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.

Department of Agriculture and Markets

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Importation of Cervids Susceptible to Chronic Wasting Disease ("CWD")

I.D. No. AAM-34-18-00001-EP
Filing No. 708
Filing Date: 2018-08-01
Effective Date: 2018-08-01

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

Proposed Action: Amendment of section 68.3 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 72 and 74

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

Specific reasons underlying the finding of necessity: Chronic Wasting Disease ("CWD") is a disease of captive and free-ranging susceptible cervids. CWD is generally spread from an infected cervid, via its bodily fluids and excretions, to an uninfected cervid. A cervid that has contracted CWD will experience weight loss, stumbling, tremors, and other symptoms and will, eventually, die due to having contracted such disease.

The proposed rule will amend 1 NYCRR section 68.3(b) to extend the prohibition upon the importation of cervids susceptible of contracting CWD from August 1, 2018, the date that such prohibition is due to expire, until August 1, 2023. The proposed rule is necessary to, generally, protect the general welfare and, specifically, to protect the State's cervid population and those industries and businesses that are dependent upon the health of such population.

Presently, the State's cervid population is believed to be to be free of CWD. However, CWD has been detected in both captive and free-ranging cervids in other states and, if an infected cervid were to be imported into New York, that cervid could, in turn, infect other cervids. The proposed rule, by extending the prohibition upon the importation of CWD-susceptible cervids, will not provide a guarantee but will significantly lessen the possibility that the State's cervid population will contract CWD; indeed, since the prohibition was initially promulgated (i.e., August 1, 2013), no CWD-infected cervid has been found in the State.

The proposed rule is necessary to ensure that the State's cervid population remains CWD-free. This objective cannot effectively be achieved by any other measure; at this time there is no ante-mortem test approved for determining if a cervid has contracted CWD and there is no generally-accepted procedure that would allow that determination to be made, based upon a cervid's appearance, because CWD-infected cervids typically do not exhibit symptoms until a period after being infected. Furthermore, it has been determined that a captive cervid in a herd enrolled in the United States Department of Agriculture's Herd Certification Program (designed to ensure that cervids in such a "certified herd" are at low risk for CWD) nevertheless had contracted that disease; as such, and based upon the foregoing, only a prohibition of the type referred to above will effectively promote the State's interest in ensuring that the State's cervid population is CWD-free.

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

Subject: Importation of cervids susceptible to Chronic Wasting Disease (''CWD'').

Purpose: To help control the spread of CWD into the State's cervid population.

Public hearing(s) will be held at: 11:00 a.m., Oct. 25, 2018 at Department of Agriculture and Markets, 10B Airline Dr., Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of emergency/proposed rule: Subdivision (b) of section 68.3 of 1 NYCRR is amended to read as follows:

(b) All movements of CWD susceptible cervids into New York State are prohibited until August 1 [2018] *2023*, except movements to a zoo accredited by the Association of Zoos and Aquariums, 8403 Colesville Road, Suite 710, Silver Springs, MD 20910-3314. No such movements shall be made unless approved prior to the movement by the commissioner or his/her designee in consultation with the New York Department of Environmental Conservation. [Prior to August 1, 2018, the commissioner shall hold public hearings to reevaluate the risks and impacts of allowing limited movement of CWD susceptible cervids into New York from other states and propose amendments to this Part if needed to prevent the introduction of Chronic Wasting Disease into New York.]

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 29, 2018.

Text of rule and any required statements and analyses may be obtained from: David Smith, D.V.M., Director, Division of Animal Industry, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3502, email: David.Smith@agriculture.ny.gov

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

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

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

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the *Register* within 30 days of the rule's effective date.

Department of Audit and Control

NOTICE OF ADOPTION

Adjustments to Merchandise/Invoice Receipt Dates

I.D. No. AAC-21-18-00037-A

Filing No. 710

Filing Date: 2018-08-02

Effective Date: 2018-08-22

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

Action taken: Amendment of sections 18.7, 18.14, 18.16 and 18.17; repeal of section 18.10 of Title 2 NYCRR.

Statutory authority: State Finance Law, section 179-m

Subject: Adjustments to merchandise/invoice receipt dates.

Purpose: To correct internal regulatory inconsistencies relating to adjustments to merchandise/invoice receipt dates.

Text or summary was published in the May 23, 2018 issue of the Register, I.D. No. AAC-21-18-00037-P.

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

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.ny.gov

Assessment of Public Comment

The agency received no public comment.

New York State Authorities Budget Office

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Requires Posting All Forms and Policies on Industrial Development Agencies Website, Consistent with Chapter 563 of Laws of 2015

I.D. No. ABO-34-18-00005-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 add Part 250 to Title 19 NYCRR.

Statutory authority: Public Authorities Law, sections 2(2), 6(h), (e); L. 2005, ch. 766; L. 2009, ch. 506

Subject: Requires posting all forms and policies on industrial development agencies website, consistent with chapter 563 of Laws of 2015.

Purpose: To promote transparency and accountability of industrial development agencies and authorities.

Public hearing(s) will be held at: 1:30 p.m., Sept. 4, 2018 at Office of General Services, Conference Rm., Empire State Concourse, Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: A new Part 250 is proposed to be added to Title 19 of the New York Codes, Rules, and Regulations (NYCRR) as follows:

Part 250.1 Standard Application Form

(a) Each industrial development agency or authority shall develop a standard application form, which shall be posted and be made publicly accessible on its website. Such Standard Application Form shall be used by the agency or authority to accept requests for financial assistance from all individuals, firms, companies, developers or other entities or organizations. The standard application form shall include the following, including all supporting documents and information provided by or on behalf of the applicant:

(i) the name and address of the project applicant;

(ii) a description of the proposed project for which financial assistance is requested, including the type of project, proposed location and purpose of the project;

(iii) the amount and type of financial assistance being requested, including the itemized estimated value of each type of tax exemption sought to be claimed by reason of the agency or authority involvement in the project;

(iv) a statement that there is a likelihood that the project would not be undertaken but for the financial assistance provided by the agency or authority, or, if the project could be undertaken without financial assistance provided by the agency or authority, a statement indicating why the project should be undertaken by the agency or authority;

(v) an itemized estimate of capital costs of the project, including all costs of each real property and equipment acquisition and building construction or reconstruction, financed from private sector sources, an estimate of the percentage of project costs financed from public sector sources, and an estimate of both the total amount to be invested by the applicant and the amount to be borrowed to finance the project.

(vi) the projected number of full time equivalent jobs that would be retained and that would be created if the request for financial assistance is granted (and if part-time jobs are part of the financial assistance a proportion of a full time equivalent job is to be calculated), the projected monthly timeframe for the creation of new jobs per year, the estimated salary and fringe benefit averages or ranges for categories of the jobs that would be retained or created if the request for financial assistance is granted, and an estimate of the number of residents of the economic development region as established pursuant to section two hundred thirty of the economic development law or the labor market area as defined by the agency or authority, in which the project is located that would fill such jobs. The labor market area defined by the agency or authority for this purpose may include no more than six contiguous counties in the state, including the county in which the project is to be located;

(vii) a statement, signed by the chief executive officer and the president of the board, expressing that the provisions of subdivision one of section eight hundred sixty-two of this chapter will not be violated if financial assistance is provided for the proposed project; e.g., for interstate moves, " The completion of this entire project will not result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state." Or in the event that such project moves intrastate, "The completion of this entire project will result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state because the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry."

(viii) a statement signed by the chief executive officer and the president of the board that the owner, occupant or operator receiving financial assistance is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations; and

(ix) a statement signed by the project applicant acknowledging that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any financial assistance and the reimbursement of an amount equal to all or part of any tax exemptions claimed by reason of agency or authority involvement in the project as well as may lead to other possible enforcement actions.

(b) Each agency or authority shall develop, and adopt by resolution, which shall be made publicly available and accessible and posted on its website, the uniform criteria for the evaluation and selection for each category of projects for which financial assistance will be provided. The criteria shall include but not be limited to require that, for each project, the following must occur prior to the approval of the provision of financial assistance:

(i) an assessment by the agency or authority of all material information included in connection with the application for financial assistance, as necessary to afford a reasonable basis for the decision by the agency or authority to provide financial assistance for the project;

(ii) a written cost-benefit analysis by the agency or authority that identifies the extent to which a project will create or retain permanent, private sector jobs; the estimated value of any tax exemptions to be provided; the amount of private sector investment generated or likely to be generated by the proposed project; the likelihood of accomplishing the proposed project in a timely fashion; and the extent to which the proposed project will provide additional sources of revenue for municipalities and school districts; and any other public benefits that may occur as a result of the project;

(iii) a statement by the applicant that the project, as of the date of the completed and submitted application, is in substantial compliance with all the requirements of Chapter 563 of the Laws of 2015 and subdivision one of section eight hundred sixty-two of the general municipal law; and

(iv) if the project involves the removal or abandonment of a facility or plant within the state, notification by the agency or authority to the chief executive officer or officers of the municipality or municipalities in which the facility or plant was located.

(c) Each agency or authority shall conspicuously post on their website the completed, developed uniform authority project agreement and all attachments, appendixes and any other relevant records that sets forth terms and conditions under which financial assistance shall be provided. The posted uniform agency or authority project agreement and its accompanying records shall be used by the authority and no financial assistance shall be provided in the absence of the execution of such an agreement. Upon approval of a project by the board of directors, the agency or authority shall conspicuously post the completed comprehensive uniform authority project agreement and all its attachments on its website. The uniform agency or authority project agreement shall, at a minimum:

(i) describe the project and the financial assistance, including the amount and type, to be provided, and the authority purpose to be achieved;

(ii) require each project owner, occupant or operator receiving financial benefits to provide annually a certified statement and supporting documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the financial assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and an explanation for why it is not still accurate

(iii) indicate the dates when payments in lieu of taxes are to be made and provide an estimate of the amounts for each affected tax jurisdiction of any payments in lieu of taxes that are included as part of the transaction, or formula or formulas by which those amounts may be calculated. In lieu of providing such information, a copy of an executed payment in lieu of tax agreement that contains the same information may be attached to the uniform authority project agreement;

(iv) provide for the suspension or discontinuance of financial assistance, or for the modification of any payment in lieu of tax agreement to require increased payments, in accordance with policies developed by the agency or authority pursuant to general municipal law section eight hundred seventy-four;

(v) provide for the return of all or a part of the financial assistance provided for the project, including all or part of the amount of any tax exemptions, which shall be redistributed to the appropriate affected tax jurisdiction, as provided for in policies developed by the agency or authority pursuant to general municipal law section eight hundred seventy-four, unless agreed to otherwise in writing by any local taxing jurisdiction or jurisdictions; and

(vi) provide that the owner, occupant or operator receiving financial assistance shall certify, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

(d) Each agency or authority shall establish and make conspicuously available on its website the developed policies for the suspension or discontinuance of financial assistance, or for the modification of any payment in lieu of tax agreement to require increased payments under circumstances as specified in the policy, which may include but shall not be limited to events of material violation of the terms and conditions of a project agreement made pursuant to section eight hundred seventy-four of the general municipal law;

(e) Each agency or authority shall make conspicuously available on its website the developed policies for the return of all or a part of the financial assistance provided for the project, including all or part of the amount of any tax exemptions or payments in lieu of taxes, as specified in the policy, which may include but shall not be limited to material shortfalls in job creation and retention projections or material violations of the terms and conditions of project agreements. All such returned amounts of tax exemptions shall be redistributed to the appropriate affected tax jurisdiction, unless agreed to otherwise by any local taxing jurisdiction.

(f) Each agency or authority shall at least once annually make publicly available on its website the assessments of the progress of each project for which bonds or notes remain outstanding or straight-lease transactions have not terminated, or which continue to receive financial assistance or are otherwise active, toward achieving the investment, job retention or creation, or other objectives of the project indicated in the project application. Such assessments shall be provided to board members and shall be made available to the public on the authority website.

Text of proposed rule and any required statements and analyses may be obtained from: Jeff Pearlman, Director, Authorities Budget Office, 240 State Street, Albany, NY 12220, (518) 474-1932, email: info@abo.ny.gov

Data, views or arguments may be submitted to: Ann Maloney, Deputy Director, Authorities Budget Office, 240 State Street, Albany, NY 12220, (518) 474-1932, email: info@abo.ny.gov

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

Consensus Rule Making Determination

Pursuant to Public Authorities Law (PAL) § 2(2), which includes industrial development agencies or authorities in the definition of a local authority under the jurisdiction of the ABO, and pursuant to the powers and duties of the ABO, which is required to promulgate regulations as authorized by PAL § 6(h), (e), to effectuate its purpose, and pursuant to Chapter 563 of the Laws of 2015 with Chapter 766 of the Laws of 2005 (PAAA) & Chapter 506 of the Laws of 2009 (PARA), together as the ABO enabling statutes, the ABO hereby requires the posting of all forms and policies (both blank and project specific) as required by Chapter 563 of the Laws of 2015 on each IDA's website, to be made available for review by the public. The ABO regulations essentially codify the statutory requirements to establish with greater clarity its enforcement capacity when uncovering potential prospective non-compliance.

With the statutory authority vested in the ABO it is unlikely that any person would object or reject to the proposed rule as written.

Job Impact Statement

A Job Impact Statement (JIS) is not required because the proposed rule has no impact on jobs or employment opportunities because the proposed rule is only adding a requirement of posting to the website that IDA's are already required, by statute, to have. It is evident from the subject matter of the rule that it is only possible to have no impact on jobs and employment opportunities, so no summary of information and methodology is attached.

The proposed regulations would require IDAs to post, on their already statutorily required websites, several of the requirements set forth by Chapter 563, including but not limited to, posting a blank standard application form and instructions in a readable fashion for the public to review; posting all approved standard application forms, including all attachments and appendices; posting the approved IDA resolution, which sets forth the uniform criteria for the evaluation and selection for each category of projects for which financial assistance will be provided; posting all uniform agency or authority project agreements setting forth terms and conditions under which financial assistance shall be provided; posting all general or project specific policies for the suspension or discontinuance of financial assistance, or for the modification of any payment in lieu of tax agreement to require increased payments under circumstances as specified in the policy, which may include but shall not be limited to events of material violation of the terms and conditions of a project agreement; posting all policies for the return of all or a part of the financial assistance provided for the project, including all or part of the amount of any tax exemptions, as specified in the policy, which may include but shall not be limited to material shortfalls in job creation and retention projections or material violations of the terms and conditions of project agreements.

Due to the nature of the regulation there are no additional members required to be on the workforce.

Education Department

EMERGENCY RULE MAKING

Reports of Incidents of Harassment, Bullying and/or Discrimination Pursuant to the Dignity for All Students Act (DASA)

I.D. No. EDU-21-18-00039-E
Filing No. 711
Filing Date: 2018-08-03
Effective Date: 2018-08-06

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

Action taken: Addition of section 100.2(kk)(1)(x) to Title 8 NYCRR.

Statutory authority: Education Law, sections 11(1-7), 13(1), 14(3), 15(not subdivided), 16(not subdivided), 101(not subdivided), 207(not subdivided), 305(1), (2), 2854(1)(b); L. 2010, ch. 482

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to assist in Statewide implementation of the Dignity for All Students Act (DASA) by adding a new subparagraph (x) to § 100.2(kk) of the Commissioner's Regulations to include illustrative examples of the types of incidents of harassment, bullying and/or discrimination which must be reported to the principal, superintendent or designee as possible DASA violations.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 17-18, 2018 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be October 3, 2018, the date a Notice of Adoption would be published in the State Register. Therefore, a second emergency action is necessary at the July 2018 Regents meeting for the preservation of the general welfare in order to ensure that the emergency rule adopted at the May 2018 Regents meeting remains continuously in effect until it can be presented for permanent adoption in September, effective October 3, 2018, and to ensure that incidents of harassment, bullying, and/or discrimination which may constitute violations of the Dignity for All Students Act are promptly reported to the principal, superintendent, or designee. It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 17-18, 2018 Regents meeting, which is the first scheduled meeting after expiration of the 60-day public comment period prescribed in SAPA for State agency rule makings.

Subject: Reports of Incidents of Harassment, Bullying and/or Discrimination Pursuant to the Dignity for All Students Act (DASA).

Purpose: To provide illustrative examples to the field to aid in the continued implementation of DASA.

Text of emergency rule: Paragraph (1) of subdivision (kk) of section 100.2 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (x) as follows:

(x) For purposes of this section, a "report of harassment, bullying, and/or discrimination" means a written or oral report of harassment, bullying, and/or discrimination that could constitute a violation of the Dignity for All Students Act (article 2 of the Education Law). Such a report may include, but is not limited to, the following examples:

(a) a report regarding the denial of access to school facilities, functions, opportunities or programs including, but not limited to, restrooms, changing rooms, locker rooms, and/or field trips, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(b) a report regarding application of a dress code, specific grooming or appearance standards that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(c) a report regarding the use of name(s) and pronoun(s) or the pronunciation of name(s) that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(d) a report regarding any other form of harassment, bullying and/or discrimination, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-21-18-00039-EP, Issue of May 23, 2018. The emergency rule will expire October 1, 2018.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 11, as added by section 2 of Chapter 482 of the Laws of 2010 (Dignity for All Students Act – DASA) establishes definitions for purposes of the new Article 2 of the Education Law added by such statute.

Education Law section 13, requires school districts to create policies, procedures and guidelines intended to create a school environment that is free from harassment, bullying and discrimination, including provisions related to making and receiving reports of harassment, bullying and discrimination and the investigation of such reports.

Education Law section 14, requires the Commissioner to promulgate regulations to assist school districts in implementing DASA.

Education Law section 15, requires the Commissioner to create a procedure under which material incidents of harassment, bullying or discrimination on school grounds or at a school function are reported to the State Education Department at least on an annual basis. The procedure shall provide that such reports shall, wherever possible, also delineate the specific nature of such incidents of harassment, bullying or discrimination.

Education Law section 16, under certain specified conditions, immunity from civil liability on persons reporting discrimination or harassment of students by a school employee or student. The statute further provides that no school district or employee shall take, request or cause a retaliatory action against a person, acting reasonably and in good faith, who makes such report or who initiates, testifies, participates or assists in any formal or informal proceeding under Education Law Article 2.

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Education Law section 305(1) empowers the Commissioner of Education to be the chief executive officer of the State system of education and the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Board of Regents. Education Law section 305(2) authorizes the Commissioner to have general supervision over all schools subject to the Education Law.

Education Law section 2854(1)(b) provides that charter schools shall meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools, except as otherwise specifically provided in Article 56 of the Education Law.

2. LEGISLATIVE OBJECTIVES:

Consistent with the above statutory authority, the proposed rule is necessary to implement Regents policy and the Dignity for All Students Act to further clarify reports of incidents of harassment, bullying and/or discrimination pursuant to DASA.

3. NEEDS AND BENEFITS:

In 2010, DASA added a new Article 2 to the Education Law to require, among other things, school districts to create policies and guidelines to be used in school training programs to discourage harassment, bullying, and/or discrimination and to enable school personnel to prevent and respond to discrimination or harassment. DASA became effective on July 1, 2012, and was later amended to include cyberbullying, effective July 1, 2013. Subsequently, the Department worked with key stakeholders through the DASA Task Force to develop and implement guidance and regulations to assist schools in implementing the provisions of the law. Since the adoption of Commissioner's Regulations to implement DASA, the Department has worked to provide training to the field, updates to the DASA website, and several guidance documents.

DASA continues to be a powerful tool used to address bullying, discrimination, and harassment in our schools and to ensure that all students are educated in a safe and supportive school environment. However, the issues faced by students and schools in this area continue to evolve. The Department is committed to working with stakeholders to ensure that all students have the opportunity to learn and to attend school free from bullying, harassment, and/or discrimination.

To that end, in July 2015, the Department issued guidance, entitled "Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students", to assist school districts in fostering an educational environment for all students that is safe and free from harassment, bullying, and discrimination — regardless of sex, gender identity, or expression — and to facilitate compliance with local, state, and federal laws concerning bullying, harassment, discrimination, and student privacy. At the time the guidance document was issued, the Department received national recognition for the proactive nature of the guidance to protect transgender and gender non-conforming students. In May 2016, this work was highlighted by the United States Department of Education as a sample policy designed to address bullying, discrimination, and/or harassment of transgender and gender non-conforming students.

In August 2016, Commissioner Elia, in partnership with Attorney General Schneiderman, issued a memorandum, guidance, and model materials to assist school districts in complying with DASA. That guidance provided school districts with model forms to assist with investigating and verifying reports of bullying, harassment, and/or discrimination.

In October 2017, the Office of the State Comptroller (OSC) issued an audit report entitled "Implementation of the Dignity for All Students Act". While OSC noted the efforts made by the Department to provide professional development and technical assistance and the efforts of school districts throughout the State to comply with DASA, OSC's findings also revealed a need to provide additional guidance and training to the field, particularly in the area of identifying, documenting, investigating, and reporting DASA incidents.

In February 2017, the Commissioner again issued a joint memorandum with the Attorney General to remind school districts of the obligation to protect transgender students from bullying, discrimination, and harassment in their schools and at all school functions, despite actions taken by the United States Department of Education (USDOE) and the United States Department of Justice (USDOJ) to rescind previously issued guidance surrounding the protection of transgender and gender non-conforming students. In response to USDOE's confirmation in February 2018 that it would no longer investigate civil rights complaints from transgender students denied access to bathrooms consistent with their gender identity, the Commissioner and the Attorney General issued another joint memorandum to school districts in which they reiterated New York's commitment to creating safe and supportive learning environments for all New York students and school district's obligation to comply with DASA.

The research shows that bullying and school climate are linked to children's academic achievement, learning, and development. Specifically, children who are bullied are more likely to avoid school, more likely to drop out of school, have lower academic achievement, have lower self-esteem and higher levels of anxiety, depression and loneliness, and are more likely to attempt suicide, both during childhood and later in life. A recent national survey of school climate found that more than 80 percent of lesbian, gay, bisexual, and transgender (LGBT) youth reported some form of bullying or harassment at school. These concerns are especially urgent for transgender students for whom the data indicates that 1 in 2 transgender students have had at least one suicide attempt by their twentieth birthday.

As a result of these developments, Department staff proposes to amend Commissioner's Regulation § 100.2(kk)(1) to include illustrative examples of the types of incidents of harassment, bullying and/or discrimination which must be reported to the principal, superintendent. or designee when reported to or witnessed by a school employee. Specifically, the proposed amendment includes a definition of "report of harassment, bullying, and/or discrimination" to include, but not be limited to, the following examples:

- a report regarding the denial of access to school facilities, functions, opportunities or programs including, but not limited to, restrooms, changing rooms, locker rooms, and/or field trips, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding application of a dress code, specific grooming or appearance standards that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding the use of name(s) and pronoun(s) or the pronunciation of name(s) that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding any other form of harassment, bullying, and/or discrimination, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex.

The Department remains committed to working with all partners throughout the State to ensure that all students have an opportunity to thrive in a school environment that is safe, supportive and free from bullying, harassment, and/or discrimination. We will continue to support district administrators and school staff as they continue to take proactive steps to create a positive school culture and climate in which students feel safe and supported, and fully included. The proposed amendment to Commissioner's Regulations § 100.2(kk)(1) is intended to support these efforts by clarifying and assisting in DASA implementation statewide.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3) and will not impose any additional costs on the State, school districts, BOCES and charter schools, or the State Education Department, beyond those imposed by the statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3). Additionally, Education Law § 13 requires that districts have a process for receiving reports of and investigating oral or written reports of harassment, discrimination and/or bullying. As such the clarifying amendments will not impose any additional program, service, duty or responsibility beyond those imposed by the statute.

6. PAPERWORK:

The proposed rule does not impose and new paperwork requirements beyond those already required by statute, but merely provides illustrative examples of the types of harassment, bullying and/or discrimination which must be reported to the principal, superintendent, or designee when reported to or witnessed by a school employee.

7. DUPLICATION:

The proposed rule does not duplicate existing State or Federal regulations.

8. ALTERNATIVES:

The proposed rule is necessary to implement Regents policy related to providing illustrative examples of the types of harassment, bullying and/or discrimination which must be reported to the principal, superintendent, or designee when reported to or witnessed by a school employee in compliance with DASA. There are no viable alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no related Federal standards.

10. COMPLIANCE SCHEDULE:

The proposed rule is necessary to provide illustrative examples of the types of harassment, bullying and/or discrimination which must be reported to the principal, superintendent, or designee when reported to or witnessed by a school employee in compliance with DASA. Because the rule merely provides additional illustrative examples, it is anticipated that regulated parties will be able to achieve compliance with proposed rule by its effective date.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3). Additionally, Education Law § 13 requires that districts have a process for receiving reports of and investigating oral or written reports of harassment, discrimination and/or bullying.

Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The proposed amendment applies to each school district, BOCES and charter school in the State pursuant to Education Law Article 2.

2. COMPLIANCE REQUIREMENTS:

In 2010, DASA added a new Article 2 to the Education Law to require, among other things, school districts to create policies and guidelines to be used in school training programs to discourage harassment, bullying, and/or discrimination and to enable school personnel to prevent and respond to discrimination or harassment. DASA became effective on July 1, 2012, and was later amended to include cyberbullying, effective July 1, 2013. Subsequently, the Department worked with key stakeholders through the DASA Task Force to develop and implement guidance and regulations to assist schools in implementing the provisions of the law. Since the adoption of Commissioner's Regulations to implement DASA, the Department has worked to provide training to the field, updates to the DASA website, and several guidance documents.

DASA continues to be a powerful tool used to address bullying, discrimination, and harassment in our schools and to ensure that all students are educated in a safe and supportive school environment. However, the issues faced by students and schools in this area continue to evolve. The Department is committed to working with stakeholders to ensure that all students have the opportunity to learn and to attend school free from bullying, harassment, and/or discrimination.

To that end, in July 2015, the Department issued guidance, entitled "Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students", to assist school districts in fostering an educational environment for all students that is safe and free from harassment, bullying, and discrimination — regardless of sex, gender identity, or expression — and to facilitate compliance with local, state, and federal laws concerning bullying, harassment, discrimination, and student privacy. At the time the guidance document was issued, the Department received national recognition for the proactive nature of the guidance to protect transgender and gender non-conforming students. In May 2016, this work was highlighted by the United States Department of Education as a sample policy designed to address bullying, discrimination, and/or harassment of transgender and gender non-conforming students.

In August 2016, Commissioner Elia, in partnership with Attorney General Schneiderman, issued a memorandum, guidance, and model materials to assist school districts in complying with DASA. That guidance provided school districts with model forms to assist with investigating and verifying reports of bullying, harassment, and/or discrimination.

In October 2017, the Office of the State Comptroller (OSC) issued an audit report entitled "Implementation of the Dignity for All Students Act". While OSC noted the efforts made by the Department to provide professional development and technical assistance and the efforts of school districts throughout the State to comply with DASA, OSC's findings also revealed a need to provide additional guidance and training to the field, particularly in the area of identifying, documenting, investigating, and reporting DASA incidents.

In February 2017, the Commissioner again issued a joint memorandum with the Attorney General to remind school districts of the obligation to protect transgender students from bullying, discrimination, and harassment in their schools and at all school functions, despite actions taken by the United States Department of Education (USDOE) and the United States Department of Justice (USDOJ) to rescind previously issued guidance surrounding the protection of transgender and gender non-conforming students. In response to USDOE's confirmation in February 2018 that it would no longer investigate civil rights complaints from transgender students denied access to bathrooms consistent with their gender identity, the Commissioner and the Attorney General issued another joint memorandum to school districts in which they reiterated New York's commitment to creating safe and supportive learning environments for all New York students and school district's obligation to comply with DASA.

The research shows that bullying and school climate are linked to children's academic achievement, learning, and development. Specifically, children who are bullied are more likely to avoid school, more likely to drop out of school, have lower academic achievement, have lower self-esteem and higher levels of anxiety, depression and loneliness, and are more likely to attempt suicide, both during childhood and later in life. A recent national survey of school climate found that more than 80 percent of lesbian, gay, bisexual, and transgender (LGBT) youth reported some form of bullying or harassment at school. These concerns are especially urgent for transgender students for whom the data indicates that 1 in 2 transgender students have had at least one suicide attempt by their twentieth birthday.

As a result of these developments, Department staff proposes to amend Commissioner's Regulation § 100.2(kk)(1) to include illustrative examples of the types of incidents of harassment, bullying and/or discrimination which must be reported to the principal, superintendent. or designee when reported to or witnessed by a school employee. Specifically, the proposed amendment includes a definition of "report of harassment, bullying, and/or discrimination" to include, but not be limited to, the following examples:

- a report regarding the denial of access to school facilities, functions, opportunities or programs including, but not limited to, restrooms, changing rooms, locker rooms, and/or field trips, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding application of a dress code, specific grooming or appearance standards that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding the use of name(s) and pronoun(s) or the pronunciation of name(s) that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding any other form of harassment, bullying, and/or discrimination, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex.

The Department remains committed to working with all partners throughout the State to ensure that all students have an opportunity to thrive in a school environment that is safe, supportive and free from bullying, harassment, and/or discrimination. We will continue to support district administrators and school staff as they continue to take proactive steps to create a positive school culture and climate in which students feel safe and supported, and fully included. The proposed amendment to Commissioner's Regulations § 100.2(kk)(1) is intended to support these efforts by clarifying and assisting in DASA implementation statewide.

3. PROFESSIONAL SERVICES:

The proposed rule does not impose any additional professional services requirements on local governments.

4. COMPLIANCE COSTS:

The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3). Additionally, Education Law § 13 requires that districts have a process for receiving reports of and investigating oral or written reports of harassment, discrimination and/or bullying. As such the clarifying amendments will not impose any additional program, service, duty, responsibility or costs beyond those imposed by the statute.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements on school districts or charter schools. Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

There were no significant alternatives and none were considered. The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3). Additionally, Education Law § 13 requires that districts have a process for receiving reports of and investigating oral or written reports of harassment, discrimination and/or bullying. As such the clarifying amendments will not impose any additional program, service, duty or responsibility beyond those imposed by the statute.

Because the statute upon which the proposed amendment is based applies to all school districts in the State and to charter schools and registered nonpublic high schools, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools from coverage by the proposed amendment.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, from the chief school officers of the five big city school districts and from charter schools.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 689 public school districts in the State, charter schools, and registered nonpublic schools in the State, to the extent that they offer instruction in the high school grades, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. At present, there is one charter school located in a rural area that is authorized to issue diplomas.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3). Additionally, Education Law

§ 13 requires that districts have a process for receiving reports of and investigating oral or written reports of harassment, discrimination and/or bullying. As such the clarifying amendments will not impose any additional reporting, recordkeeping or professional service beyond those already imposed by the statute.

3. COMPLIANCE COSTS:

None.

4. MINIMIZING ADVERSE IMPACT:

There were no significant alternatives and none were considered. The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3). Additionally, Education Law § 13 requires that districts have a process for receiving reports of and investigating oral or written reports of harassment, discrimination and/or bullying. As such the clarifying amendments will not impose any additional program, service, duty or responsibility beyond those imposed by the statute.

Because the statute upon which the proposed amendment is based applies to all school districts in the State and to charter schools and registered nonpublic high schools, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment is necessary to The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3).

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

Department of Environmental Conservation

NOTICE OF ADOPTION

Regulations Governing the Recreational and Commercial Fishing of Tautog (Blackfish)

I.D. No. ENV-16-18-00003-A
Filing No. 722
Filing Date: 2018-08-07
Effective Date: 2018-08-22

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105 and 13-0340-d

Subject: Regulations governing the recreational and commercial fishing of Tautog (blackfish).

Purpose: To revise regulations concerning the recreational and commercial harvest of Tautog in New York State.

Text or summary was published in the April 18, 2018 issue of the Register, I.D. No. ENV-16-18-00003-EP.

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

Text of rule and any required statements and analyses may be obtained from: Rachel Sysak, New York State Department of Environmental Conservation, 205 North Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0469, email: rachel.sysak@dec.ny.gov

Additional matter required by statute: The action is subject to SEQR as an Unlisted action and a Short EAF was completed. The Department has determined that an EIS need not be prepared and has issued a negative declaration. The EAF and negative declaration are available upon request.

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

DEC received a total of 5 comments during the public comment period for the proposed rulemaking. All five comments came from recreational fishers and the recreational fishing industry.

Comment: Two comments opposed having a spring fishery, stating that it could harm spawning tautog.

DEC Response: Tautog spawning in New York waters is based on water temperature, and usually occurs from May – July with the peak occurring during the end of June and early July. The proposed recreational season of April 1 – 30 avoids this spawning season and its peak.

Comment: Two comments expressed the suggestion that the spring season should extend into May.

DEC Response: These regulations were developed to decrease tautog harvest in New York waters, because the regional population is being overfished. Extending the spring season into May could increase New York's harvest due to the greater availability of tautog during that month. Increases to harvest would not be in compliance with the Atlantic States Marine Fisheries Commission's Amendment 1 to the Tautog Fishery Management Plan.

Comment: One commenter felt that it would be more fair to completely close the tautog fishery until the population has recovered, rather than have different regulations for the commercial and recreational fisheries.

DEC Response: The tautog fishery is an important resource for both recreational and commercial fishing industries in New York. A complete closure of the fishery would result in hardship and financial losses for these businesses. The proposed regulations were developed to restrict harvest to sustainable levels that will allow the tautog populations to recover, while still providing the benefits of the resource to both commercial and recreational fishers.

NOTICE OF ADOPTION

Regulations Governing the Recreational Fishing of Scup and Summer Flounder (Fluke)

I.D. No. ENV-16-18-00004-A
Filing No. 723
Filing Date: 2018-08-07
Effective Date: 2018-08-22

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

Action taken: Amendment of Part 40 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105, 13-0340-b and 13-0340-e

Subject: Regulations governing the recreational fishing of scup and summer flounder (fluke).

Purpose: To revise regulations concerning the recreational harvest of scup and summer flounder in New York State.

Text or summary was published in the April 18, 2018 issue of the Register, I.D. No. ENV-16-18-00004-EP.

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

Text of rule and any required statements and analyses may be obtained from: John Maniscalco, New York State Department of Environmental Conservation, 205 North Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0437, email: John.Maniscalco@dec.ny.gov

Additional matter required by statute: The proposed rulemaking action is subject to SEQR as an Unlisted action and a Short EAF was completed. The Department has determined that an EIS need not be prepared and has issued a negative declaration. The EAF and negative declaration are available upon request.

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

DEC received only 1 comment during the public comment period for the proposed rulemaking. The comment came from a member of the recreational fishing industry.

Comment: Supports the liberalization of the summer flounder regulations, but feels that scup fishing is down and should not be liberalized.

DEC Response: Based on the 2015 benchmark stock assessment and peer review, the scup population has a spawning stock biomass that is two times the target, and fishing mortality is below the targets. Fishery Independent Surveys also indicate that the scup population is thriving, and can sustain a decrease to the minimum size for recreational harvest.

Department of Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Statewide Planning and Research Cooperative System (SPARCS)

I.D. No. HLT-34-18-00006-P

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

Proposed Action: Amendment of section 400.18 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2816

Subject: Statewide Planning and Research Cooperative System (SPARCS).

Purpose: To revise the SPARCS regulation related to data intake.

Text of proposed rule: Section 400.18 is amended to read as follows:

10 NYCRR § 400.18 Statewide Planning and Research Cooperative System (SPARCS).

(a) Definitions. For the purposes of this section, these terms shall have the following meanings:

(1) Health care facilities shall mean facilities licensed under Article 28 of the Public Health Law.

(2) Identifying data elements shall mean those SPARCS [and Patient Review Instrument (PRI)] data elements that, if disclosed without any restrictions on use or re-disclosure would constitute an unwarranted invasion of personal privacy. A list of identifying data elements shall be specified by the Commissioner and will be made available publicly.

(3) Inpatient hospitalization data shall mean SPARCS data submitted by hospitals for patients receiving inpatient services at a general hospital that is licensed under Article 28 of the Public Health Law and that provides inpatient medical services.

(4) Outpatient data shall mean emergency department data, ambulatory surgery data, and outpatient services data.

(i) Emergency department data shall mean SPARCS data submitted by a facility licensed to provide emergency department services under Article 28 of the Public Health Law.

(ii) Ambulatory surgery data shall mean SPARCS data submitted by a facility licensed to provide ambulatory surgery services under Article 28 of the Public Health Law.

(iii) Outpatient services data shall mean all data submitted by licensed Article 28 facilities excluding inpatient hospitalization data, emergency department data, and ambulatory surgery data.

(5) [Patient Review Instrument (PRI) data shall mean the data submitted on PRI forms by residential health care facilities, pursuant to section 86-2.30 of this Title.

(6)] SPARCS Administrator shall mean a person in the SPARCS program designated by the Commissioner to act as administrator for all SPARCS activities.

[(7)] *(6)* SPARCS data shall mean the data collected by the Commissioner under section 2816 of the Public Health Law and this section, including inpatient hospitalization data and outpatient data.

[(8)] *(7)* SPARCS program shall mean the program in the New York State Department of Health (NYSDOH) that collects and maintains SPARCS data and discloses SPARCS [and Patient Review Instrument (PRI)] data.

(b) Reporting SPARCS data.

(1) Health care facilities shall report data as follows:

(i) Health care facilities shall submit, or cause to have submitted, SPARCS data in an electronic, computer-readable format through [NYSDOH's] *a* secure electronic network [according to the requirements of section 400.10 of this Part and the] *designated by the Department according to* specifications provided by the Commissioner.

(ii) All SPARCS data must be supported by documentation in the patient's medical and billing records.

(iii) Health care facilities must submit on a monthly basis to the SPARCS program, or cause to have submitted on a monthly basis to the SPARCS program, data for all inpatient discharges and outpatient visits. Health care facilities must submit, or cause to have submitted, at least 95 percent of data for all inpatient discharges and outpatient visits within sixty (60) days from the end of the month of a patient's discharge or visit. Health care facilities must submit, or cause to have submitted, 100 percent of data for all inpatient discharges and outpatient visits within one hundred eighty (180) days from the end of the month of a patient's discharge or visit.

(iv) The SPARCS program may conduct an audit evaluating the quality of submitted SPARCS data and issue an audit report to a health care facility listing any inadequacies or inconsistencies in the data. Any health care facility so audited must submit corrected data to the SPARCS program within 90 days of the receipt of the audit report.

(2) Content of the SPARCS data.

(i) Health care facilities shall submit, or cause to have submitted, uniform bill data elements as required by the Commissioner. The data elements required by the Commissioner shall be based on those approved by the National Uniform Billing Committee (NUBC) or required under national electronic data interchange (EDI) standards for health care transactions and shall be published on the NYSDOH website *to the extent allowed by copyright law*.

(ii) Health care facilities shall submit, or cause to have submitted, additional data elements as required by the Commissioner. Such additional data elements shall be from medical records or demographic information maintained by the health care facilities.

(iii) The list of specific SPARCS data elements and their definitions shall be maintained by the Commissioner, will be made available publicly, and may be modified by the Commissioner.

(c) Maintenance of SPARCS data.

The Commissioner shall be responsible for protecting the privacy and security of the health care information reported to the SPARCS program.

(d) Requests for SPARCS [and PRI] data.

(1) SPARCS [and PRI] data may be used for medical or scientific research or statistical or epidemiological purposes approved by the Commissioner.

(2) The Commissioner may determine that additional purposes are proper uses of SPARCS [and PRI] data.

(3) In determining the purpose of a request for SPARCS [and PRI] data, the SPARCS program shall not be limited to information contained in the data request form and may request supplemental information from the applicant.

(4) The Commissioner shall charge a reasonable fee to all persons and organizations receiving SPARCS [and PRI] data based upon costs incurred and recurring for data processing, platform/data center and software. The Commissioner may discount the base fee or waive the fee upon request to the SPARCS program. The fee may be waived in the following circumstances:

(i) Use by a health care facility of the data it submitted to the SPARCS program.

(ii) Use by a health care facility that is licensed under Article 28 of the Public Health Law for the purpose of rate determinations or rate appeals and for health care-related research.

(iii) Use by a Federal, New York State, county or local government agency for health care-related purposes.

(5) The SPARCS program shall follow applicable federal and state laws when determining whether SPARCS [and PRI] data contain identifying data elements may be shared and whether a disclosure of SPARCS [and PRI] data constitutes an unwarranted invasion of personal privacy.

(6) All entities seeking SPARCS [and PRI] data must submit a request to the SPARCS program using standard data request forms specified by the SPARCS program. Data users shall take all necessary precautions to prevent unwarranted invasions of personal privacy resulting from any data analysis or release. Data users may not release any information that could be used, alone or in combination with other reasonably available information, to identify an individual who is a subject of the information. Data users bear full responsibility for breaches or unauthorized disclosures of personal information resulting from use of SPARCS [or PRI] data. Applications for SPARCS [or PRI] data must provide an explicit plan for preventing breaches or unauthorized disclosures of personal information of any individual who is a subject of the information.

(7) Each data request form must include an executed data use agreement in a form prescribed by the SPARCS program. Data use agreements are required of: a representative of the requesting organization; a representative of each other organization associated with the project; and all individuals who will have access to any data including identifying data elements.

(8) The SPARCS program shall publish and make publicly available the name of the project director, the organization, and the title of approved projects.

(9) The SPARCS Administrator shall review and make recommendations on requests for SPARCS [and PRI] data containing identifying data elements to a data release committee established by the Commissioner. The data release committee shall have at least three members, including at least one member not otherwise affiliated with NYSDOH. The members of the data release committee shall be posted on the NYSDOH website. Requests will be granted only upon formal, written approval for access by a majority of the members of the data release committee. The Commissioner has the final authority over the approval, or disapproval, of all requests. Requests for identifying data elements shall be approved only if:

(i) The purpose of the request is consistent with the purposes for which SPARCS [and PRI] data may be used;

(ii) The applicant is qualified to undertake the project; and

(iii) The applicant requires such identifying data elements for the intended project and is able to ensure that patient privacy will be protected.

(10) The SPARCS Administrator may recommend approval of a request in which future SPARCS data is to be supplied on a periodic basis under the following conditions:

(i) SPARCS data may be requested for a predetermined time not to exceed three years beyond the current year provided that the organization and uses of the data remain as indicated in the data request form submitted to the SPARCS program.

(ii) During the period of retention of SPARCS [or PRI] data, no additional individuals may access SPARCS [or PRI] data without an executed data use agreement on file with the SPARCS program.

(11) The Commissioner may rescind for cause, at any time, approval of a data request.

(e) Penalties.

(1) Any person or entity that violates the provisions of this section or any data use agreement may be liable pursuant to the provisions of the Public Health Law, including, but not limited to, sections 12 and 12-d of the Public Health Law.

(2) Any person or entity that violates the provisions of this section or any data use agreement may be denied access to SPARCS [or PRI] data.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

The Statewide Planning and Research Cooperative System (SPARCS) is a comprehensive health care data reporting system established in 1979 through cooperation between the health care industry and government. The enabling legislation for SPARCS is Section 2816 of the Public Health Law (PHL). The regulations pertaining to SPARCS are under Section 400.18 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR).

Legislative Objectives:

In 2001, the Legislature codified the Department's authority to collect SPARCS data by adding PHL § 2816. In 2011, the Legislature expanded this authority by authorizing the Department to develop and implement an All Payer Database for New York State. In doing so, the Legislature referenced the Department's need for greater flexibility in the forms of data submission.

The enactment of Public Health Law § 2816(6) authorized the Department to describe data elements by reference to information reasonably available to regulated parties, as such material may be amended in the future. This provision recognizes the Department's need for flexibility when determining data elements by authorizing the Department to adjust such data elements administratively.

Needs and Benefits:

The current regulation directs data to be submitted to SPARCS through the Health Commerce System (HCS). This rule making revises Section 400.18 to grant the SPARCS program the flexibility to explore other data intake options, consistent with Public Health Law § 2816. This rule making also removes all references to Patient Review Instrument (PRI) data, which is an obsolete data source.

This rule making clarifies that input data dictionary elements are protected by copyright law. The Department will continue to precisely identify and publish a description of what data elements must be submitted to the extent it may do so under copyright law.

The proposed regulation changes will enhance the SPARCS program by modernizing the program's technology and functionality. Currently, HCS users regularly experience bandwidth issues, poor network performance, and slow data transfer speeds. These issues hinder the ability of data submitters to submit SPARCS data in a timely fashion. By leveraging new technology for SPARCS data intake, the SPARCS program will operate more efficiently.

Lastly, the proposed regulation specifies that data elements required by the Commissioner shall be based on those approved by the National Uniform Billing Committee (NUBC) or required under national electronic data interchange (EDI) standards for health care transactions and shall be published on the NYSDOH website to the extent allowed by copyright law. The SPARCS program is in the process of changing its data format to require data to be submitted in the X12 837R ("X12") format, which is to some extent proprietary intellectual property owned by X12 Incorporated. See http://www.x12.org/, http://members.x12.org/policies-procedures/cap01v3-bylaws.pdf, http://store.x12.org/store/ip-use. Consistent with past practice, the Department will publish the data elements with specificity so that regulated parties will know exactly what data elements must be submitted, with the caveat that the Department will not publish intellectual property that it does not have a right to publish.

Costs:

Costs to Regulated Parties:

The rule change levies minor additional costs to health care facilities licensed under Article 28 of the PHL that may need to, in some cases, change their existing contracts with vendors to submit data, if they utilize a vendor. These minor additional costs would be solely related to changes needed to submit data to the Department's contractor rather than submitting data directly to the Department using the HCS. Data will continue to be submitted in the standard claims data format that all Article 28 facilities have already adopted under federal regulations in 42 CFR Part 162 as authorized by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Costs to the NYSDOH:

The costs associated with this change will be offset by savings from no longer having to finance a mainframe system and changes needed to the HCS maintained by the NYS Office of Information Technology Services. This change will also allow for the reallocation of NYSDOH staff to areas needing additional resources.

Costs to State and Local Governments:

There are no anticipated costs to local governments as a result of this rule change, except that any PHL Article 28 facilities that are operated by local governments will incur the same costs as any other Article 28 facilities subject to this regulation.

Local Government Mandates:

This rule change imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The rule change imposes no significant reporting requirements, forms, or other paperwork upon regulated parties.

Duplication:

There will be no duplication of reporting efforts to New York State for health care facilities licensed under Article 28 of the PHL.

Alternatives:

There are no reasonable alternatives that could serve as a substitute, because the Department will no longer be able to collect data using the HCS. The Department's mainframe system for SPARCS was scheduled to sunset when key staff retired. The Office of Information Technology Services would no longer support COBOL/mainframe SPARCS translation. Likewise, the Office of Information Technology Services was sunsetting support for a key technology used to support the SPARCS application on the HCS.

Federal Standards:

The rule change does not exceed any minimum standards of the federal government for the same or similar subject area, as the federal government does not operate a national program like SPARCS.

Compliance Schedule:

The rule change will not alter SPARCS compliance schedules. Health care facilities licensed under Article 28 of the PHL will continue to submit data to SPARCS at the same frequency and levels they currently do.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because 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 proposed amendments.

Job Impact Statement

The rule change will have no impact on jobs and employment opportunities on the part of regulated parties (health care facilities licensed under Article 28 of the Public Health Law). The regulated health care facilities already have an existing data reporting infrastructure and are required to report SPARCS data. The way facilities submit data to SPARCS would not change. It would not be more burdensome or costly for data submitters as their data submission process would be very similar to what currently is in

place. There will be no job impacts in any other segments or sectors of the job market. With regards to adverse employment effects, there is no expectation of job losses as a result of the rule.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

New York State Medicaid Infertility Treatment

I.D. No. HLT-34-18-00007-P

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

Proposed Action: Amendment of sections 505.1 and 505.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 365-a(2)(ee)

Subject: New York State Medicaid Infertility Treatment.

Purpose: To authorize Medicaid coverage of infertility benefits.

Text of proposed rule: Paragraph (1) of subdivision (a) of Section 505.1 is amended and a new subparagraph (iii) is added to read as follows:

Section 505.1 Scope of medical assistance. (a) Services available. (1) Medical care, services and supplies available to eligible persons must, except to the extent that such medical care, services and supplies are [either furnished solely to promote fertility or] certified as inappropriate, unnecessary or otherwise not authorized by the Commissioner of Health or his or her designee and except as provided in subdivision (b) of this section, include the following:

(i) services of qualified physicians, dentists, nurses, optometrists and other related professional personnel;

(ii) care, treatment, maintenance and nursing services in hospitals, skilled nursing facilities that qualify as, or have applications pending to become, providers in the Medicare program pursuant to title XVIII of the Federal Social Security Act, or other eligible institutions, and health-related care and services in intermediate care facilities, while such institutions and facilities are operated in compliance with applicable provisions of law and to the extent authorized by this Subchapter. However, no medical assistance payment will be authorized for care provided after December 31, 1977 in skilled nursing facilities which have participated in title XIX since September 1, 1976, but for whom title XVIII certification is still lacking, except for those skilled nursing facilities providing solely pediatric care[.]*;*

(iii) services to ensure improved outcomes of women ages 21 through 44 experiencing infertility, limited to ovulation enhancing drugs, office visits, hysterosalpingogram services, pelvic ultrasounds, and blood testing.

Paragraph (3) of subdivision (g) of Section 505.3 is amended to read as follows:

(3) No payment will be made for any drug which has weight reduction as its sole clinical use[, or for any drug when used to promote fertility]. *Payment for drugs used to promote fertility is limited to bromocriptine, clomiphene citrate, letrozole and tamoxifen, when receiving services pursuant to section 505.1(a)(1)(iii) of this Title, and subject to the FDA recommended and/or compendia-supported uses and limitations.*

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 365-a and Public Health Law (PHL) section 201(l)(v) provide that the Department is the single State agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, which shall be consistent with law, and as may be necessary to implement the State's Medicaid program. SSL section 365-a authorizes Medicaid coverage for specified medical care, services and supplies, together with such medical care, services and supplies as authorized in the regulations of the Department.

Legislative Objectives:

In 2017, the Legislature added a new paragraph (ee) to subdivision (2) of section 365-a of the SSL, to "include the coverage of a set of services to ensure improved outcomes of women who are in the process of ovulation enhancing drugs, limited to the provision of such treatment, office visits, hysterosalpingogram services, pelvic ultrasounds, and blood testing; services shall be limited to those necessary to monitor such treatment." These regulations implement the change in statute.

Needs and Benefits:

In New York State, women enrolled in Medicaid currently do not have access to insurance coverage for infertility benefits. This regulation implements a recent statutory change to extend Medicaid coverage to provide infertility benefits. Specifically, Section 505.1 of Title 18 is being amended to provide Medicaid eligible women ages 21 through 44 experiencing infertility, access to ovulation enhancing drugs, office visits, hysterosalpingogram services, pelvic ultrasounds, and blood testing. Section 505.3 is amended to specify which drugs may be covered by Medicaid.

Costs:

As a Family Planning benefit under Medicaid, the cost of this coverage is 90% covered by the federal government, with 5% covered by New York State and 5% covered by local governments. However, because the local share is subject to a spending cap pursuant to Chapter 58 of the Laws of 2005, the State will be responsible for both the State and local share for this benefit, based on current budget projections. The cost to the New York State Medicaid program is expected to be $5 million annually.

Local Government Mandates:

This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

This rule imposes no new reporting requirements, forms, or other new paperwork.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

This change conforms with a recent change in statute and, as such, no other alternatives were considered.

Federal Standards:

There are no federal standards associated with this rule.

Compliance Schedule:

Medicaid infertility benefits will be available to eligible members upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. The proposed rules will allow Medicaid eligible women ages 21 through 44 diagnosed with infertility access to ovulation enhancing drugs, blood testing, ultrasounds, and office visits for treatment and monitoring.

Job Impact Statement

A Job Impact Statement is not included because the proposed regulatory amendments will not have an adverse effect on jobs and employment opportunities. The proposed amendments will establish the reimbursement of infertility health care services provided to the New York State Medicaid population of women diagnosed with infertility.

Higher Education Services Corporation

EMERGENCY
RULE MAKING

Excelsior Scholarship

I.D. No. ESC-34-18-00002-E
Filing No. 712
Filing Date: 2018-08-03
Effective Date: 2018-08-03

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

Action taken: Addition of section 2201.18 to Title 8 NYCRR.

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

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 2201.18 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 2017 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for full tuition benefits to college-going students pursuing their undergraduate studies at a New York State public institution of higher education. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of the Program as provided in the regulation be effective immediately 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: Excelsior Scholarship.

Purpose: To implement the Excelsior Scholarship.

Text of emergency rule: New section 2201.18 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.18 Excelsior Scholarship.

(a) Definitions. For purposes of this section and Education Law, section 669-h, the following definitions shall apply:

(1) Award shall mean an Excelsior Scholarship award pursuant to Education Law, section 669-h.

(2) Full-time attendance or full-time study, for purposes of Education Law, section 669-h(1)(c), shall mean enrollment in at least 12 credits per semester and completion of at least 30 combined credits per year following the student's start date, or its equivalent, applicable to his or her program of study, excluding any permissible interruption of study as determined by the corporation, and except as provided in subdivision (b) of this section and Education Law, section 669-h(1)(c). Noncredit courses shall not be considered as contributing toward full-time attendance.

(3) Half-time shall mean enrollment in at least six but less than 12 credits, or the equivalent, per semester.

(4) Interruption in undergraduate study shall mean either: (i) a temporary period of leave or (ii) enrollment in or completion of less than the required number of credits for a definitive length of time both due to circumstances as determined by the corporation, including, but not limited to, death of a family member, medical leave, military service, service in the Peace Corps or parental leave.

(5) Program shall mean the Excelsior Scholarship codified in Education Law, section 669-h.

(6) Public institution of higher education shall mean the State University of New York, as defined in Education Law, section 352(3), a community college as defined in Education Law, section 6301(2), or the City University of New York as defined in Education Law, section 6202(2).

(7) Satisfactory progress shall have the same meaning as successful completion.

(8) Student's start date shall mean the date the student first enrolled as a matriculated student.

(9) Successful completion shall mean a student has earned at least 30 combined credits in each consecutive year following the student's start date, or its equivalent, applicable to his or her program or programs of study except as provided in subdivision (b) of this section and Education Law, section 669-h(1)(c).

(b) Eligibility. In addition to the requirements of Education Law, section 669-h, an applicant must also satisfy the general eligibility requirements provided in Education Law, section 661. As authorized by Education Law, section 669-h, the following exceptions and modifications to the eligibility requirements shall apply:

(1) College credit earned toward a recipient's program(s) of study while a high school student or other non-matriculated status shall be considered as contributing toward full-time attendance. For a recipient who earned college credit toward his or her program(s) of study prior to enrolling in college as a matriculated student and who is making satisfactory progress toward timely completion of his or her program(s) of study, and is enrolled in coursework not applicable toward his or her program(s) of study, such coursework outside of his or her program(s) of study shall be considered as contributing toward full-time attendance.

(2) A recipient must be in full-time attendance as defined in this section.

(3) For purposes of Education Law, section 669-h(1)(b), an applicant must have completed at least 30 combined credits each year following his or her start date, or its equivalent, applicable to his or her program(s) of study which were accepted by his or her current institution at the time of application for this award, except for any permissible interruption of study as determined by the corporation.

(4) For students who are disabled as defined by the Americans with Disabilities Act of 1990, 42 USC 12101, the full-time attendance requirement is eliminated, subject to the parameters of paragraph 4 of subdivision e of this section. Rather such students are required to have completed the number of credits in which they were enrolled (attempted) each term, except for any allowable interruption in undergraduate study as determined by the corporation.

(c) Income. An applicant or recipient whose current income or prior year adjusted gross income qualifies for an award due to the disability, divorce or separation of a parent, spouse or the applicant/recipient or the death of a parent or spouse as authorized in Education Law, section 669-h(1), shall provide documentation required by the corporation to determine his or her eligibility for an award or award payment. The corporation may consider such documentary evidence it deems sufficient to determine disability, divorce, separation or death.

(d) Administration. In addition to the requirements contained in Education Law, section 669-h, the following requirements shall also apply.

(1) Applicants for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) electronically transmit applications for program eligibility to the corporation on or before the date prescribed by the corporation for the applicable academic year.

(2) Recipients of an award shall:

(i) execute a contract with the corporation agreeing to reside in New York State for a continuous number of years equal to the duration of the award received and, if employed during such time, to be employed in New York State;

(ii) apply for payment annually on forms specified by the corporation; and

(iii) receive such awards for not more than two academic years of full-time undergraduate study if enrolled in an eligible two year program of study or four academic years of full-time undergraduate study or five academic years if the program of study normally requires five years, as defined by the commissioner pursuant to article thirteen of the education law, excluding any allowable interruption of study as defined in this section. For purposes of this subparagraph, a recipient's academic year shall begin with the term he or she was first matriculated.

(3) For each recipient, institutions shall certify on forms and in the manner prescribed by the corporation the tuition rate charged by the institution, eligibility to receive the award, the number of credits completed each academic term, the cumulative credits at the end of each academic term, the type and amount of each student financial aid award received, excluding loans and work study, and any other information requested by the corporation.

(e) Amounts.

(1) The amount of the award shall be determined in accordance with Education Law, section 669-h.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time subject to the verification and certification by the institution of the recipient's full-time status and other eligibility and certification requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships that cover the cost of attendance unless the award is exclusively for non-tuition expenses as authorized by Education Law, section 669-h.

(4) For students who are disabled as defined by the Americans with Disabilities Act of 1990, 42 USC 12101, upon each certification by the college or university, payment eligibility shall be determined and measured proportionally in equivalence with full-time study.

(f) Contractual obligation.

(1) For the purpose of complying with Education Law, section 669-h(4)(e), military personnel, including those in the Military Reserves and ROTC or CSPI, for whom New York is his or her legal state of residence shall be deemed to reside and be employed in New York State regardless of where the individual is stationed or deployed.

(2) For the purpose of complying with Education Law, section 669-h(4)(e), for a recipient who is no longer eligible to receive award payments, the duration he or she resides in New York State while completing undergraduate or graduate study, including medical residency, shall be credited toward the time necessary to satisfy the recipient's residency and employment requirement.

(3) Where a recipient, within six months of receipt of his or her final

award payment, fails to maintain permanent domicile in New York State for a continuous number of years equal to the duration of the award received or, during such time, is employed in any other state, the corporation shall convert all award monies received to a 10-year student loan, without interest. However, the requirement to maintain permanent domicile, and only be employed, in New York State, may be deferred to complete undergraduate study or attend graduate school, including medical residency, on at least a half-time basis.

(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, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, discharge the amount owed, or take such other appropriate action. Notwithstanding, the corporation shall prorate the amount owed commensurate with the length of time the recipient complied with the residency and employment requirements.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 31, 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 Excelsior Scholarship (Program) is codified within Article 14 of the Education Law. Part HHH of Chapter 59 of the Laws of 2017 created the Program by adding a new section 669-h to the Education Law, which was amended by Part T of Chapter 56 of the Laws of 2018. Subdivision 6 of section 669-h of the Education Law authorizes HESC to promulgate emergency regulations to administer 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 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-h to create the Excelsior Scholarship (Program). This Program makes college tuition-free for New York's middle class families at all State University of New York (SUNY) and City University of New York (CUNY) two-year and four-year colleges.

Needs and benefits:

Many studies have underscored the importance of a college degree in today's global economy. According to a report by the Center on Education and the Workforce (CEW) at Georgetown University, by 2020, 65 percent of all jobs will require some form of postsecondary education or training, compared to 59 percent of jobs in 2010. The CEW report finds that having a skilled workforce is critical if the United States is to "remain competitive, attract the right type of industry, and engage the right type of talent in a knowledge-based and innovative economy." At the current pace, the United States will fall short of its skilled workforce needs by 5 million workers. The disparity in earning potential between high school graduates and college graduates has never been greater, nor has the student loan debt – which stands at $1.3 trillion – being carried by those who have pursued a postsecondary education. Recognizing the growing need for workers with postsecondary education and training, the wage earnings benefits for those with training beyond high school, the rapidly rising college costs and mounting student loan debt, this Program makes college tuition-free for New York's students attending a State University of New York (SUNY) or City University of New York (CUNY) two-year or four-year college.

The Program provides for annual tuition awards up to $5,500 for resident, undergraduate students from households with incomes of up to $125,000, when fully phased in. Students must be on track to complete an associate's degree in two years or a bachelor's degree in four years by taking at least 30 credits each year. Awards are reduced by other financial aid received by the student, such as a Tuition Assistance Program (TAP) award. Any remaining tuition expense will be covered through a college credit. Payments will be made directly to the public college or university on behalf of the student upon certification of his or her successful completion of the academic term.

The Program was amended to authorize HESC to use an applicant's current income to establish eligibility if the applicant, a parent or a spouse becomes disabled, divorced or separated or in the event of the death of a parent or spouse.

Students receiving an Excelsior Scholarship award must sign a contract agreeing to live in New York State for a number of years equal to the duration of the award received and, if employed, work within the State during this time. Recipients who do not satisfy this obligation will have the value of their awards converted to an interest-free student loan.

Costs:

a. It is anticipated that there will be no 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 $87 million in the first year and $118.418 million in the second 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 each year they wish to receive an award up to and including five years of eligibility. Recipients are required to sign a contract agreeing to live in New York State, and not be employed outside the State, in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

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

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals regarding this Program. Several alternatives were considered in the drafting of this regulation, such as the application of the credit requirement. Given the statutory language as set forth in section 669-h of the Education Law, a "no action" alternative was not an option.

Federal standards:

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

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Emergency Rule Making, seeking to add a new section 2201.18 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 impacts inasmuch as it implements a statutory student financial aid program that provides full tuition benefits to college students who pursue their undergraduate studies at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.18 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 full tuition benefits to college students who pursue their undergraduate studies at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit 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 2201.18 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides full tuition benefits to college students who pursue their undergraduate studies at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

EMERGENCY RULE MAKING

New York State Science, Technology, Engineering and Mathematics Incentive Program

I.D. No. ESC-34-18-00003-E

Filing No. 713

Filing Date: 2018-08-03

Effective Date: 2018-08-03

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

Action taken: Addition of section 2201.13 to Title 8 NYCRR.

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

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 2201.13 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 attending New York State public institutions of higher education beginning with the fall 2014 term and students attending private degree-granting institutions of higher education located in New York State beginning with the fall 2018 term. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students who, beginning in August, pursue an undergraduate program of study in science, technology, engineering, or mathematics at a New York State institution of higher education. High school students entering college in August must inform the institution of their intent to enroll no later than May 1. Therefore, it is critical that the terms of the program as provided in the regulation be available immediately in order for HESC to process scholarship applications so that students can make informed choices. 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 Science, Technology, Engineering and Mathematics Incentive Program.

Purpose: To implement the New York State Science, Technology, Engineering and Mathematics Incentive Program.

Text of emergency rule: New section 2201.13 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.13 New York State Science, Technology, Engineering and Mathematics Incentive Program.

(a) Definitions. For purposes of this section and section 669-e of the Education Law, the following definitions shall apply:

(1) "Award" shall mean a New York State Science, Technology, Engineering and Mathematics Incentive Program award pursuant to section 669-e of the New York State education law.

(2) "Employment" shall mean continuous employment for at least thirty-five hours per week in an approved occupation in the science, technology, engineering or mathematics field, as published on the corporation's web site, for a public or private entity located in New York State for five years after the completion of the undergraduate degree program and, if applicable, a higher degree program or professional licensure degree program and a grace period as authorized by section 669-e(4) of the education law.

(3) "Grace period" shall mean a six month period following a recipient's date of graduation from a public or private degree granting institution of higher education and, if applicable, a higher degree program or professional licensure degree program as authorized by section 669-e(4) of the education law.

(4) "High school class" shall mean the total number of students eligible to graduate from a high school in the applicable school year.

(5) "Interruption in undergraduate study or employment" shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, maternity/paternity leave, death of a family member, or military duty.

(6) "Private degree granting institution of higher education" shall mean any institution of higher education recognized and approved by the Regents of the State University of New York which provides a course of study leading to the granting of a post-secondary degree or diploma except public institutions of higher education as defined in this subdivision.

(7) "Program" shall mean the New York State Science, Technology, Engineering and Mathematics Incentive Program codified in section 669-e of the education law.

(8) "Public institution of higher education" shall mean the state university of New York, as defined in subdivision 3 of section 352 of the education law, a community college as defined in subdivision 2 of section 6301 of the education law, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.

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

(10) "Science, technology, engineering and mathematics" programs shall mean those undergraduate degree programs designated by the corporation on an annual basis and published on the corporation's web site.

(11) "Successful completion of a term" shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-e of the education law; (ii) completed at least 12 credit hours or its equivalent in a course(s) of study leading to an approved undergraduate degree in the field of science, technology, engineering, or mathematics; and (iii) possessed a cumulative grade point average (GPA) of 2.5 as of the date of the certification by the institution. Notwithstanding, the GPA requirement is preliminarily waived for the first academic term for programs whose terms are organized in semesters, and for the first two academic terms for programs whose terms are organized on a trimester basis. In the event the recipient's cumulative GPA is less than a 2.5 at the end of his or her first academic year, the recipient will not be eligible for an award for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. In such case, the award received for the first academic term for programs whose terms are organized in semesters and for the first two academic terms for programs whose terms are organized on a trimester basis must be returned to the corporation and the institution may reconcile the student's account, making allowances for any other federal, state, or institutional aid the student is eligible to receive for such terms unless: (A) the recipient's GPA in his or her first academic term for programs whose terms are organized in semesters was a 2.5 or above, or (B) the recipient's GPA in his or her first two academic terms for programs whose terms are organized on a trimester basis was a 2.5 or above, in which case the institution may retain the award received and only reconcile the student's account for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. The corporation shall issue a guidance document, which will be published on its web site.

(b) Eligibility. In addition to the requirements of Education Law, section 669-e, recipients must satisfy the general eligibility requirements provided in Education Law, section 661. An applicant must apply and be selected for this program for the fall term immediately following his or her high school graduation.

(c) Class rank or placement. As a condition of an applicant's eligibility, the applicant's high school shall provide the corporation:

(1) official documentation or other certification showing that the applicant is in the top 10 percent of his or her graduating high school class; and

(2) any additional information the corporation deems necessary to determine that the applicant has graduated within the top 10 percent of his or her high school class.

(d) Recipient selection. If there are more applicants attending private degree granting institutions of higher education than available funds, the following provisions shall apply:

(1) First priority shall be given to eligible applicants who have received payment of an award pursuant to this section in a prior year, including payment for attendance at a public institution of higher education, and are currently in attendance at a private degree granting institution of higher education. If there are more applicants than available funds, recipients shall be chosen by lottery.

(2) Second priority shall be given to eligible applicants who are matriculated in an approved undergraduate program in science, technology, engineering or mathematics for the first time. If there are more applicants than available funds, recipients shall be chosen by lottery.

(e) Administration.

(1) Applicants for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) submit applications for program eligibility to the corporation on or before the date prescribed by the corporation for the applicable academic year. Notwithstanding any other rule or regulation to the contrary, such applications shall be received by the corporation no later than August 15th of the applicant's year of graduation from high school.

(2) Recipients of an award shall:

(i) execute a service contract prescribed by the corporation;

(ii) apply for payment annually on forms specified by the corporation;

(iii) be enrolled in an approved undergraduate degree program in science, technology, engineering, or mathematics;

(iv) receive such awards for not more than four academic years of full-time undergraduate study or five academic years if the program of study normally requires five years, as defined by the commissioner pursuant to article thirteen of the education law, excluding any allowable interruption(s) of study; and

(v) confirm employment in an approved occupation each year on forms or in a manner prescribed by the corporation.

(f) Amounts.

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

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

(3) Awards shall be applied to any remaining tuition after the application of all other educational grants and scholarships limited to tuition, as authorized by section 669-e of the education law.

(g) Failure to comply.

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

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

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

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

(5) Where a recipient has demonstrated extreme hardship as a result of a total and permanent disability, labor market conditions, or other such circumstances, or is working in an approved occupation, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, prorate the amount owed commensurate with service completed, discharge the amount owed, or such other appropriate action. Where a recipient has demonstrated in-school status, the corporation shall temporarily suspend repayment of the amount owed for the period of in-school status.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 31, 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 Science, Technology, Engineering and Mathematics Incentive Program ("Program") is codified within Article 14 of the Education Law. Part G of Chapter 56 of the Laws of 2014 created the Program by adding a new section 669-e to the Education Law, which was subsequently amended by Part BB of Chapter 56 of the Laws of 2018. Subdivision 5 of section 669-e of the Education Law authorizes HESC to promulgate emergency regulations to administer 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 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-e to create the "New York State Science, Technology, Engineering and Mathematics Incentive Program" (Program). This Program is aimed at increasing the number of individuals working in the fields of science, technology, engineering and mathematics (STEM) in New York State to meet the increasingly critical need for those skills in the State's economy.

Needs and benefits:

According to a February 2012 report by President Obama's Council of Advisors on Science and Technology, there is a need to add to the American workforce over the next decade approximately one million more science, technology, engineering and mathematics (STEM) professionals than the United States will produce at current rates for the country to stay competitive. To meet this goal, the United States will need to increase the number of students who receive undergraduate STEM degrees by about 34% annually over current rates. The report also stated that fewer than 40% of students who enter college intending to major in a STEM field complete a STEM degree. Further, a recent Wall Street Journal article reported that New York state suffers from a shortage of graduates in STEM fields to fill the influx of high-tech jobs that occurred five years ago. At a plant in Malta, about half the jobs were filled by people brought in from outside New York and 11 percent were foreigners. According to the article, Bayer Corp. is due to release a report showing that half of the recruiters from large U.S. companies surveyed couldn't find enough job candidates with four-year STEM degrees in a timely manner; some said that had led to more recruitment of foreigners. About two-thirds of the recruiters surveyed said that their companies were creating more STEM positions than other types of jobs. There are also many jobs requiring a two-year degree. To deal with this shortage, companies are using more internships, grants and scholarships.

The Program is aimed at increasing the number New York graduates with two and four year degrees in STEM who will be working in STEM fields across New York state. Eligible recipients may receive annual awards for not more than four academic years of undergraduate full-time study (or five years if enrolled in a five-year program) while matriculated in an approved program leading to a career in STEM.

Students receiving a New York State Science, Technology, Engineering and Mathematics Incentive Program award must sign a service agreement and agree to work in New York state for five years in a STEM field and reside in the State during those five years. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

a. It is anticipated that there will be no 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 $8 million in the first year based upon budget estimates. At private degree granting institutions of higher education $1 million was appropriated for the 2018-19 academic year in the State Budget.

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 each year they wish to receive an award up to and including five years of eligibility. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

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

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals regarding this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms/phrases used in the regulation as well as the academic progress requirement. Given the statutory language as set forth in section 669-e 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 unsubsidized Stafford loan rate if the award is converted into a student loan.

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.13 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 impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at degree-granting institutions of higher education located in New York State. Students will be rewarded for remaining and working in New York, which will also serve to provide economic benefits to the State's small businesses and local governments.

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 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at degree-granting institutions of higher education located in New York State. Students will be rewarded for remaining and working in New York, which will also serve to benefit rural areas around the State.

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 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at degree-granting institutions of higher education located in New York State. Students will be rewarded for remaining and working in New York, which will also serve to benefit the State.

EMERGENCY RULE MAKING

Enhanced Tuition Awards Program

I.D. No. ESC-34-18-00004-E
Filing No. 714
Filing Date: 2018-08-03
Effective Date: 2018-08-03

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

Action taken: Addition of section 2201.19 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 667-d

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 2201.19 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 2017 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students pursuing their undergraduate studies at a New York State private institution of higher education. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of the Program as provided in the regulation be effective immediately 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: Enhanced Tuition Awards program.

Purpose: To implement the Enhanced Tuition Awards program.

Text of emergency rule: New section 2201.19 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.19 Enhanced Tuition Awards.

(a) Definitions. For purposes of this section and Education Law, section 667-d, the following definitions shall apply:

(1) Award shall mean an Enhanced Tuition Award pursuant to Education Law, section 667-d.

(2) Full-time attendance or full-time study, for purposes of Education Law, section 667-d(1)(d)(ii), shall mean enrollment in at least 12 credits per semester and completion of at least 30 combined credits per year following the student's start date, or its equivalent, applicable to his or her program of study, excluding any permissible interruption of study as determined by the corporation, and except as provided in subdivision (b) of this section and Education Law, section 667-d(1)(d)(ii). Noncredit courses shall not be considered as contributing toward full-time attendance.

(3) Half-time shall mean enrollment in at least six but less than 12 credits, or the equivalent, per semester.

(4) Interruption in undergraduate study shall mean either: (i) a temporary period of leave or (ii) enrollment in or completion of less than the required number of credits for a definitive length of time both due to circumstances as determined by the corporation, including, but not limited to, death of a family member, medical leave, military service, service in the Peace Corps or parental leave.

(5) Private degree granting institutions of higher education shall mean any institution of higher education recognized and approved by the Regents of the State University of New York which provides a course of study leading to the granting of a post-secondary degree or diploma except public institutions as defined in this subdivision.

(6) Program shall mean the Enhanced Tuition Awards codified in Education Law, section 667-d.

(7) Public institution of higher education shall mean the State University of New York, as defined in subdivision 3 of section 352 of the Education Law, a community college as defined in subdivision 2 of section

6301 of the Education Law, or the City University of New York as defined in subdivision 2 of section 6202 of the Education Law.

(8) Satisfactory progress shall have the same meaning as successful completion.

(9) Student's start date shall mean the date the student first enrolled as a matriculated student.

(10) Successful completion shall mean a student has earned at least 30 combined credits in each consecutive year following the student's start date, or its equivalent, applicable to his or her program or programs of study except as provided in subdivision (b) of this section and Education Law, section 667-d(1)(d)(ii).

(b) Eligibility. In addition to the requirements of Education Law, section 667-d, an applicant must also satisfy the general eligibility requirements provided in Education Law, section 661. As authorized by Education Law, section 667-d, the following exceptions and modifications to the eligibility requirements shall apply:

(1) College credit earned toward a recipient's program(s) of study while a high school student or other non-matriculated status shall be considered as contributing toward full-time attendance. For a recipient who earned college credit toward his or her program(s) of study prior to enrolling in college as a matriculated student and who is making satisfactory progress toward timely completion of his or her program(s) of study, and is enrolled in coursework not applicable toward his or her program(s) of study, such coursework outside of his or her program(s) of study shall be considered as contributing toward full-time attendance.

(2) A recipient must be in full-time attendance as defined in this section.

(3) For purposes of Education Law, section 667-d(1)(d)(i), an applicant must have completed at least 30 combined credits each year following his or her start date, or its equivalent, applicable to his or her program(s) of study which were accepted by his or her current institution at the time of application for this award, except for any permissible interruption of study as determined by the corporation.

(4) For students who are disabled as defined by the Americans with Disabilities Act of 1990, 42 USC 12101, the full-time attendance requirement is eliminated, subject to the parameters of paragraph 3 of subdivision f of this section. Rather such students are required to have completed the number of credits in which they were enrolled (attempted) each term, except for any allowable interruption in undergraduate study as determined by the corporation.

(c) Income. An applicant or recipient whose current income or prior year adjusted gross income qualifies for an award due to the disability, divorce or separation of a parent, spouse or applicant/recipient or the death of a parent or spouse as authorized in Education Law, section 667-d(3), shall provide documentation required by the corporation to determine his or her eligibility for an award or award payment. The corporation may consider such documentary evidence it deems sufficient to determine disability, divorce, separation or death.

(d) Recipient selection. If there are more applicants than available funds, the following provisions shall apply:

(1) In the program's first year:

(i) First priority shall be given to eligible applicants who are currently in attendance at an institution of higher education. If there are more applicants than available funds, recipients shall be chosen by lottery.

(ii) Second priority shall be given to eligible applicants who are matriculated in an approved program leading to an undergraduate degree at a private not-for-profit degree granting institution of higher education located in New York State, except those institutions set forth in Education Law, section 661(4)(b), for the first time. If there are more applicants than available funds, recipients shall be chosen by lottery.

(2) After the program's first year:

(i) First priority shall be given to eligible applicants who have received payment of an award pursuant to this section in a prior year and are currently in attendance at a private degree granting institution of higher education located in New York State. If there are more applicants than available funds, recipients shall be chosen by lottery.

(ii) Second priority shall be given to eligible applicants who have not received payment of an award in a prior year and are currently in attendance at an institution of higher education. If there are more applicants than available funds, recipients shall be chosen by lottery.

(iii) Third priority shall be given to eligible applicants who are matriculated in an approved program leading to an undergraduate degree at a private degree granting institution of higher education located within New York State for the first time. If there are more applicants than available funds, recipients shall be chosen by lottery.

(e) Administration. In addition to the requirements contained in Education Law, section 667-d, the following requirements shall also apply:

(1) Applicants for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) electronically transmit applications for program eligibility to the corporation on or before the date prescribed by the corporation for the applicable academic year.

(2) Recipients of an award shall:

(i) execute a contract with the corporation agreeing to reside in New York State for a continuous number of years equal to the duration of the award received and, if employed during such time, to be employed in New York State;

(ii) apply for payment annually on forms specified by the corporation; and

(iii) receive such awards for not more than two academic years of full-time undergraduate study if enrolled in an eligible two-year program of study or four academic years of full-time undergraduate study or five academic years if the program of study normally requires five years, as defined by the commissioner pursuant to article thirteen of the education law, excluding any allowable interruption of study as defined in this section. For purposes of this subparagraph, a recipient's academic year shall begin with the term he or she was first matriculated.

(3) Institutions.

(i) Certification. For each recipient, institutions shall certify on forms and in the manner prescribed by the corporation the tuition rate charged by the institution, the amount of the institution's matching award, eligibility to receive the award, the number of credits completed each academic term, the cumulative credits at the end of each academic term, and any other information requested by the corporation.

(ii) College Option. (A) An institution may annually choose to participate in the Program or to opt out of the Program in the manner prescribed by the corporation; (B) Institutional participation shall be for an entire academic year; (C) An institution may establish a cap on its participation based on a dollar threshold or a maximum number of students; (D) An institution that opts out of the Program shall continue to provide the institutional matching award, unless such institution is exempt, and applicable tuition rate to all award recipients until such recipients have exhausted eligibility or are no longer eligible for award payments.

(f) Amounts.

(1) The amount of the award shall be determined in accordance with Education Law, section 667-d.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time subject to the verification and certification by the institution of the recipient's full-time status and other eligibility and certification requirements.

(3) For students who are disabled as defined by the Americans with Disabilities Act of 1990, 42 USC 12101, upon each certification by the college or university, payment eligibility shall be determined and measured proportionally in equivalence with full-time study.

(g) Contractual obligation.

(1) For the purpose of complying with Education Law, section 667-d(1)(f), military personnel, including those in the Military Reserves and ROTC or CSPI, for whom New York is his or her legal state of residence shall be deemed to reside and be employed in New York State regardless of where the individual is stationed or deployed.

(2) For the purpose of complying with Education Law, section 667-d(1)(f), for a recipient who is no longer eligible to receive award payments, the duration he or she resides in New York State while completing undergraduate or graduate study, including medical residency, shall be credited toward the time necessary to satisfy the recipient's residency and employment requirement.

(3) Where a recipient, within six months of receipt of his or her final award payment, fails to maintain permanent domicile in New York State for a continuous number of years equal to the duration of the award received or, during such time, is employed in any other state, the corporation shall convert all award monies received to a 10-year student loan, without interest. However, the requirement to maintain permanent domicile, and only be employed, in New York State, may be deferred to complete undergraduate study or attend graduate school, including medical residency, on at least a half-time basis.

(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, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, discharge the amount owed, or take such other appropriate action. Notwithstanding, the corporation shall prorate the amount owed commensurate with the length of time the recipient complied with the residency and employment requirements.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 31, 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 Enhanced Tuition Awards (Program) is codified within Article 14 of the Education Law. Part III of Chapter 59 of the Laws of 2017 created the Program by adding a new section 667-d to the Education Law, which was amended by Part W of Chapter 56 of the Laws of 2018. Subdivision 9 of section 667-d of the Education Law authorizes HESC to promulgate emergency regulations to administer 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 to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 667-d to create the Enhanced Tuition Awards program (Program). This Program is aimed at reducing tuition costs and accelerating completion rates for students who attend a private college in New York State.

Needs and benefits:

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

Recognizing the growing need for workers with postsecondary education and training, the wage earnings benefits for those with training beyond high school, the rapidly rising college costs and mounting student loan debt, this Program awards students up to $6,000 to offset students' tuition costs through a combination of a New York State Tuition Assistance Program (TAP) award, the Enhanced Tuition Award and a match from those private colleges who elect to participate in the Program unless the college qualifies for an exemption from providing the match award. When fully phased in, Program awards will be available to resident, undergraduate students from households with incomes of up to $125,000. To be eligible for a Program award, students must be on track to complete an associate's degree in two years or a bachelor's degree in four years by taking at least 30 credits each year. Payments will be made directly to colleges and universities on behalf of students upon certification of their successful completion of the academic term.

The Program was amended to: (1) authorize HESC to use an applicant's current income to establish eligibility if the applicant, a parent or spouse becomes disabled, divorced or separated or in the event of the death of a parent or spouse; (2) include students attending for-profit degree granting colleges; (3) exempt colleges from providing the matching award if certain criteria is met; and (4) authorize colleges to include the matching award as part of the recipient's institutional aid package.

Students receiving Enhanced Program Awards must sign a contract agreeing to live in New York State for the number of years equal to the duration of the award received and, if employed, work within the State during this time. Recipients who do not satisfy this obligation will have the value of their awards converted to an interest-free student loan.

Costs:

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

b. Private colleges that opt to participate in the Program are required to credit each recipient's remaining tuition expenses in an amount equal to the recipient's award ("matching award") unless the college qualifies for an exemption from providing the matching award. Such credit may be part of the recipient's institutional aid package. The maximum amount of the matching award to a recipient is $3,000.

c. The maximum cost of the program to the State is $19 million in the first year and $22.863 million in the second year based upon budget estimates.

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

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

Local government mandates:

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

Paperwork:

This proposal will require applicants to file an electronic application for each year they wish to receive an award up to and including five years of eligibility. Recipients are required to sign a contract agreeing to live in New York State, and not be employed outside the State, in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

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

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals regarding this Program. Several alternatives were considered in the drafting of this regulation, such as the application of the credit requirement. Given the statutory language as set forth in section 667-d of the Education Law, a "no action" alternative was not an option.

Federal standards:

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

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Emergency Rule Making, seeking to add a new section 2201.19 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This rule implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies at a New York State private institution of higher education. Colleges that opt to participate in the Program are required to credit each recipient's remaining tuition expenses in an amount equal to the recipient's award ("matching award"), unless the institution qualifies for an exemption from providing the matching award. Such credit may be part of the recipient's institutional aid package. The maximum amount of the matching award to a recipient is $3,000. Notwithstanding, HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts by offering new financial aid support for students seeking to enroll in a private college in New York state and providing students with additional tuition award benefits. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.19 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies at a New York State private institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit 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 2201.19 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies at a New York State private institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Care Coordination Organizations

I.D. No. PDD-17-18-00001-A

Filing No. 724

Filing Date: 2018-08-07

Effective Date: 2018-08-22

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

Action taken: Amendment of Subpart 635-11 of Title 4 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 13.15(a), 16.00; Social Services Law, section 365-l

Subject: Care Coordination Organizations.

Purpose: To allow individuals to be enrolled in a CCO when individuals are unable to enroll themselves.

Text of final rule: Subpart 635-11 is amended as follows:

Enrollment in Medicare Prescription Drug Plans*, Care Coordination Organizations,* and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD)

New subparagraph 635-11.1(a)(1)(iii) is added as follows:

(iii) services provided by a Care Coordination Organization (CCO) designated by the New York State Department of Health pursuant to section 365-l of the Social Services Law; or

Existing paragraph 635-11.1(a)(2) is amended as follows:

(2) who can pursue grievances, complaints, exceptions and appeals in such plans *or services*.

New paragraph 635-11.1(b)(1) is added, and all remaining paragraphs are renumbered accordingly.

(1) Act in the CCO review process means doing any of the following within a CCO:

(i) filing a grievance;

(ii) submitting a complaint to the quality improvement organization or to federal or state government regulatory agencies;

(iii) filing and requesting appeals and dealing with, or participating in, any part of the appeals process;

New paragraph 635-11.1(b)(4) is added, and all remaining paragraphs are renumbered accordingly.

(4) CCO means a Care Coordination Organization which is designated by the New York State Department of Health, in conjunction with the Office for People With Developmental Disabilities, pursuant to section 365-l of the Social Services Law to provide Medicaid health home care coordination services or Basic HCBS Plan Support.

Existing subparagraph 635-11.1(b)(5)(i) is amended as follows:

(i) a PDP; [and/or]

Existing subparagraph 635-11.1(b)(5)(ii) is amended as follows:

(ii) a FIDA-IDD plan[.]*; or*

New subparagraph 635-11.1(b)(5)(iii) is added as follows:

(iii) a CCO.

New section 635-11.8 is added as follows:

Section 635-11.8. CCO enrollment and reviews for persons residing in a residential facility operated or certified by OPWDD or a family care home

(a) If a person has the ability to choose a CCO on his or her own, or with the assistance of supported decision making, the person may

(1) enroll himself or herself in a CCO Plan;

(2) act in the CCO review process;

(3) disenroll himself or herself from a CCO;

(4) appoint another party to take actions on his or her behalf; or

(5) seek assistance with the above decisions and actions.

(b) If a person lacks the ability to enroll in a CCO, disenroll from a CCO, or act in the CCO review process, but has a guardian lawfully empowered to enroll him or her in a CCO, the guardian may take any of the actions enumerated in subdivision (a) of this Subpart.

(c) If a person lacks the ability to choose a CCO and does not have a guardian lawfully empowered to enroll him or her in a CCO, then any of the following parties, in the order stated, may take any of the actions enumerated in subdivision (a) of this subpart:

(1) an actively involved (see section 633.99 (ax) of this Title) spouse;

(2) an actively involved parent;

(3) an actively involved adult child;

(4) an actively involved adult sibling;

(5) an actively involved adult family member;

(6) the Consumer Advisory Board for the Willowbrook Class members, but only for members of the Willowbrook Class.

(d) If the first surrogate on the list in subdivision (c) is not reasonably available and willing to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process, and is not expected to become reasonably available and willing to make an enrollment decision and enroll the individual in a CCO or act in the CCO review process, the surrogate who has the highest priority on the list and who is willing and available shall have the authority to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process.

(e) *If more than one party exists within a category in subdivision (c) of this paragraph utilizing the standard of active involvement, consent shall be sought first from the party with a higher level of involvement or, when the parties within a category are equally actively involved, consent shall be sought from any of such parties.*

[(e)] *(f)* If a person lacks the ability to choose a CCO, does not have a guardian lawfully empowered to enroll him or her in a CCO, and there are no parties identified in (c) above, then the chief executive officer (CEO) (see section 635-99.1 of this Part) of the agency operating the person's residential facility or sponsoring the family care home, or a designee of the CEO, may take any of the actions enumerated in subdivision (a) of this subpart. For the purposes of this subsection only, if the person's residential facility is operated by OPWDD, the CEO of the agency is the director of the DDSOO that operates the residential facility.

[(f)] *(g)* If a party specified in subdivisions (a) through (e) of this section, in the order so specified, makes a decision to enroll in a CCO; not to enroll in a CCO; or to disenroll from a CCO; that decision shall be considered the final decision of the affected individual and any party in a subordinate position, as specified in subdivisions (a) through (e) of this section, may not change that enrollment decision. The party that enrolls the individual shall also be the party authorized to act in the CCO review process.

[(g)] *(h)* If the CEO enrolls the person in the CCO or acts in the CCO review process, he or she shall give written notice of such enrollment and/or action to (1) the person's correspondent or advocate, if one is available; (2) the person's Medicaid service coordinator, or other person identified as that person's care coordinator; (3) the DDRO director for the region encompassing the person's residence.

[(h)] *(i)* For each individual eligible to enroll in a CCO, the individual's care management provider for OPWDD-certified services shall identify a decision-maker who has the authority to make enrollment decisions for the individual pursuant to this section. If there is no care management provider assigned to the individual at the time of the eligibility, the DDRO director for the region encompassing the person's current residence, or his or her designee, shall identify a decision-maker pursuant to this section.

[(i)] *(j)* The care management provider or DDRO director shall notify the following parties of the decision-maker identified to make enrollment decisions:

(1) the identified decision-maker; and

(2) OPWDD, if necessary.

[(j)] *(k)* The care management provider or DDRO director shall maintain documentation of the current decision-maker identified pursuant to this subsection, including documentation of attempts to reach unavailable individuals, and shall confirm the identification of the current decision maker as necessary, but at least annually.

New section 635-11.9 is added as follows:

Section 635-11.9. CCO Enrollment and reviews for persons not residing in a residential facility or a family care home

(a) If a person has the ability to choose a CCO on his or her own, or with the assistance of supported decision making, the person may:

(1) enroll himself or herself in a CCO;

(2) act in the CCO review process;

(3) disenroll himself or herself from a CCO;
(4) appoint another party to take actions on his or her behalf; or
(5) seek assistance with the above decisions and actions.

(b) If a person lacks the ability to choose a CCO, but has a guardian lawfully empowered to enroll him or her in a CCO, the guardian may take any of the actions enumerated in subdivision (a) of this Subpart.

(c) If a person lacks the ability to choose a CCO and does not have a guardian lawfully empowered to enroll him or her in a CCO, then any of the following parties, in the order stated, may take any of the actions enumerated in subdivision (a) of this subpart:
(1) an actively involved (see section 633.99 (ax) of this Title) spouse;
(2) an actively involved parent;
(3) an actively involved adult child;
(4) an actively involved adult sibling;
(5) an actively involved adult family member;
(6) the Consumer Advisory Board for the Willowbrook Class members, but only for the members of the Willowbrook Class;

(d) If the first surrogate on the list in subdivision (c) is not reasonably available and willing to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process, and is not expected to become reasonably available and willing to make an enrollment decision and enroll the individual in a CCO or act in the CCO review process, the surrogate who has the highest priority on the list and who is willing and available shall have the authority to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process.

(e) If more than one party exists within a category in subdivision (c) of this subparagraph utilizing the standard of active involvement, consent shall be sought first from the party with a higher level of active involvement or, when the parties within a category are equally actively involved, consent shall be sought from any of such parties.

[(e)] *(f)* If a person lacks the ability to choose a CCO: does not have a guardian lawfully empowered to enroll him or her in a CCO; and there are no parties identified in (c) above, the DDRO director for the region encompassing the person's residence, or his or her designee may take any of the actions enumerated in subdivision (a) of this subpart.

(g) If the DDRO director or designee enrolls the person in the CCO, acts in the CCO review process, or disenrolls the individual from a CCO, he or she shall give written notice of such enrollment, disenrollment and/or action to the person's correspondent or advocate, if one is available.

[(f)] *(h)* If a party specified in subdivisions (a) through (e) of this section, in the order so specified, makes a decision to enroll in a CCO; not to enroll in a CCO; or to disenroll from a CCO; that decision shall be considered the final decision of the affected individual and any party in a subordinate position, as specified in subdivisions (a) through (e) of this section, may not change that enrollment decision. The party that enrolls the individual shall also be the party authorized to act in the CCO review process.

[(g)] *(i)* For each individual eligible to enroll in a CCO, the individual's care management provider for OPWDD-certified services shall identify a decision-maker who has the authority to make enrollment decisions for the individual pursuant to this section. If there is no care management provider assigned to the individual at the time of the eligibility, the DDRO director for the region encompassing the person's current residence, or his or her designee, shall identify a decision-maker pursuant to this section.

[(h)] *(j)* The care management provider or DDRO director shall notify the following parties of the decision-maker identified to make enrollment decisions:
(1) the identified decision-maker; and
(2) OPWDD, if necessary.

[(i)] *(k)* The care management provider or DDRO director shall maintain documentation of the current decision-maker identified pursuant to this subsection, including documentation of attempts to reach unavailable individuals, and shall confirm the identification of the current decision maker as necessary, but at least annually.

A new Section 635-11.10 is added as follows:

Section 635-11.10. Other responsibilities and rights of CEOs and DDSOO and DDRO directors or designees regarding CCO enrollment and reviews

(a) No CEO or DDRO or DDSOO director or designee shall solicit, accept or receive from a CCO or Managed Care Plan operator, or an agent of the CCO or Managed Care Plan, for personal use or benefit (other than for the personal use or benefit of the person being enrolled), any payment, discount or other remuneration in consideration of, or as a result of, enrolling the person in a CCO or Managed Care Plan.

(b) No CEO or DDRO or DDSOO director or designee shall charge, accept or receive payment from the person, family or anyone else for enrolling the person in a CCO or Managed Care Plan, for providing advice and assistance in choosing a CCO or Managed Care Plan or for acting for the person in the CCO or Managed Care Plan review process.

(c) When a CEO or DDRO or DDSOO director or designee is authorized to act by this section or appointed to act in the CCO or Managed Care Plan review process for a person, the director or designee may appoint a party outside of the agency to act in the CCO or Managed Care Plan review process for the person.

(d) When a CEO or DDRO or DDSOO director or designee enrolls a person in a CCO or Managed Care Plan, disenrolls a person from a CCO or Managed Care Plan, or acts in the CCO or Managed Care Plan review process for a person he or she shall act based on the best interests of the person, and shall fully document the reasons for such enrollment decision or action.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 635-11.8(c)(1), (e), 635-11.9(c)(1), (e) and (g).

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

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

Revised Regulatory Impact Statement
A revised Regulatory Impact Statement is not being submitted because nonsubstantial changes made to the proposed regulation provide clarification of the Care Coordination Organization process and create consistency between this regulation and other OPWDD regulations. The changes do not materially alter the purpose, meaning or effect of this regulation, and are necessary for the regulation's coherency.

Revised Regulatory Flexibility Analysis
A revised Regulatory Impact Statement is not being submitted because nonsubstantial changes made to the proposed regulation provide clarification of the Care Coordination Organization process and create consistency between this regulation and other OPWDD regulations. The changes do not materially alter the purpose, meaning or effect of this regulation, and are necessary for the regulation's coherency.

Revised Rural Area Flexibility Analysis
A revised Regulatory Impact Statement is not being submitted because nonsubstantial changes made to the proposed regulation provide clarification of the Care Coordination Organization process and create consistency between this regulation and other OPWDD regulations. The changes do not materially alter the purpose, meaning or effect of this regulation, and are necessary for the regulation's coherency.

Revised Job Impact Statement
A revised Regulatory Impact Statement is not being submitted because nonsubstantial changes made to the proposed regulation provide clarification of the Care Coordination Organization process and create consistency between this regulation and other OPWDD regulations. The changes do not materially alter the purpose, meaning or effect of this regulation, and are necessary for the regulation's coherency.

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

Assessment of Public Comment
This document contains responses to public comments submitted during the public comment period for proposed regulations that allow individuals to be enrolled in a CCO, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

Comment: A commenter expressed concerns regarding the potential conflict of interest that may arise when the Chief Executive Officer (CEO) has the duty to enroll individuals into CCO plans, and the duty to pursue grievances, complaints, exceptions, and appeals for such plans.

Response: The commenter did not supply sufficient detail to enable OPWDD to address any specific concern of a potential conflict. However, the regulations are designed to have the CEO of an agency separate from the CCO make the enrollment decision and to pursue grievances, complaints, exceptions, and appeals on behalf of the individual. Even if the CEO has some relationship with the CCO that would create a potential conflict of interest, the regulations require the CEO to act in the best interest of the person, and forbid the CEO from receiving any form of remuneration in exchange for a particular enrollment decision. The regulations also permit the CEO to appoint someone outside of his organization to undertake these duties, providing further protection from the appearance of conflict.

Comment: A commenter stated that the regulations mistakenly allow

the CEO, when exercising a review function for a beneficiary, to appeal to himself or herself under certain circumstances.

Response: This comment does not apply to the CCO regulation, and was addressed in other rulemaking.

Comment: A commenter stated that the regulation lacks specificity as to who a "person outside of the agency" is in this context, and suggests adding examples or a definition.

Response: No change will be made based upon this comment, as OPWDD wishes to allow CEOs flexibility to select a person outside of his or her organization to take actions on behalf of the individual.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity and Request for Waiver of the Energy Audit Requirement

I.D. No. PSC-34-18-00008-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 notice of intent of Roosevelt Parc LLC to submeter electricity at 37-46 72nd Street, Jackson Heights, New York and request for a waiver of 16 NYCRR section 96.5(k)(3).

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

Subject: Notice of intent to submeter electricity and request for waiver of the energy audit requirement.

Purpose: To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place.

Substance of proposed rule: The Commission is considering the notice of intent filed by Roosevelt Parc LLC (Owner) on June 13, 2018, to submeter electricity at 37- 46 72nd Street, Jackson Heights, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to submeter electricity, the Owner 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 Commission is also considering the Owner's request for waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. The full text of the notice of intent and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-E-0378SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Westchester Power Community Choice Aggregation Program

I.D. No. PSC-34-18-00009-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 Westchester Power's proposal in its Implementation Plan Update, filed on August 1, 2018, to continue its Community Choice Aggregation program.

Statutory authority: Public Service Law, sections 5(1), (2), 53, 65 and 66

Subject: Westchester Power Community Choice Aggregation Program.

Purpose: To ensure appropriate consumer protections and benefits.

Substance of proposed rule: The Commission is considering Westchester Power's proposal, in its Implementation Plan Update, to continue its Community Choice Aggregation (CCA) program. Westchester Power, a program of Sustainable Westchester, Inc., has been operating a pilot CCA program, consistent with the Commission's February 26, 2015 Order Granting Petition in Part (SW Order) in Case 14-M-0564. Subsequent to the issuance of the SW Order, the Commission expanded the CCA program through the April 21, 2016 Order Authorizing Framework for CCA Opt-Out Program (CCA Framework Order). The Commission has since approved three Implementation Plans filed in accordance with the CCA Framework Order. The CCA Framework Order requires CCA Administrators to file an updated Implementation Plan for Commission review and approval prior to the end of their initial contract term. In accordance with that requirement, Westchester Power filed its Implementation Plan Update on August 1, 2018. The Implementation Plan Update describes Westchester Power's plan to continue its CCA program through soliciting a new supply contract and describes other initiatives Westchester Power intends to undertake. It also includes a Public Outreach Plan and sample opt-out notification letters. The full text of the Implementation Plan Update and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(14-M-0224SP17)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-34-18-00010-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 notice of intent of Tower 195, LLC to submeter electricity to the residential tenants at 1 South Clinton Avenue, Rochester, New York.

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

Subject: Notice of intent to submeter electricity.

Purpose: To ensure adequate submetering equipment and consumer protections are in place.

Substance of proposed rule: The Commission is considering the notice of intent filed by Tower 195, LLC on April 24, 2018, to submeter electricity to the residential tenants at 1 South Clinton Avenue, Rochester, New York, located in the service territory of Rochester Gas and Electric Corporation RG&E By stating its intent to submeter electricity to its residents, Tower 195, LLC has requested authorization to take electric service from RG&E and then distribute and meter that electricity to residential 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 notice of intent and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-E-0258SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Compensation of Distributed Energy Resources

I.D. No. PSC-34-18-00011-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 recommendations and options for future community distributed generation compensation discussed in the July 26, 2018 Department of Public Service Staff Whitepaper.

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

Subject: Compensation of distributed energy resources.

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

Substance of proposed rule: The Public Service Commission is considering the recommendations and options in the Staff Whitepaper on Future Community Distributed Generation Compensation (the Whitepaper), filed by the Department of Public Service Staff (Staff) on July 26, 2018. The Whitepaper recommends adjustments to the Market Transition Credit (MTC) portion of Value Stack compensation in several utility service territories. The Value Stack is used to calculate compensation to eligible distributed energy resources (DERs) and is based on the calculable benefits the DERs create. The MTC is an adder to the Value Stack for eligible DERs to support the transition from net metering to the Value Stack and recognize that some benefits are not yet included in the Value Stack. The Whitepaper also recommends that an upfront incentive be established for projects in service territories where no MTC is available for new projects. The full text of the Whitepaper and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(15-E-0751SP17)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Submeter Electricity

I.D. No. PSC-34-18-00012-P

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

Proposed Action: The Commission is considering the petition of Sheldrake Station Development LLC requesting authorization to submeter electricity at 270 Waverly Avenue, Mamaroneck, New York.

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

Subject: Petition to submeter electricity.

Purpose: To ensure adequate submetering equipment and consumer protections are in place.

Substance of proposed rule: The Commission is considering the petition filed by Sheldrake Station Development LLC on June 28, 2018, to submeter electricity at 270 Waverly Avenue, Mamaroneck, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). Sheldrake Station Development LLC 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 in 16 NYCRR Part 96. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-E-0387SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Administrative Costs and Funding Sources for the RES and ZEC Programs

I.D. No. PSC-34-18-00013-P

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

Proposed Action: The Commission is considering NYSERDA's petition, filed on July 30, 2018, requesting approval of a budget and sources of funds for its administrative costs for Year Three of the Renewable Energy Standard (RES) and Zero Emission Credit (ZEC) programs.

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

Subject: Administrative costs and funding sources for the RES and ZEC programs.

Purpose: To promote and maintain renewable and zero emission electric energy resources.

Substance of proposed rule: The Commission is considering a petition filed on July 30, 2018 by the New York State Energy Research and Development Authority (NYSERDA) seeking approval of a budget and sources of funds for NYSERDA's administrative costs and fees related to Year 3 of the Clean Energy Standard (CES). Specifically, NYSERDA requests approval for a total budget of $8,040,048 for costs related to the implementation of Tier 1 of the Renewable Energy Standard (RES) for Compliance Year 2019 and the Zero Emission Credit (ZEC) program for Compliance Year 2019. The Commission's August 1, 2016 Order Adopting a Clean Energy Standard established the RES compliance period as January 1 to December 31 of each year, beginning in 2017, and the ZEC compliance period as April 1 to March 31 of each year, beginning in 2017. For administrative costs and fees related to Year 3 of the RES program, NYSERDA's petition proposes to use the unspent balance of administrative funds approved for Year 1 of the CES administrative funds, as well as unspent System Benefits Charge (SBC), Energy Efficiency Portfolio Standard (EEPS), and Renewable Portfolio Standard (RPS) funds. For administrative costs and fees related to Year 3 of the ZEC program,

NYSERDA's petition proposes using unspent System Benefits Charge (SBC), Energy Efficiency Portfolio Standard (EEPS), and Renewable Portfolio Standard (RPS) funds. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(15-E-0302SP36)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Continued Implementation of the Clean Energy Standard

I.D. No. PSC-34-18-00014-P

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

Proposed Action: The Commission is considering the Clean Energy Standard Phase 3 Implementation Plan Proposal filed on July 30, 2018 by Department of Public Service Staff and the New York Energy Research and Development Authority.

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

Subject: Continued implementation of the Clean Energy Standard.

Purpose: To promote and maintain renewable and zero-emission electric energy resources.

Substance of proposed rule: The Commission is considering the proposed Clean Energy Standard (CES) Phase 3 Implementation Plan (Phase 3 Plan) filed on July 30, 2018 by the New York State Research and Development Authority (NYSERDA) and Department of Public Service Staff (Staff). The Commission approved the CES on August 1, 2016 to achieve State environmental, public health, climate policy and economic goals. Under the CES, load-serving entities (LSEs) are required to procure Renewable Energy Certificates (RECs) and Zero Emissions Credits (ZECs) in proportion to their load. The proposed Phase 3 Plan continues the process of implementing the goals and requirements of Commission orders regarding the CES. Specifically, the proposed Phase 3 Plan clarifies how the load is calculated; amends the Renewable Energy Standard (RES) Tier 1 certification processes for eligible resources compensated based on the Value of Distributed Energy Resources (VDER) methodology; and proposes to extend the commercial operation milestone date under future RES Tier 1 procurements by an additional two six-month extensions, to up to approximately five years in total from the selection date. Further, the proposed Phase 3 Plan recommends changes to the program design and procedures for the sale of the 2019 and beyond of Tier 1 RECs procured by NYSERDA under long-term contracts such as sale frequency and timing; sale pricing and inventory management process; eligible REC purchasers and transferability; and sale method and considerations for potential future modifications of any of these provisions. The Phase 3 Plan proposes to maintain and continue the current methods to calculate the alternative compliance payment (ACP) for 2019 and beyond, as well as the current Tier 1 REC banking rules. Finally, the Phase 3 Plan outlines and clarifies the state reporting requirements under the CES, including the content and timing of the Triennial Review process, and provides a schedule for ongoing filings. The full text of the Phase 3 Plan and the full record of the proceeding may be read in its entirety on the Department of Public Service's website at www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(15-E-0302SP37)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition to Submeter Electricity

I.D. No. PSC-34-18-00015-P

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

Proposed Action: The Commission is considering the petition of Lake Ave Plaza, LLC to submeter electricity at 30 Lake Avenue, Saratoga Springs, New York.

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

Subject: Petition to submeter electricity.

Purpose: To ensure adequate submetering equipment and energy efficiency protections are in place.

Substance of proposed rule: The Commission is considering the petition, filed by Lake Ave Plaza, LLC (Owner) on July 27, 2018, to submeter electricity at 30 Lake Avenue, Saratoga Springs, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid. By petitioning to submeter electricity, the Owner has requested authorization to take electric service from National Grid and then distribute and meter that electricity to tenants. The Owner's building is a hotel that presently has direct metering from the utility to hotel suites, common areas, and to a commercial tenant, a restaurant. In order to master meter the rest of the hotel, the Owner states that the restaurant can no longer be direct metered, and therefore requests authorization to convert the restaurant from direct metering to submetering. Submetering of electricity to direct-metered commercial tenants is allowed so long as it complies with the protections and requirements of the Commission's Opinion No. 79-24. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-E-0484SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Deferral of Pre-Staging and Mobilization Storm Costs

I.D. No. PSC-34-18-00016-P

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

Proposed Action: The Public Service Commission is considering a petition by Orange and Rockland Utilities, Inc., filed June 26, 2018, for autho-

rization to defer approximately $5.4 million of incremental pre-staging and mobilization costs related to Winter Storm Toby.

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

Subject: Deferral of pre-staging and mobilization storm costs.

Purpose: To ensure just and reasonable rates for ratepayers and utility recovery of unexpected, prudently incurred costs.

Substance of proposed rule: The Commission is considering a petition filed by Orange and Rockland Utilities Inc. (O&R or the Company) on June 26, 2018, requesting authorization to defer approximately $5.4 million of incremental pre-staging and mobilization costs related to Winter Storm Toby. The weather forecast predicted that Winter Storm Toby would result in possible snowfall accumulation of up to 15" across the service territory, with a potential for 18" of accumulation in isolated areas, and wind gusts at 35-45 mph; as a result, a state of emergency was in effect for downstate New York, including Rockland County. Winter Storm Toby was forecasted to be the third major storm to threaten O&R's service territory in three weeks. Based on the weather forecasts, as well as the Company's recent experience with Winter Storms Riley and Quinn, O&R expected Winter Storm Toby to affect its electric operations to the degree meeting the criteria of a "major storm," as defined in 16 NYCRR Part 97, and took preparatory measures as a result, including the acquisition of resources through mutual assistance. Ultimately, the storm did not impact O&R's service territory as predicted. The Company proposes to defer the incremental operations and maintenance expenses as a regulatory asset in Account 182.3 – Storm Deferral, and accrue carrying charges on the deferral balance. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-E-0414SP1)

Department of State

NOTICE OF ADOPTION

Suspension and Revocation of Certifications of Code Enforcement Personnel

I.D. No. DOS-20-18-00002-A

Filing No. 725

Filing Date: 2018-08-07

Effective Date: 2018-08-22

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

Action taken: Amendment of section 1208-3.5(b); addition of subpart 1208-6 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 376-a and 381(1)

Subject: Suspension and revocation of certifications of code enforcement personnel.

Purpose: The purpose of this rule is to add provisions to 19 NYCRR Part 1208 that authorize the Secretary of State to suspend or revoke the certification of a building safety inspector or code enforcement official who is found, after a hearing, to have materially failed to uphold his or her code enforcement duties.

Substance of final rule: The rule adds a new Subpart 1208-6, entitled Suspension or Revocation of Certifications, to 19 NYCRR Part 1208.

Section 1208-6.1(a) provides that the purpose of Subpart 1208-6 is to implement Chapter 468 of the Laws of 2017, which authorizes the Secretary to promulgate rules and regulations with respect to the revocation or suspension of the certification of any code enforcement personnel found after a hearing to have "materially failed to uphold duties of a code enforcement officer, including but not limited to, making material errors or omissions on an inspection report."

Section 1208-6.1(b) defines the term "authority having jurisdiction" (AHJ) as any city, town, village, county, State agency, or other governmental unit or agency charged with or otherwise accountable or responsible for administration and enforcement of the Uniform Code and/or Energy Code.

Section 1208-6.2(a) provides that the Secretary of State may suspend or revoke the certification of a building safety inspector (BSI) or code enforcement official (CEO) if the administrative law judge ALJ) conducting a hearing finds, after such hearing, that such BSI or CEO has materially failed to uphold his or her code enforcement duties.

Section 1208-6.2(b) provides that a BSI shall be deemed to have materially failed to uphold his or her code enforcement duties if he or she: (1) fails to note one or more serious violations of the Uniform Code on an inspection report relating to a fire safety and/or property maintenance inspection, provided that such violations are of a type that should have been observed by a certified building safety inspector exercising reasonable care in the performance of the inspection; (2) makes any other material error or omission on an inspection report relating to a fire safety and/or property maintenance inspection, provided that such error or omission is of a type that should not have been made by a certified building safety inspector exercising reasonable care in the performance of the inspection; (3) demonstrates, by act or omission, willful misconduct, gross negligence, or gross incompetence in the performance of his or her code enforcement activities; (4) performs any code enforcement activity other than fire safety and/or property maintenance inspections of existing buildings; or (5) performs any code enforcement activity at a time when his or her certification is inactive or suspended.

Section 1208-6.2(c) provides that CEO shall be deemed to have materially failed to uphold his or her code enforcement duties if he or she: (1) fails to note one or more serious violations of the Uniform Code and/or Energy Code on an inspection report relating to any type of inspection, provided that such serious violations are of a type that should have been observed by a certified code enforcement official exercising reasonable care in the performance of the inspection; (2) makes any other material error or omission on an inspection report relating to any type of inspection, provided that such error or omission is of a type that should not have been made by a certified code enforcement official exercising reasonable care in the performance of the inspection; (3) demonstrates, by act or omission, willful misconduct, gross negligence, or gross incompetence in the performance of his or her code enforcement activities; or (4) performs any code enforcement activity at a time when his or her certification is inactive or suspended.

Section 1208-6.2(d) provides that personnel-related matters, such as tardiness, absenteeism, insubordination, rude behavior, and the like, shall not be deemed to be a material failure to uphold code enforcement duties.

Section 1208-6.2(e) provides that (1) the suspension of a person's certification pursuant to Subpart 1208-6 shall result in such person being deemed not to be certified during the period of such suspension; (2) the revocation of a person's certification pursuant to Subpart 1208-6 shall result in such person being deemed not to be certified at any time on or after the date of such revocation; (3) such suspension or revocation shall not be shortened or terminated by reason of such person taking or re-taking any basic training, in-service training, advanced in-service training, or other training; and (4) unless otherwise provided in the order suspending or revoking such certification, such person shall not receive any new or additional certification as either a BSI or a CEO, and such person shall not be permitted to increase or decrease the level of his or her certification pursuant to section 1208-3.1(c) or (d), at any time during the period of such suspension or after such revocation.

Section 1208-6.3(a) provides that a complaint alleging that a BSI or CEO has materially failed to uphold his or her code enforcement duties may be submitted to the Department of State (DOS), and must (1) be in writing; (2) identify the BSI or CEO who is alleged to have materially failed to uphold his or her duties (the "subject person"); (3) identify the AHJ that employs or otherwise uses the services of the subject person; (4) include a statement of the acts or omissions of the subject person that are alleged by the complainant to constitute a material failure to uphold the subject person's code enforcement duties; (5) include the complainant's agreement to cooperate with any investigation conducted by the department and/or by any AHJ; (6) include the complainant's name, address, and contact information; and (7) be signed by the complainant.

Section 1208-6.3(b) provides that DOS will review the complaint to determine if the complaint states, on its face, an allegation that the subject person has materially failed to uphold his or her code enforcement duties.

Section 1208-6.3(c) provides that if DOS determines that the complaint, on its face, does not state an allegation that the subject person has materially failed to uphold his or her code enforcement duties, DOS will notify the complainant of that determination, and DOS will take no further action with respect to the complaint. If DOS determines that the complaint, on its face, does state an allegation that the subject person has materially failed to uphold his or her code enforcement duties, DOS shall investigate the complaint and/or refer the complaint to the appropriate AHJ.

Section 1208-6.3(d) provides that DOS shall be permitted, but not required, to submit a copy of such complaint and any supporting information and documentation provided to DOS by the complainant to each AHJ that employs or otherwise uses the services of the subject person. In addition, if the complaint relates to an inspection performed pursuant to section 807-a of the Education Law, DOS shall be permitted, but not required, to submit a copy of such complaint and any supporting information and documentation provided to DOS by the complainant to the school authorities in charge of the subject school and to the New York State Department of Education. To the extent required by the Personal Privacy Protection Law, DOS shall redact the complainant's name, address, and contact information, and any other "personal information" from copies submitted to an AHJ or to any other person or entity pursuant this subdivision.

Section 1208-6.3(e) provides that DOS may take action with respect to information indicating that a BSI or CEO has materially failed to uphold his or her enforcement duties even if that information comes to DOS's attention by means other than a formal complaint.

Section 1208-6.4(a)(1) provides that if DOS determines that a complaint states, on its face, an allegation that the subject person has materially failed to uphold his or her code enforcement duties, DOS shall: (1) investigate such complaint in such manner as the department deems appropriate and/or (2) refer such complaint to the AHJ that employs or otherwise uses the services of the subject person, require such AHJ to investigate the complaint and to submit a written report of such investigation to the department, and provide such AHJ with instructions regarding the conduct of such investigation and the submission of such report.

Section 1208-6.4(a)(2) provides that the complainant, the subject person, and each AHJ that employs or otherwise uses the services of the subject person shall cooperate fully with any such investigation.

Section 1208-6.4(a)(3) provides that (1) upon completion of any such investigation, DOS shall determine whether the matter should be referred to the Office of Administrative Hearings (OAH) for a hearing or discontinued, with or without prejudice, and (2) DOS shall notify the complainant, the subject person, and each AHJ that employs or otherwise uses the services of the subject person of DOS's determination.

Section 1208-6.4(b)(1) provides that if information indicating that a BSI or CEO may have materially failed to uphold his or her code enforcement duties comes to the attention of DOS by any means other than a formal complaint submitted pursuant to section 1208-6.3, DOS may: (1) investigate such matter in such manner as the department deems appropriate and/or (2) refer such matter to the AHJ that employs or otherwise uses the services of such BSI or CEO, require such AHJ to investigate the complaint and to submit a written report of such investigation to the department, and provide such AHJ with instructions regarding the conduct of such investigation and the submission of such report.

Section 1208-6.4(b)(2) provides that the BSI or CEO and each AHJ that employs or otherwise uses the services of such BSI or CEO shall cooperate fully with any such investigation.

Section 1208-6.4(b)(3) provides that (1) upon completion of any such investigation, DOS shall determine whether the matter should be referred to the OAH or discontinued, with or without prejudice, and (2) DOS shall notify the BSI or CEO who was the subject of the investigation and each AHJ that employs or otherwise uses the services of such BSI or CEO of DOS's determination.

Section 1208-6.5 provides that:

(a) DOS may refer the question of whether a BSI or CEO did or did not materially fail to uphold his or her code enforcement duties to the OAH; that upon such referral, an ALJ in the OAH shall conduct a hearing and shall render a decision in writing;

(b) the hearing shall be conducted in accordance with the provisions of Article 3 of the State Administrative Procedure Act and 19 NYCRR Part 400; and

(c) the ALJ's decision shall include findings of fact and conclusions of law or reasons, and if the ALJ finds that the BSI or CEO did materially fail to uphold his or her code enforcement duties, the ALJ shall: (1) suspend the certification of such BSI or CEO for such period of time, and subject to such terms and conditions, as the ALJ may deem to be appropriate, or (2) revoke the certification of such BSI or CEO.

Section 1208-6.6 provides that each person who has performed or hereafter performs any enforcement activity on behalf of any AHJ shall be deemed to have consented to: (a) the jurisdiction of DOS and the DOS's Office of Administrative Hearings for the purpose of proceedings to suspend or revoke certifications pursuant to this Subpart, and (b) service of notices of hearing, determinations, and other papers in such proceedings by certified mail, return receipt requested, or regular first-class mail directed to such person at the address of such person last known to the department, or in any manner authorized by the CPLR or any other applicable law.

Section 1208-6.7 provides for the purposes of Subpart 1208-6, any authority to perform enforcement activities given to a person under section 1208-2.2(b)(1), section 1208-2.2(b)(2), or section 1208-2.2(b)(4) of Part 1208 shall be deemed to be a certification, and such authority shall be subject to suspension or revocation pursuant to Subpart 1208-6.

Section 1208-6.8 provides that if a person whose certification has been designated as inactive pursuant to section 1208-3.5 of Part 1208 materially fails to uphold his or her code enforcement duties, whether before or after such designation, such person's certification shall be subject to suspension or revocation pursuant to Subpart 1208-6.

Section 1208-6.9 provides that the provisions of Subpart 1208-6 are in addition to, and not in substitution for or limitation of, the provisions of 19 NYCRR section 1208-3.5(b).

The rule also amends 19 NYCRR section 1208-3.5(b) to provide that the revocations contemplated by that provision are in addition to, and not in substitution for or limitation of, the provisions of Subpart 1208-6.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 1208-6.4(a) and (b).

Text of rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-6740, email: joseph.ball@dos.ny.gov

Revised Regulatory Impact Statement

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

Those changes made to the rule are summarized as follows:

Section 1208-6.4 of Title 19 NYCRR, as originally proposed, provided that if the Department of State (DOS) determined that a complaint stated, on its face, an allegation that a building safety inspector (BSI) or code enforcement official (CEO) materially failed to uphold his or her code enforcement duties, DOS would investigate the complaint or refer the complaint to the authority having jurisdiction (AHJ) who used the services of the BSI or CEO and direct the AHJ to investigate the complaint. Section 1208-6.4, as originally proposed, also provided that if information indicating that a BSI or CEO materially failed to uphold his or her code enforcement duties came to DOS's attention by means other than a formal complaint, DOS could investigate or refer the matter to the AHJ for investigation. However, the rule as originally proposed did not call for DOS to notify the complainant (if any), the affected BSI or CEO, or the affected AHJ, of the steps taken upon completion of the investigation. Section 1208-6.4 was changed to provide that upon completion of an investigation, (1) DOS would determine whether the matter should be referred to the Office of Administrative Hearings for a hearing, or discontinued, with or without prejudice, and (2) DOS would notify the complainant (if any), the BSI or CEO, and the AHJ of that determination.

Revised Regulatory Flexibility Analysis

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

Those changes made to the rule are summarized as follows:

Section 1208-6.4 of Title 19 NYCRR, as originally proposed, provided that if the Department of State (DOS) determined that a complaint stated, on its face, an allegation that a building safety inspector (BSI) or code enforcement official (CEO) materially failed to uphold his or her code enforcement duties, DOS would investigate the complaint or refer the complaint to the authority having jurisdiction (AHJ) who used the services of the BSI or CEO and direct the AHJ to investigate the complaint. Section 1208-6.4, as originally proposed, also provided that if information indicating that a BSI or CEO materially failed to uphold his or her code enforcement duties came to DOS's attention by means other than a formal complaint, DOS could investigate or refer the matter to the AHJ for investigation. However, the rule as originally proposed did not call for DOS to notify the complainant (if any), the affected BSI or CEO, or the affected AHJ, of the steps taken upon completion of the investigation. Section 1208-6.4 was changed to provide that upon completion of an investigation, (1) DOS would determine whether the matter should be referred to the Office of Administrative Hearings for a hearing, or discontinued, with or without prejudice, and (2) DOS would notify the complainant (if any), the BSI or CEO, and the AHJ of that determination.

Revised Rural Area Flexibility Analysis

The Department of State has determined that the changes made to the last published rule are non-substantive and do not necessitate a revision of

the original Rural Area Flexibility Analysis published in the Notice of Emergency Adoption and Proposed Rule Making.

Those changes made to the rule are summarized as follows:

Section 1208-6.4 of Title 19 NYCRR, as originally proposed, provided that if the Department of State (DOS) determined that a complaint stated, on its face, an allegation that a building safety inspector (BSI) or code enforcement official (CEO) materially failed to uphold his or her code enforcement duties, DOS would investigate the complaint or refer the complaint to the authority having jurisdiction (AHJ) who used the services of the BSI or CEO and direct the AHJ to investigate the complaint. Section 1208-6.4, as originally proposed, also provided that if information indicating that a BSI or CEO materially failed to uphold his or her code enforcement duties came to DOS's attention by means other than a formal complaint, DOS could investigate or refer the matter to the AHJ for investigation. However, the rule as originally proposed did not call for DOS to notify the complainant (if any), the affected BSI or CEO, or the affected AHJ, of the steps taken upon completion of the investigation. Section 1208-6.4 was changed to provide that upon completion of an investigation, (1) DOS would determine whether the matter should be referred to the Office of Administrative Hearings for a hearing, or discontinued, with or without prejudice, and (2) DOS would notify the complainant (if any), the BSI or CEO, and the AHJ of that determination.

Revised Job Impact Statement

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

Those changes made to the rule are summarized as follows:

Section 1208-6.4 of Title 19 NYCRR, as originally proposed, provided that if the Department of State (DOS) determined that a complaint stated, on its face, an allegation that a building safety inspector (BSI) or code enforcement official (CEO) materially failed to uphold his or her code enforcement duties, DOS would investigate the complaint or refer the complaint to the authority having jurisdiction (AHJ) who used the services of the BSI or CEO and direct the AHJ to investigate the complaint. Section 1208-6.4, as originally proposed, also provided that if information indicating that a BSI or CEO materially failed to uphold his or her code enforcement duties came to DOS's attention by means other than a formal complaint, DOS could investigate or refer the matter to the AHJ for investigation. However, the rule as originally proposed did not call for DOS to notify the complainant (if any), the affected BSI or CEO, or the affected AHJ, of the steps taken upon completion of the investigation. Section 1208-6.4 was changed to provide that upon completion of an investigation, (1) DOS would determine whether the matter should be referred to the Office of Administrative Hearings for a hearing, or discontinued, with or without prejudice, and (2) DOS would notify the complainant (if any), the BSI or CEO, and the AHJ of that determination.

Initial Review of Rule

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

Assessment of Public Comment

The Department of State (DOS) received eight separate comments relating to this rule. The following includes a summary and an analysis of the issues raised and significant alternatives suggested by such comments, a statement of the reasons why any significant alternatives were not incorporated into the rule, and a description of any changes made in the rule as a result of such comments.

Comment 1 questioned how this rule will "work" for a local code enforcement official (CEO) who seeks an interpretation of a code provision, and receives different interpretations from different sources, such as "the local rep" (presumably, a DBSC staff person) and an instructor in a training course.

DOS Response to Comment 1: The rule provides that in the case of a CEO, a material failure to uphold duties must involve a failure to note one or more serious code violations on an inspection report; some other material error or omission on an inspection report; willful misconduct, gross negligence, or gross incompetence; or performing code enforcement activity at a time when his or her certification is inactive or suspended. It is unlikely that a local CEO who makes an honest effort to obtain the proper interpretation of a code provision and applies what he or she honestly and reasonably believes to be the proper interpretation will be subject to suspension or revocation under this rule. DOS also notes that a CEO can apply to the Secretary of State for a formal, and binding, code interpretation under Executive Law section 376(4). No change was made to the rule in response to Comment 1.

Comment 2 appeared to support the concept of suspending or revoking the certification of a CEO who does not do his or her job "adequately," but questioned whether a CEO should be subject to suspension or revocation for "falling short" on the required annual in-service training for an unforeseen reason.

DOS Response to Comment 2: The already existing training regulations already provide that the certification of a CEO or a building safety inspector (BSI) who fails to complete the required annual in-service training, or any required advance in-service training, will be designated as inactive (19 NYCRR section 1208-3.5). This rule will supplement and clarify these already existing provisions. In addition, DOS views completion of required in-service training as an essential duty that CEOs and BSIs must fulfill to maintain their ability to enforce the code in a due and proper manner. No change was made to the rule in response to Comment 2.

Comment 3 expressed the concern that this rule will "open the floodgate to needless complaints that will tie up [code enforcement personnel] even more."

DOS Response to Comment 3: This rule implements a requirement imposed by the recent amendments to Executive Law section 376-a. DOS believes that the provisions in the rule that call for the DOS to review each complaint it receives and to determine if the complaint is of the type that warrants further action under this rule (subdivisions (b) and (c) of 19 NYCRR section 1208-6.3) will weed out the "needless" complaints mentioned in the comment. No change was made to the rule in response to Comment 3.

Comment 4 noted that the rule provides that a material failure to uphold code enforcement duties includes, inter alia, failure to note a "serious violation" on an inspection report, and asks "what does a serious code violation mean?" (Comment 2, above, also requested an explanation of the meaning of the term "serious" violation.)

Comment 4 also noted that the rule provides that "making any other material error or omission on an inspection report" would also constitute a material failure to uphold code enforcement duties, and appears to express the concern that an honest or inadvertent error could be grounds for suspension or revocation. The person who submitted Comment 4 noted that the codes are changed from time to time, stated that sometimes the State does not inform the authorities who are enforcing the codes of these changes, and expressed the hope that the State "would understand that local municipalities have limited resources and are trying diligently to enforce the law but also keep the cost of living in NYS affordable."

DOS Response to Comment 4: The rule provides that material failures to uphold code enforcement duties include, inter alia, failure to note one or more "serious violations" of the Uniform Code (or, in the case of a CEO, failure to note one or more "serious violations" of the Uniform Code and/or Energy Code) on an inspection report. DOS believes that the term "serious violation" is self-explanatory. DOS also notes that any proceeding to suspend or revoke the certification of a CEO or BSI under this rule will be referred to the Department's Office of Administrative Hearings (OAH) for a hearing before an Administrative Law Judge (ALJ). DOS believes that the ALJs who will hear these matters will be able to interpret the term "serious violation" in the context of a proceeding under this rule.

The provisions in the rule that provide that making any other "material error or omission on an inspection report" a material failure to uphold code enforcement duties reflects the express language of the statute under which this rule is proposed. See Executive Law section 376-a(2)(e), which provides, in pertinent part, that the Secretary of State may promulgate rules and regulations with respect to. . . "(r)evocation or suspension of the certification of any code enforcement personnel found after a hearing to have materially failed to uphold duties of a code enforcement officer, including but not limited to, making material errors or omissions on an inspection report" (emphasis added). Again, DOS believes that the ALJs who will hear matters referred to them under this rule will be able to interpret the term "material errors or omissions on an inspection report" in the context of a proceeding under this rule.

With respect to New York State informing local governments of code changes as they are adopted, DOS's Division of Building Standards and Codes (DBSC) maintains a "Rule Making Activity" section on its homepage (https://www.dos.ny.gov/DCEA/). This section includes information about code changes that are in development, code changes that are currently proposed for adoption, and code changes that have been recently adopted. The DBSC also issues an e-bulletin entitled "Building New York" that includes information of interest to builders and code enforcement officials, including information regarding proposed, or recently adopted, changes to the codes. This e-bulletin is available at no charge to anyone who wishes to subscribe. See https://www.dos.ny.gov/DCEA/code_list.html for more information. In addition, the annual in-service training courses that CEOs and BSIs are required to take are intended to keep code enforcement personnel up to date on the codes. The "advanced in-service training" courses that CEOs and BSIs are required to take after each major update to the codes are particularly important for this purpose.

No change was made to the rule in response to Comment 4.

Comment 5 noted that the rule would "strip inspectors of their certifica-

tions for incompetence" and asked "how about a rule where you have to attend all disciplinary [hearings] of all [CEOs] that you certify?"

DOS Response to Comment 5: With respect to the question "how about a rule where you have to attend all disciplinary [hearings] of all [CEOs] that you certify," it is not clear if the "you" is the Department of State, and if the "disciplinary hearings" are the proceedings to be commenced under this rule. However, under this rule, complaints that allege a material failure to uphold code enforcement duties will be referred to OAH for a hearing before an ALJ. DOS employees will attend those hearings as presenters and/or as witnesses. Therefore, DOS employees will attend all such disciplinary proceedings. No change was made to the rule in response to Comment 5.

Comment 6 expressed support for this rule, noting that it was "about time a rule like this was adopted."

DOS Response to Comment 6. No response is required. DOS notes that this rule was proposed to implement the recent amendments to Executive Law section 376-a.

Comment 7 suggested making the following changes to the rule:

(1) add a new subdivision to Section 1208-6.3 (Complaints) that would specify "steps in response to a complaint, including writing back to the complainant of its findings and determinations" and

(2) amend paragraphs (a)(2) and (b)(2) of Section 1208-6.4 (Investigations) to provide that when DOS refers a matter to the authority having jurisdiction (AHJ) to investigate, the AHJ must provide a written report of its investigation to DOS and to the complainant. (The rule currently provides that the AHJ is required to provide its written report only to DOS.)

DOS Response to Comment 7. With respect to that part of Comment 7 that requests notification to the complainant, DOS notes that the rule already provides that (1) DOS will review each complaint to determine if the complaint states, on its face, an allegation that the BSI or CEO named in the compliant (the subject person) has materially failed to uphold his or her code enforcement duties (19 NYCRR section 1208-6.3(b)) and (2) if DOS determines that the complaint does not state an allegation that the subject person has materially failed to uphold his or her code enforcement duties, DOS will notify the complainant of that determination (19 NYCRR section 1208-6.3(c)). However, the rule, as originally proposed, did not expressly provide that DOS would notify the complainant of any action taken if, following DOS's initial review of the complaint, DOS determines that the complaint does state, on its face, a proper allegation of material failure to uphold code enforcement duties. As noted above, if DOS determines that a complaint, on its face, states a proper allegation, DOS will investigate the complaint or refer the complaint to the AHJ for investigation. In response to Comment 7, DOS has changed the rule to provide that (1) upon completion of the investigation of a complaint, DOS will determine whether the matter should be referred to the OAH for a hearing, or discontinued (with or without prejudice) and (2) DOS will notify the complainant, the subject person, and the AHJ of that determination.

With respect to that part of Comment 7 that requests that the rule require delivery of a copy of the written investigation report to the complainant, DOS notes that a written report of an investigation conducted by DOS, or conducted by an AHJ and provided to DOS, will be a record subject to disclosure under the Freedom of Information Law (FOIL). FOIL is broadly drafted to provide maximum disclosure of records. However, FOIL includes provisions that allow certain records, or certain portions of records, to be withheld under certain circumstances. There are sound policy reasons behind FOIL's exceptions to disclosure. DOS is concerned that a blanket requirement that DOS and/or an AHJ provide a copy of its inspection report to the complainant may result in disclosure of material which could and should be redacted under FOIL. Therefore, DOS believes that it would be better not to include such a blanket requirement in this rule. A complainant who is interested in obtaining a copy of an investigation report will be free to submit a FOIL request for that report. Such request could be reviewed and responded to in accordance with the procedures established by FOIL. No change was made to the rule in response to this part of Comment 7.

Comment 8 expressed support for this rule.

DOS Response to Comment 8. No response is required.

NOTE: Comments 5 and 8 also included allegations relating to certain officials and/or certain municipalities. DOS has contacted the persons who submitted Comments 5 and 8 with regard to these allegations. Since these allegations do not appear to be directed to the merits of this rule, they will not be addressed in this Assessment.