittings); and IPC Table 604.4 (maximum flow rates and consumption for plumbing fixtures and fixture fittings). Because these requested modifications were either substantive or would not comply with NYS statutory requirements or a directive of the Code Council, these changes were not made.

Comments were received pointing out potential code discrepancies and the possible need for corrections to the Uniform Code, including but not limited to: carbon monoxide alarm requirements found in IRC Section AJ504.3, IRC Section AJ604.2, and IFC Section 915.2; missing Referenced Standards TPI, UL, ULC, USC, and WDMA; a separate electric meter requirement for individual dwelling units (IRC dwellings) similar to what had been required in the 2010 RCNYS; factory vs. site performed blower door tests for factory manufactured homes; IRC Section R313 vs. garage separation to account for sprinklers not being required (similar to what had been done in the 2010 RCNYS); IRC Section 304.1 (Minimum area) vs. IPMC Section 404.4.1 (Room area); IRC Section R305.1 (Minimum height) vs. IPMC Section 404.3 (Minimum ceiling heights); IRC definition of freeboard; and illuminated means of egress similar to Section 1029.8 of the FCNYS. These comments did not require substantive changes to the Uniform Code.

Duplicative code language was deleted and certain code language was clarified in such a manner as to require Items to be renumbered in certain chapters of the 2017 Supplement.

Description of Changes Made in the Rule

This rule will amend the current versions of Parts 1220 through 1228, 1264, and 1265 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) by replacing references to the 2016 Uniform Code Supplement with the new publication entitled 2017 Uniform Code Supplement (2017 Supplement). Non-substantive changes were made to the following subdivisions of Parts 1220 through 1228; the 2017 Supplement; and the 2015 Codes published by the International Code Council, as originally proposed.

Changes to Title 19 NYCRR Parts 1220 through 1228

The following changes were made to the amended Parts 1220 through 1228 of Title 19 NYCRR. The changes update the date that the 2017 Supplement was published from March to July.

Part 1220, Section 1220.1(b): The publication date of the publication entitled "2017 Uniform Code Supplement" has been changed from March 2017 to July 2017.

Part 1221, Section 1221.1(b): The publication date of the publication entitled "2017 Uniform Code Supplement" has been changed from March 2017 to July 2017.

Part 1222, Section 1222.1(b): The publication date of the publication entitled "2017 Uniform Code Supplement" has been changed from March 2017 to July 2017.

Part 1223, Section 1223.1(b): The publication date of the publication entitled "2017 Uniform Code Supplement" has been changed from March 2017 to July 2017.

Part 1224, Section 1224.1(b): The publication date of the publication entitled "2017 Uniform Code Supplement" has been changed from March 2017 to July 2017.

Part 1225, Section 1225.1(b): The publication date of the publication entitled "2017 Uniform Code Supplement" has been changed from March 2017 to July 2017.

Part 1226, Section 1226.1(b): The publication date of the publication entitled "2017 Uniform Code Supplement" has been changed from March 2017 to July 2017.

Part 1227, Section 1227.1(b): The publication date of the publication entitled "2017 Uniform Code Supplement" has been changed from March 2017 to July 2017.

Part 1228, Section 1228.17(e): The publication date of the publication entitled "2017 Uniform Code Supplement" has been changed from March 2017 to July 2017.

Changes to the 2017 Supplement

General Changes

Formatting changes such as margins, spacing, and indents were made throughout the 2017 Supplement. For the sake of clarity, whenever a change is described herein to an Item number in the 2017 Supplement, such change shall refer to the original numbering convention, and not the numbering convention resulting from the change.

Changes to the Table of Contents

The table of contents has been changed to coordinate with the amendments to Chapters 2, 3, 7, and 10.

Changes to Chapter 2

Item 2.2: The following terms were added to coordinate with the amendments made to IRC Chapter 11: air-impermeable insulation", "building thermal envelope", "conditioned space", and "ERI reference design.

Item 2.5: Item 2.5 has been deleted as it can never be applied, since an electrical power supply is required by Exceptions 1 and 2.

Item 2.6: Item 2.6 has been deleted as it can never be applied, since an electrical power supply is required by the Exception.

Item 2.25: Exception 1 to R324.7 was separated into two exceptions to provide clarity. Because R324.7 and R324.7.7 share similar exceptions, a similar modification was made to R324.7.7. R324.7.2, item 5 has been clarified to state that roof access points shall be located where the accompanying ground access area does not conflict with ground obstructions. Section R324.7.3 has been amended to delete the word "directly" and insertion of the phrase "so as to facilitate roof access" and clarifies where ground access areas shall be located.

Item 2.28: The legally binding provisions of the Energy Code are as set forth in 19 NYCRR Part 1240, and consist, primarily, of the 2015 International Energy Conservation Code (IECC) and ASHRAE 90.1-203, as amended by the 2016 Supplement to the New York State Energy Conservation Construction Code (Revised August 2016) (ECS). Chapter 11 of the 2015 IRC, as amended by the 2017 Uniform Code Supplement, is intended to be a restatement of the provisions of the Energy Code applicable to residential buildings. However, in the event of a conflict between provisions of Part 1240 and the provisions in Chapter 11, the provisions of Part 1240 will control. To address any discrepancies, the 2017 Uniform Code Supplement has been revised to align the Chapter 11 provi-

sions with the corresponding provisions of the IECC/ECS as described herein. These modifications include:

1. New exceptions 2 and 3 to IRC Section N1101.1;
2. New Sections N1101.3.1, N1101.3.1.1, and N1101.3.1.1.1;
3. Amendments to the terms "building thermal envelope", "conditioned space", "ERI reference design", and "historic building" and a new definition of the term "air-impermeable insulation have been added to N1101.6;
4. An amendment to Section N1102.1;
5. An amendment to Section N1102.1.2;
6. An amendment to Table N1102.1.2;
7. An amendment to Section N1102.4;
8. An amendment to Section N1102.4.1.2;
9. The addition of new Sections N1102.4.1.3 and N1102.4.1.3.1;
10. An amendment to Section N1102.4.2;
11. The addition of a new Section N1102.4.6;
12. An amendment to Section N1103.10.3;
13. An amendment to Section N1103.12;
14. An amendment to Section N1107.4; and
15. An amendment to Section N1107.6.

Changes to Chapter 3

Item 3.3: Item 3.3 has been deleted. It was placed in the 2016 Supplement in response to an errata report from the ICC which made a correction to the first printing of the 2015 IBC. The third printing of the IBC that was adopted incorporated this correction. The contents of Item 3.3 are duplicative of what appears in the adopted IBC.

Changes to Chapter 7

New Item 7.9: A new Item 7.9, which amends Section 503.1 of the IFC, was added to the Supplement to clarify that Appendix D was adopted and made part of the IFC.

Item 7.13: Item 7.13, Section 511.2.6, did not have a section heading and was subsequently titled "Driveways serving more than four buildings".

Item 7.15: Section 605.11.1 is substantially similar to IRC Section R324.7. Consequently, the clarification that was made to IRC Section R324.7, which separated Exception 1 into two exceptions, has been made for Section 605.11.1. Section 605.11.1.1 is substantially similar to IRC Section R324.7.2. Therefore, the clarification made to IRC Section R324.7.2 has also been made to 605.11.1.1. This clarification states that roof access points shall be located where the accompanying ground access area does not conflict with ground obstructions. Section 605.11.1.2.2 is substantially similar to IRC Section R324.7.3. Likewise, the clarification made to IRC Section R324.7.3 has also been made to Section 605.11.1.2.2. This amendment deletes the word "directly" and inserts the phrase "so as to facilitate roof access", clarifying where ground access areas shall be located. Finally, Section 605.11.1.2.6 is substantially similar to IRC Section R324.7.7. Therefore, the clarification made to IRC Section R324.7.7 has also been made to Section 605.11.1.2.6, which separated Exception 1 into two exceptions.

Item 7.16: The reference to "soda ash" extinguisher has been deleted from Section 806.1.1 so as to correctly reference fire extinguishers in conformance with NFPA 10. A footnote has been added to further clarify the exception.

Item 7.28: The reference to "Part" 1203.3(g) has been changed to "Section". The reference to subdivision (h) has been corrected to reference Section 5610.8.

Changes to Chapter 9

Item 9.3: The missing reference to footnote "a" was inserted into Table 805.3.1.1(1).

Changes to Chapter 10

The referenced standard 222-3 (2014) contained a typo and was subsequently relabeled 222-G-3 (2014).

NOTICE OF ADOPTION

State Energy Conservation Construction Code (Energy Code)

I.D. No. DOS-14-17-00005-A

Filing No. 521

Filing Date: 2017-07-18

Effective Date: 90 days after publication

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

Action taken: Amendment of section 1240.3; addition of sections 1240.2(s), (t), 1240.4(c)(9) and 1240.5(b)(7) to Title 19 NYCRR.

Statutory authority: Energy Law, section 11-103(2)

Subject: State Energy Conservation Construction Code (Energy Code).

Purpose: To amend the existing Energy Code.

Text of final rule: Section 1240.2 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding new subdivisions (s) and (t), to read as follows:

(s) 2016 Uniform Code Supplement. The term "2016 Uniform Code Supplement" means the publication entitled 2016 Uniform Code Supplement (publication date: March 2016) published by the New York State Department of State.

(t) 2017 Uniform Code Supplement. The term "2017 Uniform Code Supplement" means the publication entitled 2017 Uniform Code Supplement (publication date: July 2017) published by the New York State Department of State.

Section 1240.3 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

1240.3 Amendments made by *and to* the 2016 Energy Code supplement.

(a) For the purposes of applying the 2015 IECC commercial provisions, the 2015 IECC residential provisions, and ASHRAE 90.1-2013 in New York State:

[(a)] *(1)* the 2015 IECC commercial provisions shall be deemed to be amended in the manner provided in part 1 of the 2016 Energy Code supplement;

[(b)] *(2)* ASHRAE 90.1-2013 shall be deemed to be amended in the manner provided in part 2 of the 2016 Energy Code supplement; and

[(c)] *(3)* the 2015 IECC residential provisions shall be deemed to be amended in the manner provided in part 3 of the 2016 Energy Code supplement.

(b) The 2016 Energy Code supplement shall be deemed to be amended as follows: each reference in the 2016 Energy Code supplement to the 2016 Uniform Code Supplement shall be deemed to be amended to be a reference to the 2017 Uniform Code Supplement.

Subdivision (c) of section 1240.4 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new paragraph (9) to read as follows:

(9) New York State Department of State. The following publication published by the New York State Department of State is incorporated herein by reference: 2017 Uniform Code Supplement (publication date: July 2017). Copies of the 2017 Uniform Code Supplement may be obtained from the publisher at the following address: New York State Department of State, Division of Building Standards and Codes, One Commerce Plaza, 99 Washington Avenue, Suite 1160, Albany, NY 12231-0001. The 2017 Uniform Code Supplement is available for public inspection and copying at the Office of the New York State Department of State located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

Subdivision (b) of section 1240.5 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new paragraph (7) to read as follows:

(7) New York State Department of State. The following publication published by the New York State Department of State is incorporated herein by reference: 2017 Uniform Code Supplement (publication date: July 2017). Copies of the 2017 Uniform Code Supplement may be obtained from the publisher at the following address: New York State Department of State, Division of Building Standards and Codes, One Commerce Plaza, 99 Washington Avenue, Suite 1160, Albany, NY 12231-0001. The 2017 Uniform Code Supplement is available for public inspection and copying at the Office of the New York State Department of State located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 1240.2(s), (t), 1240.4(c)(9) and 1240.5(b)(7).

Text of rule and any required statements and analyses may be obtained from: Gerard Hathaway, Department of State, 99 Washington Avenue, Suite 1160, Albany, NY 12231, (518) 474-4073, email: Gerard.Hathaway@dos.ny.gov

Revised Regulatory Impact Statement

The Department of State has determined that the changes made to the last published rule are non-substantive and do not necessitate a revision of the original Regulatory Impact Statement published in the Notice of Proposed Rule Making.

Those changes made to the rule are summarized as follows:

Part 1240 of Title 19 NYCRR was changed to update the date that the 2017 Supplement was published from March to July. Changes were made throughout the 2017 Uniform Code Supplement to clarify certain code language and to delete duplicative code language. The majority of the changes were to Chapter 11 of the 2015 International Residential Code (IRC).

The legally binding provisions of the State Energy Conservation Construction Code (Energy Code) are as set forth in 19 NYCRR Part 1240, and consist, primarily, of the 2015 International Energy Conservation Code (IECC) and ASHRAE 90.1-203, as amended by the 2016 Supplement to the New York State Energy Conservation Construction Code (Revised August 2016) (ECS). Chapter 11 of the 2015 IRC, as amended by the 2017 Uniform Code Supplement, is intended to be a restatement of

the provisions of the Energy Code applicable to residential buildings. However, in the event of a conflict between provisions of Part 1240 and the provisions in Chapter 11, the provisions of Part 1240 will control. To address any discrepancies, the 2017 Uniform Code Supplement has been revised to align the Chapter 11 provisions with the corresponding provisions of the IECC/ECS.

Revised Regulatory Flexibility Analysis

The Department of State has determined that the changes made to the last published rule are non-substantive and do not necessitate a revision of the original Regulatory Flexibility Analysis for Small Businesses and Local Governments published in the Notice of Proposed Rule Making.

The changes made to the previously published rule text provide clarification as to the application of the proposed text and do not alter or increase any effect of the rule upon small businesses or local governments.

19 NYCRR Part 1240 ("Part 1240") and the publications incorporated by reference in Part 1240 constitute the State Energy Conservation Construction Code (the "Energy Code") promulgated pursuant to Article 11 of the Energy Law. The amended and updated version of the Energy Code that became effective on October 3, 2016 incorporated by reference the 2015 edition of the International Energy Conservation Construction Code (the "2015 IECC") published by the International Code Council, Inc. and the 2013 edition of the Energy Standard for Building Except Low-Rise Residential Buildings ("ASHRAE 90.1-2013") published by the American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc. Under the amended and updated version of the Energy Code, certain provisions of the 2015 IECC and certain provisions of ASHRAE 90.1-2013 are deemed to be amended in the manner provided in the publication entitled 2016 Supplement to the New York State Energy Conservation Construction Code (revised August 2016) (the "2016 Energy Code Supplement").

The 2016 Energy Code Supplement includes a number of references to the 2016 Uniform Code Supplement. This rule amends and updates the Uniform Code by replacing the 2016 Uniform Code Supplement with a new publication entitled the 2017 Uniform Code Supplement. The State Fire Prevention and Building Code Council (the "Code Council") voted to adopt and approve this rule to amend and update the Uniform Code at a meeting held on July 13, 2017.

This rule amends Part 1240 so that references in Part 1240 to provisions in the prior version of the Uniform Code are changed to refer to the corresponding provisions in the updated version of the Uniform Code. Particularly, this rule amends Part 1240 so that all references in the 2016 Energy Code Supplement to the 2016 Uniform Code Supplement are deemed to be references to the 2017 Uniform Code Supplement. The rule also amends the 2016 Energy Code by incorporating by reference the 2017 Uniform Code Supplement.

This rule makes no substantive changes to Part 1240.

Small businesses and local governments that are currently subject to Part 1240 will continue to be subject to Part 1240 as amended by this rule.

Revised Rural Area Flexibility Analysis

The Department of State has determined that the changes made to the last published rule are non-substantive and do not necessitate a revisions of the original Rural Area Flexibility Analysis published in the Notice of Proposed Rule Making.

The changes made to the previously published rule text provide clarification as to the application of the proposed text and do not alter or increase any effect of the rule upon rural areas in New York State.

19 NYCRR Part 1240 ("Part 1240") and the publications incorporated by reference in Part 1240 constitute the State Energy Conservation Construction Code (the "Energy Code") promulgated pursuant to Article 11 of the Energy Law. The amended and updated version of the Energy Code that became effective on October 3, 2016 incorporated by reference the 2015 edition of the International Energy Conservation Construction Code (the "2015 IECC") published by the International Code Council, Inc. and the 2013 edition of the Energy Standard for Building Except Low-Rise Residential Buildings ("ASHRAE 90.1-2013") published by the American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc. Under the amended and updated version of the Energy Code, certain provisions of the 2015 IECC and certain provisions of ASHRAE 90.1-2013 are deemed to be amended in the manner provided in the publication entitled 2016 Supplement to the New York State Energy Conservation Construction Code (revised August 2016) (the "2016 Energy Code Supplement").

The 2016 Energy Code Supplement includes a number of references to the 2016 Uniform Code Supplement. This rule amends and updates the Uniform Code by replacing the 2016 Uniform Code Supplement with a new publication entitled the 2017 Uniform Code Supplement. The State Fire Prevention and Building Code Council (the "Code Council") voted to adopt and approve this rule to amend and update the Uniform Code at a meeting held on July 13, 2017.

This rule amends Part 1240 so that references in Part 1240 to provisions in the prior version of the Uniform Code are changed to refer to the corresponding provisions in the updated version of the Uniform Code. Particularly, this rule amends Part 1240 so that all references in the 2016 Energy Code Supplement to the 2016 Uniform Code Supplement are deemed to be references to the 2017 Uniform Code Supplement. The rule also amends the 2016 Energy Code by incorporating by reference the 2017 Uniform Code Supplement.

This rule makes no substantive changes to Part 1240.

Since Part 1240 applies in all rural areas of the State, and since this rule amends Part 1240, this rule will apply in all rural areas of the State.

Revised Job Impact Statement

The Department of State has determined that the changes made to the last published rule are non-substantive and do not necessitate a revision of the original Job Impact Statement published in the Notice of Proposed Rule Making.

The changes made to the previously published rule text provide clarification as to the application of the proposed text and will not have a substantial adverse impact on jobs and employment opportunities in New York State.

19 NYCRR Part 1240 ("Part 1240") and the publications incorporated by reference in Part 1240 constitute the State Energy Conservation Construction Code (the "Energy Code") promulgated pursuant to Article 11 of the Energy Law. The amended and updated version of the Energy Code that became effective on October 3, 2016 incorporated by reference the 2015 edition of the International Energy Conservation Construction Code (the "2015 IECC") published by the International Code Council, Inc. and the 2013 edition of the Energy Standard for Building Except Low-Rise Residential Buildings ("ASHRAE 90.1-2013") published by the American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc. Under the amended and updated version of the Energy Code, certain provisions of the 2015 IECC and certain provisions of ASHRAE 90.1-2013 are deemed to be amended in the manner provided in the publication entitled 2016 Supplement to the New York State Energy Conservation Construction Code (revised August 2016) (the "2016 Energy Code Supplement").

The 2016 Energy Code Supplement includes a number of references to the 2016 Uniform Code Supplement. This rule amends and updates the Uniform Code by replacing the 2016 Uniform Code Supplement with a new publication entitled the 2017 Uniform Code Supplement. The State Fire Prevention and Building Code Council (the "Code Council") voted to adopt and approve this rule to amend and update the Uniform Code at a meeting held on July 13, 2017.

This rule amends Part 1240 so that references in Part 1240 to provisions in the prior version of the Uniform Code are changed to refer to the corresponding provisions in the updated version of the Uniform Code. Particularly, this rule amends Part 1240 so that all references in the 2016 Energy Code Supplement to the 2016 Uniform Code Supplement are deemed to be references to the 2017 Uniform Code Supplement. The rule also amends the 2016 Energy Code by incorporating by reference the 2017 Uniform Code Supplement.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Proposed Rule Making was published in the State Register on April 5, 2017. A public hearing was held on May 22, 2017. The Department of State (DOS) received the comments described below. Where identical or substantially similar comments were received from more than one commenter, those comments are discussed in one consolidated statement below.

Summary and Analysis of Issues Raised and Significant Alternatives Suggested by Comments, and Reasons Why any Significant Alternatives were not incorporated into the Rule.

COMMENT 1: Several comments were received requesting deletion of Item 3.8 of the 2016 Supplement to the New York State Energy Conservation Construction Code (Revised August 2016) ("2016 Energy Code Supplement") which added an "Option 2" in the prescriptive table (Table R402.1.2) of the 2015 International Energy Conservation Code (IECC) which allows a reduction in insulation as a trade-off for improved fenestration U-value in climate zone 6. The commenters stated that "Option 2" is inconsistent with the 2015 IECC, it is not necessary as the IECC already provides several means of demonstrating compliance that provide extensive flexibility for builders, not technically justified possibly leading to less efficient residential buildings, and a similar proposal was rejected by the Code Development Committee for the 2018 IECC because it was found to be confusing. The commenters also stated that "Option 2" would seem to open up the IECC to additional requests for product-specific exceptions in the prescriptive path.

RESPONSE TO COMMENT 1: The purpose of this rule was to amend the 2017 Uniform Code Supplement and to amend Part 1240 to the extent that references to the 2016 Uniform Code Supplement should be references to the 2017 Uniform Code Supplement. No changes were made to the 2016 Energy Code Supplement by this rule. However, the DOS will continue to research the above topic and determine if the requested modifications can be accommodated at a future code update.

COMMENT 2: Several comments noted discrepancies between the Residential Provisions of the 2015 IECC, as amended by the 2016 Energy Code Supplement, and Chapter 11 of the 2015 International Residential Code (IRC), as amended by proposed the 2017 Uniform Code Supplement. For example, the requirements for insulation values and fenestration by component, and the provisions of section R501.4 of the 2015 IECC, as amended by the 2016 Energy Code Supplement, differ from the corresponding provisions in Chapter 11 of the 2015 IRC, as amended by proposed the 2017 Uniform Code Supplement.

RESPONSE TO COMMENT 2: The legally binding provisions of the Energy Code are as set forth in 19 NYCRR Part 1240, and consist, primarily, of the 2015 IECC and ASHRAE 90.1-2013, as amended by the 2016 Energy Code Supplement. Chapter 11 of the 2015 IRC, as amended by the 2017 Uniform Code Supplement, is intended to be a restatement of the provisions of the Energy Code applicable to residential buildings. However, in the event of a conflict between the provisions of Part 1240 and the provisions in Chapter 11, the provisions of Part 1240 will control. DOS agrees that discrepancies should be corrected, to reduce confusion. Therefore, the 2017 Uniform Code Supplement has been revised to align the Chapter 11 provisions cited in the comments with the corresponding provisions in the 2015 IECC, as amended by the 2016 Energy Code Supplement.

COMMENT 3: The 2015 IECC Commercial Provisions Section C405.6 mandates that each dwelling unit located in a Group R-2 building shall have a separate electrical meter. There was a similar requirement for monitoring electrical energy consumption, in buildings having individual dwelling units, in the 2010 RCNYS Section N1101.10. There is no similar requirement in the 2015 IRC, the 2015 IECC Residential Provisions, nor in the 2016 UCS or the 2017 Draft UCS.

RESPONSE TO COMMENT 3: When the Code Council amended the entire Energy Code in 2016, the Code Council determined that it would adopt the 2015 IECC with only those changes that were (1) required by NYS law or (2) deemed by the Code Council to be necessary in NYS. The 2015 IECC requires separate meters in buildings in Occupancy Group R-2, but not in buildings in Occupancy Groups R-1 or R-3 nor in buildings that are subject to the 2015 IRC. When the Code Council adopted the 2016 version of the Energy Code, the Code Council elected not to change the 2015 IECC's requirements for separate metering. The Energy Code-related rule now being adopted is intended only to make those changes to Part 1240 that are necessary to change Part 1240's references to a publication that was part of the Uniform Code (the 2016 Uniform Code Supplement) to references to the new publication (the 2017 Uniform Code Supplement) that will now be part of the Uniform Code pursuant to a separate rule making. This comment requests a substantive change to the Energy Code, which would be beyond the intended scope of the Energy Code-related rule now being adopted. Any substantive change, such as that requested by this comment, would have to be considered as part of a new, separate rule making, and would require consideration of issues, such as anticipated pay-back periods, as prescribed in Article 11 of the Energy Law.

COMMENT 4: The 2015 IRC, the 2015 IECC, and the 2016 Energy Code Supplement mandate that blower door testing shall be performed to verify compliance with mandatory air leakage requirements. The 2016 Energy Code Supplement amends the definition of "Residential Building" to include factory manufactured homes and mobile homes. The 2016 UCS and the 2017 Draft UCS Section 101.2.1.4 mandate that Factory Manufactured Homes (Modular Homes) shall be constructed and installed in accordance with the requirements of the 2015 IRC and shall bear an Insignia of Approval issued in accordance with the 19 NYCRR Part 1209, Regulations and Fees for Factory Manufactured Homes. The 2016 Energy Code Supplement (Revised August 2016) Section R402.4.1.2 mandates that the building (including factory manufactured homes and mobile homes, according to the definition for building) or dwelling unit shall be tested and verified as having an air leakage rate not exceeding three air changes per hour. Testing shall be conducted in accordance with ASTM E 779 or ASTM E 1827 and reported at a pressure of 0.2 inch w.g. (50 Pascals). Testing shall be performed at any time after creation of all penetrations of the building thermal envelope. QUESTION: Can the manufacturer issue that insignia if the blower door test is not performed with satisfactory results? Is the factory required to conduct the blower door test at the time of manufacture of the factory manufactured home, or does the local code official have the right to require blower door testing of the factory manufactured home once it is installed on the project site?

RESPONSE TO COMMENT 4:

The insignia of approval only demonstrates that the work performed in the factory meets code requirements; it does not certify to all requirements of the Uniform Code. The DOS believes that the issue raised by this comment does not require a change to this rule or to the Energy Code, but may better be addressed by a technical bulletin or similar guidance to be issued by the DOS. No change will be made to this rule in response to this comment.

Description of Changes Made in the Rule

This rule will amend Part 1240 of Title 19 NYCRR. Part 1240 incorporates by reference a publication entitled "2017 Uniform Code Supplement" (hereinafter referred to as the "2017 Supplement"). Non-substantive changes were made to the following subdivisions of Part 1240, as originally proposed.

Changes to Title 19 NYCRR Part 1240

The following changes were made to the amendment to Part 1240 of Title 19 NYCRR. The changes update the date that the 2017 Supplement was published from March to July.

Part 1240, Section 1240.2(t): The publication date of the publication entitled "2017 Uniform Code Supplement" has been changed from March 2017 to July 2017.

Part 1240, Section 1240.4(c)(9): The publication date of the publication entitled "2017 Uniform Code Supplement" has been changed from March 2017 to July 2017.

Part 1240, Section 1240.5(b)(7): The publication date of the publication entitled "2017 Uniform Code Supplement" has been changed from March 2017 to July 2017.

Changes to the 2017 Supplement

Changes to Chapter 2

The legally binding provisions of the Energy Code are as set forth in 19 NYCRR Part 1240, and consist, primarily, of the 2015 IECC and ASHRAE 90.1-2013, as amended by the 2016 Energy Code Supplement. Chapter 11 of the 2015 IRC, as amended by the 2017 Uniform Code Supplement, is intended to be a restatement of the provisions of the Energy Code applicable to residential buildings. However, in the event of a conflict between the provisions of Part 1240 and the provisions in Chapter 11, the provisions of Part 1240 will control. To address any discrepancies, the 2017 Uniform Code Supplement has been revised to align the Chapter 11 provisions with the corresponding provisions of the 2015 IECC, as amended by the 2016 Energy Code Supplement, as described herein. These modifications include:

1. New exceptions 2 and 3 to IRC Section N1101.1 (old Item 2.28);
2. New Sections N1101.3.1, N1101.3.1.1, and N1101.3.1.1.1 (new Item 2.27);
3. Amendments to the terms "building thermal envelope", "conditioned space", "ERI reference design", and "historic building" and a new definition of the term "air-impermeable insulation have been added to N1101.6 (New Item 2.28);
4. An amendment to Section N1102.1 (New Item 2.29);
5. An amendment to Section N1102.1.2 (New Item 2.30);
6. An amendment to Table N1102.1.2 (New Item 2.31);
7. An amendment to Section N1102.4 (New Item 2.32);
8. An amendment to Section N1102.4.1.2 (New Item 2.33);
9. The addition of new Sections N1102.4.1.3 and N1102.4.1.3.1 (New Item 2.34);
10. An amendment to Section N1102.4.2 (New Item 2.35);
11. The addition of a new Section N1102.4.6 (New Item 2.36);
12. An amendment to Section N1103.10.3 (New Item 2.37);
13. An amendment to Section N1103.12 (New Item 2.38);
14. An amendment to Section N1107.4 (New Item 2.39); and
15. An amendment to Section N1107.6 (New Item 2.40).

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Continuing Education Requirements

I.D. No. DOS-31-17-00005-P

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

Proposed Action: Amendment of section 192.7(v) and (w) of Title 19 NYCRR.

Statutory authority: General Business Law, sections 791(2), 794 and 803

Subject: Continuing education requirements.

Purpose: To amend the education requirements to include 1 hour of instruction on telecoil (t-coil) and other assistive listening devices.

Text of proposed rule: Section 192.7 of Title 19 NYCRR is amended to read as follows:

Section 192.7. Continuing education

(v) Infection control and New York State and Federal law, regulation and professional conduct for hearing aid dispensers. As a condition of renewing a hearing aid dispenser registration, each hearing aid dispenser shall successfully complete a total of 20 continuing education credits per registration period as set forth in section 794 of the General Business Law. At least [two] *one* of [these] *the* required credit hours shall be devoted to the subject of infection control as prescribed by the Secretary of State*, at least one of the required credit hours shall be devoted to the subject of telecoil (t-coil) and other assistive listening devices,* and at least one of the required credit hours shall be devoted to the subject of New York State and Federal law, regulations and professional conduct as prescribed by the Secretary of State.

(w) Infection control and New York State and Federal law, regulation and professional conduct for audiologists. As a condition of renewing a hearing aid dispenser registration, each audiologist who is registered as a hearing aid dispenser under General Business Law section 790(1)(b), shall successfully complete four continuing education credits relating to the dispensing of hearing aids as set forth in section 794 of the General Business Law. At least [two] *one* of [these] *the* required credit hours shall be devoted to the subject of infection control*, at least one of the required credit hours shall be devoted to the subject of telecoil (t-coil) and other assistive listening devices,* and at least one of the required credit hours shall be devoted to the subject of New York State and Federal law, regulations and professional conduct.

Text of proposed rule and any required statements and analyses may be obtained from: David Mossberg, NYS Dept. of State, 123 William St., 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority:

Article 37-a of General Business Law ("GBL"), Registration of Hearing Aid Dispensers, prescribes continuing education requirements for individuals and business entities to act as a hearing aid dispenser. GBL §§ 791(2) and 794 authorizes the Secretary of State to promulgate rules and regulations establishing the content requirements of continuing education hearing aid dispenser courses. GBL § 794 authorizes the Secretary to promulgate rules and regulations establishing the method, content and supervision requirements for the continuing education course or courses provided for in this section. GBL § 803 authorizes the Secretary to promulgate such rules and regulations as are deemed necessary to effectuate the purposes of Article 37-a.

2. Legislative objectives:

To protect the hearing-impaired public by ensuring competent, honest and accountable dispensers of hearing aids who will protect the health, safety and welfare of the people of New York State.

3. Needs and benefits:

Existing laws regulating the dispensing of hearing aids have been ineffective in providing adequate education to hearing aid dispensers and audiologists regarding telecoil (t-coil) and other assistive listening devices. T-coils are small copper coils on hearing aids that allow various sound sources to be directly connected to hearing aids, improving sound quality and permitting the hearing aid user to easily perceive the signal of interest in almost any environment regardless of background noise. The T-coil feature provides access to many public accommodations such as movie theaters, libraries, theaters, and auditoriums.

Although T-coils are an option on a variety of hearing aids, many consumers are not sufficiently informed of their availability or benefits when purchasing hearing aids. Requiring at least one of the required credit hours of continuing education for hearing aid dispensers and audiologists to be devoted to the subject of telecoil (t-coil) and other assistive listening devices will promote the safety of users of hearing aids by enabling hearing aid dispensers and audiologists to more thoroughly advise hearing aid consumers of the benefits and uses of T-coils. These changes are intended to ensure continued consumer access to safe, reliable and appropriate hearing aid dispensing services.

4. Costs:

a. Costs to regulated parties:

The Department does not anticipate additional costs to regulated parties resulting from the implementation of the rule. Hearing aid dispenser and audiologist licensees are already required to complete a greater number of total course hours, and this rule simply reallocates the required subject matters.

b. Costs to the Department of State:

The rule does not impose any costs to the agency, the state or local governments for the implementation and continuation of the rule. Existing staff will answer any questions about the regulatory changes and investigate and enforce compliance with the proposed rules.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule does not impose any new paperwork requirements. Insofar as licensees are already required to satisfactorily complete continuing education prior to renewal, this rule change does not impose new paperwork requirements.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The New York State Department of State and Hearing Aid Dispenser Board participated in a series of open meetings with various stakeholders to discuss and consider alternative variations of course subject matter and allocation of required hours within the hearing aid dispenser curriculum. After due consideration of various alternatives to the existing hearing aid dispenser and audiologist course curriculum, the Department of State determined that the proposed course subject matter and allocation of hours was the preferred option and recommended said proposal. The Department for example considered not permitting audiologists to have any elective courses, but was informed by the New York State Board for Speech-language Pathology and Audiology that allowing an elective would benefit licensed audiologists who also dispensed hearing aids.

9. Federal standards:

There are no federal standards relating to this rule. Consequently, this rule does not exceed any existing federal standard.

10. Compliance schedule:

The rule will be effective January 1, 2019 to allow licensees to prepare for this change, as well as allow educational providers to create new courses to cover these topics.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule will require that all licensed hearing aid dispensers complete at least 1 hour of continuing education devoted to telecoil (t-coil) and other assistive listening devices prior to renewal. The majority of hearing aid businesses licensed by the Department are small businesses employing 10 or fewer persons.

The rule does not apply to local governments.

2. Compliance requirements:

Insofar as the existing statute and regulations already require minimum continuing education requirements for license renewal, the rule making will not add any new reporting, record keeping or other compliance requirements.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

Hearing aid dispensers will not need to rely on any new or different professional services in order to comply with the rule. Dispensers are already required to complete continuing education pursuant to Article 37-a of the General Business Law. Insofar as dispensers must already attend and complete approved education courses, this proposal will not result in the need to rely on any new professional services. The Department expects existing education providers to offer new approved courses in accordance with this rule making.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

The rule making will not result in increased costs to dispensers as the proposal merely reallocates existing course requirements, and does not add new credit hours to renew. The rule does not impose any compliance costs on governments.

5. Economic and technologic feasibility:

This rule is both economically and technologically feasible to comply with. The Department is aware that there are courses which already provide instruction in this subject area so dispensers will be able to comply.

6. Minimizing adverse impact:

The rule making will not result in any adverse economic impact. Insofar as dispensers must already attend and complete approved education courses, the rule will not have an adverse economic impact on prospective dispensers seeking renewal.

7. Small business participation:

This proposal was discussed at several open meetings conducted by the Hearing Aid Advisory Board and at least 1 meeting of the New York State Board for Speech-language Pathology and Audiology; these meeting allowed for small business participation. Additionally, publication of the proposed rule in the State Register will provide additional notice to small businesses of the proposed rule making.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not required because this rule does not impose any adverse impact on rural areas, and the rule does not impose any new reporting, record keeping or other compliance requirements on public or private entities in rural areas. The rule merely proposes the reallocation of the required course hours that dispensers are required to complete. Insofar as the existing regulations already require education requirements for renewal, the rule making will not add any new reporting, record keeping or other compliance requirements on public or private entities in rural areas, outside of the proposed changes in the education requirement.

Job Impact Statement
A job impact statement is not required because this rule will not have any substantial impact on jobs or employment opportunities for registered hearing aid dispensers. The rule making reallocates existing continuing education credit hours to include 1 hour of instruction in a new topic. The Department finds that this change will not have any foreseeable impact on jobs or employment opportunities for hearing aid dispensers seeking renewal.

Office of Temporary and Disability Assistance

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mandated Reporter Requirement and Background Checks

I.D. No. TDA-31-17-00002-EP
Filing No. 515
Filing Date: 2017-07-17
Effective Date: 2017-07-17

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

Proposed Action: Addition of Part 901 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(2)(b), 34(3)(c)-(d), (6), 412, 413, 424-a, 460-h and 495; L. 2017, ch. 56, part Q

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

Specific reasons underlying the finding of necessity: The Office of Temporary and Disability Assistance (OTDA) finds that immediate adoption of the rule is necessary for the preservation of the public health, public safety, and general welfare, and specifically, to protect and prevent homeless children being served by publicly-funded emergency shelters for families with children from exposure to potentially harmful conditions, including child abuse, neglect, and maltreatment, and to prevent their interacting with individuals who are inappropriate to serve this vulnerable population.

This rule protects children who are residing in publicly-funded emergency shelters for families with children by requiring checks of the Statewide Central Register of Child Abuse and Maltreatment (SCR), the Register of Substantiated Category One Cases of Abuse or Neglect (hereinafter referenced as the Staff Exclusion List [SEL]), and criminal history information for certain persons functioning in qualifying roles in publicly-funded emergency shelters for families with children and who have the potential for regular and substantial contact with children served by these emergency shelters. This rule also expands the list of individuals who are mandated reporters of child abuse and maltreatment by amending State regulations, consistent with recent amendments to Social Services Law § 413(1), to include employees of publicly-funded emergency shelters for families with children. Furthermore, by preserving the health, safety, and general welfare of children in publicly-funded emergency shelters for families with children, this rule helps make such shelters safer for all individuals and families staying in them.

Given the foregoing potential dangers faced by children served by publicly-funded emergency shelters for families with children and other hazards posed to individuals experiencing homelessness, OTDA asserts that proposing this rule only as a "regular rule making" as provided by the State Administrative Procedure Act (SAPA) should not be required because to do so would be detrimental to the immediate health, safety, and general welfare of this vulnerable population. Without this emergency rule, publicly-funded emergency shelters for families with children would be allowed to maintain the status quo, thereby increasing the potential that children experiencing homelessness may be subject to potential abuse, neglect, and maltreatment.

In addition, OTDA notes that this rule has been developed by the Office of Children and Family Services, the Division of Criminal Justice Services, and itself to implement Part Q of Chapter 56 of the Laws of 2017, which provides that the rule may be promulgated on an emergency basis.

Subject: Mandated reporter requirement and background checks.

Purpose: To implement the State regulations as required by part Q of chapter 56 of the Laws of 2017.

Substance of emergency/proposed rule (Full text is posted at the following State website: http://otda.ny.gov/legal/regulatory-activities.asp): The Office of Temporary and Disability Assistance (OTDA) is proposing the addition of 18 NYCRR Part 901, pursuant to Part Q of Chapter 56 of the Laws of 2017, to require publicly-funded emergency shelters for families with children to perform checks of the Statewide Central Register of Child Abuse and Maltreatment (SCR), the Staff Exclusion List of Category One Cases of Abuse and Neglect (SEL), and criminal history information for certain persons functioning in qualifying roles in publicly-funded emergency shelters for families with children and who have the potential for regular and substantial contact with children served by these emergency shelters. This rule also expands the list of individuals who are mandated reporters of child abuse and maltreatment by amending State regulations, consistent with recent amendments to Social Services Law § 413(1), to include employees of publicly-funded emergency shelters for families with children.

Add Subpart 901-1 addressing the mandated reporter requirement, SCR, and SEL.

Add § 901-1.1(a) to include definitions of the following terms that are used in this Subpart: contractor, facility, Justice Center, Office, prospective consultant, prospective employee, prospective volunteer, and publicly-funded emergency shelter for families with children.

Add § 901-1.1(b) to include the screening requirements, notice provisions, and record keeping requirements for publicly-funded emergency shelters for families with children regarding the SCR and the SEL checks. Provisions relating to the temporary approval of individuals subject to these checks prior to obtaining the results are included, as well as the analysis that must occur when an individual is found to be the subject of an indicated report.

Add § 901-1.1(c) to include the mandated reporter requirements for employees of publicly-funded emergency shelters for families with children when they have reasonable cause to suspect that a child coming before them in their professional or official capacity as an employee of a publicly-funded emergency shelter for families with children is an abused or maltreated child.

Add § 901-1.1(d) to include a severability provision so that if any provision of this Subpart or the application thereof to any person or circumstance is determined to be invalid, such determination shall not affect other provisions or applications of this Subpart and they are deemed to be severable.

Add Subpart 901-2 addressing criminal history information reviews.

Add § 901-2.1 to provide that this Subpart, relating to criminal history background checks, shall apply to every provider of services to publicly-funded emergency shelters for families with children.

Add § 901-2.2 to include definitions of the following terms that are used in this section: authorized person, criminal history information, Division, facility, Office, prospective assistant, prospective consultant, prospective employee, prospective volunteer, provider of services, publicly-funded emergency shelter for families with children, subject individual, and supervising social services district.

Add § 901-2.3 to include the procedure, notice requirements, and informed consents relating to the submission of fingerprints by prospective employees, consultants, assistants and volunteers in order to obtain criminal history information. This section also provides that an individual subject to the background check requirement can withdraw from the application process, without prejudice, at any time.

Add § 901-2.4 to include the required procedure when a publicly-funded emergency shelter for homeless families with children receives criminal history information. Specifically, it requires that upon receipt of criminal history information from the Division of Criminal Justice Services, the shelter provider shall assess the information to consider and determine whether to approve or disapprove the prospective employee, prospective consultant, prospective volunteer or prospective asssistant in accordance with the provisions of article 23-A of the Correction Law and Executive Law § 296(15) and (16). It also provides the subject individual the opportunity to explain why the application should not be denied and

requires that the individual shall be provided with information detailing how to seek correction of information contained in the report.

Add § 901-2.5 to include documentation and confidentiality provisions relative to criminal history background checks conducted pursuant to the regulation. It also provides that any party who willfully permits the disclosure of any confidential criminal history information obtained pursuant to this Subpart to parties not authorized to receive such information shall be guilty of a misdemeanor.

Add § 901-2.6 to include the required procedure when it is learned that an individual subject to a criminal background check has a pending criminal charges.

Add § 901-2.7 to include the responsibilities incumbent upon publicly-funded emergency shelters for families with children regarding record-keeping, retention and disposal of criminal history information, and the requirement that each qualified shelter provider have policies and procedures to ensure compliance with the regulation.

Add § 901-2.8 to include a severability provision so that if any provision of this Subpart or the application thereof to any person or circumstance is determined to be invalid, such determination shall not affect other provisions or applications of this Subpart and they are deemed to be severable.

A copy of the full text of the regulatory proposal is available on OTDA's website at http://otda.ny.gov/legal/regulatory-activities.asp.

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 14, 2017.

Text of rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, NY 12243-0001, (518) 486-7503, email: Richard.RhodesJr@otda.ny.gov

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

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

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

1. Statutory Authority:

Social Services Law (SSL) § 17(a)-(b) and (j) provide, in part, that the Commissioner of the Office of Temporary and Disability Assistance (OTDA) shall "determine the policies and principles upon which public assistance, services and care shall be provided within the [S]tate both by the [S]tate itself and by the local governmental units …", shall "make known his policies and principles to local social services officials and to public and private institutions and welfare agencies subject to his regulatory and advisory powers …", and shall "exercise such other powers and perform such other duties as may be imposed by law."

SSL § 20(2)(b) provides, in part, that OTDA shall "supervise all social services work, as the same may be administered by any local unit of government and the social services officials thereof within the state, advise them in the performance of their official duties and regulate the financial assistance granted by the state in connection with said work." Pursuant to SSL § 20(3)(d), OTDA is authorized to promulgate rules, regulations, and policies to fulfill its powers and duties under the SSL.

SSL § 34(3)(c) requires OTDA's Commissioner to "take cognizance of the interests of health and welfare of the inhabitants of the [S]tate who lack or are threatened with the deprivation of the necessaries of life and of all matters pertaining thereto." In addition, pursuant to SSL § 34(3)(d), OTDA's Commissioner must exercise general supervision over the work of all social services districts (SSDs), and SSL § 34(3)(e) provides that OTDA's Commissioner must enforce the SSL and the State regulations within the State and in the SSDs. Pursuant to SSL § 34(6), OTDA's Commissioner "may exercise such additional powers and duties as may be required for the effective administration of the department and of the [S]tate system of public aid and assistance."

SSL § 412 defines the term "publicly-funded emergency shelter for families with children" as "any facility with overnight sleeping accommodations and that is used to house recipients of temporary housing assistance and which houses or may house children and families with children."

SSL § 413 sets forth the list of persons who are required to report suspected cases of child abuse or maltreatment, which includes, but is not limited to, employees of publicly- funded emergency shelters for families with children.

SSL § 424-a allows access to, and requires checks of, the Statewide Central Register of Child Abuse and Maltreatment (SCR) as to certain qualifying individuals by providers of publicly-funded emergency shelters for families with children.

SSL § 460-h allows access to, and requires checks of, criminal history information as to certain qualifying individuals by providers of publicly-funded emergency shelters for families with children.

SSL § 495 allows access to, and requires checks of, the Register of Substantiated Category One Cases of Abuse or Neglect (hereinafter referenced as the Staff Exclusion List [SEL]) as to certain qualifying individuals by providers of publicly-funded emergency shelters for families with children.

Part Q of Chapter 56 of the Laws of 2017 provides that rules and regulations necessary to implement the provisions of that law concerning the required mandated reporting requirements and the required SCR checks, the SEL checks, and the criminal history background checks may be promulgated on an emergency basis.

2. Legislative Objectives:

It is the intent of the Legislature in enacting the above statutes that OTDA, the Office of Children and Family Services (OCFS), and the Division of Criminal Justice Services (DCJS) establish rules, regulations and policies to provide for the health, safety and general welfare of vulnerable individuals.

3. Needs and Benefits:

Homeless children are a vulnerable population in need of additional protections to ensure their wellbeing while residing in publicly-funded emergency shelters for families with children. The purpose of this rule is to address the need for additional protections for children who are residing in publicly-funded emergency shelters for families with children by requiring checks of the SCR and the SEL and criminal history background checks for individuals in certain positions in publicly-funded emergency shelters for families with children who have the potential for regular and substantial contact with children who are served by the shelter. This rule prevents children from being exposed to individuals with indicated reports of abuse, maltreatment and neglect or prior criminal convictions that rise to the level of rendering them particularly inappropriate for interactions with such children. Not only does this rule preserve the health, safety, and general welfare of children in publicly-funded emergency shelters for families with children, but also helps make these shelters safer for all individuals residing in such shelters.

The rule also expands the list of individuals who are mandated reporters of child abuse and maltreatment, consistent with the recent amendments to SSL § 413(1), to include employees of publicly-funded emergency shelters for families with children, thereby expanding the scope of individuals required to report child abuse and maltreatment which will improve child welfare in publicly-funded emergency shelters for families with children.

4. Costs:

For the providers of publicly-funded emergency shelters for families with children who are subject to the rule, there are neither expected initial capital costs, nor recurring annual fixed costs to comply with this rule.

OTDA does not anticipate compliance costs for publicly-funded emergency shelters for families with children that already conduct these searches. Qualifying shelters that do not already conduct these searches may experience a slight increase in administrative costs associated with the screening process and the additional steps that are required by the rule before hiring an individual. The publicly-funded emergency shelters for families with children will incur the costs associated with the actual checks, which, in the cases of the SCR and criminal background checks, cost $25 and $87 (subject to change) each, respectively; there are no costs associated with the SEL check. Qualifying shelters can include the costs within their operational budgets and may seek reimbursement from the State for at least a portion thereof. It is anticipated there would be a manageable increase in the amount of administrative and recordkeeping responsibilities imposed by the rule upon such providers.

There could be a slight increase in the number of SCR-related fair hearings held by OCFS. As to the SEL checks, the Justice Center for the Protection of People with Special Needs (Justice Center) will input into its system all provider agencies required to perform SEL checks, which is now estimated at approximately 80, and will perform more checks of the SEL. It is noted that such SEL checks are practically automated. DCJS will perform more criminal background checks, for which it will receive the aforementioned fee.

5. Local Government Mandates:

Local governments must inform and ensure that all qualifying shelters are fully compliant with existing State and local laws, regulations, administrative directives, and guidelines.

6. Paperwork:

There are essentially four requirements imposed by the legislative action and the subject rule.

The portion of the rule concerning criminal history background checks mandates that qualifying providers of services to publicly-funded emergency shelters for families with children perform criminal history background checks of all prospective employees, prospective consultants, prospective assistants and prospective volunteers it seeks to hire, contract with, or otherwise utilize the services of who will have the potential for, or may be permitted, regular and substantial contact with children who are served by the publicly-funded emergency shelter for families with children. The recordkeeping requirements that are needed to comply with

this portion of the rule include, but are not limited to, informing and obtaining the signed consent, on a prescribed form, of the individual subject to the check and selecting an authorized person to refer the subject to a designated fingerprinting entity to receive and transmit the fingerprints to DCJS, and to receive and evaluate the search results to determine whether to approve or disapprove the prospective employee/consultant/volunteer/applicant in accordance with the provisions of article-23A of the Correction Law and subdivisions (15) and (16) of § 296 of the Executive Law. Additionally, all qualifying providers are required to keep records of the current roster of employees, staffing assignments, volunteers, assistants and consultants as well as the names of all persons for whom criminal history background checks are submitted to DCJS. Such records shall be kept for at least six years from the time a person is no longer employed in, volunteers as, or serves as an assistant or consultant in a position that involves regular and substantial contact with children who are served by such shelters; such records shall also include applicants who are ultimately not hired. Moreover, under certain circumstances, certain records are to be destroyed and/or returned, and a use and dissemination agreement will be required and provided by DCJS with each provider.

The portion of the regulation concerning checks of the SCR requires checks of same for all prospective employees, prospective consultants, prospective volunteers and any individual or any person employed by an individual who will have the potential for regular and substantial contact with children who are served by such qualifying shelters and allows SCR checks for current employees. The publicly-funded emergency shelters for families with children may also conduct SCR checks on current employees at their own discretion, but not more than once every six months. The recordkeeping requirements include informing and obtaining the signed consent, on a prescribed form, of the individual subject to the check and notifying that individual that the check will be conducted. Additionally, whenever a person who is the subject of an indicated report is hired, retained, used, or given access to children, a written record must be generated and maintained and contain the specific reasons why the person was determined to be appropriate and acceptable to be afforded such access. OCFS may require a use agreement with each shelter provider subject to this rule.

The portion of the regulation concerning checks of the SEL before determining whether to hire or otherwise allow any person as an employee, administrator, consultant, intern, volunteer or contractor who will have the potential for regular and substantial contact with children who are served by such qualifying shelters place recordkeeping requirements upon shelter providers. These recordkeeping requirements include informing and obtaining the signed consent, on a prescribed form, of the individual subject to the check, and notifying that individual that the check will be conducted. The Justice Center may require a use agreement with each shelter provider subject to this rule.

The portion of the regulation designating employees of qualifying shelters as mandated reporters requires such employees to report to the SCR "when they have reasonable cause to suspect that a child coming before them in their professional or official capacity … [is] an abused or maltreated child", in accordance with SSL § 413(1)(a). Qualifying shelters shall provide all current and new employees with information on how to recognize the signs of child abuse and maltreatment. Subsequent to reporting these signs via telephone, the reporting employee shall follow-up with a written report to the child protective services of the local social services district and notify the provider, director, other person in charge, or a designated agent of the publicly- funded emergency shelter for families with children that the report was made.

7. Duplication:

The rule does not duplicate, overlap, or conflict with any existing State or federal regulations.

8. Alternatives:

Failure to promulgate the rule could jeopardize the health, safety and general welfare of vulnerable homeless children by subjecting them to the risk of substantial interaction with individuals convicted of prior criminal offenses, and/or indicating behaviors that constitute child abuse or neglect and render such individuals inappropriate for substantial interactions with children in such qualifying publicly-funded emergency shelters for families with children. Therefore, OTDA does not consider inactivity as a viable alternative to the rule. OTDA believes that the rule is necessary to protect homeless children from the dangers presented by exposure to the aforementioned individuals.

9. Federal Standards:

The rule does not conflict with federal statutes, regulations or policies.

10. Compliance Schedule:

To protect the public health, safety and general welfare of homeless children, the rule will be effective immediately upon its filing date.

Regulatory Flexibility Analysis

1. Effect of rule:

Pursuant to the State Administrative Procedure Act (SAPA) § 102(8), a "small business," in part, is any business which is independently owned and operated and employs 100 or fewer individuals. Publicly-funded emergency shelters for families with children will be required to provide additional protections to children by adding steps to their clearance process and making their employees mandated reporters of child abuse and maltreatment. The Office of Temporary and Disability Assistance (OTDA) anticipates that some of the additional costs incurred by such shelters as a result of the implementation of this rule can be included in the shelter's operational budget which may be reimbursed to the social services districts (SSDs) by OTDA. The rule applies to all publicly-funded emergency shelters for families with children in all 58 SSDs in New York State.

There are approximately 80 providers of publicly-funded emergency shelters for families with children in New York State, the majority of which are considered to be small businesses under SAPA § 102(8). It is estimated that approximately 30 SSDs will be affected.

2. Compliance requirement:

There are essentially four requirements imposed by the legislative action and the subject rule.

The portion of the rule concerning criminal history background checks mandates that qualifying providers of services to publicly-funded emergency shelters for families with children perform criminal history background checks of all prospective employees, prospective consultants, prospective assistants and prospective volunteers it seeks to hire, contract with, or otherwise utilize the services of who will have the potential for, or may be permitted, regular and substantial contact with children who are served by the publicly-funded emergency shelter for families with children. The recordkeeping requirements needed to comply with this portion of the rule include, but are not limited to, informing and obtaining the signed consent, on a prescribed form, of the individual subject to the check and selecting an authorized person to refer the subject to a designated fingerprinting entity to receive and transmit the fingerprints to the Division of Criminal Justice Services (DCJS), and to receive and evaluate the search results to determine whether to approve or disapprove the prospective employee/consultant/volunteer/applicant in accordance with the provisions of Article-23A of the Correction Law and subdivisions (15) and (16) of § 296 of the Executive Law. Additionally, all qualifying providers are required to keep records of the current roster of employees, staffing assignments, volunteers, assistants and consultants as well as the names of all persons for whom criminal history background checks are submitted to DCJS. Such records shall be kept for at least six years from the time a person is no longer employed in, volunteers as, or serves as an assistant or consultant in a position that involves regular and substantial contact with children who are served by such shelters; such records shall also include applicants who are ultimately not hired. Moreover, under certain circumstances, certain records are to be destroyed and/or returned, and a use and dissemination agreement will be required by DCJS with each provider.

The portion of the regulation concerning checks of the Statewide Central Register of Child Abuse and Maltreatment (SCR) requires checks of same for all prospective employees, prospective consultants, prospective volunteers and any individual or any person employed by an individual who will have the potential for regular and substantial contact with children who are served by such qualifying shelters and allows SCR checks for current employees. The publicly-funded emergency shelters for families with children may also conduct SCR checks on current employees at their own discretion, but not more than once every six months. The rule's recordkeeping requirements include informing and obtaining the signed consent, on a prescribed form, of the individual subject to the check and notifying that individual that the check will be conducted. Additionally, whenever a person who is the subject of an indicated report is hired, retained, used or given access to children, a written record must be generated and maintained and contain the specific reasons why the person was determined to be appropriate and acceptable to be afforded such access. The Office of Children and Family Services may require a use agreement with each shelter provider subject to this rule.

The portion of the regulation concerning checks of the Register of Substantiated Category One Cases of Abuse or Neglect (Staff Exclusion List [SEL]) before determining whether to hire or otherwise allow any person as an employee, administrator, consultant, intern, volunteer or contractor who will have the potential for regular and substantial contact with children who are served by such qualifying shelters places recordkeeping requirements upon shelter providers. These recordkeeping requirements include informing and obtaining the signed consent, on a prescribed form, of the individual subject to the check and notifying that individual that the check will be conducted. The Justice Center may require a use agreement with each qualifying shelter provider subject to this rule.

The portion of the regulation designating employees of qualifying shelters as mandated reporters requires such employees to report "when they have reasonable cause to suspect that a child coming before them in their professional or official capacity … [is] an abused or maltreated child" in accordance with Social Services Law § 413(1)(a). Qualifying shelters

shall provide all current and new employees with information on how to recognize the signs of child abuse and maltreatment. Subsequent to reporting such alleged abuse and/or maltreatment signs via telephone, the reporting employee shall follow-up with a written report and notify the provider, director, other person in charge, or a designated agent of the publicly-funded emergency shelter for families with children that the report was made.

3. Professional services:

The rule imposes obligations upon the publicly-funded emergency shelters for families with children that OTDA anticipates can be fulfilled without the need for the qualifying shelter(s) or SSD(s) to obtain professional services.

4. Compliance costs:

OTDA does not anticipate compliance costs for publicly-funded emergency shelters for families with children qualifying as small businesses under SAPA § 102(8) that already conduct these searches. Qualifying shelters meeting the small business definition under SAPA § 102(8) that do not already conduct these searches may experience a slight increase in administrative costs associated with the screening process and the additional steps that are required by the rule before hiring an individual. The publicly-funded emergency shelters for families with children will incur the costs associated with the actual checks, which, in the cases of the SCR and criminal background checks, cost $25 and $87 (subject to change) each, respectively; there are no costs associated with the SEL check. Qualifying shelters can include the costs within their operational budgets and may seek reimbursement from the State for at least a portion thereof. Regarding local governments, OTDA notes that most of the publicly-funded emergency shelters for families with children are located in New York City and that relatively few rural SSDs have qualifying shelters.

5. Economic and technological feasibility:

SSDs and publicly-funded emergency shelters for families with children qualifying as small businesses pursuant to the SAPA already have the economic and technological abilities to comply with the rule.

6. Minimizing adverse impact:

This rule is designed to minimize any adverse economic impact on affected small businesses or local governments. The rule only targets those publicly-funded emergency shelters for families with children and not all publicly-funded shelters that house homeless individuals. Further, the required checks of certain persons functioning in qualifying roles in these shelters is limited to those individuals who will have regular and substantial contact with children served by the shelter, and not all individuals at those shelters. The rule should not provide exemptions to small businesses, because this would contravene the purpose of the rule, namely, preserving the health, safety, and general welfare of homeless children who reside in publicly-funded emergency shelters for families with children.

7. Small business and local government participation:

The rule was discussed at the New York Public Welfare Association conference held on May 10-12, 2017, at which representatives from the SSDs were in attendance and provided an opportunity to express their concerns. OTDA will also be providing administrative guidance to SSDs for distribution to the publicly-funded emergency shelters for families with children so that they are notified of the rule and the requirements associated therewith. Qualifying shelter providers and SSDs will also have the opportunity to comment on the rule during the 45-day SAPA public comment period.

Rural Area Flexibility Analysis

1. Types and estimate numbers of rural areas:

Although the rule will, on its face, apply to all 44 of the rural social services districts (SSDs), it is expected that not all of these rural SSDs have publicly-funded emergency shelters for families with children that will have to take action to comply with the rule.

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

There are essentially four requirements imposed by the legislative action and the subject rule.

The portion of the rule concerning criminal history background checks mandates that qualifying providers of services to publicly-funded emergency shelters for families with children in rural areas perform criminal history background checks of all prospective employees, prospective consultants, prospective assistants and prospective volunteers it seeks to hire, contract with, or otherwise utilize the services of who will have the potential for, or may be permitted, regular and substantial contact with children who are served by the publicly-funded emergency shelter for families with children. The recordkeeping requirements that are needed to comply with this portion of the rule include, but are not limited to, informing and obtaining the signed consent, on a prescribed form, of the individual subject of the check and selecting an authorized person to refer the subject to a designated fingerprinting entity to receive and transmit the fingerprints to the Division of Criminal Justice Services (DCJS), and to receive and evaluate the search results to determine whether to approve or disapprove the prospective employee/consultant/volunteer/applicant in accordance with the provisions of Article-23A of the Correction Law and subdivisions (15) and (16) of § 296 of the Executive Law. Additionally, all qualifying providers in rural areas are required to keep records of the current roster of employees, staffing assignments, volunteers, assistants and consultants as well as the names of all persons for whom criminal history background checks are submitted to DCJS. Such records shall be kept for at least six years from the time a person is no longer employed in, volunteers as, or serves as an assistant or consultant in a position that involves regular and substantial contact with children who are served by such shelters; such records shall also include applicants who are ultimately not hired. Moreover, under certain circumstances, certain records are to be destroyed and/or returned, and a use and dissemination agreement will be required by and is provided by DCJS with each provider.

The portion of the regulation concerning checks of the Statewide Central Register of Child Abuse and Maltreatment (SCR) requires checks of same for all prospective employees, prospective consultants, prospective volunteers and any individual or any person employed by an individual who will have the potential for regular and substantial contact with children who are served by such qualifying shelters. The publicly-funded emergency shelters for families with children in rural areas may also conduct SCR checks on current employees at their own discretion, but not more than once every six months. The recordkeeping requirements include informing and obtaining the signed consent, on a prescribed form, of the individual subject to the check and notifying that individual that the check will be conducted. Additionally, whenever a person who is the subject of an indicated report is hired, retained, used, or given access to children, a written record must be generated and maintained and contain the specific reasons why the person was determined to be appropriate and acceptable to be afforded such access. The Office of Children and Family Services may require a use agreement with each shelter provider subject to this rule.

The portion of the regulation concerning checks of the Register of Substantiated Category One Cases of Abuse or Neglect (hereinafter referenced as the Staff Exclusion List [SEL]) before determining whether to hire or otherwise allow any person as an employee, administrator, consultant, intern, volunteer or contractor who will have the potential for regular and substantial contact with children who are served by such qualifying shelters places recordkeeping requirements upon shelter providers in rural areas. These recordkeeping requirements include informing and obtaining the signed consent, on a prescribed form, of the individual subject to the check, and notifying that individual that the check will be conducted. The Justice Center may require a use agreement with each shelter provider subject to this rule.

The portion of the regulation designating employees of qualifying shelters as mandated reporters requires such employees to report "when they have reasonable cause to suspect that a child coming before them in their professional or official capacity … [is] an abused or maltreated child" in accordance with Social Services Law § 413(1)(a). Qualifying shelters in rural areas shall provide all current and new employees with information on how to recognize the signs of child abuse and maltreatment. Subsequent to reporting these signs via telephone to the SCR, the reporting employee shall follow-up with a written report to the child protective services of the rural SSD and notify the provider, director, other person in charge, or a designated agent of the publicly-funded emergency shelter for families with children that the report was made.

3. Costs:

For the providers of publicly-funded emergency shelters for families with children in rural areas who are subject to the rule, there are neither expected initial capital costs, nor recurring annual fixed costs to comply with this rule. Providers will have to pay $25 for each SCR check and $87 (subject to change) for each criminal history background check. There is no fee for checks of the SEL.

For rural SSDs, the fiscal impact of the rule is anticipated to be small because of the relatively small number of publicly-funded emergency shelter for families with children located in those rural SSDs. Moreover, qualifying shelter providers in rural areas may seek reimbursement at least in part from the State for expenditures relating to the searches required by this rule.

4. Minimizing adverse impact:

The rule is not expected to adversely impact rural areas. Moreover, the rule is designed to minimize any such possible adverse impact on rural areas by limiting its scope to shelters that are receiving qualified services. The rule should not provide exemptions, because doing so would contravene the purpose of the rule, namely, preserving the health, safety, and general welfare of homeless children who reside in publicly-funded emergency shelters for families with children.

5. Rural area participation:

The rule was discussed at the New York Public Welfare Association conference held on May 10-12, 2017, at which representatives from the

rural SSDs were in attendance and provided an opportunity to express their concerns. The Office of Temporary and Disability Assistance will also be providing administrative guidance to all SSDs for distribution to the publicly-funded emergency shelters for families with children so that they are notified of the rule and the requirements associated therewith. Qualifying shelter providers and SSDs in rural areas will also have the opportunity to comment on the rule during the 45-day State Administrative Procedure Act public comment period.

Job Impact Statement

A Job Impact Statement is not required for this rule. The purpose of the rule is to protect children who are residing in publicly-funded emergency shelters for the homeless by requiring checks of the Statewide Central Register of Child Abuse and Maltreatment (SCR), the Register of Substantiated Category One Cases of Abuse or Neglect (hereinafter referenced as the Staff Exclusion List [SEL]), and criminal history information for certain persons functioning in qualifying roles in publicly-funded emergency shelters for families with children who have the potential for regular and substantial contact with children who are served by the qualifying shelter, and by amending State regulations to include employees of publicly-funded emergency shelters for families with children who are designated as mandated reporters of child abuse and maltreatment pursuant to Social Services Law § 413(1).

It is apparent from the nature and the purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities in the private sector, in the social services districts, or in the State. This rule will not reduce the number of jobs or employment opportunities within the subject facilities, but rather modify the clearance process for prospective employees and add an additional reporting responsibility for employees.