

# RULE MAKING ACTIVITIES

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

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

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

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## Department of Agriculture and Markets

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### REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS AND/OR JOB IMPACT STATEMENT

#### Quarantine to Help Prevent the Spread of the European Cherry Fruit Fly (ECFF)

I.D. No. AAM-25-18-00004-E

*This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement* pertain(s) to a notice of Emergency rule making, I.D. No. AAM-25-18-00004-E, printed in the *State Register* on June 20, 2018.

#### *Regulatory Impact Statement*

##### 1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been adopted to implement these laws.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Section 167 also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law.

##### 2. Legislative objectives:

These regulations are consistent with the public policy objectives the Legislature sought to advance when enacting the statutory authority, namely, preventing the spread within the State of an injurious insect, the European Cherry Fruit Fly (ECFF).

##### 3. Needs and benefits:

This regulation establishes regulated and quarantine areas in Erie and Niagara Counties to help control the spread of the ECFF. Left unchecked, ECFF has the potential to infest 100% of a cherry crop, rendering the cherries unmarketable.

The ECFF (*Rhagoletis cerasi*), an insect nonindigenous to the United States, is native to Europe. It was first detected in Ontario, Canada in 2015 and subsequently found in Niagara County in 2017. While ECFF infests both sweet and tart cherries, sweet cherries are ECFF's preferred host material. ECFF also infests honeysuckle (*Lonicera* sp.), an invasive plant found throughout New York State. Honeysuckle may serve as a reservoir for the ECFF to assist in its unchecked development.

The life cycle of ECFF begins with the emergence of the fruit flies during May and June. They have an average lifespan of two to four weeks. Females usually lay one egg beneath the skin of each piece of fruit. Once the eggs hatch, the larvae develop inside the fruit and feed on it for up to six weeks. As the larvae develop, they damage the fruit pulp. Mature larvae exit the fruit, drop to the ground, and burrow into the soil. Once in the soil, they pupate within a few days and overwinter in the soil underneath or near the host plant. After winter, the life cycle begins anew.

Evidence of ECFF infestation of cherries includes puncture holes in the cherries. As the larva develop in the fruit, the puncture hole becomes brown and soft. When cutting or breaking open infested cherries, the larvae and internal fruit damage can be readily seen. Infested cherries may shrivel, display soft spots, and decay. Infested fruit may also have small holes formed when larvae exit the fruit to drop to the ground to pupate. Growers cannot sell infested cherries for fresh fruit. Infested cherries for processing have a high likelihood of being rejected as well. Processors want tart cherries so diverting sweet cherries to processing is not a viable option. Fresh cherries command at least six times the price of processing cherries making it an economic hardship to move fresh cherries to processing if processors would accept them.

The regulated area consists of areas where the ECFF has been found and extends one-half mile in all directions from each such location. Thus far, ECFF has only been detected in State parks and public lands.

Regulated articles may only be moved from the regulated area if a

grower or handler has a limited permit issued by the Commissioner or has entered into a compliance agreement which requires a systems approach that minimizes the chance of ECFF spread. If the growers or handlers meet these requirements, they can move regulated articles anywhere within New York, except for the following cherry producing counties established as restricted areas: Counties of Chautauqua, Columbia, Dutchess, Delaware, Niagara (outside the regulated and quarantine areas), Orleans, Oswego, Schuyler, Seneca, Tompkins, Ulster and Wayne.

The quarantine area surrounds the regulated area and extends 4 miles from the regulated area. Regulated articles may only be moved from a quarantine area if the grower or handler has a limited permit or has entered into a compliance agreement. Since there is a lower risk of exposure to ECFF in the quarantine area, regulated articles in this area may be moved throughout the State, including the established restricted cherry producing areas.

To date, ECFF has not infested any cherry orchards in the regulated area in New York State. There are three growers in the regulated area, and an additional 11 growers in the quarantine area, which would be affected by this regulation. There are also nine registered nursery growers and 41 registered nursery dealers in the quarantine area. Those who have regulated articles will need a limited permit or compliance agreement in order to move regulated articles outside the regulated and quarantine areas to ensure that no host fruit is on any plants at the time of sale or movement out of the regulated area.

These regulations are necessary to protect the general welfare, since the effective control of ECFF in New York State, generally, and Niagara County, specifically, is critical for the protection of New York State's \$4.5-million dollar cherry industry, which includes 450 acres of cherry production. The regulations help ensure that as control measures are undertaken in the regulated and quarantine areas, ECFF will not spread beyond those areas via the movement of infested fruit.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

#### 4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: Growers in the quarantine and regulated areas will be provided the required pesticide by USDA and the applications will be completed by USDA. Accordingly, growers will not incur any costs for the application of pesticides. Department staff have visited the growers to explain the regulation and have compliance agreements signed. It is anticipated that each grower will have to spend a maximum of three hours to understand, sign, and comply with requirements of the compliance agreement. This will cost \$300.00, based on \$100.00 per hour. Growers will be able to self-issue limited permits upon complying with the requirements of the compliance agreement. This time is included in the \$300.00. For 13 impacted cherry growers (one grower has fields in both the regulated and quarantine areas), this is a total of \$1,300.00.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: NYSDAM horticultural Inspectors will be working with growers on the signing and enforcement of the compliance agreements and limited permits. This work will be shared among 2 to 7 people at a cost of approximated \$12,000 in staff time.

(c) The information, including the sources of such information and the methodology upon which the cost analysis is based: The costs analysis set forth above is based upon Department records and practices and observations of the industry.

#### 5. Local government mandates:

There are no additional programs, services, duties or responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or any other special district.

#### 6. Paperwork:

Growers will be issued compliance agreements, which authorize the grower to self-issue limited permits to move cherries.

#### 7. Duplication:

The USDA will issue a parallel quarantine that will mirror the State quarantine.

#### 8. Alternatives:

The only alternative considered was to continue with control efforts directed at similar fruit flies in areas where infestation was discovered without a quarantine. This option was rejected, since to do so could result in the USDA establishing a quarantine throughout New York State, preventing the sale of fresh cherries from New York being sold outside the State.

#### 9. Federal standards:

The USDA will be establishing a parallel quarantine which will mirror this one.

#### 10. Compliance schedule:

This rule shall take effect immediately upon filing.

### *Regulatory Flexibility Analysis*

#### 1. Effect of rule:

This regulation establishes regulated and quarantine areas in Erie and Niagara Counties to help control the spread of the European Cherry Fruit Fly (ECFF) and establishes parameters in the form of a systems approach set forth in a compliance agreement for the movement of regulated articles (i.e. cherries, and host material including soil beneath the dripline of the host material) out of the regulated and quarantine areas.

The regulated area extends from an ECFF infestation by one-half mile. To date, the only infestation of regulated articles has been found in State parks and public land. Regulated articles may only be moved from the regulated area if a grower or handler has a limited permit issued by the Commissioner or has entered into a compliance agreement which requires a systems approach that minimizes the chance of ECFF spread. If the growers or handlers meet these requirements, they can move regulated articles anywhere within New York, except for the following cherry producing counties established as restricted areas: Counties of Chautauqua, Columbia, Dutchess, Delaware, Niagara (outside the regulated and quarantine areas), Orleans, Oswego, Schuyler, Seneca, Tompkins, Ulster and Wayne.

The quarantine area surrounds the regulated area and extends 4 miles from the regulated area. Cherries may only be moved from a quarantine area if the grower or handler has a limited permit issued by the Commissioner or has entered into a compliance agreement. Since there is a lower risk of exposure to the ECFF in the quarantine area, regulated articles in this area may be moved throughout the State, including the established restricted cherry producing areas.

It is not anticipated that local governments would be involved in the shipment of cherries from the regulated and quarantine areas.

#### 2. Compliance requirements:

All regulated parties in the regulated and quarantine areas would be required to obtain limited permits issued by the Commissioner (or enter into compliance agreements) to ship regulated articles outside those areas. If growers enter into compliance agreements, they will have to use a systems approach to control the insects as set forth in the compliance agreement that minimizes the chance of ECFF spread.

It is not anticipated that local governments would be involved in the shipment of cherries from the regulated and quarantine areas.

#### 3. Professional services:

Those shipping regulated articles from the regulated and quarantine areas will need a limited permit issued by the Commissioner or enter into a compliance agreement which requires a systems approach to control the insects as set forth in the compliance agreement that minimizes the chance of ECFF spread.

It is not anticipated that local governments would be involved in the shipment of cherries from the regulated and quarantine areas.

#### 4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the rule: It is anticipated that there will be no such costs.

(b) Annual cost for continuing compliance with the rule: Costs to

regulated parties for the implementation of and continuing compliance with the rule: Growers in the quarantine and regulated areas will be provided the required pesticide by USDA and the applications will be completed by USDA. Accordingly, growers will not incur any costs for the application of pesticides. Department staff have gone to the growers to explain the regulation and have the compliance agreements signed. It is anticipated that each grower will have to spend a maximum of three hours to understand, sign, and comply with requirements of the compliance agreement. This will cost \$300.00, based on \$100.00 per hour. Growers will be able to self- issue limited permits upon complying with the requirements of the compliance agreement. This time is included in the \$300.00. For 13 impacted cherry growers (one grower has fields in both the regulated and quarantine areas), this is a total of \$1,300.00.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the regulated and quarantine areas.

#### 5. Economic and technological feasibility:

The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Growers shipping regulated articles outside the regulated and quarantine areas would require a limited permit or enter into a compliance agreement which requires a systems approach that minimizes the chance of ECFF spread.

It is not anticipated that local governments would be involved in the shipment of cherries from the regulated and quarantine areas and as such, would incur no costs.

#### 6. Minimizing adverse impact:

Approaches for minimizing adverse economic impact were considered. The Department has sought to minimize adverse impact of ECFF quarantine through the use of limited permits and compliance agreements between the Department and regulated parties, including small businesses. This would facilitate the movement of regulated articles by permitting the shipment of those articles without State or federal inspection, with the exception of regulated articles leaving the regulated area. Those cherries are banned from entry into cherry producing counties restricted by the USDA. There is no charge for a limited permit or compliance agreement. Given all of the facts and circumstances, the regulations minimize adverse economic impact as much as is currently possible.

It is not anticipated that local governments would be involved in the shipment of cherries from the regulated and quarantine areas.

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

In November of 2017, the Department mailed an ECFF fact sheet to cherry growers in Niagara and Orleans Counties.

On November 16, 2017, the Department, USDA and Cornell Cooperative Extension hosted meetings in the afternoon and evening to discuss ECFF, its life cycle, its potential impact, and the proposed quarantine area and regulated area accompanying restrictions. Approximately 20 cherry growers attended the meetings.

On February 5, 2018, February 6, 2018, and February 21, 2018, the Department participated in meetings in Lockport, Newark, and Albany, respectively. Like the meeting in November, the Department presented information on ECFF, its life cycle, its potential impact, and the proposed quarantine area and accompanying restrictions. Approximately 100 growers attended the sessions in Lockport and Newark, and 150 growers attended the Albany meeting.

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

##### 1. Types and estimated numbers of rural areas:

There are three growers in the regulated area and 11 growers in the quarantine area, all of whom are in rural areas as defined by section 481(7) of the Executive Law.

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

The rule does not require any reporting or recordkeeping requirements. In terms of professional services, those shipping regulated articles from the regulated and quarantine areas will need a limited permit issued by the Commissioner or a compliance agreement.

##### 3. Costs:

Costs to regulated parties for the implementation of and continuing compliance with the rule: Growers in the quarantine and regulated areas will be provided the required pesticide by USDA and the applications will be completed by USDA. Accordingly, growers will not incur any costs for the application of pesticides. Department staff have gone to the growers to explain the regulation and have compliance agreements signed. It is anticipated that each grower will have to spend a maximum of three hours to understand, sign, and comply with requirements of the compliance agreement. This will cost \$300.00, based on \$100.00 per hour.

Growers will be able to self- issue limited permits upon complying with the requirements of the compliance agreement. This time is included in the \$300.00. For 13 impacted cherry growers (one grower has fields in both the regulated and quarantine area), this is a total of \$1,300.00.

##### 4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the Department has designed the rule to minimize adverse economic impact on regulated parties in rural areas. By limiting ECFF regulated and quarantine areas to regions where infestation exists, the rule minimizes economic impacts while maintaining, without compromising, efforts to slow the spread of ECFF.

Approaches for minimizing adverse economic impact were considered. The Department has sought to minimize adverse impact of the ECFF quarantine by continuing the use of limited permits issued by the Commissioner and compliance agreements between the Department and regulated parties, including regulated parties in rural areas. This would facilitate the movement of regulated articles by permitting the shipment of cherries without state or federal inspection, with for the exception of cherries leaving the regulated area. Those cherries are banned from entry into cherry producing counties restricted by the USDA. There is no charge for a compliance agreement. Given all of the facts and circumstances, the regulations minimize adverse economic impact as much as is currently possible.

##### 5. Rural area participation:

In November of 2017, the Department mailed an ECFF fact sheet to cherry growers in Niagara and Orleans Counties.

On November 16, 2017, the Department, USDA and Cornell Cooperative Extension hosted meetings in the afternoon and evening to discuss ECFF, its life cycle, its potential impact, and the proposed quarantine area and regulated area accompanying restrictions. Approximately 20 cherry growers attended the meetings.

On February 5, 2018, February 6, 2018, and February 21, 2018, the Department participated in meetings in Lockport, Newark, and Albany, respectively. Like the meeting in November, the Department presented information on ECFF, its life cycle, its potential impact, and the proposed quarantine area and accompanying restrictions. Approximately 100 growers attended the sessions in Lockport and Newark, and 150 growers attended the Albany meeting.

#### **Job Impact Statement**

##### 1. Nature of impact:

It is anticipated that the rule will not have a negative impact on jobs and employment opportunities in New York, since regulated parties will incur no costs in complying with this rule.

##### 2. Categories and numbers affected:

It is anticipated that the rule will not affect any jobs or employment opportunities in New York.

##### 3. Regions of adverse impact:

There are no regions of adverse impact since the rule will not affect and jobs or employment opportunities in New York.

##### 4. Minimizing adverse impact:

Approaches for minimizing adverse economic impact to jobs and employment opportunities were considered. The Department has sought to minimize adverse impact of the ECFF quarantine by proposing the use of limited permits issued by the Commissioner or compliance agreements between the Department and regulated parties. These permits and agreements allow the shipment of regulated articles

without State or federal inspection, with the exception of regulated articles leaving the regulated area which are banned from entry into cherry producing counties restricted by the USDA. There is no charge for a limited permit or compliance agreement. Given all of the facts and circumstances, the regulations minimize adverse economic impact as much as is currently possible.

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## State Commission of Correction

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

#### Specialized Secure Juvenile Detention Facilities for Older Youth (SSDs)

**I.D. No.** CMC-27-18-00002-P

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

**Proposed Action:** Addition of Parts 7301, 7302, 7305, 7306, 7308, 7309, 7310, 7311, 7312, 7313, 7320, 7322, 7326, 7328, 7331, 7332, 7334, 7336, 7342, 7346, 7350, 7352, 7354, 7356 and 7360 to Title 9 NYCRR.

**Statutory authority:** Correction Law, section 45(6) and (15)

**Subject:** Specialized secure juvenile detention facilities for older youth (SSDs).

**Purpose:** To enact minimum standards and regulations for the management of SSDs.

**Substance of proposed rule (Full text is posted at the following State website: [www.scoc.ny.gov](http://www.scoc.ny.gov)):** Parts 7301, 7302, 7305, 7306, 7308, 7309, 7310, 7311, 7312, 7313, 7320, 7322, 7326, 7328, 7331, 7332, 7334, 7336, 7342, 7346, 7350, 7352, 7354, 7356 and 7360 of Title 9 NYCRR are added to provide as follows:

Part 7301 (Legal Authority): Correction Law section 40(2) includes a specialized secure juvenile detention facility for older youth (SSD) within the definition of "local correctional facility." Thus, all oversight and regulatory duties and responsibilities of the Commission of Correction (Commission) set forth in Article 3 of the Correction Law with regard to local correctional facilities shall now pertain to such SSDs.

Part 7302 (Definitions): Provides definitions for common terms utilized throughout the Chapter.

Part 7305 (Admissions and Intake): SSDs shall ensure that all youth are admitted in accordance with law and in a manner which protects the safety of all persons and the security of the facility. Such admission shall include adequate identification procedures, necessary searches, a health screening, the issue of personal hygiene items and clothing, telephone calls and an orientation to facility rules and information.

Part 7306 (Security and Supervision): SSDs shall operate in a manner that provides for the adequate supervision of youth and for a safe and secure environment. Adequate supervision shall include minimum supervision levels inside and outside living areas, the maintenance of supervisory records, and the performance of formal youth population counts. Additionally, SSDs shall take measures to ensure key control, tool and equipment control, perimeter control, and the inspection of locks and other securing devices.

Part 7308 (Visitation): SSDs shall ensure that youth receive contact visitation by providing sufficient space for a visiting room, establishing and publishing a visitation schedule that allows for two (2) hours of weekly visitation per youth, and affording effective visitor identification and registration.

Part 7309 (Food Services): SSDs shall maintain a facility food service program sufficient to satisfy the daily nutritional needs of each youth and compliant with both sanitation requirements and youth religious and medical needs.

Part 7310 (Health Services): Adequate health care and health care services shall be provided to all SSD youth to promote their well-being through the prevention, detection, treatment and management of disease and disability. Such services shall include the availability of both clinical and ambulatory health care services. Furthermore, arrangements must be made for the availability of emergency medical services, the provision of medical diets, and the maintenance of youth medical records.

Part 7311 (Mental Health Services): SSD youth shall be provided uniform access to comprehensive mental health services, including mental health screening, and emergency and inpatient mental health services.

Part 7312 (Youth Personal Hygiene): SSDs shall provide for and maintain standards of personal hygiene for youth, including the opportunity for daily showers and shaving, haircuts, and the provision of clothing, personal health care items, bedding and linen.

Part 7313 (Classification): SSDs shall establish, implement, and maintain a formal and objective system for the consistent classification of facility youth, which shall include an initial screening and assessment, the assignment of the youth to an appropriate facility living unit upon facility admission, and reassessment reviews.

Part 7320 (Maximum Facility Capacity): In order to promote a safe, secure and healthy environment, there shall be a limit on the total number of youth confined at any given time within a SSD. Each individual occupancy room shall contain at least seventy (70) square feet of floor space and contain one bed and mattress, and have available at least one functioning toilet, one functioning sink, and one functioning shower for every six (6) youth contained within a living unit.

Part 7322 (Reportable Incidents): In order to provide a mechanism by which SSD operations, policies and procedures can be monitored, evaluated and improved, each SSD shall internally review and assess all incidents of a serious or potentially problematic nature, and report such incidents to the Commission.

Part 7326 (Printed Material and Publications): SSD youth shall generally be entitled to receive printed material and publications suitable for minors, obtained from any approved vendor, including but not limited to bookstores or publishers.

Part 7328 (Exercise, Recreation and Leisure Activities): Each SSD shall provide youth with at least two hours per day of exercise, recreation and leisure activities, forty-five (45) minutes of which shall generally be held in an outdoor recreation area.

Part 7331 (Access to Legal Services): SSD youth shall be allowed access to legal services for the legal preparation of any matter, action or proceeding. Legal services shall include access to legal counsel, the Ombudsman and a notary public.

Part 7332 (Grievance Program): In order to provide an effective and impartial procedure for the timely resolution of youth complaints, SSDs shall establish, implement and maintain a formal youth grievance program. Such program shall include the availability of grievance forms, necessary assistance to youth, and the ability to appeal facility determinations to the Commission's Citizens' Policy and Complaint Review Council (CPCRC).

Part 7334 (Correspondence and Telephone): SSDs shall develop written policies and procedures that govern correspondence and telephone usage, including necessary assistance to youth in writing correspondence, the provision of writing materials and first-class postage for at least two one-ounce pieces of correspondence each week, and the collection and delivery of mail via to and from the United States Postal Service.

Part 7336 (Religion): SSDs shall allow for a youth's religious observance in a manner that does not constitute a threat to the safety, security or operational stability of the facility, or the safety, security or health of any person. Youth shall have a right to hold any religious belief, and to be affiliated with any religious faith, including participation in congregational religious activities, the celebration of religious holidays or festivals, and the possession and use of religious articles.

Part 7342 (Deathbed and Funeral Visits): SSD youth shall be permitted to visit family members when the death of a family member is imminent or after death has occurred, subject to the expeditious review, assessment and approval of the facility director and sheriff.

Part 7346 (Nondiscriminatory Treatment): SSDs shall develop written policies and procedures designed to prevent the unlawful discriminatory treatment of youth in the facility based upon race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, disability, or any other characteristic protected by federal or state law. The areas addressed by such policies shall include, but shall not be limited to, educational, religious, and vocational programs, work assignments, classification, disciplinary and grievance decisions, and consideration for program participation.

Part 7350 (Sanitation): SSDs shall develop and implement a system that ensures facility sanitation, including provisions for general facility sanitation, food service sanitation, insect and rodent control, waste disposal, and the performance of regular sanitation inspections.

Part 7352 (Fire Prevention and Safety): In order to safeguard the lives and property of all occupants, and to minimize the possibility of fire emergencies or other similar hazards, each SSD shall practice proper fire prevention and safety measures, which shall include compliance with all applicable laws, codes, rules and regulations related to fire safety and prevention. Each facility shall undergo weekly fire and safety inspections by staff, and an annual inspection by the agency having code enforcement authority thereto.

Part 7354 (Environmental Health and Safety): Environmental conditions significantly influence the overall effectiveness of facility operations. Standards for lighting, air quality, temperature and noise levels are

designed to preserve the health and well-being of youth and staff members and to promote the operational stability and security of the facility. Each SSD shall maintain compliance with all applicable laws, codes, rules and regulations governing lighting, water supply, plumbing, noise control, heating control, ventilation, heating and ventilation.

Part 7356 (Good Behavior Allowances and Sentence Calculation): SSD youth serving a definite sentence of imprisonment may receive time allowances as discretionary reductions of the term of the sentence, as provided by law. Whenever a good behavior allowance is granted, withheld, forfeited, canceled or restored, in whole or in part, the SSD director must inform the sheriff, who is charged with crediting applicable jail time to a sentence.

Part 7360 (Variances): The Commission recognizes the need to provide a mechanism by which a SSD may apply for a variance to Commission regulations when situations exist or arise that would prevent or alter the facility's ability to meet such requirement. The Commission shall grant such variances only under specified conditions and when doing so would not jeopardize the safety, security, or operational stability of the facility.

**Text of proposed rule and any required statements and analyses may be obtained from:** Deborah Slack-Bean, Senior Attorney, New York State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210, (518) 485-2346, email: Deborah.Slack-Bean@scoc.ny.gov

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

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

#### Regulatory Impact Statement

##### 1. Statutory authority:

Subdivision (6) of section 45 of the Correction Law authorizes the Commission to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all persons confined in the correctional facilities of New York State. Subdivision (15) of section 45 of the Correction Law allows the Commission to adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of its functions, powers and duties. County Law section 218-a(6) and Correction Law section 500-p require specialized secure detention facilities for older youth to be regulated and certified by the Office of Children and Family Services (OCFS) in conjunction with the Commission.

##### 2. Legislative objectives:

Enactment of "Raise the Age" legislation (RTA) was an initiative of Governor Andrew Cuomo for several years, as New York was one of only two States left that still considered all 16 and 17-year-olds automatically criminally responsible. Consistent with adolescent developmental needs and the Prison Rape Elimination Act (PREA), the RTA recognizes the potential vulnerability and treatment needs of younger persons who will remain criminally responsible for their actions. Thus, such persons are required to be housed in discrete local facilities (i.e. specialized secure detention facilities) that are not jails, pending adjudication and for short sentences, and in specially designated facilities operated by the Department of Corrections and Community Supervision for longer sentences. This proposed rule outlines requirements under the RTA for specialized secure detention facilities for older adolescents. By including specialized secure detention facilities for older youth within the Correction Law section 40(2) definition of "local correctional facility," the Legislature intended the Commission to promulgate regulations for the construction, renovation and certification of such facilities.

##### 3. Needs and benefits:

The proposed rule is needed to fulfill the statutory mandates of the RTA. As noted in the "Summary of the Proposed Rule," the RTA is a necessary change to New York State's laws to address how youth are processed through the criminal and juvenile justice systems. By including specialized secure detention facilities for older youth within the Correction Law section 40(2) definition of "local correctional facility," the Commission is bound by Correction Law section 45(6) to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment and supervision of the youth confined therein. As proposed, the Commission affirms that the regulations will serve to ensure that specialized secure detention facilities for older youth are managed in a safe, stable and humane manner, with operations and incidents sufficiently documented to allow for sufficient oversight by the Commission and OCFS.

##### 4. Costs:

Initial cost outlay by county governments is necessary to implement the requirements of the RTA. However, the RTA adds a new section 54-m to the State Finance Law which provides that qualifying counties are eligible for reimbursement of one hundred percent of the costs associated with implementation of the RTA. Those counties that would not automatically qualify are those that have enacted a budget that is subject to the provisions of General Municipal Law section 73(c) that has exceeded the limits

of that law, or counties that are not subject to General Municipal Law section 73(c). Regardless, such counties may qualify for such state aid with a hardship waiver. Additionally, section 104-a of Part WVV of Chapter 59 provides that funding shall be available for one hundred percent of a county's costs associated with the transport of youth by the sheriff that would not otherwise have occurred absent the provisions of chapter 59 of the laws of 2017. The State has appropriated \$19 million to finance local detention costs and renovation.

With respect to overall costs, it should be noted that these same youth have been held in local jails, at county expense, and have been maintained separately from older inmates due to the requirements of Correction Law and Commission regulations. Thus, some expenses currently exist. In addition, in the event a county does not qualify for one hundred percent reimbursement under the RTA, reimbursement of the costs for new construction or substantial remodeling currently available for other juvenile detention facilities will be available for the same specialized secure detention outlays.

##### 5. Local government mandates:

Counties must meet the deadlines established in the RTA to house 16-year-old adolescent offenders in specialized secure juvenile detention facilities beginning October 1, 2018, and 17-year-olds beginning October 1, 2019.

In addition, New York City must transfer all 16 and 17-year-olds currently held at Rikers Island to a specialized secure juvenile detention facility established for that purpose by October 1, 2018. The counties will have opportunities to work jointly to create regional facilities that may reduce the workload of a single county administering and operating a specialized secure detention facility. Counties may also engage an authorized child caring agency to operate specialized secure juvenile detention facilities.

##### 6. Paperwork:

A county will need to obtain certification of the specialized secure juvenile detention facility every two years. There will also be paperwork associated with tracking costs and claiming reimbursement. Additionally, there will continue to be records retention requirements for the youth and reporting requirements related to incidents.

##### 7. Duplication:

There should be no duplication of effort, as this is a single population that is being removed from the adult system to the juvenile system. This proposed rule does not duplicate other state or federal requirements.

##### 8. Alternatives:

There were no significant alternative proposals to this rule, as the RTA mandates creation of specialized secure juvenile detention facilities and the proposal is consistent with the RTA's direction and prevailing standards.

##### 9. Federal standards:

This proposed rule is consistent with federal standards.

##### 10. Compliance schedule:

Specialized secure detention facilities must be available to house 16 year-old youth who are alleged to have committed felonies on or after October 1, 2018 and 17 year-old youth by October 1, 2019. In addition, Correction Law section 500-p mandates that all 16 and 17-year-old youth who are currently housed at Rikers Island must be moved to a specialized juvenile detention facility for that purpose by October 1, 2018.

#### Regulatory Flexibility Analysis

##### 1. Effect of rule:

Each county must have adequate specialized secure detention facilities available to meet the needs of their populations. Counties (including New York City) that choose to operate a specialized secure detention facility, either alone or in conjunction with other counties, are affected by the proposed rule. The most significant impact will be on a county agency that is appointed to jointly administer detention with the applicable sheriff. The exact number to be affected in this way is unknown, as it is not known how many counties will opt to operate a specialized secure detention facility. Counties may choose to participate in a regional approach with other counties instead of operating their own specialized secure detention facilities. As for small businesses affected, the extent to which counties will choose to contract nonprofit authorized child caring agencies to operate a facility is unknown.

##### 2. Compliance requirements:

The county sheriffs and New York City currently house 16 and 17-year-olds accused of and serving definite sentences for felonies in local jails in areas separate from adult inmates. To comply with the proposed rule, the counties will need to determine alternate locations to house such youth in specialized secure detention. Unlike the other counties, New York City will also be required to transfer all current 16 and 17-year-olds held at Rikers Island to one or more specialized juvenile detention facilities for that purpose by October 1, 2018.

For New York City and counties electing to operate a specialized secure juvenile detention facility for older youth, the proposed regulations will impose various compliance requirements on each program area of facility

operations, to include the establishment and implementation of facility policies and procedures, the facility director's review and determination of decisions regarding a youth's management, the formation of a formal grievance process, and the reporting of significant facility incidents to the Commission.

3. Professional services:

It is likely that significant services for the construction or substantial remodeling required for the creation of specialized secure detention facilities will be necessary to meet the obligations of the RTA and this proposed rule. Additionally, there will be several professional facility staff positions required at each facility, such as teachers, medical staff, and counseling staff. Some of these staff may already exist in the facilities where such adolescents are currently being served and will transfer to the new facility, but some portion of the new facilities will likely generate new positions or contractual services.

4. Compliance costs:

Initial capital costs are not able to be determined as the construction or renovation costs will vary depending on which counties opt to operate a facility and what will be required for startup. However, the RTA provides state aid to qualifying localities for up to one hundred percent of the costs incurred for implementation. For counties that would not qualify, existing levels of state aid for construction of new or substantially remodeled detention facilities are carried over for specialized secure detention facilities. In addition, the RTA provides for reimbursement of one hundred percent of the increased cost of sheriff transport associated with the RTA.

5. Economic and technological feasibility:

The RTA requires the operation of specialized secure detention facilities. Currently, certain counties and New York City operate secure detention facilities pursuant to County Law section 218-a. This proposed rule, together with OCFS regulations, permits collocation of specialized secure detention facilities with secure detention facilities so that operators of such facilities can take advantage of unused space. Technological resources exist to create buildings with the necessary security features. Moreover, as noted above, state aid is potentially available to defray costs. Therefore, the requirements of this proposal are economically and technically feasible.

6. Minimizing adverse impact:

This proposal, together with OCFS regulations, minimizes adverse impact by permitting specialized secure detention facilities to be collocated with secure detention facilities, thus allowing for use of existing unused space. In addition, financial assistance available for costs will minimize adverse impact. Lastly, where compliance with a specific regulation cannot be achieved due to a temporary condition or situation, or is to be achieved in a manner other than that which is specified in the regulation, the proposed rule does allow for a facility's application, and the Commission's approval of, a variance.

7. Small business and local government participation:

In conjunction with OCFS, the Commission is the agency charged with certifying and regulating the specialized secure detention facilities; thus, the regulations and rules must come from the Commission as required by section 45(6) of the Correction Law. Prior to publication of this proposal, meetings were held with certain detention providers regarding forthcoming requirements. The proposal will be available to affected parties for comment.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

Each county must have adequate specialized secure detention facilities available to meet the needs of their populations. Counties serving rural areas that choose to operate a specialized secure detention facility, either alone or in conjunction with other counties, will be affected by the rule. The most significant impact for those counties choosing to operate a specialized secure detention facility will be on a county agency that is appointed to jointly administer detention with the applicable sheriff. This burden is the need to administer and operate these new facilities. The exact number to be affected in this way is unknown, as it is not known how many counties serving rural areas will opt to operate a specialized secure detention facility. Counties may choose to participate in a regional approach with other counties instead of operating their own specialized secure detention facilities.

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

At this time, counties serving rural areas must meet the deadlines established in the RTA to house 16-year-olds in specialized secure detention facilities by October 2018 and 17-year-olds by October 2019. Counties serving rural areas will have opportunities to work jointly to create regional facilities, that may reduce the workload. Counties may also engage an authorized child caring agency to operate specialized secure detention facilities.

Counties serving rural areas will need to obtain certification of a specialized secure detention facility every two years. There will also be

paperwork associated with tracking costs and claiming reimbursement. Additionally, the proposed regulations will impose various compliance requirements on each program area of facility operations, to include the establishment and implementation of facility policies and procedures, the facility director's review and determination of decisions regarding a youth's management, the formation of a formal grievance process, and the reporting of significant facility incidents to the Commission.

It is likely that services for the construction or substantial remodeling required for the creation of specialized secure detention facilities will be necessary to meet the obligations of the RTA and this proposed rule. Additionally, there will be several professional facility staff positions, such as teachers, medical staff, and counseling staff. Some of these staff may already exist in the facilities where such adolescents are being served and will transfer to the new facility, but some portion of the new facilities will likely generate new positions or contractual services.

3. Costs:

Initial capital costs are currently undetermined as the construction or renovation costs will vary depending on which counties serving rural areas opt to operate a facility individually or jointly and required startup costs. However, the RTA provides state aid to qualifying localities for up to one hundred percent of the costs incurred for implementation. For counties serving rural areas that would not qualify, existing levels of state aid for construction of new or substantially remodeled detention facilities are carried over for specialized secure detention facilities. In addition, the RTA provides for reimbursement of one hundred percent of the increased cost of sheriff transport associated with the RTA.

4. Minimizing adverse impact:

This regulatory proposal, together with OCFS regulations, minimize adverse impact on rural areas by permitting specialized secure detention facilities to be collocated with secure detention facilities, thus allowing for use of existing unused space. In addition, the financial assistance available for costs associated with new construction or substantial remodeling, and one hundred percent reimbursement for costs associated with the RTA, will minimize adverse impact. Lastly, where compliance with a specific regulation cannot be achieved due to a temporary condition or situation, or is to be achieved in a manner other than that which is specified in the regulation, the proposed rule does allow for a facility's application, and the Commission's approval of, a variance.

5. Rural area participation:

The regulatory proposal will be available to affected parties for comment and will be thoroughly addressed through statewide trainings and guidance documentation distributed to affected parties and counties, including those that serve rural communities.

**Job Impact Statement**

The newly created specialized secure detention facilities are not expected to have a negative impact on the job market. There may be a positive impact resulting from the need to contract for construction to create specialized secure detention facilities and ongoing employment to staff and service such facilities.

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## Department of Financial Services

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### NOTICE OF ADOPTION

**Registration Requirements and Prohibited Practices for Credit Reporting Agencies**

**I.D. No.** DFS-40-17-00003-A

**Filing No.** 544

**Filing Date:** 2018-06-13

**Effective Date:** 2018-07-03

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

**Action taken:** Addition of Part 201 to Title 23 NYCRR.

**Statutory authority:** Financial Services Law, sections 102, 201, 202, 301, 302 and 408

**Subject:** Registration Requirements and Prohibited Practices for Credit Reporting Agencies.

**Purpose:** To address deficient practices of consumer credit reporting agencies and protect user of, and the market for financial services.

**Substance of final rule:** Section 201.00 "Introduction," introduces the rule.

Section 201.01 “Definitions,” defines terms used throughout the rule.

Section 201.02 “Registration,” requires that every consumer credit reporting agency that assembles, evaluates, or maintains a consumer credit report on one thousand or more New York consumers within the previous twelve-month period must register with the Superintendent of Financial Services (“Superintendent”). Registrants shall be subject to examination by the Superintendent as necessary.

Section 201.03 “Acting Without a Registration,” prohibits any individual or entity required to be registered from assembling, evaluating, or maintaining a consumer credit report on any consumers located in New York State if they have not registered with the Superintendent. Further prohibits any Department of Financial Services (“DFS”) regulated entity from paying any fee or transmitting any information to any consumer credit reporting agency who fails to register as required.

Section 201.04 “Information Reporting Requirements,” requires annual reporting of information requested by the Superintendent, and such other regular reporting as the Superintendent may require. Additionally, the Superintendent may address an inquiry to a consumer credit reporting agency required to be registered under the Part in relation to its assembly, evaluation, or maintenance of any consumer credit report on any consumers located in New York. The information disclosed by consumer credit reporting agencies is deemed confidential and not subject to disclosure unless its determined necessary for the Superintendent or DFS to carry out their powers and duties conferred by law.

Section 201.05 “Revocation and Suspension of a Registration,” authorizes the Superintendent to refuse to renew, revoke, or suspend the registration of any consumer credit reporting agency if, after notice and hearing, the superintendent determines that the registrant or any member, principal, officer, director, or controlling person of the registrant, has engaged in any of the enumerated improper conduct.

Section 201.06 “Prohibited Practices,” sets forth certain conduct in which a consumer credit reporting agency may not engage.

Section 201.07 “Cybersecurity,” sets forth that consumer credit reporting agencies are deemed covered entities for the purpose of Part 500 of 23 NYCRR. The section further sets forth transition periods specific for consumer credit reporting agencies to come into compliance with Part 500.

Section 201.08 “Authority of the Superintendent Preserved,” states that nothing in this Part can be construed to limit or affect the Superintendent’s lawful authority.

Section 201.09 “Severability,” states that in the event a specific provision of the rule is adjudged invalid, such judgment shall not impair the validity of the remainder of the rule.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 201.00, 201.01, 201.02, 201.03, 201.04, 201.05, 201.06 and 201.07.

**Text of rule and any required statements and analyses may be obtained from:** Eamon G. Rock, NYS Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 474-4567, email: Eamon.Rock@dfs.ny.gov

#### **Revised Regulatory Impact Statement**

A revised Regulatory Impact Statement (“RIS”) is not required for the adoption of new Part 201 to 23 NYCRR because the non-substantive revisions to the regulation do not require a change to the previously published RIS.

#### **Revised Regulatory Flexibility Analysis**

A revised Regulatory Flexibility Analysis for Small Businesses and Local Governments (“RFA”) is not required for the adoption of new Part 201 to 23 NYCRR because the non-substantive revisions to the regulation do not require a change to the previously published RFA.

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

A revised Rural Area Flexibility Analysis (“RAFA”) is not required for the adoption of new Part 201 to 23 NYCRR because the non-substantive revisions to the regulation do not require a change to the previously published RAFA.

#### **Revised Job Impact Statement**

A revised Job Impact Statement (“JIS”) is not required for the adoption of new Part 201 to 23 NYCRR because the non-substantive revisions to the regulation do not require a change to the previously published JIS.

#### **Initial Review of Rule**

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

#### **Assessment of Public Comment**

The Department received a number of comments to the proposed Part 201 of NYCRR 23 concerning the regulation of Credit Reporting Agen-

cies (“CRAs”). The commenters included industry members, trade groups, consumer groups, and individual consumers. Having considered each of these comments, the Department has made a number of changes to the final regulation, none of which, individually or collectively, materially alter the purpose, meaning, or effect of the regulation.

Comments were made with respect to 23 NYCRR Part 201 sections 201.01 (definitions); 201.02 (regarding registration requirements); 201.03 (regarding acting without a registration); and 201.04 (regarding information reporting requirements); 201.05 (regarding revocation and suspension of a registration); 201.06 (regarding prohibited practices); and 201.07 (regarding cybersecurity requirements).

Some commenters raised objections to the legal authority of the Department to promulgate this regulation. These commenters further asserted that the regulation as proposed would violate federal law and thus would be preempted. One commenter also raised various state and federal constitutional objections to the regulation.

The Department has considered the legal arguments raised in these comments and has found them to be without merit, particularly given the clarifications made in the final regulation. Among other powers and responsibilities that provide a firm basis for this regulation, the Superintendent has clear and unquestionable statutory authority to take actions to protect consumers of financial products and services in this State and that is the primary purpose of the regulation. See, e.g., N.Y. Financial Services Law § 102, 201, 202, 301, 408. The regulation adequately protects any Constitutional rights that a CRA has in relation to the matters in the regulation, and is not violative of any provision of the state or federal constitutions. Further no portion of the regulation is in conflict with, or otherwise preempted, by federal law. To the extent necessary, the Department has made clarifications in the final regulation that make this fact even more clear. The regulation has been promulgated in complete compliance with all statutory requirements and the provisions of the regulation are in accord with all requirements of state law.

The Department addresses each of the comments in full in the complete version of the assessment of public comments, which will be posted on the Department’s website. Where appropriate, the Department made certain non-substantive revisions, as discussed in the complete version of the assessment.

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## Higher Education Services Corporation

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### EMERGENCY RULE MAKING

#### NYS Part-Time Scholarship (PTS) Award Program

**I.D. No.** ESC-27-18-00003-E

**Filing No.** 550

**Filing Date:** 2018-06-19

**Effective Date:** 2018-06-19

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

**Action taken:** Addition of section 2201.20 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 653, 655 and 667-c-1

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

**Specific reasons underlying the finding of necessity:** This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s (HESC) Emergency Rule Making seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the 2017-18 academic year, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students pursuing their undergraduate studies at a community college at the State University of New York or the City University of New York. Decisions on applications for student financial aid programs are customarily made prior to the beginning of the term. Therefore, it is critical that the terms of the Program as provided in the regulation be effective immediately in order for HESC to begin processing scholarship

applications. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the Program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

**Subject:** NYS Part-Time Scholarship (PTS) Award Program.

**Purpose:** To implement the NYS Part-time Scholarship (PTS) Award Program.

**Text of emergency rule:** New section 2201.20 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

*Section 2201.20 New York State Part-time Scholarship (PTS) Award Program.*

(a) *Definitions. As used in Education Law, section 667-c-1 and this section, the following terms shall have the following meanings:*

(1) *Good academic standing shall mean having a minimum cumulative grade point average of 2.0.*

(2) *Interruption of study shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, death of a family member; medical leave, military service, service in the Peace Corps or parental leave.*

(3) *Program shall mean the New York State Part-time Scholarship (PTS) Award Program codified in Education Law, section 667-c-1.*

(b) *Eligibility. An applicant must satisfy the requirements of Education Law, section 667-c-1 and the general eligibility requirements provided in Education Law, section 661.*

(c) *Administration.*

(1) *Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.*

(2) *For purposes of determining priority, financial need shall be established based on the federal expected family contribution reflected on the applicant's federal student aid report, with the lowest expected family contribution evidencing the greatest financial need.*

(3) *Recipients of an award shall:*

(i) *request payment annually at such times, on forms and in a manner specified by the corporation;*

(ii) *provide any information necessary for the corporation to determine compliance with the program's requirements.*

(4) *The corporation shall maintain data relating to the performance of award recipients including, but not limited to, degree completion rates. All such data shall be deemed confidential and the corporation shall only disclose aggregate data unless otherwise required by law.*

(d) *Awards.*

(1) *The amount of the award shall be determined in accordance with section 667-c-1 of the education law.*

(2) *A recipient of an award must remain in good academic standing, as defined in this section, and remain continuously enrolled (excluding summer and winter terms) to be eligible for payment of future awards, excluding any allowable interruption of study.*

(3) *Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time after verification and certification by the institution of the recipient's grade point average and other eligibility requirements.*

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 16, 2018.

**Text of rule and any required statements and analyses may be obtained from:** Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

#### **Regulatory Impact Statement**

Statutory authority:

The New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate regulations and administer the NYS Part-time Scholarship (PTS) Award Program (Program) is codified within Article 14 of the Education Law. In particular, Part KKK of Chapter 59 of the Laws of 2017 created the Program by adding a new section 667-c-1 to the Education Law. Subdivision 6 of section 667-c-1 of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC, and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 667-c-1 to create the Program, which is aimed at reducing tuition expenses for students who attend a State University of New York (SUNY) or City University of New York (CUNY) community college.

Needs and benefits:

Many studies have underscored the necessity of a college degree in today's global economy. The Center on Education and the Workforce (CEW) at Georgetown University found that by 2020, 65 percent of all jobs will require some form of postsecondary education or training, compared to 59 percent of jobs in 2010. The CEW report finds that having a skilled workforce is critical if the United States is to "remain competitive, attract the right type of industry, and engage the right type of talent in a knowledge-based and innovative economy." At the current pace, the United States will fall short of its skilled workforce needs by 5 million workers. Furthermore, the disparity in earning potential between high school graduates and college graduates has never been greater, nor has the student loan debt – which stands at \$1.3 trillion – being carried by those who have pursued a postsecondary education.

Recognizing the growing need for workers with postsecondary education and training, the wage earnings benefits for those with training beyond a high school diploma, the rapidly rising college costs and mounting student loan debt, this Program awards students attending a public community college up to \$1,500 per semester to offset their tuition costs. To be eligible for a Program award, students must be enrolled in at least six but less than 12 credits per semester at a SUNY or CUNY community college and maintain a grade point average of 2.0. Payments will be made directly to colleges on behalf of students upon certification of their eligibility at the end of the academic term.

Costs:

a. The estimated cost to the agency for the implementation of, or continuing compliance with this rule is \$719,344.

b. The maximum cost of the program to the State is \$3,129,000 in the first year based upon budget estimates.

d. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

e. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application together with supporting documentation for each year they wish to receive an award up to and including two consecutive years of eligibility.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals at SUNY and CUNY with regard to this Program. Several alternatives were considered in the drafting of this regulation, such as the definition of financial need. Given the statutory language as set forth in section 667-c-1 of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

#### **Regulatory Flexibility Analysis**

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Emergency Rule Making, seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This rule implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies at a community college at the State University of New York or City University of the State of New York. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts by providing community college students with additional tuition award benefits. Providing students with direct financial assistance will encourage them to attend college in New York State, which will provide an economic benefit to the State's small businesses and local governments as well.

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

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts by providing community college students with additional tuition award benefits. Providing students with direct financial assistance will encourage them to attend college in New York State, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

#### **Job Impact Statement**

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts by providing community college students with additional tuition award benefits. Providing students with direct financial assistance will encourage them to attend college in New York State and possibly seek employment opportunities in the State as well, which will benefit the State.

## **EMERGENCY RULE MAKING**

### **New York State Masters-in-Education Teacher Incentive Scholarship Program**

**I.D. No.** ESC-27-18-00004-E

**Filing No.** 551

**Filing Date:** 2018-06-19

**Effective Date:** 2018-06-19

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

**Action taken:** Addition of section 2201.17 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 653, 655 and 669-f

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

**Specific reasons underlying the finding of necessity:** This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2016 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students attending a New York State public institution of higher education who pursue a graduate program of study in an education program leading to a career as a teacher in public elementary or secondary education. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of the program as provided in the regulation be effective immediately so that students can make informed choices and in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

**Subject:** New York State Masters-in-Education Teacher Incentive Scholarship Program.

**Purpose:** To implement the New York State Masters-in-Education Teacher Incentive Scholarship Program.

**Text of emergency rule:** New section 2201.17 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

*Section 2201.17 New York State Masters-in-Education Teacher Incentive Scholarship Program.*

(a) *Definitions. As used in section 669-f of the Education Law and this section, the following terms shall have the following meanings:*

(1) *Academic excellence shall mean the attainment of a cumulative grade point average of 3.5 or higher upon completion of an undergraduate program of study from a college or university located within New York State.*

(2) *Approved master's degree in education program shall mean a program registered at a New York State public institution of higher education pursuant to Part 52 of the Regulations of the Commissioner of Education.*

(3) *Award shall mean a New York State Masters-in-Education Teacher Incentive Scholarship Program award pursuant to section 669-f of the New York State education law.*

(4) *Classroom instruction shall mean elementary and secondary education instruction, as required by the New York State Education Department, including enrichment and supplemental instruction that may be offered to a subset of students. Classroom instruction shall not include support services, such as counseling, speech therapy or occupational therapy services.*

(5) *Elementary and secondary education shall mean pre-kindergarten through grade 12 in a public school recognized by the board of regents or the university of the state of New York, including charter schools authorized pursuant to article fifty-six of the education law.*

(6) *Full-time study shall mean the number of credits required by the institution in each term of the approved master's degree in education program. A recipient may complete fewer credits than required for full-time study if he or she is in their last term and fewer credit hours are necessary to complete their degree program. In this case, the award amount shall be based on the tuition reported by the institution.*

(7) *Initial certification shall mean any certification issued pursuant to part 80 of this title which allows the recipient to teach in a classroom setting on a full-time basis.*

(8) *Interruption in graduate study or employment shall mean an allowable temporary period of leave for a definitive length of time due to circumstances approved by the corporation, including, but not limited to, maternity/paternity leave, death of a family member, or military duty.*

(9) *Program shall mean the New York State Masters-in-Education Teacher Incentive Scholarship Program codified in section 669-f of the education law.*

(10) *Public institution of higher education shall mean the state university of New York, as defined in subdivision 3 of section 352 of the education law, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.*

(11) *Rank shall mean an applicant's position, relative to all other applicants, based on cumulative grade point average upon completion of an undergraduate program of study from a college or university located within New York State.*

(12) *School year shall mean the period commencing on the first day of July in each year and ending on the thirtieth day of June next following.*

(13) *Successful completion of a term shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-f of the Education Law; (ii) maintained full-time status as defined in this section; and (iii) possessed a cumulative grade point average of 3.5 or higher as of the date of the certification by the institution.*

(14) *Teach in a classroom setting on a full-time basis shall mean continuous employment providing classroom instruction in a public elementary or secondary school, including charter schools, Boards of Cooperative Educational Services (BOCES) and public pre-kindergarten programs, located within New York State, for at least 10 continuous months, each school year, for a number of hours to be determined by the labor contract between the teacher and employer, or if none of the above apply, the chief administrator of the school.*

(b) *Eligibility. An applicant must satisfy the eligibility requirements contained in both sections 669-f and 661 of the education law, provided however that an applicant for this Program must meet the good academic standing requirements contained in section 669-f of the education law.*

(c) *Priorities. If there are more applicants than available funds, the following provisions shall apply:*

(1) *First priority shall be given to applicants who have received payment of an award pursuant to section 669-f of the education law for the*

academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic term for which payment is sought. First priority shall include applicants who received payment of an award pursuant to section 669-f of the education law, were subsequently granted an interruption in graduate study by the corporation for the academic year immediately preceding the academic year for which payment is sought. If there are more applicants than available funds, recipients shall be chosen by lottery.

(2) Second priority shall be given to up to five hundred new applicants, within the remaining funds available for the Program, if any. If there are more applicants than available funds, recipients shall be chosen by rank, starting at the applicant with the highest cumulative grade point average beginning in the 2016-17 academic year. In the event of a tie, distribution of any remaining funds shall be done by lottery.

(d) Administration.

(1) Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.

(2) Recipients of an award shall:

- (i) execute a service contract prescribed by the corporation;
- (ii) request payment at such times, on forms and in a manner specified by the corporation;
- (iii) receive such awards for not more than four academic terms, or its equivalent, of full-time graduate study leading to certification as a public elementary or secondary classroom teacher, including charter schools, excluding any allowable interruption of study;
- (iv) facilitate the submission of information from their employer attesting to the recipient's job title, the full-time work status of the recipient, and any other information necessary for the corporation to determine compliance with the program's employment requirements on forms and in a manner prescribed by the corporation; and
- (v) provide any other information necessary for the corporation to determine compliance with the program's requirements.

(e) Amounts.

(1) The amount of the award shall be determined in accordance with section 669-f of the education law.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time upon successful completion of the term subject to the verification and certification by the institution of the recipient's grade point average and other eligibility requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships limited to tuition, as authorized by section 669-f of the education law.

(f) Failure to comply.

(1) All award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to meet the statutory, regulatory, contractual, administrative or other requirement of this program.

(2) The interest rate for the life of the loan shall be fixed and equal to that published annually by the U.S. Department of Education for undergraduate unsubsidized Stafford loans at the time the recipient signed the service contract with the corporation.

(3) Interest shall begin to accrue on the day each award payment is disbursed to the institution.

(4) Interest shall be capitalized on the day the award recipient violates any term of the service contract or the date the corporation deems the recipient was no longer able or willing to perform the terms of the service contract. Interest on this capitalized amount shall continue to accrue and be calculated using simple interest until the amount is paid in full.

(5) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, prorate the amount owed commensurate with service completed, discharge the amount owed, or take such other appropriate action.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 16, 2018.

**Text of rule and any required statements and analyses may be obtained from:** Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

**Regulatory Impact Statement**

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Masters-in-Education Teacher Incentive Scholarship

Program ("Program") is codified within Article 14 of the Education Law. In particular, Subpart A of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-f to the Education Law. Subdivision 6 of section 669-f of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objectives and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-f to create the "New York State Masters-in-Education Teacher Incentive Scholarship Program" (Program). The objective of this Program is to incent New York's highest-achieving undergraduate students to pursue teaching as a profession.

Needs and benefits:

According to a recent Wall Street Journal article, many experts call teacher quality the most important school-based factor affecting learning. Studies underscore the impact of highly effective teachers and the need to put them in classrooms with struggling students to help them catch up. To improve teacher quality, New York State has significantly raised the bar by modifying the three required exams and adding the Educative Teacher Performance Assessment, known as edTPA, as part of the licensing requirement for all teachers. To supplement this effort, this Program aims to incentivize top undergraduate students to pursue their master's degree in New York State and teach in public elementary and secondary schools (including charter schools) across the State.

The Program provides for annual tuition awards to students enrolled full-time, at a New York State public institution of higher education, in a master's degree in education program leading to a career as a classroom teacher in elementary or secondary education. Eligible recipients may receive annual awards for not more than two academic years of full-time graduate study. The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending a graduate program full-time at the State University of New York (SUNY). Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Masters-in-Education Teacher Incentive Scholarship Program award must sign a service agreement and agree to teach in the classroom at a New York State public elementary or secondary school, which includes charter schools, for five years following completion of their master's degree. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

a. There are no application fees, processing fees, or other costs to the applicants of this Program.

b. It is anticipated that there will be no costs to the agency for the implementation of, or continuing compliance with this rule.

c. The maximum cost of the Program to the State is \$1.5 million in the first year, based upon budget estimates.

d. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

e. The source of the cost data in (c) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application, together with supporting documentation, for eligibility. Each year recipients will file an electronic request for payment together with sup-

porting documentation for up to two years of award payments. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

**Duplication:**

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

**Alternatives:**

The proposed regulation is the result of HESC’s outreach efforts to the State Education Department, the State University of New York and the City University of New York with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g of the Education Law, a “no action” alternative was not an option.

**Federal standards:**

This proposal does not exceed any minimum standards of the Federal Government and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal undergraduate unsubsidized Stafford loan rate in the event that the award is converted to a student loan.

**Compliance schedule:**

The agency will be able to comply with the regulation immediately upon its adoption.

**Regulatory Flexibility Analysis**

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s (“HESC”) Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master’s degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State’s small businesses and local governments as well.

**Rural Area Flexibility Analysis**

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master’s degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

**Job Impact Statement**

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master’s degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

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## Department of Law

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### NOTICE OF ADOPTION

**Change of Office Address (Lower Manhattan Location)**

**I.D. No.** LAW-13-18-00010-A

**Filing No.** 589

**Filing Date:** 2018-06-20

**Effective Date:** 2018-07-03

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

**Action taken:** Amendment of Parts 10-13, 16-25, 50, 53, 80, 91, 94, 96, 120, 121, 200 and 400 of Title 13 NYCRR.

**Statutory authority:** State Administrative Procedure Act, section 207

**Subject:** Change of office address (Lower Manhattan location).

**Purpose:** To update new address of the Lower Manhattan location.

**Summary:** Law Department rules previously referred to the former Lower Manhattan address of the Law Department. Rules are being updated to reflect new address. No other information is being changed.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 11.1(c), 16.1(c), 24.3(m)(3)(v), 121.8(c) and 121.9(a).

**Text of rule and any required statements and analyses may be obtained from:** Michael Jerry, Department of Law, 28 Liberty Street, New York, NY 10005, (212) 416-8808, email: michael.jerry@ag.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

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## Niagara Falls Water Board

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### NOTICE OF ADOPTION

**Adoption of Rates, Fees, and Charges**

**I.D. No.** NFW-01-18-00004-A

**Filing No.** 549

**Filing Date:** 2018-06-18

**Effective Date:** 2018-06-18

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

**Action taken:** Amendment of section 1950.20 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, section 1230-j

**Subject:** Adoption of Rates, Fees, and Charges.

**Purpose:** To pay for increased costs necessary to operate, maintain, and manage the system, and to meet covenants with the bondholders.

**Text or summary was published in:** the January 3, 2018 issue of the Register, I.D. No. NFW-01-18-00004-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** Sean W. Costello, Esq., General Counsel and Secretary, Niagara Falls Water Board, 5815 Buffalo Avenue, Niagara Falls, New York 14304, (716) 283-9770, email: scostello@nfwb.org

**Revised Regulatory Impact Statement**

A revised regulatory impact statement 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.

**Revised Regulatory Flexibility Analysis**

A revised regulatory flexibility analysis 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.

**Revised Rural Area Flexibility Analysis**

A revised rural area flexibility analysis 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.

**Revised Job Impact Statement**

A revised job impact statement 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.

**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.

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## Office for People with Developmental Disabilities

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### NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

**Site Based and Community Based Prevocational Services****I.D. No.** PDD-51-17-00006-ERP**Filing No.** 548**Filing Date:** 2018-06-18**Effective Date:** 2018-06-18

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

**Action Taken:** Amendment of Subpart 635-10 of Title 14 NYCRR.

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

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

**Specific reasons underlying the finding of necessity:** The emergency adoption of amendments that identify what site-based and community-based services are and clarify reimbursement requirements are necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system. Prevocational services are provided to individuals with developmental disabilities to prepare individuals for paid employment or unpaid meaningful community activities.

The emergency amendments amend existing regulations for Prevocational services to establish guidelines for when an individual can be paid less than federal/state minimum wage, provide an exception to the group size available under site-based and community-based prevocational services, add language that allows providers to bill for community prevocational services delivered on behalf of an individual while the individual is in another Medicaid service, and require providers to conduct an annual assessment. The regulations must be filed on an emergency basis to ensure individuals receive services that constitute a prevocational service and that adequately prepare individuals for competitive employment. Additionally, the emergency filing is necessary to update reimbursement requirements for providers.

**Subject:** Site Based and Community Based Prevocational Services.

**Purpose:** To clarify site-based and community-based services and clarify reimbursement requirements.

**Substance of emergency/revised rule (Full text is posted at the following State website: [https://opwdd.ny.gov/regulations\\_guidance/opwdd\\_regulations/emergency](https://opwdd.ny.gov/regulations_guidance/opwdd_regulations/emergency)):** OPWDD's regulations clarify what site based prevocational services are, describes the skills that site based prevocational services are intended to teach, and provide examples of what site based prevocational services can include.

The regulations specify that to participate in paid site based prevocational services the individual must have a demonstrated or assessed earning capacity relative to the prevocational task(s) involved, of less than 50 percent of the current state minimum wage, federal minimum wage or prevailing wage, and be expected to have such an earning capacity while participating in prevocational services.

The regulations specify that a provider must have a valid Department of Labor 14c Certificate and comply with all applicable Federal laws and regulations to pay less than minimum wage.

The regulations specify that effective one year from effective date of this regulation, site based prevocational services may only be provided at

a site that is certified by OPWDD as a site based prevocational services site.

The regulations provide an exception that allows site based prevocational services to be delivered in a non-certified site when conducting the required annual assessment.

The regulations specify that there must be no new enrollments into site based prevocational services located within day training programs that are sheltered workshops and specify that site based prevocational services may be provided in an agency-owned business or former day training/sheltered workshop program if the business or former program is in a setting that is certified as a site-based prevocational services site.

The regulations specify that if the integration standard as determined in the provider's original workshop transformation plan is not being met, or a change has been approved by OPWDD, there must be no new enrollments into site-based prevocational services.

The regulations specify that service providers must conduct an annual assessment to determine if site based prevocational services are consistent with the individual's habilitation plan, and prevocational services are needed to prepare the individual for competitive employment. The annual assessment must be done in a form and format prescribed by OPWDD.

The regulations clarify what community based prevocational services are, describes the skills that community based prevocational services are intended to teach, and provide examples of what community based prevocational services can include.

The regulations add staff training time as an allowable service.

The regulations specify that to participate in paid community based prevocational services, the individual must have a demonstrated or assessed earning capacity relative to the prevocational task(s) involved of less than 50 percent of the current state minimum wage, federal minimum wage, or prevailing wage and be expected to have such an earning capacity while participating in prevocational services.

The regulations add language that allows providers to bill for community prevocational services delivered on behalf of an individual while the individual is in another Medicaid service.

The regulations specify that community based prevocational services must be provided in the most integrated setting appropriate to the needs of the individual receiving such services.

The regulations specify that community based prevocational services may not be provided in OPWDD certified space. However, certified settings may be used for any combination of activities that provide time limited job readiness training and/or identify prevocational activities for the day. Activities must not exceed 2 hours per day.

The regulations specify that certified settings may be used for any combination of activities that provide services at the site when there is a significant circumstance in which service delivery in the community may jeopardize the health and safety of individuals as determined and documented by the provider agency administration or with prior approval from OPWDD based on the best interests of the individual(s).

The regulations specify that groups of individuals receiving site-based and community prevocational services are limited to a maximum of 8 individuals per group. However, group size may be increased to a maximum of 15 individuals if granted OPWDD approval and are businesses that were previously work centers or sheltered workshops that have an OPWDD approved workshop transformation plan and meet the integration standards as outlined in the transformation plan, or are businesses that were not previously work centers or sheltered workshops.

The regulations specify that OPWDD approval of an increased group size will expire within 24 months of issuance. Requests for renewals must be submitted in a format prescribed by OPWDD. The renewal request must include an assessment of the individual's continued need to receive prevocational services in a group size greater than eight individuals.

The regulations require the service provider to maintain documentation of OPWDD's approval (and renewal) to increase group size to more than 8 individuals.

The regulations require the service provider to conduct an annual assessment to determine whether community based prevocational services are consistent with the individual's habilitation plan and are needed to prepare the individual for competitive employment. The annual assessment must be done in a form and format prescribed by OPWDD.

The regulations specify that the four-hour program day must include at least two face-to-face services, and may also include non-face-to-face services.

The regulations specify that the two-hour program day must consist of at least one face-to-face service, and may also include non-face-to-face services.

The regulations specify that when there is a break in the service delivery during a single day the service provider must combine, for billing purposes, the duration of periods or sessions of service. Rounding up is permitted for services 10 minutes or more when billing for reimbursements.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on December 20, 2017, I.D. No. PDD-51-17-00006-EP. The emergency rule will expire August 16, 2018.

**Emergency rule compared with proposed rule:** Substantial revisions were made in section 635-10.4(1)(2), (c)(7) and (k)(1).

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

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

**Public comment will be received until:** 30 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.

#### **Revised 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.

2. Legislative objectives: The regulations further legislative objectives embodied in sections 13.07, 13.09(b), 16.00 and 16.05 of the Mental Hygiene Law. The regulations specify what site-based and community-based services are, establishes guidelines for when an individual can be paid less than federal/state minimum wage, provides an exception to the group size available under community-based prevocational services, and requires providers to conduct an annual assessment.

3. Needs and benefits: The regulations amend 14 NYCRR Part 635-10.4 by identifying what site-based and community-based services are and by providing examples for the type of activities included under each service, and amends 14 NYCRR Part 635-10.5 by clarifying reimbursement requirements.

The regulations in 635-10.4 establish guidelines for when an individual can be paid less than minimum wage for site-based and community-based services.

The regulations in 633-10.4 requires providers to conduct an annual assessment to determine if the prevocational service is consistent with the individual's habilitation plan and is needed to prepare the individual for competitive employment.

The regulations provide a timeframe for when site-based prevocational services must be provided at a site-based prevocational services site.

The regulations add language that allows providers to bill for community prevocational services delivered on behalf of an individual while the individual is in another Medicaid service.

The regulations provide an exception that allows site based prevocational services to be delivered in a non-certified site when conducting the required annual assessment.

In addition, the regulations provide an exception to the number of individuals allowed in a group for community-based and site-based prevocational services.

##### 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 regulations. The regulations specify what site-based and community-based services are, establishes guidelines for when an individual can be paid less than federal/state minimum wage, provides an exception to the group size available under community-based prevocational services, and requires providers to conduct an annual assessment. 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.

There are no anticipated costs to OPWDD in its role as a provider of services to comply with the new requirements.

###### b. Costs to private regulated parties: OPWDD expects that the costs to

ensure compliance with the regulation will be minimal and absorbed with the site-based and community-based services reimbursement.

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 regulations. The regulations will require providers to conduct an annual assessment to determine if the prevocational service is consistent with the individual's habilitation plan and is needed to prepare the individual for competitive employment.

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

8. Alternatives: OPWDD did not consider any other alternatives to the regulations. The regulations are necessary to specify what site-based and community-based services are and to clarify reimbursement requirements.

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

10. Compliance schedule: OPWDD is planning to adopt the amendments as soon as possible within the timeframes mandated by the State Administrative Procedure Act. Providers will have one year from the effective date of this regulation to have site-based prevocational services at a site-based prevocational services site. The regulations were discussed with and reviewed by representatives of providers in advance of this proposal. Additionally, OPWDD will be mailing a notice of the amendments to providers in advance of the effective date.

#### **Revised 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 amendments have been reviewed by OPWDD in light of their impact on small businesses. The regulations specify what site-based and community-based services are, establishes guidelines for when an individual can be paid less than federal/state minimum wage, provides an exception to the group size available under site-based and community-based prevocational services, add language that allows providers to bill for community prevocational services delivered on behalf of an individual while the individual is in another Medicaid service, and requires providers to conduct an annual assessment.

2. Compliance requirements: The amendments will impose some additional compliance requirements on providers. OPWDD requires providers to conduct an annual assessment to determine if the prevocational service is consistent with the individual's habilitation plan and is needed to prepare the individual for competitive employment.

The amendments will have no effect on local governments.

3. Professional services: The amendments will have no effect on professional services.

4. Compliance costs: OPWDD expects the compliance costs to conduct an annual assessment will be minimal because it is conducted once a year and can be satisfied with existing staff.

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

6. Minimizing adverse impact: The purpose of these amendments is to specify what site-based and community-based services are, establish guidelines for when an individual can be paid less than federal/state minimum wage, provide an exception to the group size available under site-based and community-based prevocational services, add language that allows providers to bill for community prevocational services delivered on behalf of an individual while the individual is in another Medicaid service, and require providers to conduct an annual assessment. The amendments will result in costs to providers, including providers 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 annual assessment is needed to ensure prevocational services are consistent with individual's habilitation plans and prepares individuals for competitive employment, OPWDD did not establish different compliance, reporting requirements or timetables from these requirements and timetables on small businesses or exempt providers that are small businesses.

7. Small business participation: The 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 providers, including small business providers, of the amendments in advance of their scheduled effective date.

#### **Revised 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, Chautau-

qua, 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 amendments have been reviewed by OPWDD in light of their impact on entities in rural areas. The regulations specify what site-based and community based services are, establishes guidelines for when an individual can be paid less than federal/state minimum wage, provides an exception to the group size available under site-based and community based prevocational services, add language that allows providers to bill for community prevocational services delivered on behalf of an individual while the individual is in another Medicaid service, and requires providers to conduct an annual assessment.

2. Compliance requirements: The amendments will impose some additional compliance requirements on providers. OPWDD requires providers to conduct an annual assessment to determine if the prevocational service is consistent with the individual's habilitation plan and is needed to prepare the individual for competitive employment.

The amendments will have no effect on local governments.

3. Professional services: The amendments will have no effect on professional services.

4. Compliance costs: OPWDD expects the compliance costs to conduct an annual assessment will be minimal because it is conducted once a year and can be satisfied with existing staff.

5. Minimizing adverse impact: The purpose of these amendments is to specify what site-based and community-based services are, establish guidelines for when an individual can be paid less than federal/state minimum wage, provide an exception to the group size available under community-based prevocational services, add language that allows providers to bill for site-based and community prevocational services delivered on behalf of an individual while the individual is in another Medicaid service, and require providers to conduct an annual assessment. The amendments will result in costs to providers, including providers 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 annual assessment is needed to ensure prevocational services are consistent with individual's habilitation plans and prepares the individuals for competitive employment, 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 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 amendments in advance of their scheduled effective date.

#### **Revised Job Impact Statement**

A Job Impact Statement for the 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 purpose of these amendments is to specify what site-based and community-based services are, establish guidelines for when an individual can be paid less than federal/state minimum wage, provide an exception to the group size available under site-based and community-based prevocational services, add language that allows providers to bill for community prevocational services delivered on behalf of an individual while the individual is in another Medicaid service, and require providers to conduct an annual assessment. The amendments will not result in staffing costs, and compliance requirements for providers are minimal. Consequently, the amendments will not have a substantial impact on jobs or employment opportunities in New York State.

#### **Assessment of Public Comment**

Comment: A commenter is concerned with the impact that the location of observation requirement will have on staffing contracts.

Response: Prevocational funding is available through the HCBS Waiver for services to an individual.

Comment: A commenter stated that prevocational services should be designed to create a path to integrated community based employment.

Response: In keeping with the philosophy of Person-Centered Services, the regulations are designed to allow the individual to make an informed

choice when determining how the service will be delivered to the individual. The regulations also require, at least once per year, an assessment of the individual in another environment to ensure the individual is learning skills necessary for community based employment.

Comment: A commenter stated that the regulation is not clear as to when site-based prevocational services are allowable.

Response: Allowable site-based prevocational services are clarified in the site-based and community-based prevocational services administrative directive memorandum.

Comment: A commenter stated that the term ISP should be changed to Life Plan.

Response: The regulations must not reflect terminology that is not yet in effect.

Comment: A commenter questioned whether providers must provide an hour of service to bill for community-based prevocational series.

Response: OPWDD has considered these concerns and will make edits to the regulations for clarification.

Comment: A commenter stated that prevocational services should allow the opportunity for prevocational services to be delivered simultaneously while the individual is in another service.

Response: OPWDD has considered these concerns and will determine if changes should be made.

Comment: A commenter stated that the earning capacity language needs clarification.

Response: OPWDD has considered these concerns and will make edits to the regulations for clarification.

Comment: A commenter stated that language use for site-based and community-based prevocational services must be consistent.

Response: OPWDD has considered these concerns and will make changes to the regulation for consistency.

Comment: A commenter stated that there should be a grace period for the requirement to develop a service delivery plan in the form and format specified by OPWDD that guides the delivery of the service for each individual receiving services.

Response: This requirement is not new and would not warrant a grace period.

Comment: A commenter questioned how "most integrated setting" is defined in relation to where an individual may be paid if the individual meets subminimum wage requirements.

Response: OPWDD has considered these concerns and will make changes to the regulations for clarification.

Comment: A commenter stated that changing the word shall to may, in 635-10.4(k)(2), changed the accountability requirement.

Response: OPWDD has considered these concerns and will make changes to the regulation accordingly.

Comment: A commenter is concerned that 635-10.5(ag)(4)(iii) will allow providers to count non-prevocational related services or down time as part of the program day duration.

Response: Program day is defined in the site-based and community-based prevocational services administrative directive memorandum. There is no intent for the regulations to allow services without the individual in site-based prevocational services.

Comment: A commenter is concerned that the regulations will return prevocational services back to segregated prevocational services.

Response: The regulations require site-based prevocational services to have an approved plan to meet both the HCBS settings requirements and the NY Business Model requirements by 2020.

## **NOTICE OF ADOPTION**

### **Telephone Service**

**I.D. No.** PDD-14-18-00002-A

**Filing No.** 552

**Filing Date:** 2018-06-19

**Effective Date:** 2018-07-03

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

**Action taken:** Amendment of Part 635 of Title 14 NYCRR.

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

**Subject:** Telephone Service.

**Purpose:** To require providers to have and maintain active telephone service at all times.

**Text of final rule:** Existing paragraph 635-7.3(c)(6) is deleted and a new paragraph 635-7.3(c)(6) is added as follows:

(6) *The facility must have and maintain active telephone service.*

(i) Cellular and/or landline services must be used to meet this requirement.

(ii) If cellular telephone service is not available at a location at all times, landline telephone service is required.

(iii) Landline telephone service, where provided, must consist of one or more of the following types of land based transmission: cable, microwave, fiber optic, or copper wire.

(iv) Landline telephone service must remain in working order and function during power outages or be backed up by immediately available cellular service.

Existing subparagraph 635-7.4(b)(3)(iii) is deleted and a new subparagraph 635-7.4(b)(3)(iii) is added as follows:

(iii) The home must have and maintain active telephone service.

(a) Cellular and/or landline services must be used to meet this requirement.

(b) If cellular telephone service is not available at a location at all times, landline telephone service is required.

(c) Landline telephone service, where provided, must consist of one or more of the following types of land based transmission: cable, microwave, fiber optic, or copper wire.

(d) Landline telephone service must remain in working order and function during power outages or be backed up by immediately available cellular service.

Existing subdivision 635-99.1(ba) is deleted and reserved.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 635-7.3(c)(6).

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

**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.

**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 are not being submitted because the nonsubstantial change to the proposed regulation was made to correct an error and does not materially alter the purpose, meaning or effect of this regulation. The term "facility" was inadvertently changed to "home," and the change made to the proposed regulation will change the term back to "facility" as it was originally written. This correction is necessary for the regulation's coherency.

#### **Initial Review of Rule**

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

#### **Assessment of Public Comment**

This document contains responses to public comments submitted during the public comment period for proposed regulations that expands the telephone service requirement by requiring OPWDD operated and certified providers to have and maintain active telephone service at all times

**Comment:** A commenter wants to know what obligations does the agency have if there is a landline/network failure? The current regulation only speaks about power outages, which is an issue only for cable and fiber optic network options.

**Response:** The regulations in 14 NYCRR 635-7.3(c)(6) and 635-7.4(b)(3)(iii) were amended to allow cellular service as an option, under certain circumstances, and to allow landline telephone services to include a variety of land based transmissions such as cable, microwave, fiber optic, or copper wire. Existing regulations in 14 NYCRR 635-7.3(c)(7) and 635-7.4(b)(3)(iv) continue to require providers to notify OPWDD immediately of anticipated or actual termination of any service vital to the continued safe operation of the facility, including telephone service, except under certain circumstances that can be remedied in a short-term timely manner. Those regulations also require providers to promptly apply remedial measures to correct anticipated or actual termination of such services.

**Comment:** A commenter wants to know if this regulation is only applicable to supervised IRA's and ICF's or for all levels of OPWDD housing inclusive of supported IRA's?

**Response:** The applicability of sections 14 NYCRR 635-7.3 and 635-7.4 has not changed. The amended provisions regarding telephone service continue to apply to supportive IRAs and other OPWDD certified settings.

**Comment:** A commenter wants to know how does OPWDD plan to answer the contradictory requirement of a hard copper line service being the only acceptable means for connecting a fire alarm system to an alarm company per NFPA 2000 Life Safety Code?

**Response:** The 2000 version of NFPA 101 was written when copper telephone lines were a very reliable means for fire alarm communication. Although 14 NYCRR Subpart 635-7 currently references the 2000 version, it should be noted that the 2012 edition of NFPA 101 references the 2010 edition of NFPA 72, which allows alternate means of communication including VOIP, fiber, radio and cellular service. This was a needed change to the code since telephone communication providers were phasing out copper line service and incorporating newer technologies. Subpart 635-7 recognizes that building codes are revised as technology develops and OPWDD and providers are encouraged to respond with appropriate modifications to provide a safe environment.

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## Public Service Commission

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### NOTICE OF ADOPTION

#### **Minor Rate Filing**

**I.D. No.** PSC-37-17-00009-A

**Filing Date:** 2018-06-15

**Effective Date:** 2018-06-15

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

**Action taken:** On 6/14/18, the PSC adopted an order approving Fishers Island Water Works Corporation's (Fishers Island) minor rate filing to increase its annual revenues by \$277,400 or 43.4%.

**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 approve Fishers Island's minor rate filing to increase its annual revenues by \$277,400 or 43.4%.

**Substance of final rule:** The Commission, on June 14, 2018, adopted an order approving Fishers Island Water Works Corporation's (Fishers Island) minor rate filing to make tariff amendments to P.S.C. No. 2 – Water, listed in Appendix A, to increase its annual revenues by \$277,400 or 43.4%, to become effective on July 1, 2018, provided that Fishers Island files further tariff revisions establishing the approved rates shown in Appendix C and any other tariff changes consistent with the body of this Order, on not less than three days' notice, 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-0472SA1)

### NOTICE OF ADOPTION

#### **Electric Rate Plan**

**I.D. No.** PSC-41-17-00006-A

**Filing Date:** 2018-06-14

**Effective Date:** 2018-06-14

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

**Action taken:** On 6/14/18, the PSC adopted an order adopting the terms of a joint proposal establishing a three-year rate plan for electric service for Central Hudson Gas and Electric Corporation (Central Hudson) for the period July 1, 2018 to June 30, 2021.

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

**Subject:** Electric rate plan.

**Purpose:** To execute the terms of a joint proposal establishing a three-year electric rate plan for Central Hudson.

**Substance of final rule:** The Commission, on June 14, 2018, adopted an order adopting the terms of a joint proposal executed by Central Hudson Gas & Electric Corporation (Central Hudson); the New York State Department of Public Service trial staff; Multiple Intervenors; Pace Energy and Climate Center; New York Geothermal Energy Organization; the Utility Intervention Unit of the Department of State, Division of Consumer Protection; Dutchess County; Acadia Center; the Public Utility Law Project of New York, Inc.; the Natural Resources Defense Council (partial); Bob Wyman; and the U.S. Army Legal Services Agency, representing the U.S. Department of Defense and all other Federal Executive Agencies, establishing a three-year rate plan for electric service provided by Central Hudson for the period July 1, 2018, through June 30, 2021. The rates, terms, conditions, and provisions of the joint proposal dated and filed April 18, 2018, in these proceedings and attached hereto as Attachment 1, except for Section IV, subsection F, and Section XXV, subsections B, C, D, E, H, I, and J are adopted and incorporated herein, 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-0459SA1)

## NOTICE OF ADOPTION

### Gas Rate Plan

**I.D. No.** PSC-41-17-00007-A

**Filing Date:** 2018-06-14

**Effective Date:** 2018-06-14

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

**Action taken:** On 6/14/18, the PSC adopted an order adopting the terms of a joint proposal establishing a three-year rate plan for gas service for Central Hudson Gas and Electric Corporation (Central Hudson) for the period July 1, 2018 to June 30, 2021.

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

**Subject:** Gas rate plan.

**Purpose:** To execute the terms of a joint proposal establishing a three-year gas rate plan for Central Hudson.

**Substance of final rule:** The Commission, on June 14, 2018, adopted an order adopting the terms of a joint proposal executed by Central Hudson Gas & Electric Corporation (Central Hudson); the New York State Department of Public Service trial staff; Multiple Intervenors; Pace Energy and Climate Center; New York Geothermal Energy Organization; the Utility Intervention Unit of the Department of State, Division of Consumer Protection; Dutchess County; Acadia Center; the Public Utility Law Project of New York, Inc.; the Natural Resources Defense Council (partial); Bob Wyman; and the U.S. Army Legal Services Agency, representing the U.S. Department of Defense and all other Federal Executive Agencies, establishing a three-year rate plan for gas service provided by Central Hudson for the period July 1, 2018, through June 30, 2021. The rates, terms, conditions, and provisions of the joint proposal dated and filed April 18, 2018, in these proceedings and attached hereto as Attachment 1, except for Section IV, subsection F, and Section XXV, subsections B, C, D, E, H, I, and J are adopted and incorporated herein, 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-0460SA1)

## NOTICE OF ADOPTION

### Request for Maintenance Support

**I.D. No.** PSC-49-17-00009-A

**Filing Date:** 2018-06-18

**Effective Date:** 2018-06-18

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

**Action taken:** On 6/14/18, the PSC adopted an order approving Finger Lakes Energy Corporation's (Finger Lakes) petition for financial support to maintain operation of its 150kW hydroelectric facility located in Moravia, Cayuga County, New York.

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

**Subject:** Request for maintenance support.

**Purpose:** To approve Finger Lakes' petition for maintenance support.

**Substance of final rule:** The Commission, on June 14, 2018, adopted an order approving Finger Lakes Energy Corporation's (Finger Lakes) petition for financial support to maintain operation of its 150kW hydroelectric facility located in Moravia, Cayuga County, New York. The New York State Energy Research and Development Authority is authorized to enter into a three-year contract with Finger Lakes, under the Tier 2 maintenance program of the Renewable Energy Standard, for \$12.64/MWh on up to 625 MWh of energy generated annually at the facility, commencing after successful completion of the capital projects identified in the petition and discussed in the body of this Order, or the date of the issuance of this Order, whichever shall be later, and shall incorporate terms that comply with the Commission's Tier 2 Order, issued March 16, 2018, in Case 15-E-0302, 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-0603SA4)

## NOTICE OF ADOPTION

### Tariff Amendments

**I.D. No.** PSC-08-18-00003-A

**Filing Date:** 2018-06-18

**Effective Date:** 2018-06-18

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

**Action taken:** On 6/14/18, the PSC adopted an order approving KeySpan Gas East Corporation d/b/a National Grid's (KEDLI) tariff amendments related to the Phase Two of the Power Generation Collaborative Report in P.S.C. No. 1—Gas.

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

**Subject:** Tariff amendments.

**Purpose:** To approve KEDLI's tariff amendments related to the Phase Two Report in P.S.C. No. 1—Gas.

**Substance of final rule:** The Commission, on June 14, 2018, adopted an order approving KeySpan Gas East Corporation d/b/a National Grid's (KEDLI) tariff amendments related to the Phase Two of the Power Generation Collaborative Report in P.S.C. No. 1 — Gas. The tariff amendments listed in the Appendix, to become effective on June 21, 2018; (1) eliminate the \$10 per dekatherm penalty charge; (2) rejects the proposal to incorporate bypass parameters into the KEDLI's respective tariffs; (3) agrees that rate design for power generators should be addressed holistically in Case 17-G-0011; and (4) finds that firm delivery rates for distributed generation resources need not be addressed specifically for KEDLI at this time. KEDLI is also required to individually notify each customer affected by the tariff amendments approved in Ordering Clause No. 1 prior to the effective date of the tariff amendments, 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-G-0058SA5)

## NOTICE OF ADOPTION

### Tariff Amendments

**I.D. No.** PSC-08-18-00006-A

**Filing Date:** 2018-06-18

**Effective Date:** 2018-06-18

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

**Action taken:** On 6/14/18, the PSC adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid's (KEDNY) tariff amendments related to the Phase Two of the Power Generation Collaborative Report in P.S.C. No. 12—Gas.

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

**Subject:** Tariff amendments.

**Purpose:** To approve KEDNY's tariff amendments related to the Phase Two Report in P.S.C. No. 12—Gas.

**Substance of final rule:** The Commission, on June 14, 2018, adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid's (KEDNY) tariff amendments related to the Phase Two of the Power Generation Collaborative Report in P.S.C. No. 12—Gas. The tariff amendments listed in the Appendix, to become effective on June 21, 2018; (1) eliminate the \$10 per dekatherm penalty charge; (2) rejects the proposal to incorporate bypass parameters into the KEDNY's respective tariffs; (3) agrees that rate design for power generators should be addressed holistically in Case 17-G-0011; and (4) finds that firm delivery rates for distributed generation resources need not be addressed specifically for KEDNY at this time. KEDNY is also required to individually notify each customer affected by the tariff amendments approved in Ordering Clause No. 1 prior to the effective date of the tariff amendments, 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-G-0059SA4)

## NOTICE OF ADOPTION

### Minor Rate Filing

**I.D. No.** PSC-09-18-00012-A

**Filing Date:** 2018-06-15

**Effective Date:** 2018-06-15

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

**Action taken:** On 6/14/18, the PSC adopted an order approving, with modifications, Forever Wild Water Company, Inc. (Forever Wild) to increase its annual revenues by \$51,830 or 38.9% and eliminate its discounted seasonal rate and increase the one-time tapping fee.

**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 approve, with modifications, Forever Wild's minor rate filing.

**Substance of final rule:** The Commission, on June 14, 2018, adopted an order approving, with modifications, Forever Wild Water Company, Inc.'s (Forever Wild) minor rate filing, authorizing Forever Wild to increase its annual revenues by \$51,830 or 38.9% and eliminate its discounted seasonal rate and to increase the one-time tapping fee for new customers from \$800 to \$1,600. Forever Wild is directed to file, on not less than three days' notice, a further tariff revision to Leaf No. 12, in P.S.C. No. 2 – Water, consistent with the discussion in the body of this Order, that contains the rates shown in Appendix F, to become effective July 1, 2018 and further tariff revision to Leaf No. 12, on not less than three days' notice, that contains the rates shown in Appendix G, to become effective July 1, 2019, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(18-W-0074SA1)

## NOTICE OF ADOPTION

### Joint Proposal on Penalty Settlement

**I.D. No.** PSC-11-18-00002-A

**Filing Date:** 2018-06-14

**Effective Date:** 2018-06-14

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

**Action taken:** On 6/14/18, the PSC adopted an order approving a joint proposal between KeySpan Gas East Corporation d/b/a National Grid (KEDLI) and the Department of Public Service (DPS) settling a penalty action.

**Statutory authority:** Public Service Law, sections 25, 25-a, 65 and 66

**Subject:** Joint proposal on penalty settlement.

**Purpose:** To approve a joint proposal between KEDLI and DPS to settle a penalty action.

**Substance of final rule:** The Commission, on June 14, 2018, adopted an order approving a joint proposal between KeySpan Gas East Corporation d/b/a National Grid (KEDLI) and the Department of Public Service settling a penalty action. In the Joint Proposal, KEDLI will commit its shareholders to fund two gas safety programs and will establish a deferral at shareholders' expense in the amount of \$1.98 million, of which \$500,000 will be deemed a penalty under PSL § 25-a. KEDLI is directed to, within 30 days of the date of issuance of this Order, submit its risk-based analysis for installing Excess Flow Valves in the KEDLI service territory for DPS agreement that such analysis is reasonable and submit an annual report on the progress made in each of the areas for which Joint Proposal funds are assigned. The first report shall be due December 15, 2018 and annually thereafter until all funds are spent, 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-G-0298SA1)

## NOTICE OF ADOPTION

### Tariff Amendments

**I.D. No.** PSC-13-18-00024-A

**Filing Date:** 2018-06-18

**Effective Date:** 2018-06-18

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

**Action taken:** On 6/14/18, the PSC adopted an order approving KeySpan Gas East Corporation d/b/a National Grid's (KEDLI) tariff amendments to Service Classification (SC) No. 3, contained in P.S.C. No. 1—Gas.

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

**Subject:** Tariff amendments.

**Purpose:** To approve KEDLI's tariff amendments to SC No. 3, contained in P.S.C. No. 1—Gas.

**Substance of final rule:** The Commission, on June 14, 2018, adopted an order approving KeySpan Gas East Corporation d/b/a National Grid's tariff amendments to Service Classification (SC) No. 3—Multiple-Dwelling Service, to eliminate an outdated provision that was inadvertently included when SC No. 3 was created, contained in P.S.C. No. 1—Gas, subject to the terms and conditions set forth in the order.

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

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

#### Assessment of Public Comment

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

(18-G-0143SA1)

### NOTICE OF ADOPTION

#### Tariff Amendments

**I.D. No.** PSC-14-18-00001-A

**Filing Date:** 2018-06-15

**Effective Date:** 2018-06-15

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

**Action taken:** On 6/14/18, the PSC adopted an order approving the emergency action and tariff amendments on a permanent basis, authorizing the New York Municipal Power Agency (NYMPA) to implement a new Rider A.

**Statutory authority:** Public Service Law, section 66

**Subject:** Tariff amendments.

**Purpose:** To approve NYMPA's tariff amendments and emergency action on a permanent basis.

**Substance of final rule:** The Commission, on June 14, 2018, adopted an order approving the emergency Order Approving Tariff Amendments with Modifications, issued March 19, 2018, on a permanent basis and the New York Municipal Power Agency's tariff amendments to implement a new Rider A to its generic tariff, P.S.C. No. 1 – Electricity, to become effective on a permanent basis upon the date of issuance of this order, subject to the terms and conditions set forth in the order.

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

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

#### Assessment of Public Comment

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

(18-E-0126SA1)

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

#### Petition to Submeter Electricity

**I.D. No.** PSC-27-18-00005-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 Harmony Mills Riverview LLC to submeter electricity at 100 North Mohawk Street, Cohoes, New York.

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

**Subject:** Petition to submeter electricity.

**Purpose:** To ensure adequate submetering equipment and consumer protections.

**Substance of proposed rule:** The Commission is considering the petition, filed by Harmony Mills Riverview LLC (Owner) on May 9, 2018, to submeter electricity at 100 North Mohawk Street, Cohoes, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid (National Grid). By petitioning to submeter electricity, the Owner has requested authorization to take electric service from National Grid and then distribute and meter that electricity to tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations at 16 NYCRR Part 96. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-E-0274SP1)

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

#### Petition to Submeter Electricity

**I.D. No.** PSC-27-18-00006-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 Harmony Mills West LLC to submeter electricity at 50 North Mohawk Street and 100 North Mohawk Street, Cohoes, New York.

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

**Subject:** Petition to submeter electricity.

**Purpose:** To ensure adequate submetering equipment and consumer protections.

**Substance of proposed rule:** The Commission is considering the petition, filed by Harmony Mills West LLC (Owner) on May 9, 2018, to submeter electricity at 50 North Mohawk Street and 100 North Mohawk Street, Cohoes, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid (National Grid). By petitioning to submeter electricity, the Owner has requested authorization to take electric service from National Grid and then distribute and meter that electricity to tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations at 16 NYCRR Part 96. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (18-E-0275SP1)

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

**Gas Safety Regulations**

**I.D. No.** PSC-27-18-00007-P

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

**Proposed Action:** Amendment of Part 255 of Title 16 NYCRR.

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

**Subject:** Gas safety regulations.

**Purpose:** To make the provision of natural gas service safer in New York State and comply with Federal Law.

**Substance of proposed rule (Full text is posted at the following State website: [www.dps.ny.gov](http://www.dps.ny.gov)):** The Public Service Commission (PSC), as a federally-certified state pipeline safety program, is required, pursuant to 49 USC § 60105(b)(2), to adopt federal pipeline safety standards. The PSC has two years from the date of adoption by the Pipeline and Hazardous Materials Administration (PHMSA) to adopt any new rules. This rulemaking is being proposed to bring sections of Title 16 NYCRR related to pipeline safety into conformance with the minimum Federal regulations related to pipeline safety adopted in 2016. The proposed changes to Title 16 NYCRR Part 255, Transmission and Distribution of Gas (Part 255), are intended to bring this part into conformance with recent amendments to 49 CFR Part 192. In addition, clarification was needed to correct one internal inconsistency created when the definition of gas service line was changed in 2015. A second clarification was needed to avoid gas company confusion in complying with the rules. The federally-mandated sections being adopted require gas companies to offer more customers Excess Flow Valves, which are safety devices that reduce or stop the flow of gas, or to install manual shut-off valves. The rules will require companies to notify the Department of Public Service of company intent to convert from a non-jurisdictional fuel to gas or petroleum service 60 days before the conversion occurs. Operator welders would be required to complete a weld to gain welding certification. The new rules clarify who in a gas company Control Room must be trained in abnormal or emergency conditions and adds the requirement that pressure-regulating devices be inspected every three years and set operating standards for such devices. The final technical change is an exemption for certain gas piping systems from the requirement to have a Distribution Integrity Management Plan. The two grammatical changes clarify what gas companies need to inspect when performing their required "gas service line" inspections and to correct an error in subdivision numbering in 16 NYCRR § 255.726 one company brought to light.

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

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

**Regulatory Impact Statement****Statutory Authority:**

Public Service Law (PSL) §§ 4, 5, 65 and 66 assign to the Public Service Commission (PSC, Commission) jurisdiction, supervision, powers, and duties over all gas corporations in the State and the conveying, transportation, and distribution of gas, which includes "all powers necessary or proper," to ensure that gas service is "safe and adequate and in all respects just and reasonable." The PSC has general supervision of all gas corporations (commonly referred to as local distribution companies, or LDCs) operating throughout the State and of all property owned, leased or operated by a gas company in connection with or to facilitate the conveying, transportation, distribution, or furnishing of gas for light, heat or power. See PSL §§ 4(1), 5(1)(b), 65(1) and 66(1). Pursuant to its statutory mandate to ensure safe and adequate gas service, in 1968 the Commission adopted gas safety regulations, found primarily in 16 NYCRR Part 255

(Part 255), which have been amended from time to time to further ensure the safety of New York's gas delivery system.

In 1994, the federal Natural Gas Pipeline Safety Act (the Act), 49 USC § 60101 et. seq., included intrastate gas pipelines within federal jurisdiction for safety purposes. The United States Department of Transportation (USDOT) adopted regulations that apply federal safety standards for gas "pipeline facilities," defined as "new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation." 49 CFR § 192.3. USDOT also established minimum safety standards that apply to "owners and operators of pipeline facilities" [49 USC § 60102(a)(2)(A)]. 49 USC § 60102 (a)(2)(C), 49 CFR §§ 192.801-192.809. The USDOT's Pipeline and Hazardous Materials Safety Administration (PHMSA), acting through its Office of Pipeline Safety, administers and enforces the federal safety standards.

A State may, however, pursuant to 49 USC § 60105, assume oversight and enforcement authority over intrastate gas pipeline facilities if the State submits a certification to USDOT/PHMSA that the State has adopted each applicable federal standard. 49 USC § 60105(a). A State that has submitted a current certification under § 60105(a) may adopt additional or more stringent safety standards for intrastate pipeline facilities only if the standards are compatible with the minimum federal standards. 49 USC § 60104(c).

The Commission implements the gas safety program in New York State through 16 NYCRR Part 255. The Department of Public Service (DPS, Department) makes annual certifications to USDOT/PHMSA that the State has asserted appropriate regulatory jurisdiction and has adopted and is enforcing the applicable federal standards. Therefore, the Commission proposes this rule in furtherance of its gas service oversight responsibilities under the PSL and to amend portions of its gas safety regulations in conformance with federal standards.

**Legislative Objectives:**

The objective of both the State and federal statutes is to ensure the safe and adequate supply and delivery of natural gas. The proposed amendments to 16 NYCRR Part 255 meets these objectives because the amendments align state rules with already-approved and effective federal safety standards.

**Needs and Benefits:**

The proposed regulatory changes are necessary to align the Commission's gas safety regulations with the federal regulations to ensure that the Commission may continue to make its annual § 60105 certification to USDOT and remain eligible for federal funding to implement New York's gas safety program. Pursuant to 49 USC § 60107, the PSC receives federal funding, which pays for up to 80 percent of the Department's costs for carrying out its certified pipeline safety program.

The practical impact of the proposed amendment to the requirement that LDCs install EFVs on five types of gas services is that it will make gas supply service safer. Presumably, LDCs that install the EFVs will seek rate treatment for the costs associated with the installation requirements.

The practical impact of the proposed amendment to the requirement that LDCs install manual service line shut-off valves is that gas system will be safer in an emergency. This is because LDCs will be able to shut off gas to a service line to avoid injury.

The practical impact of the proposed amendment to clarify that testing of meters extend "upstream of the meter or regulator where one is installed" rather than "inside the wall of the customers' structure through which service enters" is to align inspection language with the requirements and definition of gas service lines.

The practical impact of the proposed amendment to clarify that all inactive service lines, not only inactive steel service lines, must be monitored and mapped, is to make sure gas companies remain abreast of all their gas facilities, not only steel facilities.

**Costs:****Costs to Private Regulated Parties:**

Regulated LDC operation and maintenance costs associated with the proposed new requirements, particularly the requirement that they install EFVs and manual shut-off valves, would increase.

The clarifying language with respect to the costs to inspect "upstream of the meter or regulator where one is installed" has already been addressed, after the service line definition was changed in 2015.

**Costs to Local Government:**

There are no anticipated added costs to local governments.

Costs to the Public Service Commission or the Department of Public Service:

The use of pressure regulating devices will add to the annual auditing practices of the PSC and DPS but to the extent they will improve gas safety and may avoid gas incidents, it could reduce PSC compliance and enforcement costs.

**Costs to Other State Agencies:**

There are no known or identifiable costs to other State agencies or offices of State government.

## Local Government Mandates:

None.

## Paperwork:

LDCs would have to retain records of completed testing of additionally installed EFVs.

## Duplication:

The purpose of the new regulations is to align them with federal gas safety regulations. There are no relevant State regulations that duplicate, overlap, or conflict with the proposed revisions.

## Alternatives:

There is a "No action alternative," but such an alternative is not preferable as it would result in the DPS being out of compliance with federal standards.

## Federal Standards:

The proposed revisions are intended to implement regulations that are at least as stringent as similar standards of the Federal government, 49 CFR Part 192.

## Compliance Schedule:

The proposed revisions would be effective upon publication of a Notice of Adoption filed in the New York State Register.

**Regulatory Flexibility Analysis**

1. Effect of rule: The proposed rule aligns New York State gas safety regulations with recently enacted (2015) Pipeline and Hazardous Materials Administration (PHMSA) regulation changes and makes two clarifications to avoid industry confusion.

2. Compliance requirements: There are no additional burdens on industry to increase reporting requirements resulting from the proposed rule.

3. Professional services: There are no professional services that a small business or local government is likely to need to comply with the changes associated with this rule.

4. Compliance costs: Costs to industry, local municipal gas companies and unions are not expected. Gas companies will recover in future rates any added costs due to customer requests for Excess Flow Valves (EFVs); similarly, municipal gas companies will only charge customers after installing EFVs for those customers who specifically request them.

5. Economic and technological feasibility: The proposed rule does not require any specialized technology for compliance.

6. Minimizing adverse impact: No adverse impacts exist.

7. Small business and local government participation: Small businesses and local governments are not affected by the rule changes. However, the PSC will comply with the New York State Administrative Procedure Act (SAPA) section 202-b (6) by accepting public comments to the Notice of Proposed Rulemaking and will be summarizing comments and responding to comments that are received.

8. Cure period: No cure period is included in the proposed rule. Gas Safety Section Staff at the Department of Public Service typically offers utilities a thirty (30) day cure period to correct deficiencies in biannual audit findings and prior to recommending the pursuit of any enforcement.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: This rule applies to the entire State and impacts all rural areas of the State.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rules apply only to gas and petroleum operators and will have no reporting, recordkeeping and other compliance requirements specific to rural areas.

3. Costs: The rules apply only to gas and petroleum operators and will create no added costs specific to rural areas.

4. Minimizing adverse impact: No adverse impacts exist relative to the requirements because installing Excess Flow Valves on new or replaced services will improve gas safety and the gas company will seek rate treatment for the costs to do so.

5. Rural area participation: Gas companies that operate in rural areas have participated in the stakeholder process.

Furthermore, the PSC will be accepting public comments to the Notice of Proposed Rulemaking and will be summarizing and responding to the comments that are received.

**Job Impact Statement**

The Department of Public Service (DPS) projects that there will be no adverse impact on jobs or employment opportunities in the State of New York (State) because of this proposed rule change. This proposed rule change is intended to bring Title 16 NYCRR Parts 255, Transmission and Distribution of Gas (Part 255), into conformance with recent amendments to 49 CFR Part 192. Additionally, two grammatical clarifications to Part 255 are being proposed. Nothing in this proposed rule change will create any adverse impacts on jobs or employment opportunities in the State. No further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Job Impact Statement is not required and therefore one has not been prepared.

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## State University of New York

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

**University Faculty Senate**

I.D. No. SUN-27-18-00001-P

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

**Proposed Action:** This is a consensus rule making to amend sections 331.8 and 331.9 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 353 and 355(2)(b)

**Subject:** University Faculty Senate.

**Purpose:** To make technical, non-substantive language change and reauthorize a prior amendment of the regulations.

**Text of proposed rule:** 331.8 President of the senate. Before July 1st of each odd-numbered year, the senate shall elect one of its elected members or the current Vice-President/secretary as President of the senate for a term of two years. Upon election as President of the senate, an elected member shall vacate the position as the representative of his or her unit in the senate. The President of the senate shall preside at all meetings of the senate and shall exercise such other powers and duties as may be vested in the President by this Part and the bylaws of the senate. The President shall be an ex officio member of all senate committees. The President of the senate may be reelected for a second term, but may not thereafter be eligible for a successive term provided however that a President initially elected to fill [the minor portion] less than half of a term arising from a vacancy is eligible to serve two additional successive full terms.

331.9 Vice president/Secretary. Before July 1st of each even-numbered year, the senate shall elect one of its elected members to serve as Vice-President/Secretary for a term of two years. Upon election as Vice-President/Secretary, the elected member shall vacate the position as representative of his or her unit in the senate and shall serve as a nonvoting member of the senate. The vice president/secretary shall take and keep minutes of the senate and shall exercise such other powers and duties as the senate shall provide in its bylaws. The vice president/secretary shall serve as president of the senate during that officer's absence or inability to act. The Vice-President/Secretary of the senate may be reelected for a second term, but may not thereafter be eligible for a successive term provided however that a Vice-President/Secretary initially elected to fill [the minor portion] less than half of a term arising from a vacancy is eligible to serve two additional successive full terms.

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

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

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

**Consensus Rule Making Determination**

The State University of New York has determined that no person is likely to object to this rule as written because it makes technical, non-substantive language changes in the regulations.

**Job Impact Statement**

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