RULE MAKING ACTIVITIES

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

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

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

Office of Children and Family Services

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Specialized Secure Detention Facilities

I.D. No. CFS-51-17-00017-EP
Filing No. 1067
Filing Date: 2017-12-07
Effective Date: 2017-12-07

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

Proposed Action: Amendment of Part 180 of Title 9 NYCRR.

Statutory authority: Executive Law, section 503(9)

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

Specific reasons underlying the finding of necessity: The "Raise the Age" law (Chapter 59 of the Laws of 2017 (RTA)) amended Executive Law section 503(9) to mandate "the Office of Children and Family Services (OCFS) in consultation with the State Commission of Correction (SCOC) to jointly regulate, certify, inspect and supervise specialized secure detention facilities." The RTA also amended County Law section 218-a to mandate counties (including New York City) to "provide for adequate detention of alleged or convicted adolescent offenders in a specialized secure detention facility" and that the facility will be jointly administered by a designated county agency and the local county sheriff. The specialized secure detention facilities will need to be operational by October 1, 2018 for the safe detention of any youth alleged to be an adolescent offender. In order for the new specialized secure detention facilities to be operational, they first need to be developed and constructed, and then certified. Approval of construction plans for a specialized secure detention facility is necessary by OCFS and SCOC before any construction/modifications can begin. OCFS, which is tasked with the role of jointly regulating, certifying, inspecting and supervising such facilities, must develop and implement regulations to guide the counties' efforts. Therefore, a new Subpart 180-3 of 9 NYCRR Part 180 is necessary to fulfill the requirements established by the enactment of Part WWW of chapter 59 of the Laws of 2017, referred to as the "Raise the Age Law" (RTA) and is being published as a notice of emergency adoption and proposed rule making. The emergency rule making is necessary as the counties need to adequately budget, procure, and plan immediately to meet the requirements of the RTA. Emergency rule making is further necessary for counties to meet the health and safety needs of alleged adolescent offenders as required by the RTA by October 1, 2018. The RTA represents New York State's decision to change how 16- and 17-year-old youth are processed through the criminal and juvenile justice systems. This proposed rule addresses the minimum requirements needed to construct, staff and certify specialized secure detention facilities. Further rule making will propose additional rules and regulations to govern specialized secure detention facilities.

Subject: Specialized secure detention facilities.

Purpose: To establish specialized secure detention facilities.

Substance of emergency/proposed rule (Full text is posted at the following State website: http://ocfs.ny.gov/main/legal/Regulatory/pc/): A new Subpart 180-3 of 9 NYCRR Part 180 is necessary to fulfill the requirements established by the enactment of Part WWW of chapter 59 of the Laws of 2017, referred to as the "Raise the Age Law" (RTA). The RTA reflects New York State's decision to change how 16- and 17-year-old youth are processed through the criminal and juvenile justice systems. In recognition that there are scientifically verified developmental differences in adolescent and adult executive reasoning, the RTA provides adolescents an opportunity to avoid being hindered throughout life by the consequences of bad decisions. This proposed rule only addresses the newly created need for specialized secure detention facilities, which will house youth alleged to be adolescent offenders, who will be youth sixteen and seventeen years of age who are accused of felonies. Specialized secure detention facilities can also house convicted adolescent offenders who are serving definite sentences for felony convictions of a year or less, and youth detained or sentenced on a vehicle and traffic violation who are 16 or 17. The New York State Office of Children and Family Services (OCFS) in conjunction with the New York State Commission of Correction (SCOC) drafted the proposed rules, as both OCFS and SCOC are mandated by law to have the ultimate regulatory oversight of the specialized secure detention facilities and these regulations meet that requirement. The proposed rule renumbers 9 NYCRR Part 180 as Subpart 180-1, to allow for the creation of a new Subpart 180-3 entitled "Specialized Secure Detention Facilities." The following is a summary of each section in proposed Subpart 180-3, as noted the full text of the rule making.

Section 180-3.1 Legal Authority – sets forth the legal authority for promulgation of the proposal.

Section 180-3.2 Definitions – defines the terms necessary for this section.

Section 180-3.3 Certification – establishes the procedure by which the local counties (New York City included as a single county for this purpose) may apply for certification to operate specialized secure detention facilities from OCFS, which shall require review and approval by OCFS and SCOC. Certifications will last for two years.

Section 180-3.4 Administration and Operation – establishes basic guidelines by which the local counties can operate the new specialized secure detention facilities, including a regionalized approach or contracting with a public or nonprofit child caring agency. This section also

requires nondiscrimination policies and policies to prevent child abuse and abuse of vulnerable youth, and provides that a specialized secure detention facility shall be subject to and must comply with the requirements of the Prison Rape Elimination Act of 2003.

Section 180-3.5 Construction and Substantial Remodeling/Definition and Approvals – provides that any plans to construct or to substantially remodel a specialized secure detention facility must be approved by OCFS and SCOC prior to construction.

Section 180-3.6 Physical Plant Requirements – provides the physical plant requirements for a specialized secure detention facility, including the minimum design and security requirements for bathrooms, sleeping accommodations, recreation areas, school facilities, health facilities, screening and fencing, communication and monitoring, among other requirements.

Section 180-3.7 Records – requires a specialized secure detention facility to maintain current case records for each youth and establishes records retention requirements.

Section 180-3.8 Reports – requires a specialized secure detention facility to report incident through the Juvenile Detention Automated System (JDAS) or any other system or manner as required by OCFS and SCOC.

Section 180-3.9 Intake Requirements – establishes the minimum assessment that must be performed when a youth first enters a specialized secure detention facility, to address the youth's well-being and proper placement, as well as the safety of others in the facility.

Section 180-3.10 Classification – describes how a specialized secure detention facility will determine classification, which results in a youth's proper placement and supervision in the facility.

Section 180-3.11 Staffing and Supervision of Youth – establishes the required staffing necessary for the adequate and continuous supervision, safety, health, proper care and treatment of youth under the care of a specialized secure detention facility, including staff to youth ratios, programmatic staff requirements, staffing qualifications, and staff training.

Section 180-3.12 Behavioral Support System – directs a specialized secure detention facility to create a policy for managing youth behavior that must be approved by OCFS.

Section 180-3.13 Education – requires a specialized secure detention facility to provide all educational programs required by section 112 of the Education Law and have alternative programs for youth who have a diploma, a high school equivalency diploma or aged out of compulsory attendance.

Section 180-3.14 Behavioral Intervention Policies – requires a specialized secure detention facility to have a policy and methods approved by OCFS that will direct staff on how to address instances of escalated behavior by youth. This section addresses de-escalation techniques, as well as the use of physical or mechanical restraints.

Section 180-3.15 Use of Physical Restraint – outlines requirements pertaining to the use of physical restraint. Staff who are expected to use physical restraints must be specially trained. Physical restraints shall not be used for discipline, punishment or administrative convenience.

Section 180-3.16 Use of Mechanical Restraints - provides requirements for the use of mechanical restrains. Staff who are expected to use mechanical restraints must be specially trained. Mechanical restraints shall not be used for discipline, punishment or administrative convenience.

Section 180-3.17 Room Confinement – requires a specialized secure detention facility to develop a procedure for room confinement approved by OCFS if room confinement is to be used. Room confinement may be used to calm or control acute physical behavior, but not be used for discipline, punishment or administrative convenience.

Section 180-3.18 Searches of Youth – this section requires a specialized secure detention facility to develop a policy that must be approved by OCFS that outlines search parameters.

Section 180-3.19 - Waivers – provides that OCFS, in consultation with SCOC, may grant a waiver of a non-statutory requirement of this Subpart if the waiver does not affect the health, safety or welfare of the youth in the specialized secure detention facility.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 6, 2018.

Text of rule and any required statements and analyses may be obtained from: Leslie Robinson, Senior Attorney, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 474-3333, email: regcomments@ocfs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority:

The "Raise the Age" law (Chapter 59 of the Laws of 2017 (RTA)) amended Executive Law section 503(9) to mandate "the Office of Children and Family Services [(OCFS)] in consultation with the State Commission of Correction [(SCOC)] to jointly regulate, certify, inspect and supervise specialized secure detention facilities." The RTA also amended County Law section 218-a to mandate counties (including New York City) to "provide for adequate detention of alleged or convicted adolescent offenders in a specialized secure detention facility" and that the facility will be jointly administered by a designated county agency and the local county sheriff. When the RTA is fully implemented, adolescent offenders will be youth ages sixteen and seventeen who are accused of felonies or who, in some cases, are serving definite sentences for felony convictions. The County Law acknowledges the certification by OCFS in conjunction with SCOC, as well as the need to have enhanced security features and specially trained staff at these new facilities. Counties can arrange for adequate specialized secure detention of adolescent offenders either by operating a specialized secure detention facility or contracting for beds in another county's facility.

2. Legislative Objectives:

Enactment of "raise the age" legislation 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.

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.

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 WWW 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 PREA. 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 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 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 detention facilities.

6. Paperwork:

A county will need to obtain certification of the specialized secure 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 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 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. Counites (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 adults offenders. 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.
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 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 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.
7. Small Business and Local Government Participation:
OCFS is the agency charged with certifying and regulating the specialized secure detention facilities in conjunction with the State Commission of Correction (SCOC); thus, the regulations and rules must come from OCFS with input from SCOC as mandated by section 503(9) of Executive 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, there are records retention requirements for the youth and reporting requirements related to incidents.

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 minimizes 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.

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.

Board of Commissioner of Pilots

NOTICE OF ADOPTION

Sandy Hook Pilot Apprentices

I.D. No. COP-41-17-00009-A
Filing No. 1025
Filing Date: 2017-11-30
Effective Date: 2017-12-20

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

Action taken: Amendment of section 51.1 of Title 21 NYCRR.

Statutory authority: Navigation Law, section 95

Subject: Sandy Hook Pilot Apprentices.

Purpose: To amend the Sandy Hook pilot apprenticeship program.

Text or summary was published in the October 11, 2017 issue of the Register, I.D. No. COP-41-17-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Frank Keane, Board of Commissioner of Pilots of the State of New York, 17 Battery Place, Suite 1230, New York, NY 10004, (212) 425-5027, email: FWKeane@bdcommpilotsny.org

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

Assessment of Public Comment
The agency received no public comment.

Department of Financial Services

NOTICE OF ADOPTION

Holding Companies

I.D. No. DFS-32-17-00017-A
Filing No. 1049
Filing Date: 2017-12-04
Effective Date: 2017-12-20

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

Action taken: Amendment of Subpart 80-1 (Regulation 52) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 1502(b) and 1506

Subject: Holding Companies.

Purpose: To make technical correction to and clarification of 11 NYCRR section 80-1.6(3).

Text or summary was published in the August 9, 2017 issue of the Register, I.D. No. DFS-32-17-00017-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Privacy of Consumer Financial and Health Information, General Provisions

I.D. No. DFS-35-17-00003-A
Filing No. 1048
Filing Date: 2017-12-04
Effective Date: 2017-12-20

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

Action taken: Amendment of Part 420 (Regulation 169) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301, 1505, 1608, 1712, 3217, art. 24; 12 U.S.C. section 1831x; 15 U.S.C. sections 6801(b), 6802, 6803, 6805(b), (c), 6807; and 15 U.S.C. ch. 94

Subject: Privacy of Consumer Financial and Health Information, General Provisions.

Purpose: To incorporate recent changes to federal privacy laws regarding information maintained by financial institutions.

Text of final rule: Section 420.5 is amended as follows:

420.5 Annual privacy notice to customers required.

(a)(1) General rule. [A] *Except as provided in subdivision (b) of this section, a* licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of 12 consecutive months during which that relationship exists. A licensee may define the 12-consecutive-month period, but the licensee [must] *shall* apply it to the customer on a consistent basis.

(2) Example. A licensee provides a notice annually if it defines the 12-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer buys an insurance policy on any day of year one, *then* the licensee shall provide an annual notice to that customer by December [31st] *31* of year two, but thereafter, shall provide each subsequent annual notice within 12 calendar months of the prior annual notice.

(b) *Exception to general rule. A licensee shall not be required to provide an annual disclosure under subdivision (a) of this section if the licensee:*

(1) provides nonpublic personal information to nonaffiliated third parties only, in accordance with sections 420.13, 420.14 or 420.15; and

(2) has not changed its policies and practices, with regard to disclosing nonpublic personal information, from the policies and practices that the licensee disclosed in the most recent disclosure sent to consumers in accordance with section 420.4 of this Part or this section.

(c)(1) Termination of customer relationship. A licensee [is] *shall* not *be* required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(2) Examples.

(i) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(ii) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials.

(iii) For the purposes of this Part, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned [by the postal authorities] as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(iv) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

[(c)] *(d)* Delivery. When the licensee is required by this section to

deliver an annual privacy notice, the licensee shall deliver it according to section 420.9 of this Part.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 420.5(e).

Text of rule and any required statements and analyses may be obtained from: Paul Zuckerman, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5286, email: paul.zuckerman@dfs.ny.gov

Revised Job Impact Statement

A revised Job Impact Statement ("JIS") is not required for the adoption of the Second Amendment to 11 NYCRR 420 (Insurance Regulation 169) because the non-substantive revision to the regulation does not require a change to the previously published JIS.

Assessment of Public Comment

The agency received no public comment.

Department of Health

NOTICE OF ADOPTION

Medical Conditions for Which an Exemption from Restrictions on Tinted Glass May be Issued

I.D. No. HLT-33-17-00022-A
Filing No. 1056
Filing Date: 2017-12-05
Effective Date: 2017-12-20

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

Action taken: Amendment of section 69-7.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 206(16)

Subject: Medical Conditions for Which an Exemption from Restrictions on Tinted Glass May be Issued.

Purpose: Amend the existing list of medical conditions for a NYS registered driver or habitual passenger for an exemption to tinted glass.

Text of final rule: Pursuant to the authority vested in the Commissioner of Health by Section 206(16) of the Public Health Law, Section 69-7.1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 69-7.1 Medical conditions for which an exemption from restrictions on tinted glass may be issued.

The following medical conditions, when their existence is certified by a physician, *physician assistant or nurse practitioner,* justify granting an exemption from the limits on light transmittance found in Vehicle and Traffic Law, section 375(12-a)(b)*, provided that personal protective measures such as sun protective clothing, sunscreen, or eye protective devices do not offer adequate protection*:

Albinism;

chronic actinic dermatitis/actinic reticuloid;

dermatomyositis;

lupus erythematosus;

porphyria*;*

xeroderma [pigmentosa] *pigmentosum;*

severe drug [photo-sensitivity] *photosensitivity, provided that the course of treatment causing the photosensitivity is expected to be of prolonged duration;*

photophobia associated with an ophthalmic or neurological disorder; and

any other condition or disorder causing severe photosensitivity in which the individual is required for medical reasons to be shielded from the direct rays of the sun.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 69-7.1.

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.ny.gov

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA and JIS.

Initial Review of Rule

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

Assessment of Public Comment

Public comments were submitted to the New York State Department of Health (Department) on the Proposed Regulation which amended Section 69-7.1 of Title 10 of the New York State Codes, Rules and Regulations (NYCRR). The Department received comments from two members of the public, a New York State (NYS) Assembly Member and a NYS Senator. These comments and the Department's responses are summarized below.

COMMENT: Each commenter suggested additional medical conditions for inclusion in the list of medical conditions that justify granting an exemption from the limits on light transmittance found in Vehicle and Traffic Law, section 375(12-a)(b), specifically: polymorphous light eruption; vitiligo; dermatoheliosis; skin cancer; leukemia and other cancers; and immunocompromised transplant recipients.

RESPONSE: The Department's proposed amendment added several specific medical disorders to the list of medical conditions that justify granting an exemption from the limits on light transmittance of vehicle windows, including albinism, chronic actinic dermatitis/actinic reticuloid, dermatomyositis, and lupus erythematosus. The Department also added two broader conditions that allow medical professionals to use their professional judgment to determine whether a patient's condition warrants an exemption; these broader conditions include 1) photophobia associated with an ophthalmic or neurological disorder, and 2) severe photosensitivity in which the individual is required for medical reasons to be shielded from the direct rays of the sun. A technical revision was made to the proposed amendment, to clarify that these are not specific diseases or disorders, but rather conditions that may be associated with a number of disorders.

In developing the proposed amendments, the Department reviewed the medical literature, the State's experience with the current window tinting regulation, other states' window tinting legislation and regulations, and other New York State regulations mandating medical certification of conditions. Through that process, the Department determined that it was not feasible or appropriate to list every specific medical disorder that might warrant an exemption. For example, there are numerous medical disorders that can result in severe photosensitivity or photophobia in only a subset of overall cases. Providing exemptions to all individuals diagnosed with such disorder(s), regardless of whether the individual has severe photosensitivity or photophobia, is inappropriate and inconsistent with the intent of the regulation and law. In addition, for some individuals, personal protective measures such as sun protective clothing, sunscreen, or eye protective devices would offer adequate protection.

By adding the two broader conditions, the Department acknowledges the importance of health care providers' professional judgment and knowledge of their patients' medical conditions and whether personal protective measures such as sun protective clothing, sunscreen, or eye protective devices would offer adequate protection. This professional judgment allows individuals whose medical conditions warrant an exemption to be granted one, and ensures that medical exemptions are not inappropriately granted, undermining the intent and purpose of the window tinting law.

The specific medical disorders on the list and the two broader conditions are intended to include medical disorders characterized by an acute, abnormal response to ultraviolet (UV) radiation or visible light. Photophobia is an abnormal intolerance to light and is associated with several ophthalmic and neurologic conditions. Photosensitive disorders of the skin, or photodermatoses, are aberrant skin reactions that occur within minutes to hours following UV radiation or visible light exposure. In some instances, the response may be delayed and not observed for up to several days after exposure. This list is not intended to include normal skin reactions to extended sun exposure such as sunburns, or usual eye sensitivity to sunlight. The list is also not intended to include disorders caused by long-term, cumulative exposure to UV radiation, such as skin cancer or precancerous skin lesions. Although some individuals are at higher risk of skin cancer, all individuals are at risk and need to take precautions to protect themselves from UV radiation. UV-protective window films are available that meet the current limits on light transmittance of vehicle windows and can effectively block 99.9 percent of UV radiation. Individuals, especially those at greater risk for developing skin cancer, can consider this additional measure to effectively protect themselves from UV radiation while in their cars, and would not require an exemption.

The following paragraphs are in response to comments to add specific medical conditions to the regulation.

Polymorphous light eruption is a very common disorder causing abnormal photosensitivity of the skin, affecting an estimated 10%-20% of the general population. The skin rash caused by polymorphous light eruption can take many forms, and ranges from mild to severe. In some

individuals, personal protective measures may be sufficient for the management of polymorphous light eruption. Some individuals also become tolerant to sunlight over time. Thus, due to polymorphous light eruption's high prevalence and the range of clinical features, it was not added as a specific condition on the list. A medical professional can make an assessment and determination of whether an exemption is warranted under the broader category of "severe photosensitivity in which the individual is required for medical reasons to be shielded from the direct rays of the sun."

Vitiligo is the loss of pigment in the skin when melanocyte cells in the skin die. Vitiligo may be widespread on an individual's body, or present on just one part of the body, such as a leg or arm. Some individuals with vitiligo may develop a rash after sun exposure. Vitiligo was not added as a specific condition on the list. Depending on a medical professional's assessment of the location and severity of the vitiligo, the presence of severe photosensitivity, and whether personal protective measures would offer adequate protection, the medical professional can make the determination if an exemption is warranted under the broader category of "severe photosensitivity in which the individual is required for medical reasons to be shielded from the direct rays of the sun."

Dermatoheliosis, or photoaging, is a term used to describe the changes to the skin that occur following prolonged exposure to UV radiation over a person's lifetime. Skin changes include fine or deep wrinkles, irregular pigmentation, rough skin texture, broken or dilated capillaries, and areas of actinic keratosis. All individuals are susceptible to dermatoheliosis, or photoaging, but it is most common among fair-skinned individuals with a history of extensive sun exposure, especially during youth. Allowing tinting exemptions for individuals with a history of dermatoheliosis would undermine the intent of the regulation and law. All individuals should take precautions to reduce skin damage, including using sunscreen, wearing protective clothing, and considering the use of UV-protective window films that meet the current limits on light transmittance of vehicle windows.

Skin cancer is the most common cancer in the United States; current estimates are that one in five Americans will develop skin cancer in their lifetimes. Between 40 and 50 percent of Americans who live to age 65 will have either basal cell carcinoma or squamous cell carcinoma, which are two types of skin cancer, at least once. In addition, although some individuals are at higher risk of skin cancer than others, anyone can develop skin cancer. Allowing tinting exemptions for individuals with a history of skin cancer or precancerous skin lesions would undermine the intent of the regulation and law. All individuals should take precautions to reduce their risk of skin cancer, including using sunscreen, wearing protective clothing and considering the use of UV-protective window films that meet the current limits on light transmittance of vehicle windows.

Individuals with a history of certain cancers, including leukemia, and individuals who are transplant recipients are known to be at significantly higher risk of developing skin cancer than the general population. These individuals should take extra precautions to reduce their exposure to UV radiation; they also have the option of using UV-protective window films that meet the current limits on light transmittance of vehicle windows. If an individual with a history of cancer or transplantation is being treated with a medication that a medical provider determines is causing severe drug photosensitivity and that the course of treatment is expected to be of prolonged duration, the medical provider may determine that an exemption is warranted, as outlined in the proposed amendment.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Get on Your Feet Loan Forgiveness Program

I.D. No. ESC-51-17-00003-E
Filing No. 1046
Filing Date: 2017-12-04
Effective Date: 2017-12-04

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

Action taken: Addition of section 2201.15 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 679-g

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 2201.15 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 who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible applicants. The statute provides for student loan relief to such college graduates who continue to live in New York State upon graduation, earn less than $50,000 per year, participate in either the federal Pay as You Earn (PAYE) or Income Based Repayment (IBR) program, which cap a federal student loan borrower's payments at 10 percent of discretionary income, and apply for this program within two years after graduating from college. Eligible applicants will have up to twenty-four payments made on their behalf towards their federal income-based repayment plan commitment. For those students who graduated in December 2014, their first student loan payment will become due upon the expiration of their grace period in June 2015. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately in order for HESC to process applications so that timely payments can be made on behalf of program recipients. 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 Get on Your Feet Loan Forgiveness Program.

Purpose: To implement the New York State Get on Your Feet Loan Forgiveness Program.

Text of emergency rule: New section 2201.15 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.15 New York State Get on Your Feet Loan Forgiveness Program.

(a) Definitions. As used in section 679-g of the education law and this section, the following terms shall have the following meanings:

(1) "Adjusted gross income" shall mean the income used by the U.S. Department of Education to qualify the applicant for the federal income-driven repayment plan.

(2) "Award" shall mean a New York State Get on Your Feet Loan Forgiveness Program award pursuant to section 679-g of the education law.

(3) "Deferment" shall have the same meaning applicable to the William D. Ford Federal Direct Loan Program as set forth in 34 CFR Part 685.

(4) "Delinquent" shall mean the failure to pay a required scheduled payment on a federal student loan within thirty days of such payment's due date.

(5) "Forbearance" shall have the same meaning applicable to the William D. Ford Federal Direct Loan Program as set forth in 34 CFR Part 685.

(6) "Income" shall mean the total adjusted gross income of the applicant and the applicant's spouse, if applicable.

(7) "Program" shall mean the New York State Get on Your Feet Loan Forgiveness Program.

(8) "Undergraduate degree" shall mean an associate or baccalaureate degree.

(b) Eligibility. An applicant must satisfy the following requirements:

(1) have graduated from a high school located in the State or attended an approved State program for a State high school equivalency diploma and received such diploma. An applicant who received a high school diploma, or its equivalent, from another state is ineligible for a Program award;

(2) have graduated and obtained an undergraduate degree from a college or university located in the State in or after the two thousand fourteen-fifteen academic year;

(3) apply for this program within two years of obtaining such undergraduate degree;

(4) not have earned a degree higher than an undergraduate degree at the time of application;

(5) be a participant in a federal income-driven repayment plan whose payment amount is generally ten percent of discretionary income;

(6) have income of less than fifty thousand dollars;

(7) comply with subdivisions three and five of section 661 of the education law;

(8) work in the State, if employed. A member of the military who is on

active duty and for whom New York is his or her legal state of residence shall be deemed to be employed in NYS;

(9) not be delinquent on a federal student loan or in default on a student loan made under any statutory New York State or federal education loan program or repayment of any New York State award; and

(10) be in compliance with the terms of any service condition imposed by a New York State award.

(c) Administration.

(1) An applicant 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) A recipient of an award shall:

(i) request payment at such times, on such forms and in a manner as prescribed by the corporation;

(ii) confirm he or she has adjusted gross income of less than fifty thousand dollars, is a resident of New York State, is working in New York State, if employed, and any other information necessary for the corporation to determine eligibility at such times prescribed by the corporation. Said submissions shall be on forms or in a manner prescribed by the corporation;

(iii) notify the corporation of any change in his or her eligibility status including, but not limited to, a change in address, employment, or income, and provide the corporation with current information;

(iv) not receive more than twenty four payments under this program; and

(v) provide any other information or documentation necessary for the corporation to determine compliance with the program's requirements.

(d) Amounts and duration.

(1) The amount of the award shall be equal to one hundred percent of the recipient's established monthly federal income-driven repayment plan payment whose payment amount is generally ten percent of discretionary income and whose payment is based on income rather than loan debt.

(2) In the event the established monthly federal income-driven repayment plan payment is zero or the applicant is otherwise not obligated to make a payment, the applicant shall not qualify for a Program award.

(3) Disbursements shall be made to the entity that collects payments on the federal student loan or loans on behalf of the recipient on a monthly basis.

(4) A maximum of twenty-four payments may be awarded, provided the recipient continues to satisfy the eligibility requirements set forth in section 679-g of the education law and the requirements set forth in this section.

(e) Disqualification. A recipient shall be disqualified from receiving further award payments under this program if he or she fails to satisfy any of the eligibility requirements, no longer qualifies for an award, or fails to respond to any request for information by the corporation.

(f) Renewed eligibility. A recipient who has been disqualified pursuant to subdivision (e) may reapply for this program and receive an award if he or she satisfies all of the eligibility requirements set forth in section 679-g of the education law and the requirements set forth in this section.

(g) Repayment. A recipient who is not a resident of New York State at the time a payment is made under this program shall be required to repay such payment or payments to the corporation. In addition, at the corporation's discretion, a recipient may be required to repay to the corporation any payment made under this program that, at the time payment was made, should have been disqualified pursuant to subdivision (e). If a recipient is required to repay any payment or payments to the corporation, the following provisions shall apply:

(1) Interest shall begin to accrue on the day such payment was made on behalf of the recipient. In the event the recipient notifies the corporation of a change in residence within 30 days of such change, interest shall begin to accrue on the day such recipient was no longer a New York State resident.

(2) The interest rate shall be fixed and equal to the rate established in section 18 of the New York State Finance Law.

(3) Repayment must be made within five years.

(4) 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, waive or defer payment, extend the repayment period, 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 March 3, 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 Get on Your Feet Loan Forgiveness Program ("Program") is codified within Article 14 of the Education Law. In particular, Part C of Chapter 56 of the Laws of 2015 created the Program by adding a new section 679-g to the Education Law. Subdivision 4 of section 679-g 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 679-g to create the "New York State Get on Your Feet Loan Forgiveness Program" (Program). The objective of this Program is to ease the burden of federal student loan debt for recent New York State college graduates.

Needs and benefits:

More than any other time in history, a college degree provides greater opportunities for graduates than is available to those without a postsecondary degree. However, financing that degree has also become more challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. More students than ever are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with debt, which averages $29,400. Many of these students feel burdened by debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement. To ensure that student debt is manageable, the federal government enacted income-driven repayment plans, such as the Pay as You Earn (PAYE) plan, which caps a federal student loan borrower's payments at 10 percent of income.

Although New York's public colleges and universities offer among the lowest tuition in the nation, currently the average New York student graduates from college with a four-year degree saddled with more than $25,000 in student loans. Mounting student debt makes it difficult for recent graduates to deal with everyday costs of living, which often increases the amount of credit card and other debt they must take on in order to survive. To help mitigate the disparate growth in the cost of financing a postsecondary education, this Program offers financial aid relief to recent college graduates by providing up to twenty-four payments towards an eligible applicant's federal income-based student loan repayment plan commitment. Students who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter, who continue to live in New York State upon graduation, earn less than $50,000 per year, participate in either the federal Pay as You Earn (PAYE) or applicable federal Income Based Repayment (IBR) program, and apply for this Program within two years after graduating from college are eligible for this Program.

Costs:

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

b. The maximum cost of the program to the State is $5.2 million in the first year based upon budget estimates.

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

d. 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 for eligibility and payment together with supporting documentation.

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 U.S. Department of Education 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. Since this Program is intended to supplement federal repayment programs, efforts were made to align the Program with the federal programs.

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 2201.15 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 eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, 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 2201.15 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 eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, 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 2201.15 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 eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits the State as well.

EMERGENCY RULE MAKING

New York State Achievement and Investment in Merit Scholarship (NY-AIMS)

I.D. No. ESC-51-17-00004-E
Filing No. 1047
Filing Date: 2017-12-04
Effective Date: 2017-12-04

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

Action taken: Addition of section 2201.16 to Title 8 NYCRR.

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

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 2201.16 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 2015 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 New York high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in New York State. Five thousand awards, of $500 each, will be granted annually in 2015-16 and 2016-17. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of this 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 Achievement and Investment in Merit Scholarship (NY-AIMS).

Purpose: To implement the New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

Text of emergency rule: New section 2201.16 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.16 The New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

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

(1) "Good academic standing" shall have the same meaning as set forth in section 665(6) of the education law.

(2) "Grade point average" shall mean the student's numeric grade calculated on the standard 4.0 scale.

(3) "Program" shall mean The New York State Achievement and Investment in Merit Scholarship codified in section 669-g of the education law.

(4) "Unmet need" for the purpose of determining priority shall mean the cost of attendance, as determined for federal Title IV student financial aid purposes, less all federal, State, and institutional higher education aid and the expected family contribution based on the federal formula.

(b) Eligibility. An applicant must:

(1) have graduated from a New York State high school in the 2014-15 academic year or thereafter; and

(2) enroll in an approved undergraduate program of study in a public or private not-for-profit degree granting post-secondary institution located in New York State beginning in the two thousand fifteen-sixteen academic year or thereafter; and

(3) have achieved at least two of the following during high school:

(i) Graduated with a grade point average of 3.3 or above;

(ii) Graduated with a "with honors" distinction on a New York State regents diploma or receive a score of 3 or higher on two or more advanced placement examinations; or

(iii) Graduated within the top fifteen percent of their high school class, provided that actual class rank may be taken into consideration; and

(4) satisfy all other requirements pursuant to section 669-g of the education law; and

(5) satisfy all general eligibility requirements provided in section 661 of the education law including, but not limited to, full-time attendance, good academic standing, residency and citizenship.

(c) Distribution and priorities. In each year, new awards made shall be proportionate to the total new applications received from eligible students enrolled in undergraduate study at public and private not-for-profit degree granting institutions. Distribution of awards shall be made in accordance with the provisions contained in section 669-g(3)(a) of the education law within each sector. In the event that there are more applicants who have the same priority than there are remaining scholarships or available funding, awards shall be made in descending order based on unmet need established at the time of application. In the event of a tie, distribution shall be made by means of a lottery or other form of random selection.

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

(ii) receive such awards for not more than four academic years of undergraduate study, or five academic years if the program of study normally requires five years as defined by the commissioner pursuant to Article 13 of the education law; and

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

(e) Awards.

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

(2) Disbursements shall be made annually to institutions on behalf of recipients.

(3) Awards may be used to offset the recipient's total cost of attendance determined for federal Title IV student financial aid purposes or may be used in addition to such cost of attendance.

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 March 3, 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 Achievement and Investment in Merit Scholarship (NY-AIMS), hereinafter referred to as "Program", is codified within Article 14 of the Education Law. In particular, Part Z of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-g to the Education Law. Subdivision 6 of section 669-g 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 669-g to create The New York State Achievement and Investment in Merit Scholarship (NY-AIMS). The objective of this Program is to grant merit-based scholarship awards to New York State high school graduates who achieve academic excellence.

Needs and benefits:

The cost to attain a postsecondary degree has increased significantly over the years; alongside this growth, the financing of that degree has become increasingly challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. All federal student financial aid and a majority of state student financial aid programs are conditioned on economic need. Despite stagnant growth in household incomes, there continues to be far fewer academically-based financial aid programs, which are awarded to students regardless of assets or income. This has resulted in more limited financial aid options for those who are ineligible for need-based aid. Concurrently, greater numbers of students are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with student loan debt averaging $29,400. Many of these students feel burdened by their college loan debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement.

This Program cushions the disparate growth in the cost of a postsecondary education by providing New York State high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in the State for up to four years of undergraduate study (or five years if enrolled in a five-year program). Five thousand awards, of $500 each, will be granted annually in 2015-16 and 2016-17.

Costs:

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

b. The maximum cost of the program to the State is $2.5 million in the first year based upon budget estimates.

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

d. 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 for eligibility and payment together with supporting documentation.

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 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 669-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 definitions/methodology concerning unmet need, expected family contribution, and cost of attendance.

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 2201.16 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 merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. 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 2201.16 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 merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. 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 2201.16 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 merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. 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.

Office of Mental Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Operation of Licensed Housing Programs for Children and Adolescents with Serious Emotional Disturbances

I.D. No. OMH-51-17-00001-P

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

Proposed Action: This is a consensus rule making to repeal section 594.8 and add new section 594.8 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 71.09 and 31.04

Subject: Operation of Licensed Housing Programs for Children and Adolescents with Serious Emotional Disturbances.

Purpose: To repeal section 594.8 of Title 14 NYCRR and replace it with a clarified revised version.

Text of proposed rule: Section 594.8 of Title 14 NYCRR is repealed and a new Section 594.8 is added to read as follows:

§ 594.8 Admission and discharge criteria.

(a) All programs subject to this Part shall maintain written admission and discharge criteria. Such criteria must be consistent with program goals and objectives and are subject to the approval of the Office of Mental Health.

(b) Admission criteria: Eligibility for admission to a licensed housing program for children and adolescents with serious emotional disturbances shall be based on the following criteria:

(1) Age requirements:

(i) For Teaching Family Homes, Community Residences, and Crisis Residences, the child must have attained at least the 5th birthday but not the 18th;

(ii) For CREDIT programs, the child must have attained at least the 12th birthday but not the 19th.

(2) Diagnosis requirements:

(i) For Teaching Family Homes, Community Residences, and Crisis Residences, the child must have a designated mental illness diagnosis.

(ii) For CREDIT programs, the child must have a designated mental illness diagnosis which includes a diagnosis of an eating disorder, as such term is defined in this Part.

(3) Functional deficits. For all programs subject to this Part, the child must have demonstrated substantial problems in social functioning due to a serious emotional disturbance within the past year.

(4) Symptomology.

(i) For Teaching Family Homes and Community Residences, the child must demonstrate serious and persistent symptoms of cognitive, affective and personality disorders; and serious problems in family relationships, peer/social interaction or school performance.

(ii) For Crisis Residences, the child must display serious and persistent symptoms of cognitive, affective and personality disorders; and current functioning and behaviors demonstrating that that the child, is currently experiencing a crisis which threatens his or her psychiatric stability, but no evidence of symptoms indicative of a need for psychiatric hospitalization.

(iii) For CREDIT programs, the child must display serious and persistent symptoms of cognitive, affective and personality disorders; and serious problems in the family relationship/support system must be present in which:

A. the family members and/or support systems demonstrate behaviors that are inconsistent with the goals of treatment, such that treatment at a lower level of care is unlikely to be successful; or

B. the family members and/or support systems do not possess the requisite skills to effectively manage the disease such that treatment at a lower level of care is unlikely to be successful;

(5) Level of Service Need. For all programs subject to this Part, there must be evidence to support a determination that the child would benefit from a level of service which requires multi-agency intervention and involvement.

(6) Documentation.

(i) For Teaching Family Homes or Community Residences, a referral for admission shall be submitted to the provider from the child's single point of access process (or similar successor process). Each referral must contain the following documents, and all assessments must have occurred within the last 90 days, except for the educational assessment which must have occurred within the last year:

A. an updated medical report;

B. a psychosocial assessment;

C. a psychiatric evaluation;

D. an educational assessment;

E. a signed, parental/guardian informed consent form for admission;

F. a description of the child's current behaviors and significant strengths and problems; and

G. documentation that potentially less restrictive community, home and/or extended nonresidential services have been reasonably explored and are either not available or have not been successful.

(ii) For Crisis Residences:

A. Eligibility for admission to a crisis residence requires evidence that potentially less restrictive community, home and/or extended nonresidential services have been reasonably explored and are either not available or have not been successful.

B. A signed, parental/guardian informed consent form shall be required for each admission.

C. Admission is contingent upon documentation of medical suitability for the program.

(iii) For CREDIT Programs, a referral for admission must be received from a Comprehensive Care Center for Eating Disorders, or from the child's primary care physician or mental health provider. All assessments must have occurred within the last 30 days. Each referral must include the following documents:

A. an updated medical report;

B. a psychosocial assessment;

C. a psychiatric evaluation;

D. an educational assessment;

E. a signed, parental/guardian informed consent form for admission;

F. a description of the child's current behaviors and significant strengths and problems;

G. documentation that potentially less restrictive community, home and/or extended non-residential services have been reasonably explored and are either not available or have not been successful;

H. nutritional screening for eating disorder behaviors and nutritional status;

I. psychological testing as needed;

J. documentation that the child demonstrates an inability to be managed at a lower level of care but does not require acute inpatient level of care; and

K. assessment of the family system when appropriate by direct involvement with the family members.

(c) Intake Committees. Providers of a Teaching Family Home or Com-

munity Residence (that is not a CREDIT program) must establish an intake committee to review the applications of children referred for admission to the program from the child's home single point of access process (or similar successor process) and determine the eligibility for admission to such program. The intake committee shall, at a minimum, include appropriate representation from the residential program and other agencies impacting the care and treatment of the child such as, but not limited to, the local governmental unit, social service district, school district, and family and consumer representation.

(d) Pre-Placement Visits. For all programs subject to this Part, each child shall be afforded at least one pre-placement visit. Where appropriate, the family shall also be afforded such opportunity.

(e) Eligibility Determinations. For all programs subject to this Part, determination of eligibility for acceptance must be made, once all intake materials have been received, within 10 working days.

(i) If a child is not accepted into a Teaching Family Home or Community Residence, the provider shall send a notice of rejection to the child's home single point of access committee (or similar successor process entity) and the child's parent or guardian, accompanied by an explanation of the rejection and suggestions for treatment alternatives.

(ii) If a child is not accepted into a CREDIT program, such program will send the notice of rejection to the referral source in a timely manner, but in no event later than 7 days after request has been made.

(f) Discharge policies. For all providers subject to this Part:

(i) a discharge policy and specific discharge criteria shall be developed. The discharge policy shall indicate that the provider will begin discharge planning upon a child's admission to the program. Although discharge planning shall begin prior to the child's 18th birthday, the child may remain in the program for up to one year following the 18th birthday, if clinically appropriate. The discharge plan must set forth the resident's functional levels and family and community supports needed to enable the child to move home or live independently. Additionally, the discharge plan must identify goals for the child to work towards which will strengthen his or her success upon discharge.

(ii) As part of the discharge planning process, for both planned and unplanned discharges, the provider shall ensure that each child and family is linked with the appropriate services needed for the child to successfully transition into the community or other appropriate alternative. Attempts should be made to ensure that the discharge process allows for gradual transition to the child's discharge living environment.

(g) All programs subject to this Part shall maintain contact with child and family for up to 90 days after discharge for the purpose of providing support during transition to the discharge living environment.

Text of proposed rule and any required statements and analyses may be obtained from: Kim Breen, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: omh.sm.co.regs

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

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

Consensus Rule Making Determination

This statement is being submitted pursuant to subparagraph (i) of paragraph (b) of subdivision (1) of Section 202 of the State Administrative Procedure Act in support of the Office of Mental Health's Notice of Proposed Rulemaking seeking to make technical clarifications to Section 594.8 of Part 594 of Title 14, Volume B, of the Official Compilation of Codes, Rules, and Regulations.

Part 594 of Title 14 NYCRR was established in 1993 to set forth standards for the operation of licensed housing programs for children and adolescents with serious emotional disturbances, of which there are three different types: crisis residence, community residence and teaching family homes. In 2008, legislation was passed to require the Office of Mental Health to establish Community Residences for Eating Disorder Integrated Treatment (CREDIT) programs for children and adolescents. Consequently, in 2009, Part 594 was amended to include provisions applicable to this sub-type of community residences.

Section 594.8 of this Part contains provisions regarding admission and discharge criteria for licensed housing programs for children and adolescents. Although subdivisions (a), (b), and (i) of this Section contain standards applicable to all licensed housing programs, the remaining eight subdivisions are different, and apply to various types of housing programs but not all of them. Particularly with respect to the CREDIT program, which is included or excluded based on whether or not a community residence is or is not a CREDIT program, it is difficult to easily and accurately identify applicable standards for each particular type of program.

The proposed amendments repeal Section 594.8 of Title 14 NYCRR and then replace it with a revised version that reorders, regroups, and clarifies existing criteria, without making substantive changes. Because no new requirements are added to this section, and the proposed changes are technical in nature, no person is likely to object to its adoption as written.

Job Impact Statement

The amendments to 14 NYCRR Section 594.8 are intended to reorder, regroup, and clarify existing criteria, without making substantive changes. Because no new requirements are added to this section, and the proposed changes are technical in nature, there will be no adverse impact on jobs and employment opportunities as a result of these amendments. Thus, a Job Impact Statement is not submitted with this notice.

Office for People with Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

SNAP Benefit Offset

I.D. No. PDD-51-17-00005-EP
Filing No. 1051
Filing Date: 2017-12-05
Effective Date: 2017-12-05

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

Proposed Action: Amendment of Parts 671 and 686 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 16.00 and 41.25

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 update the Supplemental Nutrition Assistance Program (SNAP) benefit offset and the amount that each individual must pay to providers based on the updated benefit offset is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system. The SNAP benefit offset prevents individuals from using other resources, which may be scarce or limited, to pay for food and to prevent an overall reduction in reimbursement for food to operators of supervised CRs and supervised IRAs.

The emergency amendments amend Title 14 NYCRR Parts 671 and 686 to reflect the changes made to SNAP eligibility levels, by the federal government, made effective October 1, 2017. The regulations must be filed on an emergency basis to reflect those changes, and ensure SNAP eligibility levels are reflected properly for individuals and providers to know the impact of the changes.

Subject: SNAP Benefit Offset.

Purpose: To update the SNAP benefit offset and the amount that each individual must pay to providers.

Text of emergency/proposed rule: New clause 671.7(b)(10)(i)(f) is added as follows:

(f) Effective January 1, 2018 through December 31, 2018, the offset shall be $191.50 per month. Effective January 1, 2019, the offset shall be $192 per month.

- Existing subparagraph 671.7(b)(10)(ii) is amended as follows:

(ii) For supportive community residences the offset shall be $1,134 (or a prorated portion thereof for facilities which opened after April, 2009) and beginning January 1, 2010, $126 per month. *Beginning January 1, 2018 through December 31, 2018 the offset shall be $161 per month. Effective January 1, 2019, the offset shall be $154 per month.*

- New clause 686.17(b)(1)(iii)(e) is added as follows:

(e) Effective January 1, 2018 through December 31, 2018, the individual shall pay the provider $191.50 per month. Effective January 1, 2019, the individual shall pay the provider $192 per month.

- New clause 686.17(b)(2)(iii)(e) is added as follows:

(e) Effective January 1, 2018 through December 31, 2018, the individual shall pay the provider $191.50 per month. Effective January 1, 2019, the individual shall pay the provider $192 per month.

- New subclause 686.17(d)(2)(iii)(b)(5) is added as follows:

(5) Effective January 1, 2018 through December 31, 2018, the individual shall pay the provider $191.50 per month. Effective January 1, 2019, the individual shall pay the provider $192 per month.

This notice is intended: to serve as both a notice of emergency adoption

and a notice of proposed rule making. The emergency rule will expire March 4, 2018.

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

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

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

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

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

d. OPWDD has the statutory authority to establish fee schedules for services and requires that fees charged or payments requested take into account costs and ability to pay, considering resources available from private and public assistance programs as stated in Mental Hygiene Law Section 41.25.

2. Legislative Objectives: The proposed regulations further legislative objectives embodied in sections 13.07, 13.09(b), 16.00 and 41.25 of the Mental Hygiene Law. The regulations update the Supplemental Nutrition Assistance Program (SNAP) benefit offset for supervised CRs and supervised IRAs.

3. Needs and Benefits: Effective October 1, 2017, SNAP eligibility levels set by the federal government will be updated. The proposed amendments to Title 14 NYCRR Parts 671 and 686 are needed to reflect this change. The amendments will update the SNAP benefit offset and the amount that each individual must pay to providers based on the updated benefit offset.

The proposed regulations prevent individuals from using other resources, which may be scarce or limited, to pay for food and to prevent an overall reduction in reimbursement for food to operators of supervised CRs and supervised IRAs.

4. Costs:

a. Costs to the Agency and to the State and its local governments: There is no anticipated impact on Medicaid expenditures as a result of the proposed regulations. The regulations merely update the SNAP benefit offset and the amount that each individual must pay to providers based on the updated benefit offset.

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. The regulations merely update the SNAP benefit offset and the amount that each individual must pay to providers based on the updated benefit offset.

b. Costs to private regulated parties: There are no anticipated costs to regulated providers to comply with the proposed regulations. The regulations merely update the SNAP benefit offset and the amount that each individual must pay to providers based on the updated benefit offset.

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

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

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

8. Alternatives: OPWDD did not consider any other alternatives to the proposed regulations. The regulations are necessary to update the benefit offset to reflect the change to SNAP made by the federal government.

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

10. Compliance Schedule: OPWDD is planning to adopt the proposed amendments as soon as possible within the timeframes mandated by the State Administrative Procedure Act. The proposed regulations were discussed with and reviewed by representatives of providers in advance of this proposal. OPWDD expects that providers will be in compliance with the proposed requirements at the time of their effective date.

Regulatory Flexibility Analysis

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

The proposed regulations update the SNAP benefit offset and the amount that each individual must pay to providers based on the updated benefit offset. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers of small business and local governments.

Rural Area Flexibility Analysis

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

The proposed regulations merely update the SNAP benefit offset and the amount that each individual must pay to providers based on the updated benefit offset. OPWDD expects that providers will be in compliance with the proposed requirements at the time of their effective date. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers in rural areas and local governments.

Job Impact Statement

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

The proposed regulations update the SNAP benefit offset and the amount that each individual must pay to providers based on the updated benefit offset. The amendments will not result in costs, including staffing costs, or new compliance requirements for providers and consequently, the amendments will not have a substantial impact on jobs or employment opportunities in New York State.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Site Based and Community Based Prevocational Services

I.D. No. PDD-51-17-00006-EP

Filing No. 1053

Filing Date: 2017-12-05

Effective Date: 2017-12-05

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

Proposed Action: 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 community-based prevocational services, 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/proposed rule (Full text is posted at the following State website: https://opwdd.ny.gov/regulations_guidance/opwdd_regulations/emergency): OPWDD's emergency/proposed 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 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 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 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 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 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 proposed rule making. The emergency rule will expire March 4, 2018.

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

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

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

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

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

1. Statutory Authority:

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 proposed regulations further legislative objectives embodied in sections 13.07, 13.09(b), 16.00 and 16.05 of the Mental Hygiene Law. The proposed 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 proposed 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 proposed 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 proposed 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 proposed regulations provide a timeframe for when site-based prevocational services must be provided at a site-based prevocational services site.

In addition, the proposed regulations provide an exception to the number of individuals allowed in a group for community-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 proposed regulations. The proposed 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 proposed 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 proposed regulations do not duplicate any existing State or Federal requirements on this topic.

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

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

10. Compliance Schedule: OPWDD is planning to adopt the proposed amendments 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 proposed regulations were discussed with and reviewed by representatives of providers in advance of this proposal. Additionally, OPWDD will be mailing a notice of the proposed amendments to providers in advance of the effective date.

Regulatory Flexibility Analysis

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

The proposed amendments have been reviewed by OPWDD in light of their impact on small businesses. The proposed 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.

2. Compliance Requirements: The proposed 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 proposed 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 proposed amendments do not impose the use of any new technological processes on regulated parties.

6. Minimizing Adverse Impact: The purpose of these proposed amendments is to 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, 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 and Local Government Participation: The proposed regulations were discussed with and reviewed by representatives of providers, some being small businesses, in advance of this proposal. OPWDD also plans to inform all providers, including small business providers, of the proposed amendments in advance of their scheduled effective date.

Rural Area Flexibility Analysis

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

The proposed amendments have been reviewed by OPWDD in light of their impact on entities in rural areas. The proposed 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.

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

Job Impact Statement

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

The purpose of these proposed 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, 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.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Opt-Out Tariff Regarding Installation of Advanced Digital Metering Devices in Central Hudson's Service Territory

I.D. No. PSC-51-17-00007-P

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

Proposed Action: The Commission is considering a petition for rehearing filed by Stop Smart Meters NY (SSMNY) on November 17, 2017 of the October 20, 2017 order granting, in part, and denying, in part, requests for modifications of opt-out tariff.

Statutory authority: Public Service Law, sections 5, 65, 66, 67, 71 and 72

Subject: Opt-out tariff regarding installation of advanced digital metering devices in Central Hudson's service territory.

Purpose: To determine the appropriate opt-out provisions for Central Hudson customers regarding advanced digital metering devices.

Substance of proposed rule: The Commission is considering a petition for rehearing, filed by Stop Smart Meters NY (SSMNY) on November 17, 2017, of the October 20, 2017 Order Granting, in Part, and Denying, in Part, Requests for Modifications of Opt-Out Tariff (Order). The petition alleges that the Order erred as a matter if law and fact pursuant to 16 NYCRR § 3.7(b). In the petition, SSMNY requests that the Commission modify its Order to require Central Hudson to offer remanufactured/refurbished electromechanical ("analog") electric meters within its service territory for customers who wish to opt out of the use of digital electric meters. Specifically, SSMNY argues that the Commission's Order ignores evidence submitted by SSMNY purporting to demonstrate certain risks caused by digital electric meters. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. Upon conducting its evaluation of the petition, the Commission may reaffirm its initial decision or adhere to it with additional rationale in denying the request, modify or reverse the decision in granting the request in whole or in part, or take such other or further action as it deems necessary with respect to the request.

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

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

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

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

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

(14-M-0196SP4)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Submeter Electricity

I.D. No. PSC-51-17-00008-P

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

Proposed Action: The Commission is considering the petition of 305 East 24th Owners Corp. to submeter electricity at 305 East 24th Street, New York, New York.

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

Subject: Petition to submeter electricity.

Purpose: To consider the petition of 305 East 24th Owners Corp. to submeter electricity.

Substance of proposed rule: The Commission is considering the petition of 305 East 24th Owners Corp. filed on October 20, 2017, to submeter electricity at 305 East 24th Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to submeter electricity, 305 East 24th Owners Corp. has requested authorization to take electric service from Con Edison 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 may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(17-E-0657SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Consideration of Con Edison's Proposed Implementation Plan

I.D. No. PSC-51-17-00009-P

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

Proposed Action: The Commission is considering a petition filed by Consolidated Edison Company of New York, Inc. (Con Edison) on November 30, 2017, requesting approval of the Implementation Plan for its approved Shared Solar Pilot Program for Low Income Customers.

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

Subject: Consideration of Con Edison's proposed Implementation Plan.

Purpose: To consider Con Edison's Implementation Plan and appropriate design of the utility-owned Shared Solar Pilot Program.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition for an Implementation Plan, filed by Consolidated Edison Company of New York, Inc. (Con Edison) on November 30, 2017, requesting approval of the Shared Solar Pilot Program for Low Income Customers. The Implementation Plan was filed in compliance with the Commission's August 2, 2017 Order Approving Shared Solar Pilot Program With Modifications. The Implementation Plan includes details regarding Con Edison's competitive vendor procurement process, cost recovery mechanism, draft tariff revisions, a community outreach and engagement plan, and detailed accounting procedures. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the Implementation Plan, and may resolve other related matters.

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

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

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

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

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

(16-E-0622SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Transfer Certain Street Lighting Facilities to the Town of Owego

I.D. No. PSC-51-17-00010-P

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

Proposed Action: The Commission is considering the petition filed by New York State Electric & Gas Corporation (NYSEG) for authority to transfer certain street lighting facilities to the Town of Owego, located in the Town of Owego, Tioga County, New York.

Statutory authority: Public Service Law, section 70

Subject: Transfer certain street lighting facilities to the Town of Owego.

Purpose: To consider the transfer of certain street lighting facilities from NYSEG to the Town of Owego.

Substance of proposed rule: The Public Service Commission (Commission) is considering the petition filed by New York State Electric & Gas Corporation for authority to transfer certain street lighting facilities to the Town of Owego, located in the Town of Owego, Tioga County, New York. The original cost of the facilities was approximately $381,806 and is being sold at a purchase price of $199,937, which represents the current fair market value of the facilities. The current net book value of the assets is $101,573. The full text of the petition may be viewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(17-E-0666SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for Recovery of Certain Costs Related to the Implementation of a Non-Wires Alternative Project

I.D. No. PSC-51-17-00011-P

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

Proposed Action: The Public Service Commission is considering a petition by Consolidated Edison Company of New York, Inc. regarding the recovery of costs for the Kennedy Airport Microgrid Project (JFK Project).

Statutory authority: Public Service Law, sections 65 and 66

Subject: Petition for recovery of certain costs related to the implementation of a Non-Wires Alternative Project.

Purpose: To consider Con Edison's petition for the recovery of costs for implementing the JFK Project.

Substance of proposed rule: The Public Service Commission is considering the petition submitted on October 27, 2017 by Consolidated Edison Company of New York, Inc. (Con Edison or Company) requesting to either: (i) confirm that Con Edison may recover all capital costs incurred for ductwork for the Glendale Project as costs of implementing the JFK Project, a Non-Wires Alternative, pursuant to the provision in Con Edison's currently-effective Electric Rate Plan authorizing Con Edison to recover the implementation costs of Non-Wires Alternatives or a similar provision in the Company's next rate plan; or (ii) rule in the alternative that the Glendale Project costs are prudently incurred costs of an abandoned property that may be deferred as a regulatory asset. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the petition and may resolve related matters.

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

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

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

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

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

(17-E-0708SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rider T – Commercial Demand Response Program

I.D. No. PSC-51-17-00012-P

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

Proposed Action: The Commission is considering a petition filed by Consolidated Edison Company of New York, Inc. to revise Rider T – Commercial Demand Response Program (CDRP) contained in its electric tariff schedule, P.S.C. No. 10 — Electricity.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Rider T – Commercial Demand Response Program.

Purpose: To consider revisions to Rider T – CDRP.

Substance of proposed rule: The Public Service Commission is considering a petition, with related tariff amendments, filed on November 30, 2017 by Consolidated Edison Company of New York, Inc. (Con Edison), to revise its electric tariff schedule, P.S.C. No. 10 — Electricity. Con Edison proposes to revise Rider T – Commercial Demand Response Programs (CDRP) to be effective for the summer 2018 Capability Period. Con Edison proposes to: 1) extend the maximum period for its Distribution Load Relief Program (DLRP) and Commercial System Relief Program Test Events to four hours, versus the current one-hour limit; 2) require a minimum Performance Factor for Rider T reservation payments; 3) amend the definition of Customer Baseline Load (CBL) to allow for additional CBL options; 4) provide that the first reservation payment will not occur until after performance is demonstrated; 5) base DLRP Tier 2 Networks upon the most recent list of Network Reliability Index (NRI) scores instead of an average of NRI scores for the previous five years; and 6) waive, for the 2018 Capability Period, the requirement to provide meter data access during demand response events to customers participating in Rider T via an Advanced Metering Infrastructure meter and supporting systems. The proposed amendments have an effective date of March 1, 2018. The full text of the filing may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(17-E-0741SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of Certain Rules and Requirements Pertaining to Cable Television Franchise

I.D. No. PSC-51-17-00013-P

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

Proposed Action: The Commission is considering a petition for certain waivers filed by Citizens Telecommunications Company of New York, Inc. DBA Frontier Communications of New York in connection with a cable television franchise for the Village of Wurtsboro.

Statutory authority: Public Service Law, sections 215, 216 and 221

Subject: Waiver of certain rules and requirements pertaining to cable television franchise.

Purpose: To determine whether to waive any regulations.

Substance of proposed rule: The Commission is considering a petition filed by Citizens Telecommunications Company of New York, Inc. DBA Frontier Communications of New York (Frontier), for certain waivers in connection with its proposed cable television franchise agreement with the Village of Wurtsboro. Frontier requests full or partial waivers of 16 NYCRR §§ 890 and 895 with respect to build out requirements, installation intervals, system description, and public, educational and governmental access availability. Specifically, Frontier requests that the Commission waive 16 NYCRR § 895.5(b)(l) and 895.5(c), requiring a five-year build-out of the primary service area; and 16 NYCRR § 895.5(b)(3) and 890(b)(l), establishing a seven-business day installation interval for providing service to certain dwellings. Frontier states that these proposed waivers will enable Frontier to bring the benefits of video competition, increased investment, and enhanced service quality-as well as enhanced high speed broadband capabilities to 35% of the residents of Wurtsboro in the near term and that additional build-out will occur based on a success based model that the Commission has previously approved for Frontier in other municipalities. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(17-V-0709SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Transfer of Control

I.D. No. PSC-51-17-00014-P

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

Proposed Action: The Commission is considering a petition of Time Warner Cable Northeast LLC seeking approval for a transfer of control of five cable television franchises from Hamilton County Cable T.V., Inc.

Statutory authority: Public Service Law, section 222

Subject: Transfer of control.

Purpose: To consider Time Warner Cable Northeast's petition seeking approval of a transfer of cable television franchises.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Time Warner Cable Northeast LLC (Time Warner) for approval of a transfer of control to Time Warner of five cable television franchises and systems from Hamilton County Cable T.V., Inc. (Hamilton) The franchises include the towns of Wells, Lake Pleasant, Indian Lake, and Johnsburg, and the Village of Speculator, New York. As a result of proposed transaction, Time Warner would directly acquire the franchises and the existing cable television systems from Hamilton. Charter proposes to upgrade the systems to provide broadband and advanced video services, which they do not at present. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the proposed petition and may resolve related matters.

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

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

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

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

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

(17-V-0733SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Opt-Out Tariff Regarding Installation of Advanced Digital Metering Devices in Central Hudson's Service Territory

I.D. No. PSC-51-17-00015-P

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

Proposed Action: The Commission is considering a petition for reconsideration filed by Stop Smart Meters Woodstock NY (SSMWNY) on November 20, 2017 of the October 20, 2017 order granting, in part, and denying, in part, requests for modifications of opt-out tariff.

Statutory authority: Public Service Law, sections 5, 65, 66, 67, 71 and 72

Subject: Opt-out tariff regarding installation of advanced digital metering devices in Central Hudson's service territory.

Purpose: To determine the appropriate opt-out provisions for Central Hudson customers regarding advanced digital metering devices.

Substance of proposed rule: The Commission is considering a petition for rescission, in part, and modification, filed by Stop Smart Meters Woodstock NY (SSMWNY) on November 20, 2017, of the October 20, 2017 Order Granting, in Part, and Denying, in Part, Requests for Modifications of Opt-Out Tariff (Order). The petition is not styled as one for rehearing or reconsideration, and it does not state an error of law or fact or new circumstances warranting a rehearing. As such, the petition will be treated as one for reconsideration. In the petition, SSMWNY requests that the Commission modify its Order to require Central Hudson to offer remanufactured/refurbished electromechanical ("analog") electric meters within its service territory for customers who wish to opt out of the use of digital electric meters. Specifically, SSMWNY argues that the Commission's Order ignores evidence submitted by SSMWNY purporting to demonstrate certain risks caused by digital electric meters. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. Upon conducting its evaluation of the petition, the Commission may reaffirm its initial decision or adhere to it with additional rationale in denying the request, modify or reverse the decision in granting the request in whole or in part, or take such other or further action as it deems necessary with respect to the request.

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

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

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

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

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

(14-M-0196SP5)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Waiver Request of Opinion No. 76-17 and 16 NYCRR Part 96

I.D. No. PSC-51-17-00016-P

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

Proposed Action: The Commission is considering the petition of Jericho Project for waiver of the individual metering requirements of Opinion No. 76-17 and 16 NYCRR Part 96 at 2065 Walton Avenue, Bronx, New York.

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

Subject: Petition for waiver request of Opinion No. 76-17 and 16 NYCRR Part 96.

Purpose: To consider the petition of Jericho Project for waiver request of Opinion No. 76-17 and 16 NYCRR Part 96.

Substance of proposed rule: The Commission is considering the petition of Jericho Project (Owner) filed on February 1, 2017, for waiver of the individual metering requirements of Opinion 76-17 and 16 NYCRR Part 96 at 2065 Walton Avenue, Bronx, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to master meter electricity, Jericho Project, requests authorization to take electric service from Con Edison and distribute electricity to tenants without metering the individual living units (submetering). The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(17-E-0071SP1)

Department of State

NOTICE OF ADOPTION

Esthetics Curriculum and Waxing Procedures

I.D. No. DOS-30-17-00001-A

Filing No. 1027

Filing Date: 2017-11-30

Effective Date: 180 days after filing

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

Action taken: Amendment of section 162.2; addition of section 160.20(k) to Title 19 NYCRR.

Statutory authority: General Business Law, sections 402 and 404

Subject: Esthetics curriculum and waxing procedures.

Purpose: To update the qualifying curriculum for esthetics and ensure that waxing procedures are safe and sanitary.

Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. DOS-30-17-00001-P.

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

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

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Continuing Education Requirements

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

Filing No. 1026

Filing Date: 2017-11-30

Effective Date: 2019-01-01

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

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

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

Subject: Continuing education requirements.

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

Text or summary was published in the August 2, 2017 issue of the Register, I.D. No. DOS-31-17-00005-P.

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

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

Initial Review of Rule

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

Assessment of Public Comment

The Department received one comment in relation to this rule. The comment submitted on behalf of the Hearing Healthcare Alliance of New York (HHCANY) requested that the Department withdraw the proposal citing the purported need to maintain a minimum 2 hours of continuing education on infection control. Having reviewed and considered the objections raised by the HHCANY, the Department finds these concerns insufficient to withdraw the rule. As alluded to by the HHCANY, the Department and Hearing Aid Dispensing Advisory Board undertook significant efforts to address concerns presented by several consumers, and the findings of a specially created subcommittee, regarding the adequacy of consumer information. As the technology that supports hearing aid devices is continually and rapidly developing, there is a significant need to ensure that the consumers which rely on these devices are properly educated, and the registered dispensers which sell these devices are adequately prepared to respond to consumer needs; the proposed rule will address these concerns. The HHCANY's comment, though important, does not present significant alternatives that the Department could consider to address the need this rule is designed to remedy. Moreover, the Department finds that one hour of infection control is sufficient as a renewal course, particularly when considering that several other jurisdictions permit renewal of similar licenses with no continuing education requirements at all. Accordingly, for the reasons provided above, the Department has not made any changes to the proposed rule.

NOTICE OF ADOPTION

Appraisal Standards

I.D. No. DOS-42-17-00002-A
Filing No. 1054
Filing Date: 2017-12-05
Effective Date: 2018-01-01

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

Action taken: Amendment of section 1106.1 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d(1)(d)

Subject: Appraisal Standards.

Purpose: To adopt the 2018-2019 edition of the Uniform Standards of Professional Appraisal Practice.

Text or summary was published in the October 18, 2017 issue of the Register, I.D. No. DOS-42-17-00002-P.

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

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

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

State University of New York

NOTICE OF ADOPTION

Governance, Structure and Operations of SUNY Authorized Charter Schools Pertaining to Teacher Certification

I.D. No. SUN-30-17-00024-A
Filing No. 1055
Filing Date: 2017-12-05
Effective Date: 2017-12-20

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

Action taken: Addition of Chapter V, Subchapter E, Part 700 to Title 8 NYCRR.

Statutory authority: Education Law, section 355(2-a)

Subject: Governance, structure and operations of SUNY authorized charter schools pertaining to teacher certification.

Purpose: To provide alternative teacher certification pathways to SUNY authorized charter schools with strong student performance.

Substance of final rule: Charter school education corporations authorized by the State University of New York Board of Trustees (the "SUNY Trustees") consistently post strong academic results as measured by student proficiency in meeting state performance measures. Over 80% of SUNY authorized charter schools provide parents and students public education choices that exceed the performance of the district school choices available in the same neighborhoods, districts and cities, some lifting 20 to 30 to 40% and more of their children to and over what New York identifies as grade level proficiency year after year. When SUNY authorized charter schools fail to perform well, the SUNY Trustees have a strong record of not allowing such schools to continue operation. The stated purpose of the NY Charter Schools Act of 1998 (as amended, the "Act") is to authorize a system of charter schools to provide opportunities for teachers, parents, and community members to establish and maintain schools that operate independently of existing schools and school districts in order to accomplish the following objectives:

(a) Improve student learning and achievement;

(b) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are at-risk of academic failure;

(c) Encourage the use of different and innovative teaching methods;

(d) Create new professional opportunities for teachers, school administrators and other school personnel;

(e) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and

(f) Provide schools with a method to change from rule-based to performance-based accountability systems by holding schools established under [Article 56 of the NY Education Law] accountable for meeting measureable student achievement results.

Instead of allowing SUNY authorized charter schools to continue to operate based on rule-based measures of school success alone (state mandated curricula, district mandated textbooks or adherence to state teacher evaluation requirements), the SUNY Trustees hold charters accountable for the success achieved in helping students read, write, calculate, compute, investigate and demonstrate their abilities to meet the demands of state performance standards. When schools demonstrate, through their students' abilities, proficiency at helping students succeed, the SUNY Trustees renew them. When schools are not able, after years of opportunity, to demonstrate student success, the SUNY Trustees close those schools. The teacher certification regulations link the proficiency of SUNY authorized charters in preparing students well to the opportunity to fulfill the purposes of the Act by allowing only those schools with strong academic performance to propose a program of teacher certification. The intent is to sharpen the focus on holding schools accountable "for meeting measureable student achievement results."

Much like their district counterparts across the state, SUNY's high performing charter schools cite challenges in identifying high quality teachers. The challenges are compounded by the need to find high quality teachers that have completed the myriad of steps and tasks required in the state's rule-based teacher certification requirements that are often not directly linked to building teacher proficiency in the instructional skills and knowledge that make a particular SUNY charter school successful. For a prospective teacher, it means that in addition to a teacher's instructional course load, communication with caregivers, supporting students after and before school, grade level team meetings, meetings with school embedded instructional coaches, preparations for the next day or week's quality lesson delivery, and the school's weekly, monthly and summer intensive professional development requirements, that teacher must as well hustle after class or between summer engagements to attend and complete traditional certification requirements with no tie to the successful school program in which they teach. The SUNY charter teacher certification regulations link certification to programs that have demonstrated student success and do not require teachers to complete a set of steps, tests, and tasks not designed for teachers embedded in a high quality school. Charter schools with a history of strong student performance normally have in place teacher requirements and professional development programs that not only compare to traditional certification pathways but are also tailored to the unique, successful educational programs delivered by such charter schools.

Teacher Certification Regulation Language

The new Part 700 of title 8 of the NY Compilation of Codes, Rules and Regulations provides certain parameters and requirements for charter schools that wish to operate alternative teacher preparation programs. The rulemaking does not mandate that any school operate such a program or teacher enroll in such a program. SUNY authorized charter schools may still comply with NY Education Law § 2854(3)(a-1) with teaching staff qualified through already established teacher certification pathways. Teachers approved through a program at a SUNY authorized charter school will be able to use the approval at another SUNY authorized charter school but will not be able to transfer such certification to a charter school not authorized by SUNY or to a district school. SUNY will not charge a fee to apply for approval of an instructor program and charter schools may not charge teachers a fee for attending such programs.

The rulemaking delineates criteria for the following: educational prerequisites; number of instructional hours required; number of hours of supervised field teaching experience and additional hours required for teaching students with disabilities or English language learners; required coursework in Mandated Reporter, SAVE and bullying, harassment, and discrimination; types of certification available; term of the certification; program instructor requirements; program assessments; and, record keeping and other requirements. The proposed rulemaking also address the education corporation application and review processes as well as the minimum applicant requirements and the program revocation process.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 700.2(o), (r), 700.4(a), (b), (c), (d), (f), 700.5(b) and 700.6(a).

Text of rule and any required statements and analyses may be obtained from: Ralph A. Rossi II, SUNY Charter Schools Institute, SUNY Plaza, 353 Broadway, Albany, New York 12246, (518) 455-4250, email: charters@suny.edu

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not required because the changes made to the last published proposed rule do not necessitate revision to the previously published document. The changes to the text still seek to implement teacher certification compliance regulations that link the proficiency of SUNY authorized charters in preparing students well to the opportunity to fulfill the purposes of the N.Y. Charter Schools Act (as amended) by allowing only those schools with strong academic performance to propose a program of teacher certification. The changes do not affect the meaning of any statement in the previously published document.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text still seek to implement teacher certification compliance regulations that link the proficiency of SUNY authorized charters in preparing students well to the opportunity to fulfill the purposes of the N.Y. Charter Schools Act (as amended) by allowing only those schools with strong academic performance to propose a program of teacher certification. This sharpens the focus on holding schools accountable for meeting measureable student achievement results. These changes do not affect the meaning of any statement in the previously published document.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text still seek to implement teacher certification compliance regulations that link the proficiency of SUNY authorized charters in preparing students well to the opportunity to fulfill the purposes of the N.Y. Charter Schools Act (as amended) by allowing only those schools with strong academic performance to propose a program of teacher certification. This sharpens the focus on holding schools accountable for meeting measureable student achievement results. These changes do not affect the meaning of any statement in the previously published document.

Revised Job Impact Statement

A revised Job Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text still seek to implement teacher certification compliance regulations that link the proficiency of SUNY authorized charters in preparing students well to the opportunity to fulfill the purposes of the N.Y. Charter Schools Act (as amended) by allowing only those schools with strong academic performance to propose a program of teacher certification. This sharpens the focus on holding schools accountable for meeting measureable student achievement results. These changes do not affect the meaning of any statement in the previously published document.

Initial Review of Rule

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

Assessment of Public Comment

This assessment responds to the comments received on the Proposed Regulations for the additional Ch. V, Subch. E, Pt. 700 of Title 8 of the New York State Code of Rules and Regulations. The Notice of Proposed Rule Making was contained in the State Register issued on July 26, 2017.

The State University of New York ("SUNY") Board of Trustees' Charter Schools Committee (the "Committee") received over 8630 comments on its proposed teacher certification requirements regulations. Approximately 2134 individual comments, which include comments with multiple signers or representative organizations, were opposed to, and 73 individual comments, which also include representative organizations, in favor of, the proposed regulations. Additional opposition comments came in the form of either automatically generated email (3257) or comments generated by a petition (3165). Some of the same comments were sent to multiple SUNY recipients and some commenters sent duplicate comments so some double counting was unavoidable within the limits of the resources available to the SUNY Charter Schools Institute (the "Institute"), which gathered and analyzed the comments for the Committee.

The automatically generated email form submissions and approximately 1400 other comments expressed general opposition to any change to the current state certification system overseen by the New York State Education Department ("NYSED"). A number of commenters incorrectly characterized the substance of the regulations and, therefore, were not relevant.

Public Comment Period

A number of commenters expressed concern that a portion of the comment period occurred during August when district school teachers are on vacation and advocated for an extension of the comment period. However, the large number of comments generated during the public comment period indicated significant public engagement. In addition, the Institute continued to collect and respond to public comments following closing of the statutory public comment period.

Authority to Promulgate Regulations

Some commenters asserted that SUNY does not have the authority to promulgate regulations. The Committee was granted the authority to promulgate regulations under Education Law § 355(2-a) regarding the operation, governance, and structure of the charter schools it oversees.

One commenter asserted that a unilateral change in certification requirements violates "equal rule of the law." However, charter schools are schools of choice, no student is forced to attend a charter school by New York's compulsory education law.

One comment urged the Committee toward further study before consideration of the proposed regulations. SUNY does not agree that additional study is necessary, and notes that the regulations may be amended at any time in the future if warranted.

Profession of Teaching

A large group of commenters expressed concerns that the proposal would lower the certification standards for teachers, certify unqualified teachers, and lack sufficient ongoing review. SUNY authorized charter schools are held to a high standard, which in turn hold their teachers to a high standard. Subdivision 700.4(f) of the regulations allows the Institute to terminate a teacher instruction program if any school in an education corporation is not renewed. A fair number of commenters analogized the regulations to other professions but given the differences in the professions, these comparisons are not fair ones.

University and College Education Programs

Commenters expressed concern that the proposed regulations will diminish the value of university/college education degree programs including those of SUNY, reduce the number of students in SUNY teaching programs, and/or incur costs that would harm SUNY programs. The regulations pertain to SUNY authorized charter schools only. The Institute believes any costs related to this regulation can be borne within existing appropriations.

Qualifications of Candidates

One commenter opposed the exception for extraordinary candidates with grade point averages ("GPAs") below 3.0 noting there was no definition of what constitutes "exceptional." In response to this comment, the Committee deleted the language objected to by the commenter and replaced it with: "or shall have been found to have the necessary knowledge and skills to successfully complete the program as determined by the institute." The same language currently allows the commissioner of education to determine exceptions to NYSED certification GPA requirements.

A commenter proposed that teachers need a degree in education in order to teach in a classroom. The proposed change would be stricter than current NYSED certification requirements.

Comments stated that the minimum 30 instructional hours of classroom instruction of the proposed regulations was not sufficient. After review of the comments and the NYSED requirements for a Transitional B certificate, the Committee finds the number of hours proposed should be increased from 30 to 160. To conform the exact amount of time, the regulations will conform to NYSED "clock hours" rather than the "instructional hours" defined in § 700.2(o) of the proposed regulations, which also slightly increases all times.

Comments stated that the 100 hours of field experience was not sufficient. NYSED's regulations governing Transitional B certificates require 40 clock hours of field experience to obtain the NYSED certificate. After review, the Committee finds the number of field experience hours should be reduced from 100 to 40 clock hours. This finding was in concert with the increase in classroom instruction hours from 30 to 160, increasing the total classroom instruction and field hours combined from 130 to 200, consistent with the Transitional B certificate requirement.

Comments stated that the proposed regulations do not require any state teacher certification exams for prospective teachers. The Committee amended the proposed regulations to require either the Educating All Students ("EAS") test or an examination which measures all required elements of the EAS test.

Qualifications of Instructors

Commenters took issue with the qualifications of supervisors and instructors. The Institute did not recommend changing the experience necessary for supervisors.

Qualification of the Charter School Education Corporation

One comment provided support but requested increasing the prerequisite of a charter school receiving a short-term renewal to a requirement that the applicant currently be within a full-term renewal. The Committee adopted the commenter's recommendation.

At-Risk Students

A large number of commenters stated that the proposed regulations were insufficient for schools with higher populations of at-risk students. The Committee made changes to the proposed regulations including increasing the dual certification field work hours related to students with disabilities from 12 to 20, requiring teacher candidates for students with disabilities take and pass the appropriate students with disabilities content specialty examination, and the inclusion of a requirement that six of the 40 hours of field experience for all candidates be "focused on meeting the needs of students with disabilities."

Non-Profit

Several commenters concerned the underlying motivations for the regulations were privatization and profits. New York charter schools are not-for-profit entities, see Education Law § 2853(1). Since 2010, the Act has not permitted charter school applicants to partner with for-profit management entities. Subdivision 700.4(e) of the regulations specifically disallows charging teacher candidates a fee for participating in a teacher instructional program. Lastly, SUNY is a not-for-profit education corporation within the University of the State of New York per Education Law § 352(1).

Oversight

Many commenters imagined other entities overseeing teacher credentialing under the proposed regulations. The Act assigns oversight of SUNY authorized charter schools to the SUNY Board of Trustees and the Board of Regents.

Mentoring

Commenters stated charter schools struggle to hire and retain teachers because of a lack of mentoring for novice teachers. The Committee amended the regulations to include mentoring throughout the three-year certification period for teacher candidates.

Union Membership

A few commenters expressed concerns with the interaction between the proposed regulations and union membership. The Institute notes that it would be illegal to deny charter school teachers the right to organize and collectively bargain, under threat of possible charter revocation under Education Law § 2855(1)(d).

General Support

Commenters wrote in support including:

a. The focus on classroom work would better prepare teachers;

b. The current NYSED certification processes are expensive, restrictive, and require too much professional development and that being hired in a district is difficult unless a candidate knows someone;

c. The current NYSED certification process is too cumbersome;

d. The onerous and costly nature of the process deters talented people;

e. The SUNY certification could allow people with degrees in STEM fields, the arts and other languages to more easily enter the profession;

f. There are many hardships associated with applying for certification reciprocity or starting the traditional certification process in New York;

g. Alternatives are needed to allow those with career experience or other postsecondary degrees outside of education to enter teaching; and,

h. Teachers at charter schools not being recognized as working in public schools by NYSED for certification purposes, i.e., work experience.

One comment noted the high performance of many charter schools in Brooklyn, and stated that a looming teacher shortage will face all public schools, that applications to graduate schools of education dropped 40% in the last five years, and saw the regulations as a tool to create a pipeline of talent to allow SUNY authorized charter schools in New York City meet the demand for quality public education.

Several comments noted that ideally, state certification would shift wholescale to a clinical residency model, and true transparency of data concerning the impact of teachers in the classroom back?128;mapped to their respective preparation programs. As the state is not currently doing this, the commenters viewed the teacher preparation program embodied in the regulations as a worthwhile experiment. The commenters thought the proposed regulations should include an independent body to evaluate and require changes of the internal assessments that programs will use. Similar to its approach to closing poor performing charter schools, the Committee commits to the idea that the continuation of any approved teacher instructional program will be determined by student performance presented in transparent student data.

Some commenters including parents of charter school students, and charter school teachers, noted the robust supports and professional development programs at some charter schools including programming provided before a teacher enters the classroom.

Autonomy

About a dozen comments endorsed the autonomy provided under the regulations to allow high performing charter schools to identify and hire individuals with different backgrounds while continuing to develop and systemize currently provided professional development that can then be shared as effective practices. The regulations would also provide the ability to train all individuals who want to teach in high performing schools in a manner specific to the schools' programs based on outcomes and not inputs. Charter operators discussed the extensive time and energy spent correcting preparation of teachers from traditional teacher preparation programs to reverse incorrect concepts fostered by those programs.

Statewide Universal Full-Day Pre-Kindergarten Program

NYSED asserted the regulations are in direct conflict with the law allowing charters to participate in Statewide Universal Full-Day Pre-Kindergarten programs as it requires all teachers in the program meet the same teacher certification standards applicable to district schools. Charter schools may apply the exemptions of Education Law § 2854(3)(a-1) to their pre-K-12 teaching staff, and would count teachers approved under the regulations as certified.

Alternatives

A few commenters compared the requirements to international and other state programs. Several commenters wanted the Committee to consider several actions other than approval of the proposed regulations: reduce class size; and increase conditions and benefits. The Committee leaves to the discretion of individual charter schools many of these determinations, and limits the regulations to what is currently proposed.

Every Student Succeeds Act

Commenters stated the proposed regulations are not supported by the state's Every Student Succeeds Act plan, which the Institute noted is still in draft. NYSED commented that a rigorous, high quality teacher preparation program fosters a high quality teacher with the likelihood to increase student achievement. As an authorizer, SUNY has fostered, through accountability, a portfolio of high performing charter schools, specifically increasing student achievement levels of at-risk populations.

Authorizers

An institutional commenter favored the idea of there being only be one authorizer in the state – NYSED. The Institute notes that authorizer best practice is to have multiple but not too many high quality authorizers in a state, and that state statute authorizes both NYSED and SUNY.

The full Assessment of Public Comment document is available at www.newyorkcharters.org.

Department of Taxation and Finance

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Metropolitan Transportation Business Tax Surcharge

I.D. No. TAF-51-17-00002-EP

Filing No. 1045

Filing Date: 2017-12-01

Effective Date: 2017-12-01

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

Proposed Action: Amendment of section 9-1.2 of Title 20 NYCRR.

Statutory authority: Tax Law, section 171, subdivision First, section 209-B, subdivision First; L. 2014, ch. 59, part A, section 7

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

Specific reasons underlying the finding of necessity: Specific reasons underlying the finding of necessity: The Commissioner is required, pursuant to Tax Law section 209-B(1)(f), to annually adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016. The rate is to be adjusted as necessary to ensure that the receipts attributable to the surcharge will meet and not exceed the financial projections for each state fiscal year, as reflected in the enacted budget for that fiscal year.

This rule is being adopted on an emergency basis in order to have the rates for tax year 2018 in place by January 1, 2018, to enable taxpayers to properly estimate the taxes due for tax year 2018 and reflect these estimated taxes in their financial statements.

Subject: Metropolitan Transportation Business Tax Surcharge.

Purpose: To provide metropolitan transportation business tax rate for tax year 2018.

Text of emergency/proposed rule: Pursuant to the authority contained in Tax Law sections 171, subdivision First and 209-B, subdivision one, and

Section 7 of Part A of Chapter 59 of the Laws of 2014, the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner of Taxation and Finance, hereby makes and adopts as an emergency measure and proposes as a permanent rule the following amendments to the New York State Business Corporation Franchise Tax regulations under Article 9-A of the Tax Law as published in Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

Section 1. Subchapter A of Title 20 of the Codes, Rules and Regulations of the State of New York is amended to add a new subdivision (d) to section 9-1.2 of Part 9 to read as follows.

(d) The metropolitan transportation business tax surcharge will be computed at the rate of 28.6 percent of the tax imposed under section 209 of the Tax Law for taxable years beginning on or after January 1, 2018 and before January 1, 2019. The rate used to compute the metropolitan transportation business tax surcharge, as determined by the Commissioner, will remain the same in any succeeding taxable year, unless the Commissioner, pursuant to the authority in paragraph (f) of subdivision (1) of section 209-B of the Tax Law, determines a new rate.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 28, 2018.

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist II, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.Oconnell@tax.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; Tax Law section 209-B generally imposes a tax surcharge on every corporation subject to Tax Law section 209, other than a New York S corporation, for the privilege of exercising the corporation's corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office, or of deriving receipts from activity in the metropolitan commuter transportation district, for all or any part of the corporation's taxable year. Tax Law section 209-B(1)(f) requires the Commissioner to adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016. The rate is to be adjusted as necessary to ensure that the receipts attributable to the surcharge will meet and not exceed the financial projections for each state fiscal year, as reflected in the enacted budget for that fiscal year.

2. Legislative objectives: New subdivision (d) of section 9-1.2 of Part 9 of 20 NYCRR complies with the mandate of section 209-B(1)(f), setting forth the rate for taxable years beginning on or after January 1, 2018 and before January 1, 2019 and follows subdivision (c), which set the rate for taxable years beginning on or after January 1, 2017 and before January 1, 2018. As required by section 209-B(1)(f), the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner, has determined that the rate of the metropolitan transportation business tax surcharge will be 28.6 percent of the tax imposed under Tax Law section 209 for taxable years beginning on or after January 1, 2018 and before January 1, 2019. The previously established statutory rate was 28.3 percent of the tax imposed under Tax Law section 209.

3. Needs and benefits: This rule sets forth amendments to the Business Corporation Franchise Tax regulations required by Tax Law section 209-B(1)(f). This rule benefits taxpayers by putting in place the metropolitan transportation business tax surcharge effective January 1, 2018 for Tax Year 2018.

4. Costs:

(a) Costs to regulated parties for the implementation and continuing compliance with this rule: There is no additional cost or burden to comply with this amendment. There is no additional time period needed for compliance.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to make amendments to the New York State Business Corporation Franchise Tax regulations under Article 9-A of the Tax Law arises due to a statutory mandate that the Commissioner adjust the metropolitan transportation business tax surcharge, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis, Bureau of Tax and Fiscal Studies, Office of Budget and Management Analysis, Management Analysis and Project Services Bureau, and the Division of Budget.

5. Local government mandates: There are no costs or burdens imposed on local governments to comply with this amendment.

6. Paperwork: This rule will not require any new forms.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since section 209-B(1)(f) requires the Commissioner to adjust, under certain circumstances, the metropolitan transportation business tax surcharge, there are no viable alternatives to providing such rate using the methodology prescribed in Tax Law section 209-B.

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

10. Compliance schedule: The required rate information has been made available to regulated parties, by means of the emergency adoption of new subdivision (d) of section 9-1.2 of Part 9 of the Business Corporation Franchise Tax regulations on December 1, 2017, in sufficient time to implement the rate effective January 1, 2018. This rule establishes the rate for the 2018 tax year as an emergency measure and proposes it as a permanent rule.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because it will not impose any adverse economic impact or any additional reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

The purpose of the rule is to add a new subdivision (d) to section 9-1.2 of Part 9 of 20 NYCRR, to adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2018 and before January 1, 2019, as required by Tax Law section 209-B(1)(f).

Tax Law section 209-B generally imposes a tax surcharge on every corporation subject to section 209 of the Tax Law, other than a New York S corporation, for the privilege of exercising the corporation's corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office, or of deriving receipts from activity in the metropolitan commuter transportation district, for all or any part of the corporation's taxable year.

The Commissioner is required, pursuant to Tax Law section 209-B(1)(f), to annually adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016. The rate is to be adjusted as necessary to ensure that the receipts attributable to the surcharge will meet and not exceed the financial projections for each state fiscal year, as reflected in the enacted budget for that fiscal year.

Subdivision (d) of section 9-1.2 of Part 9 complies with the mandate of Tax Law section 209-B(1)(f), setting forth the rate for taxable years beginning on or after January 1, 2018 and before January 1, 2019, and follows subdivision (c), which set the rate for taxable years beginning on or after January 1, 2017 and before January 1, 2018. As required by Tax Law section 209-B(1)(f), the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner, using the state fiscal year 2018 – 2019 fiscal projections, has determined that the metropolitan transportation business tax surcharge rate will be 28.6 percent of the tax imposed under section 209 of the Tax Law for taxable years beginning on or after January 1, 2018 and before January 1, 2019.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on any rural areas. The purpose of the rule is to add a subdivision (d) to section 9-1.2 of Part 9 of 20 NYCRR, to adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2018 and before January 1, 2019, pursuant to Tax Law section 209-B(1)(f).

Tax Law section 209-B generally imposes a tax surcharge on every corporation subject to Tax Law section 209, other than a New York S corporation, for the privilege of exercising the corporation's corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office, or of deriving receipts from activity in the metropolitan commuter transportation district, for all or any part of the corporation's taxable year.

The Commissioner is required, pursuant to Tax Law section 209-B(1)(f), to annually adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016. The rate is to be adjusted as necessary to ensure that the receipts attributable to the surcharge will meet and not exceed the financial projections for each state fiscal year, as reflected in the enacted budget for that fiscal year.

Subdivision (d) of section 9-1.2 of Part 9 complies with the mandate of Tax Law section 209-B(1)(f), setting forth the rate for taxable years beginning on or after January 1, 2018 and before January 1, 2019, and follows

subdivision (c), which set the rate for taxable years beginning on or after January 1, 2017 and before January 1, 2018. As required by section 209-B(1)(f), the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner, using the state fiscal year 2018-2019 fiscal projections, has determined that the metropolitan transportation business tax surcharge rate will be 28.6 percent of the tax imposed under Tax Law section 209 for taxable years beginning on or after January 1, 2018 and before January 1, 2019.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that the rule will have no adverse impact on jobs and employment opportunities. The purpose of the rule is to add a new subdivision (d) to section 9-1.2 of Part 9 of 20 NYCRR, to adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2018 and before January 1, 2019, pursuant to section 209-B(1)(f) of the Tax Law.

Tax Law section 209-B generally imposes a tax surcharge on every corporation subject to Tax Law section 209, other than a New York S corporation, for the privilege of exercising the corporation's corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office, or of deriving receipts from activity in the metropolitan commuter transportation district, for all or any part of the corporation's taxable year.

The Commissioner is required, pursuant to Tax Law section 209-B(1)(f), to annually adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016. The rate is to be adjusted as necessary to ensure that the receipts attributable to the surcharge will meet and not exceed the financial projections for each state fiscal year, as reflected in the enacted budget for that fiscal year.

Subdivision (d) of section 9-1.2 of Part 9 complies with the mandate of Tax Law section 209-B(1)(f), setting forth the rate for taxable years beginning on or after January 1, 2018 and before January 1, 2019, and follows subdivision (c), which set the rate for taxable years beginning on or after January 1, 2017 and before January 1, 2018. As required by section 209-B(1)(f), the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner, using the state fiscal year 2018-2019 fiscal projections, has determined that the metropolitan business tax surcharge rate will be 28.6 percent of the tax imposed under Tax Law section 209 for taxable years beginning on or after January 1, 2018 and before January 1, 2019.

This rule merely complies with the mandates of Tax Law section 209-B, as amended, by adding a new subdivision (d) to section 9-1.2 of Part 9 of 20 NYCRR, setting forth the rate for the metropolitan transportation tax surcharge for tax year 2018.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Public Assistance (PA) Budgetary Method

I.D. No. TDA-39-17-00005-A
Filing No. 1052
Filing Date: 2017-12-05
Effective Date: 2017-12-20

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

Action taken: Amendment of section 352.29(h)(2)(v)(b) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(3)(d), 34(3)(f), 131(1) and 131-n(1)

Subject: Public Assistance (PA) budgetary method.

Purpose: To update State regulations governing treatment of income in excess of standard of need in PA households, consistent with SSL section 131-n(1).

Text or summary was published in the September 27, 2017 issue of the Register, I.D. No. TDA-39-17-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16-C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Establishment, Modification, and Enforcement of Child Support Obligations

I.D. No. TDA-40-17-00002-A
Filing No. 1050
Filing Date: 2017-12-05
Effective Date: 2017-12-20

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

Action taken: Repeal of sections 347.8, 347.10, 347.26; addition of new section 347.8; and amendment of sections 347.9 and 422.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(3)(d), 111-a, 111-i; Title 42 of the United States Code, sections 651-657, 660, 663-664, 666-667; Title 45 of the Code of Federal Regulations, sections 303.4, 303.6 and 303.8

Subject: Establishment, modification, and enforcement of child support obligations.

Purpose: To amend State regulations concerning support obligations to reflect Federal statutory requirements and current terminology used by the child support program, and to conform regulatory citations with Federal and State laws.

Text or summary was published in the October 4, 2017 issue of the Register, I.D. No. TDA-40-17-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16-C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.