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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Licensing of Malt Operators and Processors

I.D. No. AAM-49-18-00001-P

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

Proposed Action: This is a consensus rule making to renumber section 276.4(e), (f); and add new section 276.4(e) and (g) to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 251-z-4

Subject: Licensing of malt operators and processors.

Purpose: To exempt malt operators and processors producing under a certain volume from licensing requirements and fees.

Text of proposed rule: Section 276.1 of 1 NYCRR is amended to read as follows:

All food processing establishments subject to regulation under article 20-C of the Agriculture and Markets Law shall be subject to the current good manufacturing practices of Part [261] *260* of this Title unless exempted by said article 20-C or by this Part.

Subdivisions (g) and (h) of section 276.4 of 1 NYCRR are re-lettered to be subdivisions (i) and (j), respectively.

Section 276.4 of 1 NYCRR is amended by adding thereto a new subdivision (g), to read as follows:

(g) Malt Operators and Processors.

(1) Definitions. As used in this subdivision:

(i) Malting is the process of converting barley or other cereal grains, such as oats, wheat or rye, into malt for use in brewing and/or distilling, and takes place in a maltings, sometimes called a malthouse, or a malting floor.

(ii) Person means a natural person, partnership, corporation, association, limited liability company or other legal entity.

(iii) Processing means that term as defined in Agriculture and Markets Law section 251-z-2(4) except processing, as used in this subdivision, shall not mean non-mechanical drying.

(2) Any person who participates in the process of malting in a volume that does not exceed 4,000,000 lbs annually shall be exempt from the licensing requirements of Article 20-C of the Agriculture and Markets Law, and shall be exempt annually from the license fee requirement of Agriculture and Markets Law section 251-z-2(4), provided that:

(i) such establishment is maintained in a sanitary condition and follows the current good manufacturing practices set forth in Part 260 of this Title; and

(ii) no other food processing operations for which licensing under article 20-C of the Agriculture and Markets Law is required are being conducted at the establishment.

Text of proposed rule and any required statements and analyses may be obtained from: John Luker, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-4492, email: John.Luker@agriculture.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.

Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR section 276.4 to exempt malt operators and processors who process 4,000,000 lbs. or less of malt annually from having to obtain a license and payment of any otherwise required application fees.

The related craft beer industry ingredient, hops, has been exempt from the 20-C license fee since 2014. This proposed rule would add the other related ingredient, malt, to the list of exemptions, if processing under 4,000,000 lbs. of malt annually.

The proposed rule is non-controversial in that it will remove a regulatory burden upon certain malt operators and processors. Similar exemptions for malt ingredients have been adopted or are in use in the great majority of states.

Further, the removal of such burden may encourage people to enter those businesses and will improve the economic condition of those who already operate as malt operators or processors. Agriculture is one of the State's largest industries and has recently been growing, and this rule will contribute to that trend. The proposed rule will not, therefore, have any adverse impact upon regulated businesses and is, therefore, non-controversial.

Job Impact Statement

The proposed rule will not have an adverse impact upon employment opportunities.

The proposed rule will exempt malt operators and processors who process 4,000,000 lbs. of malt or less annually from having to obtain a food processing license and pay any otherwise required licensing fees. The proposed rule, by removing a regulatory burden upon such businesses, will have no adverse impact upon jobs.

New York State Authorities Budget Office

NOTICE OF ADOPTION

Industrial Development Agencies and Authorities (IDAs)

I.D. No. ABO-34-18-00005-A
Filing No. 1082
Filing Date: 2018-11-14
Effective Date: 2018-12-05

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

Action taken: Addition of Part 250 to Title 19 NYCRR.

Statutory authority: Public Authorities Law, sections 2(2), 6(e), (h); L. 2005, ch. 766; L. 2009, ch. 506; General Municipal Law, section 875(7)

Subject: Industrial Development Agencies and Authorities (IDAs).

Purpose: To increase the accountability and improve the efficiency and transparency of the operations of industrial development agencies.

Text of final 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 an individual authorized to bind the project applicant, 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 an individual authorized to bind the project applicant 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 an individual authorized to bind 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 an individual authorized to bind the project applicant, 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, including but not limited to the completed project application form submitted by the project applicant for consideration. 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 project application and the completed comprehensive uniform authority project agreement with 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.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 250.1(a)(vii), (viii), (ix) and (b)(iii).

Text of rule and any required statements and analyses may be obtained from: Jeffrey H. Pearlman, Director, State of New York Authorities Budget Office, State of New York Authorities Budget Office PO Box 2076, Albany, NY 12220-0076, (518) 474-1932, email: Jeff.Pearlman@abo.ny.gov

Revised 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.

Assessment of Public Comment

Introduction

By the authority vested by Public Authorities Law Sections 2(2), 6(e), 6(h); Chapter 766 of 2005; Chapter 506 of 2009; General Municipal Law, section 875(7), regulations were proposed by the Authorities Budget Office (ABO) to increase the accountability and improve the efficiency and transparency of the operations of industrial development agencies and authorities (IDAs). The proposed regulations were filed with the Department of State, and upon publication in the State Register, public comments on the proposed regulations were accepted for 60 days -- from August 22, 2018 until the close of business on October 21, 2018. The proposed regulations require posting on each IDA website the both blank and approved standard application forms for requests for financial assistance, uniform criteria for the evaluation and selection for each category of projects for which financial assistance is provided, and each uniform project agreement approved by the board.

Public Hearing

On September 4, 2018 at 1:30 pm in Concourse Hearing Room 125, Empire State Plaza, a public hearing was held. Written and oral testimony was received.

Comments and Testimony Received with Responses

Attendees of the public hearing were Melissa Bennett from Barclay Damon, Alex Camarda from Reinvent Albany, Marc Cesta from UA Local 7 Plumbers & Steamfitters, Ryan Silva from the NYS Economic Development Council, David Friedfel from Citizens Budget Commission of NY, James Vielkind from Politico, Rachel Silberstein from Times Union, and Michael Logan from Hodgson Russ. Besides the testimony received at the hearing, additional submitted comments were timely received by Senator Omara and Assemblyman Palmesano, Richard C. Herrick, Caraccioli & Associates PLLC on behalf of the County of Oswego Industrial Development Agency, the New York State Building and Construction Trades Council, and the New York City District Council of Carpenters and Joiners of America.[1]

This Assessment of Public Comments responds to all substantive comments received during the public comment period. Comments were compiled, reviewed, and categorized based on their content. The ABO categorized the comments into two topics:

1. Comments raising concerns with proposed reporting requirements;
2. Comments in support of the proposed reporting requirements.

Pursuant to the State Administrative Procedure Act (SAPA) § 202(1), a Notice of Proposed Rulemaking (Notice) regarding IDA web posting information was published in the State Register on August 22, 2018 [Proposed Regulation ID No. ABO-34-18-00005-P]. Pursuant to the Notice, the time for the submission of comments expired on October 21, 2018. All comments filed and received between August 22nd and October 21, 2018 were accepted and are addressed herein. The comments filed after the deadline are untimely and are not considered herein.

1.1 Concerns Raised

1.1.1 The issue of concern is your call for an agency to post all completed applications online. No other economic development agency in New York State is required to do so.

1.1.2 The proposed ABO rule change will add an unnecessary, costly and time-consuming administrative burden to IDAs, which will have to carefully examine and prepare completed applications in order to ensure that any public posting does not inappropriately contain private company information.

1.1.3 It is also troubling that your new rule requiring a public posting of what can sometimes be competitive, sensitive information detailing private planning, in the absence of a formal agency request, could prevent applicants from moving forward on projects that could be vital to our local economies.

1.1.4 The current law as written requires any agreement by a company with the IDA to be signed by an officer of the board or authorized executive of the company. The new proposed regulation requires the chairman of the board or chief executive of a company to sign off on any agreement. This contradiction could lead to an OSC audit stating an IDA is being compliant while an ABO review states they are not. Additionally, it is quite unrealistic to get a CEO or board chairman to sign off on everything a company does, particularly in NY where we have Fortune 500 companies with a global presence and offices across the world. These entities have signees on behalf of the company. We would respectfully request that any regulation follow the standard written into law that requires the signature by an authorized officer of the board or executive of the company.

1.1.5 However, in the proposed regulations, it does not mention completed applications. It goes from talking about applications to referencing a "uniform authority project agreement and all attachments". This is separate and distinct from a complete application. In many cases this document can be hundreds of pages long and creates a variety of chal-

lenges for IDAs to publish and post on a website, including redaction of sensitive financial records, anything considered trade secrets, and other confidential information about an applicant that could hinder a private company from doing business successfully in NYS.

1.1.6 Additionally, the next section of the proposed regulation goes on to state that an applicant needs to submit an annual certified statement which would need to be separate from and in addition to a project agreement. I could see several circumstances where this would create an administrative challenge for an organization and again lead to a situation where IDAs are OSC compliant but are not considered compliant by the ABO.

Responses to Concerns Raised

Response to 1.1.1

The online posting is set up in a manner generally consistent with the current intent of § 875(7) of the General Municipal Law, which provides in part that:

"In addition to any other reporting or filing requirements an IDA has under this article or other law, an IDA shall also report and make available on the internet, without charge, copies of its resolutions and agreements appointing an agent or project operator or otherwise related to any project it establishes. (emphasis added). It shall also provide, without charge, copies of all such reports and information to a person who asks for it in writing or in person."

Section 859-a(4) of General Municipal Law requires each IDA to establish a standard application form which is to be used by the IDA to accept requests for financial assistance, and requires that certain specific information be included in the application. Further, Section 859-a(5) requires IDAs to develop uniform criteria for evaluating and selecting projects for financial assistance and requires the IDA to assess the information included in the application to form a reasonable basis for its decision to provide financial assistance. As such, the completed application is a critical document related to any project established by the IDA and subject to the requirement to post such documents on the internet as called for in Section 875(7).

Among the reporting requirements is the obligation to post on an IDA website detailed information regarding any project that has been approved. General Municipal Law subdivision (6) of § 859-a requires each IDA to "develop a uniform agency project agreement that sets forth the terms and conditions under which financial assistance shall be provided." Paragraphs (a) through (g) of that provision are essentially duplicated in Part 250.1(c) of the proposed regulations, which deals with "the completed, developed uniform authority project agreement…that sets forth terms and conditions under which financial assistance shall be provided." Therefore § 859-a(6) coupled with 875(7) of the General Municipal Law would require a final agreement be posted on the IDA's website.

The only instance in which the records relating to the process of reviewing and eventually approving requests for financial assistance by the IDA might be withheld is found in the last sentence of subdivision (7) of § 875. That provision states, "The IDA may, at the request of its agent or project operator delete from any such copies posted on the internet or provided to a person described in the prior sentence portions of its records that are specifically exempted from disclosure under article six of the public officers law", which is the Freedom of Information Law (FOIL).

Response to 1.1.2

This regulation should not add any unnecessary, costly and time-consuming administrative burdens to an IDA beyond the already required internet posting. The burden to redact sensitive information is not for the IDA to unilaterally decide. Rather, the redaction "burden" is on the project applicant who must inform the IDA, pursuant to Public Officers Law Article 6 (FOIL), of those portions of any record submitted, which are specifically exempt from disclosure. This is a common occurrence when sensitive information is provided to regulatory agencies. Moreover, it is expressed in General Municipal Law § 875(7), where the IDA may, at the request of its agent or project operator delete from any such copies posted on the internet or provided to a person pursuant to FOIL the portions of its records that are specifically exempted from disclosure under article six of the public officers law. Public Officers Law § 89(5) governs the process. See also, Markowitz v Serio, 11 NY3d 43 (2008) [a "speculative conclusion that disclosure might potentially cause harm" is insufficient to meet the burden of proof and justifying secrecy].

Response to 1.1.3

When an IDA applicant receives a public benefit -- not having to pay the full taxable value of assessed real property or is provided sales tax exemptions to help fulfill its commercial obligations, the public has the right to know where such taxes are forgiven. The ABO's mission is to help IDAs remain accountable and transparent, which is intended to keep the general public informed of their activities. Pursuant to Public Authorities Law Section 6(h), the ABO has the authority to promulgate "regulations to effectuate the purpose of the office." When business applicant receives the assistance of an IDA there is an understanding that the public ought to know where their taxes are being spent as well as being forgiven. Requiring IDAs to post on their website those deals which grant public benefits to businesses is authorized as it allows the ABO to assist with management practices and procedures relating to "activities and financial practices [that]. . . are disclosed to the public," as authorized and established in Public Authorities Law Section 6(e). Therefore, the cost of receiving a public benefit eliminates the ability to be kept confidential. There is no evidence presented that would indicate such transparency prevents applicants from moving forward on public projects.

Response to 1.1.4

Should an application for tax exemption or other public benefits be provided, it is important for the public to know and understand exactly who has considered this application and its approval. The statute does not specify who should sign the record, leaving open who is truly authorized to sign off on a project. By requiring at a minimum someone authorized by a company to sign off on any project agreement, this regulation is clarifying any ambiguity and is making certain that the fiduciaries at the highest level are certifying compliance.

Response to 1.1.5

Considering the sensitive nature of the record and relying on the veracity of those who testified and presented comments during this period, we consulted with the NYS Committee on Open Government to receive their analysis of the purported transparency challenges. The comments address the concerns and conclude that "the regulations are consistent with the law and require posting of records and information that would be accessible to the public pursuant to FOIL and other statutory requirements dealing with records involving the functions of IDA's." See attached letter to be included in the assessment of public comment in the Appendix of this issue, dated 9/25/2018 from Committee on Open Government Executive Director Robert J. Freeman.

Response to 1.1.6

The requirement to make public a certified statement from whomever is receiving a public benefit is consistent with subdivision b of paragraph 6 of Section 859-a of the general municipal law, which was established in Chapter 563 of the Laws of 2015.

2.1 Comments in Support

2.1.1. This proposed regulation would enhance transparency of IDAs to the public by making important details about the selection process, benefits, and results of IDA projects available online.

2.1.2. The proposed regulation would make the IDA's decision making process behind the more than $750 million in benefits since 2015, a vast majority of which were through tax reductions, more transparent, and would allow for additional reporting and evaluation of these entities, as well as allow taxpayers to hold IDAs accountable.

2.1.3. Localities spend over $4 billion annually on business subsidies, and taxpayers deserve to know exactly what their money is being spent on, and whether their investment is yielding returns in jobs produced and retained.

2.1.4. This rule is a small yet meaningful measure that IDAs should have already been doing without being required to do so without the ABO, as state economic development programs have been plagued by corruption, and now more than ever is greater scrutiny of their projects needed.

2.1.5. Government agencies across the country are proactively making data and information available through Open Data and Open Records Platforms, rather than waiting reactively to release information in response to Freedom of Information Law (FOIL) requests, and IDAs should be using their websites to make detailed project information known to the public and demonstrate that they are effective stewards of the public's money.

2.1.6 The regulation proposed by the ABO is promulgated pursuant to Chapter 563 of the Laws of 2015, which was sponsored by Senator Marchione and Assembly member Magnarelli, with the intention of making IDAs more accountable and efficient.

2.1.7 This law has many significant and meaningful requirements including, that companies seeking public subsidies provide information on the number and types of jobs they will create and deadlines for doing so; that company executives complete a sworn application acknowledging that knowingly providing false or misleading information will result in benefits being terminated; that IDAs must establish standardized criteria for evaluating projects and include a cost-benefit analysist of the cost to taxpayers versus the jobs created and economic activity; and that IDA's create project agreements with subsidy recipients, specifying annual certification and documentation of jobs produced, the dates for their creation, the formula for payments in lieu of taxes (PILOTs), and the termination, reduction, or claw back of benefits promised if job numbers are not met.

2.1.8 The proposed ABO rule would additionally require disclosure of 1) financial assistance application forms; 2) criteria for evaluating projects; 3) project agreements between IDAs and companies; 4) annual assessments by IDAs of approved projects' progress; or 5) policies for rescission benefits; on IDA websites, none of which are certain policies or information explicitly required by the existing Chapter 563 law.

2.1.9 Requiring this information to be posted on IDA websites will make it easier for the ABO to ensure compliance and would compel IDAs to follow existing requirements of Chapter 563.

2.2.0 The public deserves to know how their tax dollars are being spent by the IDAs, that need to show how proposed projects are evaluated; the terms on which companies receive public subsidies; whether companies are hitting job targets; and under what circumstances the IDAs will terminate or claw back benefits if goals are not met.

2.2.1 Hard-working men and women of the New York State Building & Construction Trades Council and the New York City District Council of Carpenters and Joiners of America applaud the regulation put forth by the ABO to bring about more transparency and accountability to projects undertaken by the IDAs.

2.2.2 As IDAs and other authorities control millions of dollars in economic development, transparency is an essential part of the process of understanding how these dollars are allocated and is critical to ensuring that these funds truly benefit New York workers.

2.2.3 In addition to the proposed regulation, additional requirements could be made to underscore the ABO's goals, including requiring entities to give detailed information about the type and amount of financial assistance they receive, clearly explaining the type of financing received, and how the financing is to be calculated and utilized. For example, with respect to PILOT payments that take place over the term of a lease, it should be clearly explained how the amount of financial assistance is calculated.

2.2.4 A recent example of this lack of transparency can be seen in a September 7th article in the Troy Record, in which no information was given about PILOTs to be negotiated and offered by the Troy IDA, despite the fact that the Troy IDA has a set PILOT formula in place. The proposed regulation would provide taxpayers with the transparency that they are entitled to when looking at how tax dollars are spent in their community.

2.2.4. It would also be beneficial if information relating to the construction jobs created as a result of the project was given, expressly detailing the number of construction jobs created, along with the duration of such jobs, and the wages and benefits of those jobs. It should also be specified if the local workforce will be utilized during the construction phase of the project.

2.2.5 IDAs and authorities should also be subjected to standardized forms, and not be able to create forms on their own. Uniform documents would make it easier for individuals, community groups, and other stakeholders to compare projects and analyze benefits across jurisdictions.

See Appendix in the back of this issue.

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[1] Pursuant to the State Administrative Procedure Act (SAPA) § 202(1), a Notice of Proposed Rulemaking (Notice) regarding the IDA web posting information was published in the State Register on August 22, 2018 [Proposed Regulation ID No. ABO-34-18-00005-P]. Pursuant to the Notice, the time for the submission of comments expired on October 21, 2018. All comments filed and received between August 22nd and October 21, 2018 were accepted and are addressed herein. The comments filed after the deadline are untimely and are not considered herein.

Department of Environmental Conservation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Northern Catskill Riparian Areas

I.D. No. ENV-49-18-00002-P

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

Proposed Action: This is a consensus rule making to amend section 190.36 of Title 6 NYCRR.

Statutory authority: Environmental Consevation Law, sections 1-0101(1)(d), (3)(b), 3-0301(1)(b), (2)(m), 9-0105(1) and (3)

Subject: Northern Catskill Riparian Areas.

Purpose: To correct a mistake in the description of the Kaaterskill Falls Riparian Area.

Text of proposed rule: Existing section 190.36 will be renumbered 190.38 and a new section 190.36 will be added to read:

In addition to other applicable provisions of this Part, the following requirements apply to the Northern Catskill Riparian Areas. In the event of a conflict between this section and another section of this Part, the more restrictive provision will control.

(a) Description. For the purposes of this section, Northern Catskill Riparian Areas means the following state forest preserve lands:

(1) The Kaaterskill Clove Riparian Corridor located in the towns of Hunter and Catskill in Greene County, along State Route 23A, beginning at the intersection of Spruce Creek and Kaaterskill Creek and extending downstream on Kaaterskill Creek approximately 2 miles to the state land boundary line. The regulated corridor includes the creek bed, the riparian area on the side of the creek in which State Route 23A is located, extending from the edge of the creek bed to State Route 23A or 300 feet, whichever is greater, and the riparian area on the other side of the creek extending 300 feet from the edge of the creek bed.

(2) The Kaaterskill Falls Riparian Area located in the town of Hunter in Greene County, beginning at a point 150 feet upstream of the Kaaterskill waterfall on Spruce Creek, and extending downstream to the base of the waterfall at the start of the man-made stone staircase. The regulated area includes the Spruce Creek bed, an area on the side of the creek which includes the stone staircase extending 300 feet from the edge of the stream bed or the staircase and the connector trail leading to the Escarpment Trail, whichever is greater, and on the other side of the creek extending 300 feet from the edge of the stream bed.

(3) The Platte Clove Riparian Corridor, located in the town of Hunter in Greene County, and the town of Saugerties in Ulster County, beginning at the state land boundary near the intersection of Platte Clove Road and Steenburg Road and extending downstream to the southeast along Platte Clove Road and the Plattekill creek to the boundary of state land, approximately 1.6 miles. The regulated corridor includes the Plattekill creek bed, an area on the side of the creek which includes Platte Clove Road extending 300 feet from the edge of the creek bed to Platte Clove Road or 300 feet, whichever is greater, and an area on the other side of the creek extending 300 feet from the edge of the creek bed.

(4) The Colgate Lake Wild Forest Area located in the town of Jewett in Greene County, including 1,375 acres at the eastern end of County Route 78 (Colgate Lake Road), bordered by the Windham-Blackhead Range Wilderness to the north, south, and east. The unit boundary as posted follows the 2,400' contour on the north and south.

(b) No person shall kindle, build, maintain or use a fire, including, but not limited to, charcoal fires, wood fires, gas grills, propane stoves, or other portable stoves, within the Northern Catskill Riparian Areas, except at designated campsites or where camped in compliance with subdivision 190.3(b) of this Part.

(c) No person shall possess a glass container within the Northern Catskill Riparian Areas, except when necessary for the storage of medicines.

(d) No person, within the Northern Catskill Riparian Areas, shall play an audio device, including, but not limited to, radios, tape players, compact disc or digital players, except at designated campsites, or where camped in compliance with subdivision 190.3(b) of this Part, unless the noise is rendered inaudible to the public by a noise-damping device, such as headphones or earbuds. At designated campsites or where camped in compliance with subdivision 190.3(b) of this Part, no person shall use any audio device which is audible outside the immediate area of the campsite.

(e) No person shall possess or consume beverages containing alcohol, including, but not limited to beer, wine, and liquor within the Northern Catskill Riparian Areas, except when transporting to, or at, designated camping sites, or where camped in compliance with subdivision 190.3(b) of this Part.

(f) No person shall enter restricted areas, as designated by signs in the Northern Catskill Riparian Areas.

(g) No person shall possess a portable generator within the Kaaterskill Clove Riparian Corridor, the Kaaterskill Falls Riparian Area, or the Colgate Lake Wild Forest Area, except at designated campsites or where camped in compliance with subdivision 190.3(b) of this Part. Possession of portable generators is prohibited within the Northern Catskill Riparian Corridor in the Indian Head Wilderness Area, located in the Town of Hunter, Greene County and the towns of Saugerties and Woodstock, Ulster County, lying generally west of the east boundary of the Catskill Park, south of Platte Clove, east of Devil's Tombstone Campground and north of the hamlets of Lake Hill and Shady.

(h) No person shall enter into, or remain in, the Kaaterskill Clove or Platte Clove Riparian Corridors between one-half hour after sunset and one-half hour before sunrise except for:

(1) persons camping at designated campsites, or where camped in compliance with subdivision 190.3(b) of this Part;

(2) licensed hunters, anglers, and trappers for the purpose of hunting, fishing, or trapping;

(3) pedestrians using marked hiking trails to cross the areas; or

(4) persons otherwise authorized by permit issued by the department.

(i) In the Kaaterskill Falls Riparian Area, no person shall enter the area located within six (6) feet of cliff edges, except: on marked trails, including the man-made stone staircase and the trail leading to the first water plunge pool, commonly referred to as the mid-pool; when engaged in ice climbing or rappelling by rope; or by authorized permit issued by the department.

(j) In the Kaaterskill Falls Riparian Area, no person shall enter the water, wade, or swim within 150 feet upstream of Kaaterskill Falls.

Text of proposed rule and any required statements and analyses may be obtained from: Peter Innes, Assistant Director Lands and Forests, NYS DEC, 625 Broadway, Albany, New York 12233, (518) 402-9405, email: peter.innes@dec.ny.gov

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

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

Additional matter required by statute: A Short EAF was completed in compliance with the State Environmental Quality Review Act.

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

Consensus Rule Making Determination

No person is likely to object to this rulemaking since it will correct an error in the express terms. Not correcting this error can cause enforcement problems. No comments were received during the public comment period when this regulation was initially proposed.

Job Impact Statement

Existing section 190.36 of 6 NYCRR will be amended to correct a mistake in the description of the Kaaterskill Falls Riparian Area which lists Kaaterskill Creek bed instead of Spruce Creek bed, the correct location identifier. A Job Impact Statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed regulation will correct a mistake in the description, which if left uncorrected can affect enforcement of this regulation.

Department of Health

NOTICE OF ADOPTION

Early Intervention Program

I.D. No. HLT-28-17-00009-A

Filing No. 1078

Filing Date: 2018-11-14

Effective Date: 2018-12-05

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

Action taken: Amendment of Subpart 69-4 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2559-b

Subject: Early Intervention Program.

Purpose: To conform existing program regulations to Federal regulations and State statute.

Substance of final rule: This notice of proposed rulemaking amends 10 NYCRR Subpart 69-4, which governs the Early Intervention Program (EIP), to: conform to federal regulations issued by the U.S. Department of Education (34 CFR Parts 300 and 303) and recent amendments to Title II-A of Article 25 of the Public Health Law (PHL). The proposed amendments also streamline conflict of interest provisions on evaluation and service coordinator providers, clarify qualifications of service coordination providers, and add licensed behavior analysts and certified behavior analyst assistants to the list of qualified personnel for the Early Intervention Program.

Section 69-4.1(a) is amended to revise the definition of "approval" to conform to statutory amendments. A new subdivision (b) is added to define "approved provider."

Subdivisions (n) and (p) of section 69-4.1 are relettered (o) and (q) respectively and are amended to conform to federal regulations. Specifically, the amendments distinguish between the evaluation and the initial evaluation to determine eligibility; and conform the definition of "family assessment."

Subdivision (ad) of section 69-4.1 is relettered (ae) and amended to clarify the definition of "multidisciplinary."

Paragraph (2) of the relettered (ak) of section 69-4.1 is amended to revise the definition of "individual provider" to conform to statutory amendments that authorized the Department to approve and enter into agreements with providers and that eliminated the requirement that municipalities contract with providers directly. A new paragraph (3) is added to define "payee provider" as an approved provider that shall directly bill third party and governmental payers for early intervention services in the first instance through the Department's fiscal agent.

Section 69-4.1(ak) is relettered subdivision (al) and paragraphs (4) and (5) are added to include licensed behavior analysts and certified behavior analyst assistants to the list of qualified personnel for the EIP.

Subparagraph (ii) of section 69-4.3(a)(1) is amended to reflect that a screening may be provided or that medical records may be reviewed for a child referred to the Early Intervention Program.

Subparagraph (ii) of section 69-4.3(a)(3) is amended to remove a reference to a program that no longer exists and to change the requirement of providing a telephone number to providing "contact information."

Subdivision (e) is added to section 69-4.3 to require primary referral sources to complete and transmit a referral form and, with parental consent, to transmit information sufficient to document the primary referral source's concern or basis for suspecting the child has a disability.

Subparagraph (v) is added to section 69-4.4(a)(1) to add licensure, certification, or registration in certain professions as acceptable minimum qualifications for service coordinators.

Section 69-4.4(b)(1) is amended to conform to statutory changes, which require that all providers be approved by the Department.

Section 69-4.5(a)(1) is amended to clarify that payee providers of EIP services must enroll in and, as applicable, be recertified by the Medicaid program and must notify the Department of such recertification on request.

Section 69-4.5(a)(4)(iii), related to a Medicaid provider agreement and the reassignment of Medicaid benefits, is repealed.

Section 69-4.5(a)(6), which prohibits an individual provider from being approved as both an evaluator and a service coordinator, is repealed.

Section 69-4.5(c) is repealed and a new subdivision (c) is added to require providers to notify the Department upon certain changes to ownership or status of the provider agency and to clarify that the Department will determine on receipt of such notice whether re-approval of the agency is required.

Subparagraphs (i)-(ix) of section 69-4.5(e)(1) are being revised to make technical amendments and to conform to statutory amendments that provide the Department with the authority to enter into agreements with providers and eliminate the requirement that municipalities are to contract with providers directly; clarify members of the individualized family service plan (IFSP) team; to streamline conflict of interest provisions relating to marketing; and to clarify that health insurance subject to New York State Insurance Law may be billed.

Paragraphs (2) and (3) of section 69-4.5(e) have been revised to make technical amendments. Paragraph (2) of this section has also been amended to add referral sources to the list of people who may not receive an incentive from a provider or agency.

Subdivision (f) of section 69-4.5 is amended, opening paragraph of subdivision (h) is amended, and subdivisions (h)(1) and (h)(2) are repealed, to conform to statutory amendments that provide the Department with the authority to enter into agreements with providers and eliminated the requirement that municipalities contract with providers directly.

Section 69-4.5(i) is repealed to conform to statutory amendments that eliminated the State Education Department's (SED) responsibility to approve providers to participate in the EIP.

Section 69-4.6(d) is amended and paragraphs (1), (2), and (3) are added to conform to statutory amendments related to procedures for obtaining children's third party coverage information and written referrals to establish medical necessity.

Section 69-4.7(g)(3) is amended to conform to statutory amendments that require providers to directly bill third party and governmental payers for early intervention services and specifies that unregulated insurers will not be billed for early intervention services.

Subdivision (m) is added to section 69-4.7 to conform to statutory amendments that require notification, with parent consent, to the Office of People with Developmental Disabilities (OPWDD) developmental disabilities regional office of a child's potential eligibility for OPWDD services.

Section 69-4.8 is repealed and replaced with new section 69-4.8, titled "Evaluation and Screening of the Child and Assessment of the Child and Family," to conform to revisions to federal regulations. The proposed new section includes: procedures that apply when a qualified evaluator administers a screening or conducts a multidisciplinary evaluation; the parent's right to request a multidisciplinary evaluation at any time; the use of medical and other records to establish a child's eligibility for the EIP without conducting an evaluation; when a multidisciplinary assessment is appropriate; the use of informed clinical opinion as one factor to establish

a child's eligibility for the EIP; and the voluntary family-directed assessment.

Section 69-4.9(c) is amended to conform to statutory amendments that provide the Department authority to enter into agreements with providers.

Section 69-4.9(g)(6) is amended to conform to statutory amendments that require providers to directly bill third party payers prior to billing governmental payers for EIP services rendered; to clarify documentation required of providers to support claims submitted; and to make technical amendments.

Subdivisions (a)(2) and (a)(3) of section 69-4.11 are repealed and replaced with new subdivisions (a)(2) and (a)(3) to conform the requirements for IFSP meeting participants to federal regulations.

Section 69-4.11(a)(7)(ii)(a) is amended and subdivisions (a)(7)(ii)(b) through (d) and (b)(3) are repealed to streamline conflict of interest procedures related to EIP providers conducting evaluations and delivering services. The proposed regulation clarifies that an evaluator who conducts an evaluation of a child, or the approved agency which employs or contracts with the evaluator, may deliver EIP services to the child unless the Early Intervention Official provides documentation justifying why this would not be in the best interest of the child and family.

Section 69-4.11(b)(3) is repealed and paragraphs (4) and (5) of section 69-4.11(b) are renumbered (3) and (4).

Subdivisions (a) and (b) of section 69-4.12 are repealed, subdivision (c) is relettered subdivision (e) and new subdivisions (a), (b), (c), and (d) are added. These proposed amendments make technical amendments and conform to statutory amendments that assign new responsibilities to municipalities for monitoring of providers and procedures for monitoring of providers.

Relettered subdivision (e) of section 69-4.12 is amended to provide that municipalities continue to have the authority to audit providers that conduct evaluations and provide early intervention services.

Paragraph (1) of section 69-4.14(a) has been repealed.

Section 69-4.16(d) is amended to conform to federal regulations that require the appointment of a surrogate parent within 30 days after the EIO makes a determination of the child's need for a surrogate parent.

Paragraphs (4) and (5) of subdivision (f) of section 69-4.16 are amended and a new paragraph (6) is added to conform to federal regulations pertaining to the appointment of a surrogate parent.

Section 69-4.17(b)(1)(i)(c) is amended to include examples of procedural safeguards available under the EIP in reference to a written notice to parents by the EIO.

Section 69-4.17(b)(2)(ii) is amended to include a reference to the IFSP team members in relation to disagreements on an IFSP.

Paragraphs (1) and (2) are added to section 69-4.17(c) to conform to federal regulations on content of notice to parents regarding personally identifiable information. Additional amendments to section 69-4.17(c) include technical changes. Current paragraphs (1) through (6) are renumbered (3) through (8).

Subdivisions (d)(1), (d)(3) and (e) of section 69-4.17 are amended to conform to federal regulations concerning access and amendments to records. These amendments clarify when providers may assume the parent has authority to inspect and review records pertaining to his or her child. The amendment also clarifies the right to request amendments apply to information pertaining to the parent, as well as the child. Additionally, section 69-4.17(e)(3)(ii) is amended to clarify that a parent has a right to an administrative hearing when the parent disagrees with a declination to amend a record.

Subparagraphs (vii) and (ix) of section 69-4.17(e)(4) are amended to conform to federal regulations on minimum requirements for administrative hearings to amend the child's record.

Section 69-4.17(g)(3), on requirements for mediation procedures, is amended to conform to federal regulations, which clarify that the mediation process cannot be used to deny or delay a parent's right to an impartial hearing, or deny any other due process rights afforded to the parent; and that a written, signed mediation agreement resulting from a successful full or partial resolution is a legally binding document enforceable in any State court of competent jurisdiction or in a district court of the United States.

Section 69-4.17(g)(13)(i)(a) is amended to further clarify that the written agreement must state that all discussions that occurred during the mediation process will remain confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding.

Section 69-4.17(h)(7) is amended to conform to federal regulations that allow the hearing officer assigned to an impartial hearing to grant specific extensions of time beyond the federally-required timeframe of 30 days at the request of either party.

Section 69-4.22(a) is amended, new paragraphs (1) to (4) are added to subdivision (a), subdivisions (b) and (c) are repealed, and subdivision (d) is relettered to subdivision (b), to conform to statutory amendments that require EIP providers to bill third party payers in the first instance, using the Department's fiscal agent. The proposed provisions include subrogation of a provider to a child's and family's third party reimbursement, including notice to the insurer by the provider; provider use of the Department's fiscal agent for claiming payment for evaluations and services rendered under the EIP; provider enrollment in one or more health care clearinghouses at the request of the Department or the Department's fiscal agent; and timely submission of claims for payment by providers.

Subdivision (a) of subpart 69-4.23 has been amended to conform to federal requirements allowing the use of medical and other records to establish a child's eligibility for the Early Intervention Program.

Paragraphs (5), (9), and (14) of section 69-4.24(a) are amended to conform to statutory amendments that: eliminated SED's responsibility to approve EIP providers; eliminated the requirement that municipalities contract with providers directly; and required providers to bill third party payors.

Section 69-4.24(c) is amended to clarify the residency requirement of the child and to conform to statutory amendments that eliminated the requirement that municipalities contract with providers directly.

Section 69-4.25 is repealed.

Section 69-4.26(a) is amended to update the new reference regarding maintaining early intervention records.

Paragraph 15 of section 69-4.26(a), on municipal claims to third party payors, is repealed.

Subdivision (b)(12), subdivision (c) of section 69-4.26 are amended to conform to statutory amendments that: require providers to bill third party payers in the first instance; provide the Department with the authority to enter into agreements with providers; and eliminate the requirement that municipalities contract with providers directly.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 69-4.3, 69-4.4, 69-4.5, 69-4.6, 69-4.8, 69-4.26 and 69-4.30.

Revised rule making(s) were previously published in the State Register on August 1, 2018.

Text of 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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2023, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department of Health ("Department") received comments from various stakeholders including but not limited to Early Intervention (EI) provider agencies, EI associations, professional associations, and members of the New York State Assembly. The most common comments related to the appointment of surrogates, service authorization, screenings, assessments, written referrals, and the verification of insurance information on a quarterly basis. Based on the comments received, the Department has made minor technical revisions to the proposed rulemaking that were not substantive.

Higher Education Services Corporation

EMERGENCY RULE MAKING

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

I.D. No. ESC-49-18-00003-E
Filing No. 1079
Filing Date: 2018-11-15
Effective Date: 2018-11-15

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

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

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

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2015 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides New York high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in New York State. Five thousand awards, of $500 each, will be granted annually in 2015-16 and 2016-17. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately so that students can make informed choices and in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

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

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

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

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

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

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

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

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

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

(b) Eligibility. An applicant must:

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

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

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

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

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

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

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

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

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

(d) Administration.

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

(2) Recipients of an award shall:

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

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

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

(e) Awards.

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 12, 2019.

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

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer The New York State Achievement and Investment in Merit Scholarship (NY-AIMS), hereinafter referred to as "Program", is codified within Article 14 of the Education Law. In particular, Part Z of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-g to the Education Law. Subdivision 6 of section 669-g of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

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

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

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

Legislative objectives:

The Education Law was amended to add a new section 669-g to create The New York State Achievement and Investment in Merit Scholarship (NY-AIMS). The objective of this Program is to grant merit-based scholarship awards to New York State high school graduates who achieve academic excellence.

Needs and benefits:

The cost to attain a postsecondary degree has increased significantly over the years; alongside this growth, the financing of that degree has become increasingly challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. All federal student financial aid and a majority of state student financial aid programs are conditioned on economic need. Despite stagnant growth in household incomes, there continues to be far fewer academically-based financial aid programs, which are awarded to students regardless of assets or income. This has resulted in more limited financial aid options for those who are ineligible for need-based aid. Concurrently, greater numbers of students

are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with student loan debt averaging $29,400. Many of these students feel burdened by their college loan debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement.

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

Costs:

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

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

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

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

Local government mandates:

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

Paperwork:

This proposal will require applicants to file an electronic application for eligibility and payment together with supporting documentation.

Duplication:

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

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 669-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal definitions/methodology concerning unmet need, expected family contribution, and cost of attendance.

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State, which benefits rural areas around the State as well.

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

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State and possibly seek employment opportunities in the State as well, which will benefit the State.

EMERGENCY RULE MAKING

New York State Get on Your Feet Loan Forgiveness Program

I.D. No. ESC-49-18-00004-E

Filing No. 1080

Filing Date: 2018-11-15

Effective Date: 2018-11-15

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

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

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

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible applicants. The statute provides for student loan relief to such college graduates who continue to live in New York State upon graduation, earn less than $50,000 per year, participate in either the federal Pay as You Earn (PAYE) or Income Based Repayment (IBR) program, which cap a federal student loan borrower's payments at 10 percent of discretionary income, and apply for this program within two years after graduating from college. Eligible applicants will have up to twenty-four payments made on their behalf towards their federal income-based repayment plan commitment. For those students who graduated in December 2014, their first student loan payment will become due upon the expiration of their grace period in June 2015. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately in order for HESC to process applications so that timely payments can be made on behalf of program recipients. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Get on Your Feet Loan Forgiveness Program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) work in the State, if employed. A member of the military who is on active duty and for whom New York is his or her legal state of residence shall be deemed to be employed in NYS;

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

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

(c) Administration.

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

(2) A recipient of an award shall:

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

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

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

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

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

(d) Amounts and duration.

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

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

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

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

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

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

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

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

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

(3) Repayment must be made within five years.

(4) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, waive or defer payment, extend the repayment period, or take such other appropriate action.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 12, 2019.

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

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Get on Your Feet Loan Forgiveness Program ("Program") is codified within Article 14 of the Education Law. In particular, Part C of Chapter 56 of the Laws of 2015 created the Program by adding a new section 679-g to the Education Law. Subdivision 4 of section 679-g of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

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

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

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

Legislative objectives:

The Education Law was amended to add a new section 679-g to create the "New York State Get on Your Feet Loan Forgiveness Program" (Program). The objective of this Program is to ease the burden of federal student loan debt for recent New York State college graduates.

Needs and benefits:

More than any other time in history, a college degree provides greater opportunities for graduates than is available to those without a postsecondary degree. However, financing that degree has also become more challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. More students than ever are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with debt, which averages $29,400. Many of these students feel burdened by debt, especially as they seek to start a family,

buy a home, launch a business, or save for retirement. To ensure that student debt is manageable, the federal government enacted income-driven repayment plans, such as the Pay as You Earn (PAYE) plan, which caps a federal student loan borrower's payments at 10 percent of income.

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

Costs:

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

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

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

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

Local government mandates:

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

Paperwork:

This proposal will require applicants to file an electronic application for eligibility and payment together with supporting documentation.

Duplication:

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

Alternatives:

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

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government. Since this Program is intended to supplement federal repayment programs, efforts were made to align the Program with the federal programs.

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits rural areas around the State as well.

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

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits the State as well.

EMERGENCY RULE MAKING

New York State Teacher Loan Forgiveness Program

I.D. No. ESC-49-18-00005-E

Filing No. 1081

Filing Date: 2018-11-15

Effective Date: 2018-11-15

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

Action taken: Addition of section 2201.21 to Title 8 NYCRR.

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

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 2201.21 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 loan forgiveness awards to be made to teachers serving in high need school districts or subject areas for which a shortage of teachers exits. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible applicants. Eligible applicants will receive up to $5,000 per year for up to four years in loan forgiveness payments. Since individuals must apply after the completion the school year, which ends in June, it is critical that the terms of this program as provided in the regulation be effective immediately in order for HESC to process applications and make payments timely. 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 Teacher Loan Forgiveness Program.

Purpose: To implement The New York State Teacher Loan Forgiveness Program.

Text of emergency rule: New section 2201.21 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.21 The New York State Teacher Loan Forgiveness Program.

(a) Definitions. For purposes of this section and Education Law, section 679-j, the following definitions shall apply:

(1) Award shall mean a New York State Teacher Loan Forgiveness Program award pursuant to section 679-j of the New York State Education Law.

(2) Corporation shall mean the New York State Higher Education Services Corporation.

(3) Department shall mean the New York State Education Department.

(4) Economically disadvantaged shall mean applicants whose household adjusted gross income is at or below 250 percent of the federal poverty level for the most recent calendar year available.

(5) Elementary and secondary school shall mean pre-kindergarten through grade 12 in a public or private school recognized by the board of regents of the university of the state of New York, including charter schools authorized pursuant to article 56 of the Education Law and programs provided by Boards of Cooperative Educational Services (BOCES) on behalf of such schools.

(6) Full time shall mean employment as a teacher in an elementary or secondary school in New York State for at least 10 continuous months, each school year, for a number of hours to be determined by either the school district, school board or school, the by-laws thereof, the labor contract between the teacher and employer, or if none of the above apply, the chief administrator of the school, except for an allowable interruption of full time employment.

(7) Interruption of full time employment shall mean an allowable temporary leave for a definitive length of time due to circumstances approved by the corporation, including, but not limited to, parental leave, medical leave, death of a family member, or military duty that exceeds forty-two calendar days, excluding legal holidays, regardless of whether such absence or leave is paid or unpaid.

(8) Household adjusted gross income shall mean the federal Adjusted Gross Income (AGI) for individuals or married couples filing jointly, or the aggregate AGI of married couples filing separately, reduced by a cost of living allowance, which shall be equal to the applicant's eligible New York State standard deductions plus their eligible New York State dependent exemptions for personal income tax purposes.

(9) Outstanding student loan debt shall mean the total cumulative student loan balance required to be paid by the applicant at the time of selection for an award under this program, including the outstanding principal and any accrued interest covering the cost of attendance to obtain an undergraduate or graduate degree from a college or university. Such outstanding student loan debt may be reduced as provided in subparagraph (iii) of paragraph (3) of subdivision (c) of this section.

(10) Program shall mean the New York State Teacher Loan Forgiveness Program.

(11) School year shall mean the period commencing on the first day of July in each year and ending on the 30th day of June next following.

(12) Teacher shall mean a New York State certified teacher providing instruction in an elementary or secondary school including enrichment and supplemental instruction that may be offered to a subset of students as well as support services such as counseling, speech and occupational therapy services.

(b) Eligibility. Applicants and recipients must:

(1) satisfy the requirements provided in section 679-j(2) of the Education Law. Recipients who continue to teach the same subject or in the same district, as the case may be, which qualified them for the award when they originally applied for this program remain eligible for subsequent award payments if the originally qualifying subject or district ceases to be designated as a subject shortage area or hard to staff district;

(2) be in a non-default status on a student loan made under any statutory New York State or federal education loan program or repayment of any award made pursuant to Article 14 of the Education Law; and

(3) be in compliance with the terms of any service condition imposed by an award made pursuant to article 14 of the Education Law.

(c) Administration.

(1) An applicant for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation on or before the date prescribed by the corporation; and

(ii) submit additional documentation evidencing eligibility, as requested by the corporation.

(2) A recipient of an award shall:

(i) confirm employment as a certified teacher each year on forms or in a manner prescribed by the corporation;

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

(iii) receive no more than five thousand dollars per year for not more than four years in duration, and not to exceed the total amount of such recipient's outstanding student loan debt as defined in paragraph (9) of subdivision (a) of this section.

(3) The outstanding student loan debt shall:

(i) include New York State student loans, federal government student loans, and private student loans for the purpose of financing undergraduate or graduate studies made by commercial entities subject to governmental examination.

(ii) exclude federal parent PLUS loans; loans cancelled under any program; private loans given by family or personal acquaintances; student loan debt paid by credit card; loans paid in full, or in part, before, on, or after the first successful application for program eligibility under this program; loans for which documentation is not available; loans without a promissory note; or any other loan debt that cannot be verified by the corporation.

(iii) be reduced by any reductions to student loan debt that an applicant has received or shall receive including voluntary payments made which reduces the balance owed.

(d) Award selection. All awards are contingent upon annual appropriations. Awards shall be distributed in accordance with Education Law, section 679-j(4). In the event there is insufficient funding to make awards within any given priority, recipients shall be chosen by lottery. In the event that a lottery is necessary, economically disadvantaged applicants and recipients who taught in a subject shortage area or hard to staff district during the prior school year but are not currently teaching in either a subject shortage area or a hard to staff district, will be given third priority.

(e) Revocation. Upon prior notice to a recipient, an award may be revoked by the corporation if the corporation determines that the recipient has failed to comply with the requirements to maintain their award, as evidenced by:

(1) a failure to apply for payment or reimbursement;

(2) a failure to respond to requests to contact or communication with the corporation;

(3) a failure to respond to a request for information; or

(4) any other information known to the corporation reasonably evidencing an indication of failure to comply with program requirements by a program participant.

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 February 12, 2019.

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 Teacher Loan Forgiveness Program (Program) is codified within Article 14 of the Education Law. Specifically, Part AA of Chapter 56 of the Laws of 2018 created the Program by adding a new section 679-j to the Education Law. Pursuant to subdivision 6 of section 679-j of the Education Law, HESC is required to promulgate rules and regulations for the administration of this Program.

Pursuant to Education Law § 652(2), HESC was established for 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:

This Program was created to retain and/or increase the number elementary and secondary school teachers serving in New York State.

Needs and benefits:

Data from New York State United Teachers (NYSUT) suggests a teacher shortage is on the horizon for New York State, as well as nationally, due in part to many educators being on the verge of retirement (32 percent within the next 5 years) and a significant drop in recent years of students enrolling in teacher training programs (49 percent decrease since 2009). Further, approximately 10 percent of New York's teacher education graduates are leaving the state for employment elsewhere and 11 percent

of New York teachers leave their school or profession annually; this number increases for early career teachers and those working in high-poverty areas. Former State University of New York (SUNY) Chancellor, Nancy Zimpher, predicts New York will need more than 180,000 new teachers in the next decade and the U.S. Department of Education projects New York's student enrollment will grow by 2 percent by 2024, with high-need school districts experiencing the largest increases.

In November 2013, the State Education Department (SED) reported the following statewide teacher shortage areas between 2010 and 2014: bilingual education, chemistry, career and technical education (CTE), earth science, English language learners, languages other than English, library and school media specialist, physics, special education, special education – bilingual, special education – science certification, and technology education. In New York City, SED identified shortage areas that include the arts, biology, chemistry, CTE, English, health education, library media specialist and mathematics. Evidence shows that New York's current teacher shortages are hitting urban and rural districts the hardest. At a meeting with NYSUT leaders, SED Commissioner MaryEllen Elia said finding ways to recruit and retain teachers must be front and center.

According to a report issued in August 2016 by the U.S. Department of Education and a report issued in May 2017 by the New York State School Board Association (NYSSBA), teacher shortages in New York are not widespread for all subject areas and geographical areas, but rather are concentrated in a handful of subjects and regions of the state, most notably science, special education, foreign languages, mathematics, and English instruction for students whose primary language is not English. In response, the Program is aimed at retaining and/or increasing the number of elementary and secondary teachers serving in hard to staff districts or subject shortage areas across the State by alleviating their student loan burden. Eligible recipients will receive up to $5,000 annually over four years.

Costs:

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

b. The estimated cost to the agency for the implementation of, or continuing compliance with, this rule is $341,850.

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

d. Costs to the State shall not exceed available New York State budget appropriations for the Program. The 2018-19 State Budget contained an appropriation for this Program in the sum of $250,000.

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 another special district.

Paperwork:

This proposal will require applicants to file an electronic web application to determine eligibility and an electronic application for each year they wish to receive an award payment for up to four years.

Duplication:

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

Alternatives:

Given the statutory language as set forth in section 679-j(6) 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 2201.21 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 a negative 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 by providing loan forgiveness benefits to teachers serving in high need school districts or subject areas for which a shortage of teachers exits. Providing these benefits will encourage individuals to pursue and/or maintain careers as elementary and secondary school teachers throughout New York State, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add new section 2201.21 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

HESC finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas. Rather, it has potential positive impacts by providing loan forgiveness benefits to teachers serving in high need school districts or subject areas for which a shortage of teachers exits. Providing these benefits will encourage individuals to pursue and/or remain in careers as elementary and secondary school teachers benefitting rural communities throughout New York State.

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 2201.21 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 a negative impact on jobs or employment opportunities. Rather, it has potential positive impacts by providing loan forgiveness benefits to teachers serving in high need school districts or subject areas for which a shortage of teachers exits. Providing these benefits will encourage individuals to pursue and/or remain in careers as elementary and secondary school teachers throughout New York State.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Appointment of a Temporary Operator

I.D. No. PSC-49-18-00006-EP

Filing Date: 2018-11-16

Effective Date: 2018-11-16

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

Proposed Action: The Commission, on November 15, 2018, appointed Suez Water New York, Inc. temporary operator of the Boniville Water Company, Inc. and Knolls Water Co., Inc. water systems.

Statutory authority: Public Service Law, sections 89-b, 89-c and 112-a

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

Specific reasons underlying the finding of necessity: Boniville Water Company, Inc. and Knolls Water Co., Inc. have failed to provide safe and adequate service for a sustained period of time and lack the technical, financial, or managerial capacity or ability to provide such service.

Subject: Appointment of a temporary operator.

Purpose: To determine if a temporary operator is needed to ensure the safe and adequate provision of water service.

Substance of emergency/proposed rule: The Public Service Commission, on November 15, 2018, adopted an order appointing Suez Water New York, Inc. temporary operator of the Boniville Water Company, Inc. (Boniville) and Knolls Water Co., Inc. (Knolls) water systems, finding that Boniville and Knolls have failed to provide safe and adequate service and lack the technical, financial, or managerial capacity or ability to do so, as demonstrated by unpaid bills, Department of Health violations and multiple boil water notices.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 13, 2019.

Text of rule may be obtained from: 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, Department of Public Service, 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(18-W-0545EP1)

NOTICE OF ADOPTION

Complaint Challenging Billing Practices for the Extension of Electric Service to New Developments

I.D. No. PSC-33-17-00013-A
Filing Date: 2018-11-19
Effective Date: 2018-11-19

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

Action taken: On 11/15/18, the PSC adopted an order denying United Residential Group, LLC (United) and Fortress Partners, LLC's (Fortress) complaint challenging Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) billing practices.

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

Subject: Complaint challenging billing practices for the extension of electric service to new developments.

Purpose: To deny United and Fortress' complaint challenging National Grid's billing practices.

Substance of final rule: The Commission, on November 15, 2018, adopted an order denying United Residential Group, LLC (United) and Fortress Partners, LLC's (Fortress) complaint challenging Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) billing practices for the extension of electric service to new developments. National Grid is directed to file a report within 60 days of the date of this order explaining its processes for reviewing applications for extensions of its electric system, as set forth in the body of this Order, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(17-E-0413SA1)

NOTICE OF ADOPTION

Proposal for an E-DPA Program

I.D. No. PSC-09-18-00013-A
Filing Date: 2018-11-15
Effective Date: 2018-11-15

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

Action taken: On 11/15/18, the PSC adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s (Con Edison) proposal to establish an electronic deferred payment agreement (e-DPA) program.

Statutory authority: Public Service Law, sections 37 and 66

Subject: Proposal for an e-DPA program.

Purpose: To approve, with modifications, Con Edison's proposal to establish an e-DPA program.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s proposal to establish an electronic deferred payment agreement program, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(16-M-0501SA2)

NOTICE OF ADOPTION

Residential Electric Vehicle Charging

I.D. No. PSC-17-18-00012-A
Filing Date: 2018-11-15
Effective Date: 2018-11-15

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

Action taken: On 11/15/18, the PSC adopted an order directing New York State Electric & Gas Corporation (NYSEG) to file a cancellation supplement for earlier tariff amendments and to file new tariff revisions.

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

Subject: Residential Electric Vehicle Charging.

Purpose: To direct NYSEG to file a cancellation supplement for earlier tariff amendments and to file new tariff revisions.

Substance of finale rule: The Commission, on November 15, 2018, adopted an order directing New York State Electric & Gas Corporation to file a cancellation supplement for earlier tariff amendments to address Public Service Law § 66-o – Residential Electric Vehicle Charging, effective on not less than one day's notice, on or before November 28, 2018, cancelling the tariff amendments listed in the Appendix, and to file newer tariff amendments consistent with the discussion in the body of this Order on not less than 90 days' notice, to become effective on April 1, 2019, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(18-E-0206SA2)

NOTICE OF ADOPTION

Residential Electric Vehicle Charging

I.D. No. PSC-17-18-00013-A
Filing Date: 2018-11-15
Effective Date: 2018-11-15

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

Action taken: On 11/15/18, the PSC adopted an order directing Rochester Gas & Electric Corporation (RG&E) to file a cancellation supplement for earlier tariff amendments and to file new tariff revisions.

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

Subject: Residential Electric Vehicle Charging.

Purpose: To direct RG&E to file a cancellation supplement for earlier tariff amendments and to file new tariff revisions.

Substance of final rule: The Commission, on November 15, 2018, adopted an order directing Rochester Gas & Electric Corporation to file a cancellation supplement for earlier tariff amendments to address Public Service Law § 66-o – Residential Electric Vehicle Charging, effective on not less than one day's notice, on or before November 28, 2018, cancelling the tariff amendments listed in the Appendix, and to file newer tariff amendments consistent with the discussion in the body of this Order on not less than 90 days' notice, to become effective on April 1, 2019, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.
Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.
Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(18-E-0206SA3)

NOTICE OF ADOPTION

Residential Electric Vehicle Charging

I.D. No. PSC-17-18-00014-A
Filing Date: 2018-11-15
Effective Date: 2018-11-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: On 11/15/18, the PSC adopted an order directing Central Hudson Gas & Electric Corporation (Central Hudson) to file a cancellation supplement for earlier tariff amendments and to file new tariff revisions.
Statutory authority: Public Service Law, sections 5, 65 and 66
Subject: Residential Electric Vehicle Charging.
Purpose: To direct Central Hudson to file a cancellation supplement for earlier tariff amendments and to file new tariff revisions.
Substance of final rule: The Commission, on November 15, 2018, adopted an order directing Central Hudson Gas & Electric Corporation to file a cancellation supplement for earlier tariff amendments to address Public Service Law § 66-o – Residential Electric Vehicle Charging, effective on not less than one day's notice, on or before November 28, 2018, cancelling the tariff amendments listed in the Appendix, and to file newer tariff amendments consistent with the discussion in the body of this Order on not less than 90 days' notice, to become effective on April 1, 2019, subject to the terms and conditions set forth in the order.
Final rule as compared with last published rule: No changes.
Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.
Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(18-E-0206SA1)

NOTICE OF ADOPTION

Residential Electric Vehicle Charging

I.D. No. PSC-18-18-00008-A
Filing Date: 2018-11-15
Effective Date: 2018-11-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: On 11/15/18, the PSC adopted an order directing Orange and Rockland Utilities, Inc. (O&R) to file tariff amendments addressing Public Service Law section 66-o – Residential Electric Vehicle Charging.
Statutory authority: Public Service Law, sections 5, 65 and 66
Subject: Residential Electric Vehicle Charging.
Purpose: To direct O&R to file tariff amendments addressing Public Service Law section 66-o – Residential Electric Vehicle Charging.
Substance of final rule: The Commission, on November 15, 2018, adopted an order directing Orange and Rockland Utilities, Inc. to file tariff amendments to address Public Service Law § 66-o – Residential Electric Vehicle Charging, consistent with the discussion in the body of this Order on not less than 90 days' notice, to become effective on April 1, 2019, subject to the terms and conditions set forth in the order.
Final rule as compared with last published rule: No changes.
Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.
Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(18-E-0206SA5)

NOTICE OF ADOPTION

Residential Electric Vehicle Charging

I.D. No. PSC-18-18-00011-A
Filing Date: 2018-11-15
Effective Date: 2018-11-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: On 11/15/18, the PSC adopted an order directing Consolidated Edison Company of New York, Inc. (Con Edison) to file tariff amendments regarding residential time-of-use (TOU) rates customer charges.
Statutory authority: Public Service Law, sections 5, 65 and 66
Subject: Residential Electric Vehicle Charging.
Purpose: To direct Con Edison to file tariff amendments regarding residential TOU rates customer charges.
Substance of final rule: The Commission, on November 15, 2018, adopted an order directing Consolidated Edison Company of New York, Inc. to file tariff amendments to address Public Service Law § 66-o – Residential Electric Vehicle Charging, consistent with the discussion in the body of this Order regarding residential time-of-use (TOU) rates customer charges on not less than 90 days' notice, to become effective on April 1, 2019, subject to the terms and conditions set forth in the order.
Final rule as compared with last published rule: No changes.
Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.
Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(18-E-0206SA4)

NOTICE OF ADOPTION

Residential Electric Vehicle Charging

I.D. No. PSC-18-18-00012-A
Filing Date: 2018-11-15
Effective Date: 2018-11-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: On 11/15/18, the PSC adopted an order directing Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) to file tariff amendments regarding residential time-of-use (TOU) rates customer charges.
Statutory authority: Public Service Law, sections 5, 65 and 66
Subject: Residential Electric Vehicle Charging.
Purpose: To direct National Grid to file tariff amendments regarding residential TOU rates customer charges.
Substance of final rule: The Commission, on November 15, 2018, adopted an order directing Niagara Mohawk Power Corporation d/b/a National Grid to file tariff amendments to address Public Service Law § 66-o – Residential Electric Vehicle Charging, consistent with the discussion in the body of this Order regarding residential time-of-use (TOU) rates customer charges on not less than 90 days' notice, to become effective on April 1, 2019, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0206SA6)

NOTICE OF ADOPTION

Motion for Clarification and Clarifying Revisions

I.D. No. PSC-18-18-00013-A

Filing Date: 2018-11-19

Effective Date: 2018-11-19

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

Action taken: On 11/15/18, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Edison) motion for clarification of the January 19, 2018 Order Approving Tariff Amendments with Modifications and to make clarifying revisions.

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

Subject: Motion for clarification and clarifying revisions.

Purpose: To approve Con Edison's motion for clarification and clarifying revisions.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Edison) motion for clarification of the January 19, 2018 Order Approving Tariff Amendments with Modifications and to make clarifying revisions. Con Edison is directed to file electric tariff amendments consistent with the discussion in the body of this Order and as set forth in the Appendix, on not less than five days' notice, to become effective on December 1, 2018, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(16-E-0060SA5)

NOTICE OF ADOPTION

Appointment of Temporary Operator

I.D. No. PSC-23-18-00015-A

Filing Date: 2018-11-19

Effective Date: 2018-11-19

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

Action taken: On 11/15/18, the PSC adopted an order appointing New York American Water Company, Inc. (NYAW) as the temporary operator of the Painted Apron Water Company (Painted Apron).

Statutory authority: Public Service Law, sections 89-b and 112-a

Subject: Appointment of temporary operator.

Purpose: To appoint NYAW as the temporary operator of Painted Apron.

Substance of final rule: The Commission, on November 15, 2018, adopted an order appointing New York American Water Company, Inc. (NYAW) as the temporary operator of the Painted Apron Water Company (Painted Apron). As a temporary operator, NYAW is authorized to operate and manage Painted Apron in compliance with the tariff approved and on file with the Commission and with statutory and regulatory requirements, in accordance with the discussion in the body of this Order. NYAW shall have the authority to bill customers under its own name and instruct customers to pay it directly. NYAW is directed to notify the customers of Painted Apron by direct mail or by means of a bill insert of the Commission's decision in this proceeding and to file a copy of the notification with the Secretary to the Commission within 45 days of this Order. The Painted Apron Water Committee shall promptly provide NYAW with access to all property, books, and records necessary for the operation of the water system, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-W-0302SA1)

NOTICE OF ADOPTION

Minor Rate Filing

I.D. No. PSC-28-18-00007-A

Filing Date: 2018-11-19

Effective Date: 2018-11-19

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

Action taken: On 11/15/18, the PSC adopted an order authorizing Dudley Water Supply, Inc. (Dudley) to increase its annual revenues by $13,183 or 32.8%, to become effective on December 1, 2018.

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

Subject: Minor rate filing.

Purpose: To authorize Dudley to increase its annual revenues.

Substance of final rule: The Commission, on November 15, 2018, adopted an order authorizing Dudley Water Supply, Inc. (Dudley) to increase its annual revenues by $13,183 or 32.8%. The tariff amendments filed by Dudley and listed in Appendix A are authorized to become effective on December 1, 2018, provided that Dudley files further tariff revisions establishing the approved rates shown in Appendix F, on not less than three days' notice, to become effective December 1, 2018, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-W-0382SA1)

NOTICE OF ADOPTION

Transfer of Utility Pole Ownership

I.D. No. PSC-28-18-00010-A

Filing Date: 2018-11-16

Effective Date: 2018-11-16

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

Action taken: On 11/15/18, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) petition for authority to transfer ownership of 1,688 Joint Use Poles to Verizon New York Inc. (Verizon).

Statutory authority: Public Service Law, sections 65, 66 and 70

Subject: Transfer of utility pole ownership.

Purpose: To approve O&R's petition for authority to transfer ownership of 1,688 Joint Use Poles to Verizon.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving Orange and Rockland Utilities, Inc.'s petition for authority to transfer ownership of 1,688 Joint Use Poles to Verizon New York Inc. O&R is directed to file, with the Secretary, within 60 days of the final transfer of the Joint Use Poles to Verizon, a copy of the actual journal entries recorded to account for this transaction, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0327SA1)

NOTICE OF ADOPTION

Debt Financing

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

Filing Date: 2018-11-16

Effective Date: 2018-11-16

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

Action taken: On 11/15/18, the PSC adopted an order approving New York Independent System Operator, Inc.'s (NYISO) petition to incur indebtness.

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

Subject: Debt financing.

Purpose: To approve NYISO's petition to incur indebtness.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving New York Independent System Operator, Inc.'s (NYISO) petition to incur indebtness. NYISO is authorized to extend for an additional year, to December 31, 2019, the draw period of its currently approved $30 million credit facility dedicated to funding the replacement of its Energy Management System and Business Management System, with all other terms and conditions of the existing debt instrument remaining the same. NYISO is authorized to enter into a new five-year $30 million revolving line of credit through December 31, 2023, including an additional $20 million that can be made available upon request. NYISO is authorized to enter into a new five-year $90 million unsecured term loan facility dedicated to funding capital investments, software development projects, and other strategic initiatives through December 31, 2023, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0439SA1)

NOTICE OF ADOPTION

Lightened Regulatory Regime

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

Filing Date: 2018-11-15

Effective Date: 2018-11-15

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

Action taken: On 11/15/18, the PSC adopted an order approving Cassadaga Wind LLC's (Cassadaga) petition for a lightened ratemaking regulatory regime.

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

Subject: Lightened Regulatory Regime.

Purpose: To approve Cassadaga's petition for a lightened ratemaking regulatory regime.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving Cassadaga Wind LLC's (Cassadaga) petition for a lightened ratemaking regulatory regime, in connection with the approximately 126 MW wind electric generating facility that Cassadaga is developing in Chautauqua County, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0399SA1)

NOTICE OF ADOPTION

Transfer of Gas Pipeline, Rate Recovery and a Lightened Regulatory Regime

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

Filing Date: 2018-11-19

Effective Date: 2018-11-19

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

Action taken: On 11/15/18, the PSC adopted an order approving EmKey Transportation (EmKey) and the City of Jamestown Board of Public Utilities' (JBPU) joint petition for the transfer of a gas pipeline and related facilities from EmKey to JPBU.

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

Subject: Transfer of gas pipeline, rate recovery and a lightened regulatory regime.

Purpose: To approve EmKey and JPBU's joint petition for the transfer of a gas pipeline and related facilities from EmKey to JPBU.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving EmKey Transportation (EmKey) and the City of Jamestown Board of Public Utilities' (JBPU) joint petition for the transfer of a pipeline and related facilities used to deliver natural gas solely to JBPU's electric generating station, from EmKey to JBPU. JPBU's request for rate recovery of the costs of purchasing and operating the assets as well as an approval for a lightened and incidental regulatory regime for ownership and operation of the assets are approved, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-M-0401SA1)

NOTICE OF ADOPTION

CCA Program

I.D. No. PSC-34-18-00009-A

Filing Date: 2018-11-15

Effective Date: 2018-11-15

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

Action taken: On 11/15/18, the PSC adopted an order approving Sustainable Westchester, Inc.'s (SW) proposal for the renewal of its Community Choice Aggregation (CCA) Program.

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

Subject: CCA Program.

Purpose: To approve SW's proposal for the renewal of its CCA Program.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving Sustainable Westchester, Inc.'s (Sustainable Westchester) proposal for the renewal of its Community Choice Aggregation (CCA) Program. Sustainable Westchester must hold at least one additional public outreach meeting in each municipality after selecting an Energy Service Company and prior to opt-out letters being mailed to residents and must make a compliance filing or filings prior to mailing the opt-out letters demonstrating that such meetings were held. Sustainable Westchester shall be permitted to add municipalities to its existing CCA program or create new programs, provided it files certifications of each local authorization for CCA formation from each municipality and supplements to the existing Plan appendices, or submits a new appendix, demonstrating that outreach and education consistent with the Master Implementation Plan and applicable Commission Orders, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-M-0224SA17)

NOTICE OF ADOPTION

Administration Budget for the 2019 Compliance Period

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

Filing Date: 2018-11-16

Effective Date: 2018-11-16

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

Action taken: On 11/15/18, the PSC adopted an order approving New York State Energy Research and Development Authority's (NYSERDA) 2019 administration budget for Tier 1 of the Renewable Energy Standard (RES) and Zero-Emissions Credit (ZEC) programs.

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

Subject: Administration budget for the 2019 compliance period.

Purpose: To approve NYSERDA's 2019 administration budget for Tier 1 of the RES and ZEC programs for the 2019 compliance period.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving New York State Energy Research and Development Authority's (NYSERDA) 2019 administration budget for Tier 1 of the Renewable Energy Standard (RES) and Zero-Emissions Credit (ZEC) programs for the 2019 compliance period. NYSERDA is authorized to expend up to $8,602,197 for Salary and Overhead, New York State Cost Recovery Fee, RES/ZEC Technical Support and Clean Energy Standard (CES) System Development, as discussed in the body of this Order. NYSERDA is authorized to repurpose up to $562,149 of previously authorized, but unspent, 2017 CES compliance period funding toward the administration of the 2019 CES compliance period of the RES and ZEC programs. NYSERDA is authorized to repurpose up to $8,040,048 of additional uncommitted System Benefits Charge, Energy Efficiency Portfolio Standard, and/or Renewable Portfolio Standard funds for the administration of the 2019 CES compliance period of the RES and ZEC programs. NYSERDA is directed to identify and quantify any uncommitted 2018 CES compliance period administrative funds that may become available as part of its 2020 CES compliance period administrative budget filing, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(15-E-0302SA36)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-35-18-00007-A

Filing Date: 2018-11-16

Effective Date: 2018-11-16

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

Action taken: On 11/15/18, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Edison) tariff amendments to P.S.C. No. 10—Electricity, modifying the reconciliation of electric Purchase of Receivables (POR) discount rate.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Tariff amendments.

Purpose: To approve Con Edison's tariff amendments to P.S.C. No. 10—Electricity, modifying the reconciliation of POR discount rate.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Edison) tariff amendments to P.S.C. No. 10 – Electricity, modifying the reconciliation of electric Purchase of Receivables (POR) discount rate charged to energy service companies (ESCOs). The tariff amendments filed by Con Edison and listed in the Appendix shall become effective on January 1, 2019, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0489SA1)

NOTICE OF ADOPTION

Motion for Waiver

I.D. No. PSC-37-18-00007-A

Filing Date: 2018-11-19

Effective Date: 2018-11-19

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

Action taken: On 11/15/18, the PSC adopted an order approving NextEra Energy Transmission New York, Inc.'s (NextEra) motion for a waiver of certain provisions of 16 NYCRR regarding requirements for applications under PSL Article VII for a Certificate.

Statutory authority: Public Service Law, sections 4 and 122

Subject: Motion for waiver.

Purpose: To approve NextEra's motion for a waiver.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving NextEra Energy Transmission New York, Inc.'s (NextEra) August 2018 motion for a waiver of 16 NYCRR § 86.3(a)(1)'s requirement to use New York State Department of Transportation Maps and to waive 16 NYCRR § 86.3(b)(2)'s requirement to provide aerial photographs taken within six months of filing, regarding requirements for applications under PSL Article VII for a Certificate of Environmental Compatibility and Public Need. This waiver does not supersede or negate the requirements set forth in the October 2018 letter from the Secretary to NextEra, concerning additional information that must be supplied to complete an application, consistent with Public Ser-

vice Law Article VII and implementing regulations, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-T-0499SA1)

State University of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

University Faculty Senate

I.D. No. SUN-49-18-00008-P

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

Proposed Action: Amendment of section 331.9 of Title 8 NYCRR.

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

Subject: University Faculty Senate.

Purpose: To clarify that the vice-president/secretary of the University Faculty Senate (''UFS'') shall be a voting member of the UFS.

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

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

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

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

Regulatory Impact Statement

1. Statutory Authority: Education Law, 355(2)(b). Section 355(2)(b) authorizes the State University Board of Trustees (''SUNY Board'') to make and amend rules and regulations for the governance of the State University and institutions therein.

2. Legislative Objectives: The present measure supports the SUNY Board's legislative authority over governance of the University, specifically faculty governance. The SUNY's Board's policies, codified in Title 8 of New York Codes of Rules and Regulations Part 331, established a University Faculty Senate through which SUNY's faculty engages in the governance of SUNY.

3. Needs and Benefits: The present measure amends the SUNY Board's rules relating to the University Faculty Senate which amendments are deemed necessary by the membership of the University Faculty Senate and the SUNY Board.

4. Costs: There are no costs associated with the present measure.

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. Paperwork: No parties will experience any new reporting responsibilities. The State University of New York Policies of the Board of Trustees will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: None.

9. Federal Standards: None.

10. Compliance Schedule: None.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

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

Department of Taxation and Finance

EMERGENCY RULE MAKING

Congestion Surcharge

I.D. No. TAF-49-18-00007-E

Filing No. 1083

Filing Date: 2018-11-19

Effective Date: 2018-11-19

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

Action taken: Addition of Part 700 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 1096(a) and art. 29-C

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

Specific reasons underlying the finding of necessity: Pursuant to Tax Law section 1299-A, a surcharge will be in effect, beginning January 1, 2019, on certain intrastate for-hire transportation that begins in, ends in, or passes through the geographic area of the city of New York, in the borough of Manhattan, south of and excluding 96th street (the ''congestion zone''). The Commissioner is required to administer this surcharge, and to accept the registration of those who will be liable for the payment of the surcharge.

This rule is being adopted on an emergency basis so that the people or entities liable for the surcharge can timely register, and ensure that proper transportation records are kept, beginning January 1, 2019.

Subject: Congestion Surcharge.

Purpose: To implement the Congestion Surcharge and related registration, records and reporting requirements.

Substance of emergency rule (Full text is posted at the following State website: tax.ny.gov): Tax Law Article 29-C mandates the payment of a surcharge, effective January 1, 2019, on the provision of certain intrastate for-hire transportation that begins in, ends in, or passes through the geographic area of the city of New York, in the borough of Manhattan, south of and excluding 96th street (the ''congestion zone''). The provisions of Article 29-C require, among other things, those who will be responsible for the payment of this surcharge to register with the Commissioner of Taxation and Finance, and to keep records of the transportation they are responsible for.

This rule adds a new Subchapter E (section 700.1 through section 700.4)

to Chapter IV of Title 20 NYCRR. Section 700.1 contains definitions that are applicable throughout Subchapter E, while section 700.2 reflects the imposition of the congestion surcharge. Section 700.3 sets forth registration and renewal requirements (including the payment of fees) for those responsible for the surcharge. Finally, section 700.4 identifies the types of records and information that must be kept, how they must be kept and transmitted, and who is responsible for keeping them (i.e., those who are responsible for the payment of the surcharge).

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires February 16, 2019.

Text of rule and any required statements and analyses may be obtained from: Kathleen D. Chase, Tax Regulations Specialist II, Department of Taxation and Finance, Office of Counsel, Room 200, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: kathleen.chase@tax.ny.gov

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.

Office of Temporary and Disability Assistance

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Outreach, Homeless Services Plans and Outcome Reporting

I.D. No. TDA-49-18-00009-EP
Filing No. 1084
Filing Date: 2018-11-20
Effective Date: 2018-11-20

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

Proposed Action: Addition of section 304.2 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(2)(b), (3)(d)-(e), 34(3)(c)-(f) and (6)

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

Specific reasons underlying the finding of necessity: The rule requires each social services district, at least every two years, to prepare a comprehensive homeless services plan, and to submit the homeless services plan for OTDA approval. Proposed revisions to an approved homeless services plan also must be submitted to OTDA for approval. Each social services district is required to provide homeless services and engage in outreach in accordance with its approved homeless services plan. Then, at least every six months, each social services district must report on its performance of the items enumerated in its homeless services plan in homeless services outcome reports.

OTDA finds that immediate adoption of the rule is necessary for the preservation of the public health, public safety, and general welfare and, specifically, to help ensure that individuals and families experiencing homelessness are provided with the services needed to help them secure transitional and permanent housing as critical steps toward attaining the goal of long-term housing stability. By requiring each social services district to prepare a comprehensive homeless services plan and then to report on its performance of the items enumerated in the homeless services plan going forward, the rule: promotes effective planning and strategic use of resources by social services districts to combat homelessness; improves coordination and integration with other resources and programs assisting people experiencing homelessness; improves data collection and performance measurement; and strengthens accountability with respect to the use of State funds while allowing each social services district to individually tailor its homeless services plan to allocate funds and resources consistent with each social services district's own unique strengths and challenges. Requiring social services districts to provide homeless services and engage in outreach in accordance with their homeless services plans will help ensure that efforts are made to link persons experiencing homelessness, including the unsheltered homeless, to appropriate services, assistance and housing.

The United States Department of Housing and Urban Development (HUD) recently reported in The 2017 Annual Homeless Assessment Report (AHAR) to Congress (https://www.hudexchange.info/resource/5639/2017-ahar-part-1-pit-estimates-of-homelessness-in-the-us/) that, since 2007, the ranks of the homeless in New York State have grown by 43 percent. Between 2016 and 2017 alone, the homeless population in New York State rose 3.6 percent, to 89,503 people. During that same period, the number of unsheltered homeless persons in New York State increased from 3,591 to 4,555, or by approximately 27 percent.

Homelessness has reached crisis proportions in New York State. OTDA asserts that proposing this rule only as a "regular rule making" pursuant to the State Administrative Procedure Act should not be required, because to do so would be detrimental to the health, safety, and general welfare of individuals and families experiencing homelessness, while simultaneously preventing a new mechanism to help ensure State funds are expended effectively and with accountability. Accordingly, OTDA is promulgating this measure as an emergency rule.

Subject: Outreach, Homeless Services Plans and Outcome Reporting.

Purpose: To promote effective planning and strategic use of resources by social service districts in combatting homelessness through their submission of homeless services plans and homeless services outcome reports, and to require social services districts to provide homeless services and engage in outreach to persons experiencing homeless, including the unsheltered homeless, in accordance with homeless service plans approved by the Office of Temporary and Disability Assistance.

Text of emergency/proposed rule: Part 304 of Title 18 of the NYCRR is amended by adding new § 304.2 to read as follows:

§ 304.2 Outreach, Homeless Services Plans and Outcome Reporting.

(a) As used in this section:

(1) Assessment means the evaluation of an individual's or family's housing and housing-related needs;

(2) Coordinated entry refers to a process by which communities prioritize assistance to homeless individuals and families based on an assessment of their vulnerability and severity of their needs;

(3) Emergency shelter means short-term housing accompanied by support services in which the individual/family being housed does not have a lease. Such shelter includes short-term housing provided in a shelter built specifically for this purpose, or in other short-term housing such as that provided by a hotel or motel paid for by the social services district or not-for-profit agency;

(4) Homeless means undomiciled and unable to secure or maintain permanent and stable housing without assistance, as determined by the Office of Temporary and Disability Assistance (OTDA). This definition excludes persons who are living "doubled up" with friends or with family;

(5) Homelessness prevention means services and assistance aimed at retention of existing housing or providing alternatives to emergency shelter, including but not limited to eviction prevention, case management, and shelter diversion programs;

(6) Housing retention services are the supports necessary for formerly homeless persons to remain stably housed. These include income supports, such as employment, job training, and disability benefits and other assistance; substance use and mental health treatment; medical care; legal assistance; life skills, including budgeting; child care; parenting skills; conflict negotiation; and other services as needed;

(7) Outreach refers to the engagement of persons experiencing homelessness in order to link them to services, assistance and housing. It can include direct outreach to undomiciled persons through outreach workers or law enforcement officers as well as community-based outreach provided through agencies that serve persons who are homeless or at risk of becoming homeless, such as, but not limited to, food pantries, soup kitchens, and drop-in centers;

(8) Permanent housing means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid rehousing. To be permanent housing, the program participant must be the tenant on a lease for a term of at least one year, which is renewable for terms that are a minimum of one month long, and is terminable only for cause;

(9) Permanent supportive housing means permanent housing in which supportive services are provided to assist homeless persons in remaining stably housed;

(10) Point-in-time count means a count of sheltered and unsheltered homeless persons carried out on one night in the last 10 calendar days of January or at such other time as required by either the United States Department of Housing and Urban Development or OTDA;

(11) Rapid rehousing is a form of permanent housing accompanied by case management for which rental subsidies can be provided for up to 24 months with the goal of helping the household attain self-sufficiency after the rent subsidies end; and

(12) Transitional housing means housing, where all program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing.

(b) Homeless services plan. At least every two years, each social services district shall develop and submit to OTDA for approval, on a form and in a manner prescribed by OTDA, a comprehensive homeless services plan. The homeless services plan shall:

(1) identify the number of sheltered and unsheltered homeless individuals and families identified in the last point-in-time count;

(2) identify the numbers of individuals and families for whom the social services district provided temporary housing assistance pursuant to section 352.35 of this Title; and

(3) describe the social services district's strategies and plans for addressing the housing and service needs of persons experiencing homelessness, and for providing or accessing each of the following:

(i) homelessness prevention services;

(ii) outreach;

(iii) assessment and coordinated entry services;

(iv) emergency shelter;

(v) transitional housing;

(vi) permanent housing, including rapid rehousing;

(vii) permanent supportive housing; and

(viii) housing retention services.

(4) Proposed revisions to an approved homeless services plan and any changes to the information contained therein must be submitted by the social services district to OTDA for approval prior to implementation.

(c) Each social services district shall provide homeless services and engage in outreach in accordance with its approved homeless services plan.

(d) Homeless services outcome report. At least every six months, each social services district shall submit to OTDA, on a form and in a manner prescribed by OTDA, a report on the performance of its homeless services plan and its outcomes relative to each of the components identified in subdivision (b) of this section.

(e) OTDA may take any enforcement action permissible by law, including, but not limited to, directing the social services district to engage a third party to provide services and/or withholding or denying reimbursement, in whole or in part, to any social services district that fails to develop or submit a homeless services plan or homeless services outcome report, that fails to provide homeless services or engage in outreach in accordance with an approved homeless services plan, or that otherwise fails to comply with this section.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 17, 2019.

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

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

1. Statutory Authority:

Social Services Law (SSL) § 17(a)-(b) and (j) provide, in part, that the Commissioner of the Office of Temporary and Disability Assistance (OTDA) shall "determine the policies and principles upon which public assistance, services and care shall be provided within the state both by the state itself and by the local governmental units …," shall "make known his policies and principles to local social services officials and to public and private institutions and welfare agencies subject to his regulatory and advisory powers …," and shall "exercise such other powers and perform such other duties as may be imposed by law."

SSL § 20(2)(b) provides, in part, that the OTDA shall "supervise all social services work, as the same may be administered by any local unit of government and the social services officials thereof within the state, advise them in the performance of their official duties and regulate the financial assistance granted by the state in connection with said work." Pursuant to SSL § 20(3)(d) and (e), OTDA is authorized to promulgate rules, regulations, and policies to fulfill its powers and duties under the SSL and "to withhold or deny state reimbursement, in whole or in part, from or to any social services district or any city or town thereof, in the event of their failure to comply with law, rules or regulations of [OTDA] relating to public assistance and care or the administration thereof."

SSL § 34(3)(c) requires OTDA's Commissioner to "take cognizance of the interests of health and welfare of the inhabitants of the state who lack or are threatened with the deprivation of the necessaries of life and of all matters pertaining thereto." Pursuant to SSL § 34(3)(d), OTDA's Commissioner must exercise general supervision over the work of all social services districts. SSL § 34(3)(e) provides that OTDA's Commissioner must enforce the SSL and the State regulations within the State and in the social services districts. Pursuant to SSL § 34(3)(f), OTDA's Commissioner must establish regulations for the administration of public assistance and care within the State by the social services districts and by the State itself, in accordance with the law. Pursuant to SSL § 34(6), OTDA's Commissioner "may exercise such additional powers and duties as may be required for the effective administration of the department and of the state system of public aid and assistance."

2. Legislative Objectives:

It is the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies to provide for the health, safety and general welfare of vulnerable individuals.

3. Needs and Benefits:

The United States Department of Housing and Urban Development (HUD) recently reported in The 2017 Annual Homeless Assessment Report (AHAR) to Congress (https://www.hudexchange.info/resource/5639/2017-ahar-part-1-pit-estimates-of-homelessness-in-the-us/) that, since 2007, the ranks of the homeless in New York State have grown by 43 percent. Between 2016 and 2017 alone, the homeless population in New York State rose 3.6 percent, to 89,503 people. During that same period, the number of unsheltered homeless persons in New York State increased from 3,591 to 4,555, or by approximately 27 percent.

Homelessness has reached crisis proportions in New York State. OTDA asserts that this emergency rule is necessary to assure that individuals and families experiencing homelessness are provided with the services needed to help them secure transitional and permanent housing as critical steps toward attaining the goal of long-term housing stability.

Outreach is particularly important to help ensure that social services districts engage the unsheltered homeless, who often can be disconnected and alienated not only from mainstream services and supports, but also from the services targeting homeless persons. More robust outreach will help to link persons experiencing homelessness to services, assistance and housing. Outreach can include direct outreach to undomiciled persons through outreach workers or law enforcement officers, as well as community-based efforts provided through agencies that serve persons who are homeless or at risk of becoming homeless, such as food pantries, soup kitchens, and drop-in centers.

The emergency rule requires each social services district, at least every two years, to prepare a comprehensive homeless services plan and to submit the homeless services plan for OTDA approval. Proposed revisions to an approved homeless services plan must be submitted by the social services district to OTDA for approval. Each social services district is required to provide homeless services and to engage in outreach in accordance with its approved homeless services plan. Then, at least every six months, each social services district must report on its performance of the items enumerated in its homeless services plan in homeless services outcome reports. The emergency rule: promotes effective planning and strategic use of resources by social services districts to combat homelessness; improves coordination and integration with other resources and programs assisting people experiencing homelessness; improves data collection and performance measurement; strengthens accountability with respect to the use of State funds, while allowing each social services district to individually tailor its homeless services plan to allocate funds and resources consistent with the district's unique strengths and challenges; and helps to ensure that persons experiencing homelessness, and in particular unsheltered homeless persons, are linked to appropriate services, assistance and housing. The State will assist social services districts lacking expertise to prepare suitable homeless services plans.

4. Costs:

The emergency rule will not result in additional costs to the State. Social services districts will incur some small additional administrative costs in regard to the compilation and submission of the homeless services plans and homeless services outcome reports. The emergency rule may require some social services districts to better coordinate the provision of homeless services with other local providers. Similar information was requested of social services districts in August 2016 for the preparation of a statewide homeless services report issued by OTDA in January 2017, as required by Chapter 482 of the Laws of 2015.

With respect to homeless services and outreach, social services districts already effectively providing services and making robust outreach efforts should incur little or no additional cost. To the extent that social services districts must enhance their delivery of homeless services or outreach efforts, there may be additional costs depending on the nature and extent of the enhancements.

In the event that a social services district fails to comply with the requirements of the emergency rule and, pursuant to 18 NYCRR

§ 304.2(e), is directed to engage a third party to provide homeless services that the social services district failed to provide, the social services district would incur the costs associated with such engagement. These potential costs would vary, depending on the extent and duration of the failure to provide homeless services, and the nature of the services to be provided by the third party. The regulation should not provide exemptions, because this would not serve the purposes of helping to ensure the health and safety of all emergency shelter residents and protecting these vulnerable residents from dangerous conditions. Requiring each social services district to prepare a comprehensive homeless services plan and then to report on its performance of the items enumerated in the homeless services plan going forward promotes effective planning and strategic use of a social services district's resources, improves each social services district's data collection and performance measurement, and allows each social services district to individually tailor its homeless services plan to allocate funds and resources consistent with the social services district's own unique strengths and challenges, all of which help to reduce the need for third party intervention.

5. Local Government Mandates:

At least every two years, each social services district is required to prepare and submit for OTDA approval a comprehensive homeless services plan. Proposed revisions to an approved homeless services plan also must be submitted to OTDA for approval. Each social services district is required to provide homeless services and engage in outreach in accordance with its approved homeless services plan. Then, at least every six months, each social services district must report on its performance of the items enumerated in its homeless services plan in homeless services outcome reports.

6. Paperwork:

At least every two years, each social services district is required to prepare and submit for OTDA approval a comprehensive homeless services plan. Proposed revisions to an approved homeless services plan also must be submitted to OTDA for approval. Then, at least every six months, each social services district must report on its performance of the items enumerated in its homeless services plan in homeless services outcome reports.

7. Duplication:

The emergency rule does not duplicate, overlap, or conflict with any existing State or federal rules or regulations.

8. Alternatives:

A possible alternative would be not to promulgate the emergency rule. However, such inaction would result in social services districts combatting homelessness using State funds with less than adequate levels of accountability and oversight, and with limited opportunity for the State to gauge the success of the social services districts' programs and efforts. By enhancing planning at the local level and requiring social services districts to report on outcomes, OTDA believes that the emergency rule helps ensure that individuals and families experiencing homelessness are most efficiently provided with the critical services needed to help them secure transitional and permanent housing, and to increase the ability to evaluate the effectiveness of social services districts' efforts to combat homelessness. OTDA further believes that the emergency rule helps to ensure that persons experiencing homelessness, in particular unsheltered homeless persons, are linked to appropriate services, assistance and housing. Therefore, OTDA does not consider inaction a viable alternative to the emergency rule.

9. Federal Standards:

The emergency rule does not conflict with federal statutes, regulations or policies.

10. Compliance Schedule:

The emergency rule became effective on the date the Notice of Emergency Adoption and Proposed Rule Making was submitted to the Department of State. At least every two years, each social services district must submit a comprehensive homeless services plan. At least every six months, each social services district also must submit homeless services outcome reports.

Regulatory Flexibility Analysis

1. Effect of rule:

The emergency rule applies to all 58 social services districts in the State. It does not apply to the small businesses that operate emergency shelters.

2. Compliance requirements:

The emergency rule requires each social services district, at least every two years, to prepare a comprehensive homeless services plan and to submit the homeless services plan for approval by the Office of Temporary and Disability Assistance (OTDA). Proposed revisions to an approved homeless services plan must also be submitted to OTDA for approval. Each social services district is required to provide homeless services and engage in outreach in accordance with its approved homeless services plan. Then, at least every six months, each social services district must report on its performance of the items enumerated in its homeless services plan in homeless services outcome reports.

The emergency rule further requires social services districts to provide homeless services and engage in outreach in accordance with their approved homeless services plans to help ensure that efforts are made to link persons experiencing homelessness, including the unsheltered homeless, to appropriate services, assistance and housing.

3. Professional services:

It is anticipated that the need for additional professional services will be limited. The State will assist social services districts that lack the expertise to prepare suitable homeless services plans and homeless services outcome reports, without the need for securing professional services.

4. Compliance costs:

The emergency rule will have no cost impact upon small businesses.

Social services districts will incur some small additional administrative costs in regard to the compilation and submission of the comprehensive homeless services plan and homeless services outcome reports. The emergency rule may require some social services districts to better coordinate the provision of homeless services with other local providers. Similar information was requested of social services districts in August 2016 for the preparation of a statewide homeless services report issued by OTDA in January 2017, as required by Chapter 482 of the Laws of 2015.

With respect to homeless services and outreach, social services districts already effectively providing services and making robust outreach efforts should incur little or no additional cost. To the extent that social services districts must enhance their delivery of homeless services or outreach efforts, there may be additional costs depending on the nature and extent of the enhancements.

In the event that a social services district fails to comply with the requirements of the emergency rule and, pursuant to 18 NYCRR § 304.2(e), is directed to engage a third party to provide homeless services that the social services district failed to provide, the social services district would incur the costs associated with such engagement. These potential costs would vary, depending on the extent and duration of the failure to provide homeless services, and the nature of the services to be provided by the third party. The regulation should not provide exemptions, because this would not serve the purposes of helping to ensure the health and safety of all emergency shelter residents and protecting these vulnerable residents from dangerous conditions. Requiring each social services district to prepare a comprehensive homeless services plan and then to report on its performance of the items enumerated in the homeless services plan going forward promotes effective planning and strategic use of a social services district's resources, improves each social services district's data collection and performance measurement, and allows each social services district to individually tailor its homeless services plan to allocate funds and resources consistent with the social services district's own unique strengths and challenges, all of which help to reduce the need for third party intervention.

5. Economic and technological feasibility:

Social services districts should already have the economic and technological abilities to comply with the emergency rule.

6. Minimizing adverse impact:

OTDA does not anticipate that the reporting requirements established by the emergency rule or the requirement to engage in outreach to persons experiencing homelessness will adversely impact social services districts. The emergency rule should not provide exemptions relating to the required submission of homeless services plans or homeless services outcome reports because this would not serve the purposes of promoting planning and strategic use of resources by social services districts to address homelessness, improving coordination and integration with other resources and programs assisting people experiencing homelessness, improving data collection and performance measurement, and strengthening accountability with respect to the use of State funds.

Likewise, the emergency rule should not provide exemptions relating to the requirement that social services districts undertake outreach to engage persons experiencing homelessness, as it is critical that persons experiencing homelessness, and in particular unsheltered homeless persons, be linked to appropriate services, assistance and housing.

7. Small business and local government participation:

At a conference held in Hamilton, New York on May 8, 2018, Social Services District Commissioners were alerted to the fact that such regulatory requirements were forthcoming. It is anticipated that social services districts will be dedicated to implementing the emergency rule and protecting the health, safety, and general welfare of persons experiencing homelessness.

8. For rules that either establish or modify a violation or penalties associated with a violation:

While the emergency rule provides that OTDA may withhold or deny reimbursement, in whole or in part, to any social services district that fails to comply, this remedial provision is already expressly set forth in Social Services Law § 20(3)(e), which authorizes OTDA to "withhold or deny state reimbursement, in whole or in part, from or to any social services

district or any city or town thereof, in the event of the failure of either of them to comply with law, rules or regulations of [OTDA] relating to public assistance and care or the administration thereof."

In the event that a social services district fails to comply with the requirements of the emergency rule and, pursuant to 18 NYCRR § 304.2(e), is directed to engage a third party to provide homeless services that the social services district failed to provide, the social services district would incur the costs associated with such engagement. These potential costs would vary, depending on the extent and duration of the failure to provide homeless services, and the nature of the services to be provided by the third party. The regulation should not provide exemptions, because this would not serve the purposes of helping to ensure the health and safety of all emergency shelter residents and protecting these vulnerable residents from dangerous conditions. Requiring each social services district to prepare a comprehensive homeless services plan and then to report on its performance of the items enumerated in the homeless services plan going forward promotes effective planning and strategic use of a social services district's resources, improves each social services district's data collection and performance measurement, and allows each social services district to individually tailor its homeless services plan to allocate funds and resources consistent with the social services district's own unique strengths and challenges, all of which help to reduce the need for third party intervention.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The emergency rule applies to the 44 rural social services districts.

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

The emergency rule requires each social services district, at least every two years, to prepare a comprehensive homeless services plan and to submit the homeless services plan for OTDA approval. Proposed revisions to an approved homeless services plan also must be submitted to OTDA for approval. Each social services district is required to provide homeless services and engage in outreach in accordance with its approved homeless services plan. Then, at least every six months, each social services district must report on its performance of the items enumerated in its homeless services plan in homeless services outcome reports. The State will assist social services districts that lack the expertise to prepare suitable outreach or homeless services plans and homeless services outcome reports.

The emergency rule further requires social services districts to provide homeless services and engage in outreach in accordance with their approved homeless services plans to help ensure that efforts are made to link persons experiencing homelessness, including the unsheltered homeless, to appropriate services, assistance and housing.

3. Costs:

Rural social services districts will incur some small additional administrative costs in regard to the compilation and submission of homeless services plans and homeless services outcome reports. The emergency rule may require some rural social services districts to better coordinate the provision of homeless services with other local providers. Similar information was requested of rural social services districts in August 2016 for the preparation of a statewide homeless services report issued by OTDA in January 2017, as required by Chapter 482 of the Laws of 2015.

With respect to homeless services and outreach, rural social services districts already effectively providing services and making robust outreach efforts should incur little or no additional cost. To the extent that rural social services districts must enhance their delivery of homeless services or outreach efforts, there may be additional costs depending on the nature and extent of the enhancements.

In the event that a rural social services district fails to comply with the requirements of the emergency rule and, pursuant to 18 NYCRR § 304.2(e), is directed to engage a third party to provide homeless services that the rural social services district failed to provide, the rural social services district would incur the costs associated with such engagement. These potential costs would vary, depending on the extent and duration of the failure to provide homeless services, and the nature of the services to be provided by the third party. The regulation should not provide exemptions, because this would not serve the purposes of helping to ensure the health and safety of all emergency shelter residents and protecting these vulnerable residents from dangerous conditions. Requiring each rural social services district to prepare a comprehensive homeless services plan and then to report on its performance of the items enumerated in the homeless services plan going forward promotes effective planning and strategic use of a rural social services district's resources, improves each rural social services district's data collection and performance measurement, and allows each rural social services district to individually tailor its homeless services plan to allocate funds and resources consistent with the rural social services district's own unique strengths and challenges, all of which help to reduce the need for third party intervention.

4. Minimizing adverse impact:

The emergency rule should not provide exemptions relating to the required submission of homeless services plans or homeless services outcome reports because this would not serve the purposes of promoting planning and strategic use of resources by social services districts to address homelessness, improving coordination and integration with other resources and programs assisting people experiencing homelessness, improving data collection and performance measurement, and strengthening accountability with respect to the use of State funds. OTDA recognizes that rural social services districts will have different strengths and challenges from those faced by social services districts in more densely populated regions, and anticipates that rural social services districts will tailor their plans accordingly, which will minimize adverse impact of the emergency rule.

5. Rural area participation:

At a conference held in Hamilton, New York on May 8, 2018, Social Services District Commissioners were alerted to the fact that such regulatory requirements were forthcoming. It is anticipated that rural social services districts will be dedicated to implementing the emergency rule and engaging in more robust planning and outreach in order to improve the strategic use of resources to combat homelessness and to link persons experiencing homelessness, including unsheltered homeless persons, to appropriate services, assistance and housing.

Job Impact Statement

A Job Impact Statement is not required for this emergency rule. The purpose of the emergency rule is to require each social services district, at least every two years, to prepare a comprehensive homeless services plan, and to submit the homeless services plan for OTDA approval. Proposed revisions to an approved homeless services plan also must be submitted by the social services district to OTDA for approval. Each social services district is required to provide homeless services and engage in outreach in accordance with its approved homeless services plan. Then, at least every six months, each social services district must report on its performance of the items enumerated in its homeless services plan in homeless services outcome reports. The emergency rule promotes effective planning and strategic use of resources by social services districts to combat homelessness. The emergency rule helps ensure that individuals and families experiencing homelessness are provided with the services needed to help them secure transitional and permanent housing as critical steps toward attaining the goal of long-term housing stability. The emergency rule also helps to ensure that persons experiencing homelessness, and in particular unsheltered homeless persons, are linked to appropriate services, assistance and housing. The State will provide assistance to social services districts lacking the expertise necessary to develop homeless services plans and homeless services outcome reports.

It is apparent from the nature and the purpose of the emergency rule that it will not have a substantial adverse impact on jobs and employment opportunities in the private sector, in the social services districts, or in the State.

Triborough Bridge and Tunnel Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

A Proposal to Establish a New Crossing Charge Schedule for Use of Bridges and Tunnels Operated by TBTA

I.D. No. TBA-49-18-00011-P

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

Proposed Action: Repeal of section 1021.1; and addition of new section 1021.1 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 553(5)

Subject: A proposal to establish a new crossing charge schedule for use of bridges and tunnels operated by TBTA.

Purpose: A proposal to raise additional revenue.

Public hearing(s) will be held at: 5:00 p.m., Nov. 27, 2018 at Baruch College, 17 Lexington Ave., Manhattan, NY; 5:00 p.m., Nov. 29, 2018 at Hostos Community College, 450 Grand Concourse, Bronx, NY; 5:30 p.m., Nov. 29, 2018 at Hilton Long Island, 598 Broad Hollow Rd., Melville, NY; 5:30 p.m., Dec. 3, 2018 at College of Staten Island, 2800 Victory

Blvd., Staten Island, NY; 5:00 p.m., Dec. 5, 2018 at New York Power Authority, Jaguar Rm., 123 Main St., White Plains, NY; 5:00 p.m., Dec. 10, 2018 at Long Island University, Kumble Theater for the Performing Arts, One University Plaza, Brooklyn, NY; 5:00 p.m., Dec. 11, 2018 at York College, Milton G. Bassin Performing Arts Center, 95-45 Guy R. Brewer Blvd., Jamaica, NY; 5:30 p.m., Dec. 13, 2018 at West of Hudson - Palisades Center, Adler Community Rm., Fourth Fl., 1000 Palisades Center Dr., West Nyack, 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: See Appendix in the back of this issue.

Text of proposed rule and any required statements and analyses may be obtained from: Julia R. Christ, Executive Agency General Counsel, Triborough Bridge and Tunnel Authority, 2 Broadway, 24th Floor, New York, New York 10004, (646) 252-7620, email: jchrist@mtabt.org

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

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

Regulatory Impact Statement, 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.

Workers' Compensation Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Pharmacy Fee Schedule

I.D. No. WCB-49-18-00010-P

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

Proposed Action: Amendment of Part 440 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 13-o, 13-p, 117 and 141

Subject: Pharmacy Fee Schedule.

Purpose: Update the pricing methodology for prescription drugs.

Substance of proposed rule (Full text is posted at the following State website: http://www.wcb.ny.gov/content/main/ wclaws/newlaws.jsp): Section 440.2 of Part 440 of Title 12 NYCRR is amended to read as follows:

Section 440.2. Definitions

Section 440.2 has added new definitions and renumbered the sections accordingly. 440.2(c), (d), (f), (i)(3)(ii), (n) and (r) are new or substantially changed, and appear below:

(c) "Calculated cost" means the Average Wholesale Price for the national drug code of the prescription drug or medicine on the day it was dispensed plus a dispensing fee. For brand name drugs the Calculated cost shall be AWP minus twelve percent of the Average Wholesale price plus a dispensing fee of four dollars. For generic drugs the Calculated cost shall be AWP minus twenty percent plus a dispensing fee of five dollars.

(d) "Contract price" means the maximum amount that a designated pharmacy (as set forth in section 440.3 of this Part) will pay a pharmacy for generic drugs and brand name drugs that have generic versions available (multi-source brands).

(f) "Generic drug" means an FDA-approved drug that is therapeutically equivalent to a brand name drug, as determined by the FDA's designation of the drug with the Therapeutic Equivalence Evaluation Code designation as an "A" product in the "Approved Drug Products with Therapeutic Equivalence Evaluations" (commonly referred to as the Orange Book), irrespective of dosage for the route of administration (oral, topical or systemic) prescribed. A brand name drug may not be dispensed when a generic version of the same active ingredient is commercially available in a different strength/dosage.

(i) "Pharmacy benefit management" means the services provided to a self-insured employer or insurance carrier, directly or through another entity, including:

(3) the administration or management of prescription medicine or drug benefits, including, but not limited to, any of the following:

(i) mail service pharmacy;

(ii) claims processing, New York Pharmacy Formulary administration and prior authorization review, retail network contracting and management, or payment of claims to pharmacies for dispensing prescription medicines or drugs;

(n) "Repackaging" is the act of taking a finished drug product from the container in which it was distributed by the original manufacturer and placing it into a different container without further manipulation of the drug. Repackaging also includes the act of placing the contents of multiple containers (e.g., vials) of the same finished drug product into one container when the container does not include other ingredients.

(r) "Usual and Customary price" means the retail price charged to the general public for a prescription drug.

Subdivision (d) of Section 440.3 of Part 440 is amended to add that prior to filing prescribed notice of the decision in a controverted case, the claimant may be prescribed and the carrier/self-insured employer will be responsible for the cost (see section 440.5) of medications from Phase A, B, C, or Perioperative section the Pharmacy Formulary as applicable.

A new subdivision (g) is added to Section 440.3 of Part 440 to read as follows:

(g) Any rebates or third-party revenue related to drugs dispensed through a contract for pharmacy benefit management and delivered to the designated pharmacy shall be passed through in full to the insurance carrier or self-insured employer. Carriers shall offset bills to insured employers by the amount of any passed-through rebate and third-party revenue. Such rebates and third-party revenue shall be reported annually to the carrier or self-insured employer and reported to the Chair upon request.

Section 440.5 of Part 440 is amended to read as follows:

Section 440.5. Fee schedule

(a)(1) The maximum reimbursement or payment for New York Workers' Compensation Formulary drugs or, when applicable, for drugs that received Prior Authorization in accordance with section 441.4 of this Chapter, including all brand name and generic prescription drugs or medicines, shall be the lesser of the calculated cost, the contract price (for designated pharmacies), or the usual and customary price for the prescription drug or medication.

(2) The maximum reimbursement for prescription drugs or medicines dispensed in controverted cases during the period the case is controverted, including all brand name and generic prescription drugs or medicines, shall be twenty-five per cent more than the calculated cost at the time the prescription drugs or medicines are provided if the case was uncontroverted, plus a dispensing fee of seven dollars and fifty cents for generic prescription drugs or medicines and six dollars for brand-name prescription drugs or medicines. Prior to the filing of a prescribed notice denying the claim for workers' compensation, the claimant may be prescribed and the insurance carrier or self-insured employer will be responsible for the cost (as set forth in subdivision (a)(1) of this section) of medications from, as applicable, Phase A, B, C or the Perioperative section of the Pharmacy Formulary.

(3) Nothing in this section shall bar a self-insured employer or insurance carrier from providing a lower reimbursement rate or dispensing fee pursuant to a written agreement with any independent pharmacy, pharmacy chain, or pharmacy benefit manager.

(4) The maximum reimbursements or payments for prescription drugs or medicines set forth in this subdivision shall be the maximum payment any individual or entity may receive from any claimant, individual, entity, self-insured employer, insurance carrier, or third party in connection with a claim for workers' compensation benefits.

(b) Fees for pharmacy benefit management shall be established by agreement between the self-insured employer or insurance carrier and the independent pharmacy, pharmacy chain, or pharmacy benefit manager. Fees to a pharmacy processing agent shall be established by agreement between the independent pharmacy, pharmacy chain, or pharmacy benefit manager and the pharmacy processing agent. The Chair may audit agreements from time to time for the purpose of ensuring compliance with this Part.

(c) Notwithstanding any other provision of this Part, if a prescription drug or medicine has been repackaged, the Average Wholesale Price used to determine the maximum reimbursement shall be the Average Wholesale Price of the underlying drug product, as identified by its national drug code (or NDC), of the underlying drug product used in the drug packaging. If the NDC is not supplied with the bill for the prescription drug or medicine, the self-insured employer or insurance carrier may identify the NDC of the underlying drug product to calculate reimbursement. While a pharmacy may engage in repackaging by removing a finished drug prod-

uct from the container in which it was distributed by the original manufacturer and placing it into a different (often smaller container), the pharmacy may not charge a fee that exceeds the AWP for the container in which the finished drug product was distributed by the original manufacturer prior to any repackaging.

(d) Compound drug, as defined in subdivision (a) of section 441.1, shall be reimbursed at the ingredient level, with each ingredient identified using the applicable NDC of the drug product, and the corresponding quantity. Ingredients with no NDC are not separately reimbursable. When a compound drug is prescribed and dispensed in accordance with subdivision (a) of section 441.1 or pursuant subdivision (m) of section 441.1 (Prior Authorization), payment shall be based upon a sum of the allowable fee for each NDC ingredient(s) plus a single dispensing fee of six dollars per compound drug.

(e) The fee schedule created by this section shall not apply to prescription drugs or medicines provided as part of treatment governed by the medical and hospital fee schedule issued pursuant to Workers' Compensation Law Section 13.

Section 440.6 of Part 440 is amended to read as follows:

Section 440.6. Prescription drugs or medicines

(a) When a brand name drug is prescribed to treat an injury for which a self-insured employer or insurance carrier is liable pursuant to Workers' Compensation Law Section 13, a generic drug equivalent, if a generic equivalent is available, shall be provided unless the prescribing physician obtains Prior Authorization pursuant to subdivision (m) of section 441.1.

(b) A billing statement submitted to a self-insured employer or carrier for a prescription drug that has been dispensed shall include the national drug code number of the prescription drug as listed in the national drug code directory maintained by the federal Food and Drug Administration and shall state separately the price of the prescription drug and the dispensing fee.

Subdivisions (a) and (b) of Section 440.8 of Part 440 are amended to read as follows:

(a) Upon receipt of a bill or reimbursement request for prescription medicine, the self-insured employer or insurance carrier shall pay or reimburse the claimant, pharmacy, pharmacy benefit manager, pharmacy processing agent or third party within forty-five days of receipt of the bill or reimbursement request in accordance with section 440.5 of this Part, unless:

(1) The drug was not prescribed consistent with Part 441 of this Chapter (New York Workers' Compensation Formulary); or

(2) The insurance carrier or self-insured employer has denied the claim in accordance with Workers' Compensation Law section 25 (2), and section 300.22 of this Chapter.

(b) Where the self-insured employer or insurance carrier denies payment of all or a portion of a pharmacy bill pursuant to subdivision 1 herein, it shall pay any undisputed amount of the bill or reimbursement request and notify the claimant, the claimant's representative, if any, as well as the pharmacy, or pharmacy benefit manager, pharmacy processing agent, or third party which submitted the bill or reimbursement request, as appropriate. A notice to the pharmacy, pharmacy benefits manager, pharmacy processing agent, or third party must be made for each claim; denial of multiple claims in a single notice are not in compliance with this Section. Such notice shall be made to all parties on the same day within forty-five days of receipt of the claim or reimbursement request and shall state that the claim is not being paid and the reason for non-payment of the claim.

Text of proposed rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, 328 State Street, Office of General Counsel, Schenectady, New York 12305-2318, (518) 486-9564, email: regulations@wcb.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

1. Statutory authority: Workers' Compensation Law (WCL) § 13-o requires the Chair to adopt a pharmacy fee schedule, WCL § 13-p requires the Chair to implement a pharmacy reimbursement strategy and drug rebate program, and WCL § 117(1) authorizes the Chair of the Workers' Compensation Board (Board) to adopt reasonable rules consistent with, and supplemental to, the provisions of the WCL.

2. Legislative objectives: The proposed amendments are required by WCL § 13-p to ensure that savings in pricing of pharmaceuticals is realized in the workers' compensation system. The proposed regulations satisfy the legislative directive insofar as the proposal would establish a fee calculation methodology that uses a "lesser of" standard, among the current means to calculate price and two additional options. The proposal also implements a reimbursement strategy to ensure cost savings to the workers' compensation system.

3. Needs and benefits: Workers' Compensation Law § 13-p requires the Chair to adopt a drug formulary and includes a requirement that this formulary implement a pharmacy reimbursement strategy. Central to such implementation is a modification of the method for calculating a drug's price to ensure that insurance carriers and employers are paying the lowest price available. Accordingly, the proposal – which governs the cost of prescription medicines – updates the pharmacy fee schedule to provide these changes and includes modifications to compound medication pricing and how savings achieved by pharmacy networks are passed to employers. Specifically, the proposed regulations amend the pharmacy fee schedule to provide an additional methodology for calculating pharmacy fees to ensure that the workers' compensation system receives the benefits of the industry cost savings.

4. Costs: The only costs associated with this proposal would be to regulated parties due to programming needed to allow for application of the alternative price calculation. It is believed the costs savings that will result from using this methodology will far exceed any associated costs.

5. Local government mandates: The proposed amendments do not impose any program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district. However, a municipality or governmental agency that is self-insured is required to comply with the same rules required of insurance carriers.

6. Paperwork: The proposal does not impose any new reporting requirements.

7. Duplication: The proposal does not duplicate other regulatory initiatives.

8. Alternatives: Based upon the mandate of the Legislature to establish a prescription drug formulary, the Chair is required to promulgate regulations in order to ensure the orderly implementation of the formulary. This includes these amendments to the pharmaceutical fee schedule. The Board believes that not following the legislative directive is not a tenable option.

9. Federal standards: There are no applicable Federal Standards.

10. Compliance schedule: All affected pharmacies, carriers, and self-insured employers will have to comply with the proposed prescription drug formulary and the amendments to the pharmaceutical fee schedule account for such required compliance. Regulated entities will be required to comply by April 1, 2019.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required because the proposed amendments will not have any adverse economic impact or impose any reporting, recordkeeping or other compliance requirements on small businesses or local governments. The proposal enhances the existing methodology for calculating reimbursement for prescription medication in workers' compensation cases. These proposed changes will not have any adverse impact on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required because the proposed amendments will not have any impact rural areas. The proposal enhances the existing methodology for calculating reimbursement for prescription medication in workers' compensation cases. These proposed changes will not affect rural areas in any manner.

Job Impact Statement

A Job Impact Statement is not required because the proposed amendments will not have any impact on jobs or employment opportunities. The proposal enhances the existing methodology for calculating reimbursement for prescription medication in workers' compensation cases. These proposed changes will not affect jobs or employment opportunities in any manner.