

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 Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-13-18-00008-A

Filing No. 1025

Filing Date: 2018-10-25

Effective Date: 2018-11-14

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the March 28, 2018 issue of the Register, I.D. No. CVS-13-18-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-18-00001-A

Filing No. 1031

Filing Date: 2018-10-25

Effective Date: 2018-11-14

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the July 18, 2018 issue of the Register, I.D. No. CVS-29-18-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-18-00005-A

Filing No. 1030

Filing Date: 2018-10-25

Effective Date: 2018-11-14

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the August 15, 2018 issue of the Register, I.D. No. CVS-33-18-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-33-18-00008-A**Filing No.** 1027**Filing Date:** 2018-10-25**Effective Date:** 2018-11-14

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify positions in the non-competitive class.**Text or summary was published** in the August 15, 2018 issue of the Register, I.D. No. CVS-33-18-00008-P.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov**Assessment of Public Comment**

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-33-18-00009-A**Filing No.** 1032**Filing Date:** 2018-10-25**Effective Date:** 2018-11-14

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To delete positions from and classify positions in the non-competitive class.**Text or summary was published** in the August 15, 2018 issue of the Register, I.D. No. CVS-33-18-00009-P.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov**Assessment of Public Comment**

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-33-18-00010-A**Filing No.** 1035**Filing Date:** 2018-10-25**Effective Date:** 2018-11-14

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify positions in the non-competitive class.**Text or summary was published** in the August 15, 2018 issue of the Register, I.D. No. CVS-33-18-00010-P.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov**Assessment of Public Comment**

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-33-18-00011-A**Filing No.** 1033**Filing Date:** 2018-10-25**Effective Date:** 2018-11-14

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify positions in the non-competitive class.**Text or summary was published** in the August 15, 2018 issue of the Register, I.D. No. CVS-33-18-00011-P.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov**Assessment of Public Comment**

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-33-18-00012-A**Filing No.** 1029**Filing Date:** 2018-10-25**Effective Date:** 2018-11-14

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

Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To delete a position from the exempt class and to classify a position in the non-competitive class.**Text or summary was published** in the August 15, 2018 issue of the Register, I.D. No. CVS-33-18-00012-P.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov**Assessment of Public Comment**

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-33-18-00014-A**Filing No.** 1034**Filing Date:** 2018-10-25**Effective Date:** 2018-11-14

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify a position in the exempt class.**Text or summary was published** in the August 15, 2018 issue of the Register, I.D. No. CVS-33-18-00014-P.

Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-18-00015-A
Filing No. 1026
Filing Date: 2018-10-25
Effective Date: 2018-11-14

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of final rule: Text of proposed rule should have read: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by adding thereto the positions of øDeputy Superintendent of Correctional Health Care Facility 1.

It originally read Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by deleting therefrom the positions of øDeputy Superintendent of Correctional Health Care Facility (6) and by adding thereto the positions of øDeputy Superintendent of Correctional Health Care Facility.

Final rule as compared with last published rule: Nonsubstantive changes were made in Appendix 2.

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.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.

Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-18-00016-A
Filing No. 1028
Filing Date: 2018-10-25
Effective Date: 2018-11-14

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the August 15, 2018 issue of the Register, I.D. No. CVS-33-18-00016-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Assessment of Public Comment
 The agency received no public comment.

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

Jurisdictional Classification

I.D. No. CVS-46-18-00006-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “Office of Indigent Legal Services,” by increasing the number of positions of Special Assistant from 10 to 11.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

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

Jurisdictional Classification

I.D. No. CVS-46-18-00007-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading “Office of Information Technology Services,” by adding thereto the positions of Information Security Manager (2), Information Technology Specialist 2 (Information Security) (7), Information Technology Specialist 3 (Information Security) (6) and Information Technology Specialist 4 (Information Security) (6).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel,

NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov
Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-46-18-00008-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by increasing the number of positions of Special Assistant from 5 to 14.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-46-18-00009-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by adding thereto the position of Public Information Specialist 2 (Digital Content) (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-46-18-00010-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by deleting therefrom the positions of Deputy Superintendent of Correctional Health Care Facility (6) and by adding thereto the positions of Deputy Superintendent of Correctional Health Care Facility 2 (6).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel,

NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov
Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-46-18-00011-P

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

Proposed Action: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt and non-competitive classes.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Criminal Justice Services," by increasing the number of positions of Special Assistant from 7 to 8 and by adding thereto the position of Manager Training; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Criminal Justice Services," by adding thereto the position of Social Work Supervisor 2 (LCSW) (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously

printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-46-18-00012-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Economic Development, by deleting therefrom the position of Keyboard Specialist 3 (1); in the State University of New York under the subheading "State University Colleges," by deleting therefrom the positions of Keyboard Specialist 3 (2) at SUC of Optometry; in the State University of New York under the subheading "SUNY Health Science Center at Brooklyn," by deleting therefrom the position of Keyboard Specialist 3 (1); in the State University of New York under the subheading "SUNY at Albany," by deleting therefrom the position of Keyboard Specialist 3 (1); in the State University of New York under the subheading "SUNY at Stony Brook," by deleting therefrom the positions of Keyboard Specialist 3 (5); in the Executive Department under the subheading "Division of Human Rights," by deleting therefrom the position of Keyboard Specialist 3 (1); in the Department of Health, by deleting therefrom the position of Keyboard Specialist 3 (1); in the State University of New York under the subheading "Central Administration," by deleting therefrom the positions of Keyboard Specialist 3 (6) and by adding thereto the position of Secretary 1 (1); in the State University of New York under the subheading "SUNY at Buffalo," by deleting therefrom the position of Keyboard Specialist 3 (1) and by adding thereto the position of Secretary 1 (1); and, in the New York State Thruway Authority, by deleting therefrom the position of Keyboard Specialist 3 (1) and by adding thereto the position of Secretary 1 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

State Board of Elections

NOTICE OF ADOPTION

Implementation of the Democracy Protection Act

I.D. No. SBE-21-18-00047-A

Filing No. 1042

Filing Date: 2018-10-29

Effective Date: 2018-11-14

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

Action taken: Amendment of section 6200.10; and addition of section 6200.11 to Title 9 NYCRR.

Statutory authority: Election Law, sections 14-107(5-a), 14-107-b and 3-102(17)

Subject: Implementation of the Democracy Protection Act.

Purpose: The rule effectuates the amendments to article 14 of the Election Law resulting from chapter 59 of the Laws of 2018.

Substance of final rule: The proposed amendment to section 6200.10, and the addition of section 6200.11, implements changes in law resulting from the New York State Democracy Protection Act, Chapter 59 of the Laws of 2018, Part JJJ. The proposed regulation modifies current regulations as follows: a) Prohibits foreign entities from forming an independent expenditure committee and purchasing political ads in order to influence New York elections; b) Requires that internet and digital advertisements paid for by Independent Expenditure Committees and targeted to 50 or more members of the General Public Audience be subject to disclosure requirements; c) Requires all paid independent political online ads to clearly display that the ad was not authorized by any candidate and who actually paid for the ad; and d) Requires television or radio broadcast stations, provider of cable or satellite televisions, or online platforms to collect the registration documents of Independent Expenditure committees when such committees purchase communications in the form of an independent expenditure.

Additionally, the proposed regulation defines "online platform" as follows: "An online platform means: (i) a public-facing Internet Web site, web application, web domain or digital application, including a social network or search engine, which sells political advertisements and has 70,000,000 or more unique monthly United States visitors or users for a majority of months during the preceding 12 months as measured by an independent digital ratings service accredited by the Media Ratings Council; or (ii) any Third-Party Advertising Vendor that has 30,000,000 or more unique monthly United States visitors in the aggregate on any advertisement space that it has sold or bought for a majority of months during the preceding 12 months as measured by an independent digital ratings service accredited by the Media Ratings Council."

There are two nonsubstantive changes to the text of the rule since the last publication. The final rule clarifies that "Third-Party Advertising Vendors" are unaffiliated with the buyer or seller of advertisements. Additionally, the final rule exempts online platforms operated by magazines and other periodicals, along with newspapers, from collecting registration forms from independent expenditure committees.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 6200.10(b)(12) and (13).

Text of rule and any required statements and analyses may be obtained from: Nicholas Cartagena, Esq., New York State Board of Election, 40 North Pearl Street, Suite 5, (518) 474-2064, email: nicholas.cartagena@elections.ny.gov

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text still seek to implement the Democracy Protection Act in a way that accomplishes the goals highlighted in the Regulatory Impact Statement. These changes, while some of them are substantial, do not affect the meaning of any statements in the document.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text still seek to implement the Democracy Protection Act in a way that accomplishes the goals

highlighted in the Regulatory Flexibility Analysis. These changes, while some of them are substantial, do not affect the meaning of any statements in the document.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text still seek to implement the Democracy Protection Act in a way that accomplishes the goals highlighted in the Rural Area Flexibility Analysis Statement. These changes, while some of them are substantial, do not affect the meaning of any statements in the document.

Revised Job Impact Statement

A revised Job Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text still seek to implement the Democracy Protection Act in a way that accomplishes the goals highlighted in the Jobs Impact Statement. These changes, while some of them are substantial, do not affect the meaning of any statements in the document.

Initial Review of Rule

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

Assessment of Public Comment

The State Board received four public comments in response to its publication of Emergency Adoption and Revised Rulemaking I.D No. SBE-21-18-00047-ERP that amends section 6200.10 and adds section 6200.11 to Title 9 NYCRR. The Board received comments from the following entities:

A trade association for newspapers;

A trade association for broadcasters;

A trade association for magazines; and

A nonprofit organization that described itself as "dedicated to protecting and strengthening the democratic process across all levels of government."

Summaries of the comments on the proposal and the Department's responses thereto are as follows:

Comment: The newspaper association, magazine association, and broadcasters association all believe that the exemption of "newspapers" from the definition of "online platform" is too narrow. The regulations define "newspaper" as the same as New York General Construction Law. These associations believe that magazines should be included in this definition because § 14-124(1) of the Election Law provides that Article 14 of the Election Law shall not apply to "any person, association or corporation engaged in the publication or distribution of any newspaper or other publication issued at regular intervals in respect to the ordinary conduct of such business" (emphasis added). The newspaper and magazine associations believe that "other publications" term would include publications such as magazines. The broadcasters association believes that on-line electronic news sites should be excluded based in the First Amendment.

Conversely, the nonprofit organization believes that newspapers should not be exempt from the definition of "online platform." The nonprofit argues that, per the language of the statute, § 14-124(1) of the Election Law exempts newspapers from Article 14 only to the extent that the activity is "in respect to the ordinary conduct of such business" (See Elec. Law § 14-124(1)). The nonprofit organization suggests that the standard should be whether the regulation would "infringe the papers' journalistic and editorial independence in any way." The nonprofit suggests that obligations in the regulation are modest and would not impose on the journalistic and editorial independence of the newspaper.

Response: Given the broad language in Election Law § 14-124(1), the State Board feels compelled to continue the exemption of newspapers to the definition of an online platform. Further, given the "other publication" language in statute, the State Board agrees that the exemption should be extended to magazines. The State Board is not inclined to exclude online news sites from the regulation. The exemption of newspaper and magazines is based on Election Law § 14-124(1), not the First Amendment. The State Board believes that Election Law § 14-124(1) does not cover online news organizations.

Comment: The newspaper association argues that the "proposed language fails to clarify that a Third-Party Advertising Vendor does not include the placement operations of a news organization which assists advertisers in reaching readers of other news organizations." Specifically, the newspaper association argues that newspapers should be exempt from the definition of "Third-Party Advertising Vendor" because some newspaper companies also provide advertising design and placement services to other news companies."

Response: The State Board does not believe that Election Law § 14-124(1) applies when a newspaper company is buying or selling advertise-

ment space on another platform on behalf of a third party. Again, Election Law § 14-124(1) provides that Article 14 of the Election Law shall not apply to “any person, association or corporation engaged in the publication or distribution of any newspaper or other publication issued at regular intervals in respect to the ordinary conduct of such business” (emphasis added). It is the State Board’s position that buying and selling digital advertisements on another platform on behalf of a third party falls outside this scope.

Comment: The Broadcasters argue that the definition of “Third-Party Advertising Vendor” would include “wholly owned” subsidiaries of companies whose sole purpose is to buy and sell advertising on behalf of its parent company. The Broadcasters argue that the definition of “Third-Party Vendor” should be modified to clarify where the third-party vendor is a “completely independent advertising agency(y).”

Response: The revised rule adds language making this clarification.

Comment: Both the Broadcasters and the Newspaper association express concern that the 30 million unique visitor on any advertisement space standard applies to “all” advertisements rather than just “political” advertisements.

Response: The revised rule provides that an online platform means: “any Third-Party Advertising Vendor that has 30,000,000 or more unique monthly United States visitors in the aggregate on any advertisement space that it has sold or bought for a majority of months during the preceding 12 months as measured by an independent digital ratings service accredited by the Media Ratings Council” (emphasis added). The State Board is unaware of any digital ratings service that measures the number of visitors to “political” advertisements. As such, setting the standard to monthly visitors of “political” advertisement space would render the Third-Party Vendor portion of the regulation meaningless as there is no viable way to measure such a metric.

Comment: The Broadcasters believe that account executives who are in “small upstate market(s),” but work for larger advertising companies should be exempt from the definition of “Third-Party Vendor” because “the small upstate office may have not have information on the national reach of the entire company.” The Broadcasters advocate that “(a) more appropriate standard would be to simply consider the reach ... of the local office in which the advertising is purchased.”

Response: The State Board does not believe it is sound policy to exclude certain branches or employees of an online platform from the regulation. Additionally, digital rating services do not measure unique visitors of advertisement space by branch; rather, it is measured by the agency as a whole. As such, the State Board believes that the 30 million standard should not be amended.

Comment: The Broadcasters express concern that small advertiser would be considered “Third-Party Vendors” if they place advertisements on large platforms, such as Twitter, Facebook, and Google. The Broadcasters believe that the 30 million threshold should be interpreted as to count only the volume of advertising placed by the Third-Party Advertising.

Response: The revised rule provides that an online platform means: “any Third-Party Advertising Vendor that has 30,000,000 or more unique monthly United States visitors in the aggregate on any advertisement space that it has sold or bought for a majority of months during the preceding 12 months”(emphasis added). The 30,000,000 is measured by the number of visitors to the advertisements the vendors have placed. If a vendor places an advertisement on Facebook, it does not automatically become defined as an “online platform” for purposes of this regulation because Facebook gets more than 30 million unique visitors.

Comment: The Broadcasters believe that only “demand side” Third-Party Vendors should be considered “Online Platforms” and that “(t)he Third-Party Advertising Vendor rules should not apply to media companies that are already subject to the 70 million standard(.)”

Response: The State Board disagrees that media companies, who also act as Third-Party Vendors, should be exempt from the 30 million standard. The Board believes that media companies that engage in the buying and selling of digital ads to unaffiliated third parties should be treated the same as advertising agencies.

Comment: The nonprofit organization argued that Third-Party Vendor status should be determined on a case-by-case basis because “much of the public information about traffic to third party-vendors’ ad inventories is self-reported. As a result, the State Board would lack a verifiably objective method to determine whether a particular third party vendor has, in fact, exceeded the threshold for ‘online platform’ status.” The nonprofit further states: “This approach would give the final regulation greater adaptability to future developments in digital marketing tactics.”

Response: As noted in the previous assessment of public comments, the Board concedes that regulating programmatic advertising and ad networks is complicated; however, not addressing the issue directly risks leaving a large regulatory loophole. While many of these processes may become obsolete in the coming years, the Board is obligated to initially review this regulation within three years, and subsequently review this regulation

every five years. This will give the board ample opportunity to modernize this regulation as needed. Additionally, the Board believes that the risk of vendors underreporting its traffic is negligible. Vendors rely on its market share and reach to attract new customers. Underreporting traffic would be contrary to the vendor’s interests.

Comment: The Broadcasters advocate that the regulations should only apply to online platforms that meet the 70 million or more unique visitor threshold “preceding August 8, 2018” and not apply to any online platform that reaches this threshold after August 8, 2018. The Broadcasters reason that a “one-time application of the standard” is appropriate because the online marketplace is changing and dynamic and the State Board needs some level of certainty in evaluating the regulations in the next three years.

Response: If the State Board made the suggested amendment, online platforms that become popular and exceed the 70 million threshold sometime in the future would not be subject to this regulation, while online platforms that are no longer be relevant in the marketplace would still be subject to the regulation because, in the past, it met the 70 million threshold. The State Board believes that this would be arbitrary and contrary to public policy.

Comment: The Broadcasters advocate for a retention date for the independent expenditure forms. The Broadcasters suggest that broadcasters and online platforms be able to dispose of the IE forms they collect 90 days after the election.

Response: The State Board does not believe it is necessary to specify a retention date in order to implement this regulation.

Department of Environmental Conservation

NOTICE OF ADOPTION

Sanitary Condition of Shellfish Lands

I.D. No. ENV-21-18-00028-A

Filing No. 1036

Filing Date: 2018-10-25

Effective Date: 2018-11-14

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

Action taken: Amendment of Part 41 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0307 and 13-0319

Subject: Sanitary Condition of Shellfish Lands.

Purpose: To reclassify underwater shellfish lands to protect public health.

Text of final rule: 6 NYCRR Part 41 is amended to read as follows:

Clause 41.2(b)(1)(ii)(‘e’) is amended to read as follows:

(‘e’) [All] *During the period of November 1 through April 30, both dates inclusive, all that area of East Bay and all other bays, creeks, canals and tributaries lying [east and within the boundaries north of a line extending southerly from the westernmost point of land at Big Crow Island at Neds Creek to the southwestern corner of the Fundy Channel Bridge of the Meadowbrook Parkway on West Crow Island, and] north of a line extending easterly from the southwestern corner of the Fundy Channel Bridge of the Meadowbrook Parkway on West Crow Island to the northwestern tip of the Sloop Channel Bridge of the Wantagh State Parkway connecting Green Island with Jones Beach State Park, and west of a line extending northerly along the western shoreline of Green Island to the southwestern tip of the Goose Creek Bascule Bridge of the Wantagh State Parkway, connecting Green Island with Great (Low) Island, [and south of a line extending westerly to the westernmost point of land of Big Crow Island on Neds Creek.] then continuing northerly along the shoreline to the westernmost point of Great (Low) Island, and continuing northwesterly to the southernmost point of land at Whaleneck Point, and lying south and east of a line extending southwesterly to the northernmost tip of Big Crow Island at Neds Creek, continuing along the western shore of Big Crow Island, to the southwestern corner of the Fundy Channel Bridge of the Meadowbrook Parkway on West Crow Island.*

Clause 41.2(b)(3)(ii)(‘c’) is amended to read as follows:

(‘c’) All that area of West Pond and *that portion of Hempstead Harbor lying [southerly and easterly of a line extending northerly from the westernmost end of the rock jetty, located southerly of the mouth of West*

Pond, to the westernmost end of the rock jetty with adjacent wooden walkway, located on Dosoris Island, northerly of the mouth of West Pond (local names, local landmarks.) *between lines extending 500 feet northwesterly from the seaward ends of the rock jetties on each side of the entrance to West Pond (local names, local landmarks).*

Clause 41.2(b)(4)(ii)(c) is amended to read as follows:

(c) All that area of West Pond and *that portion of Hempstead Harbor lying [southerly and easterly of a line extending northerly from the westernmost end of the rock jetty, located southerly of the mouth of West Pond, to the westernmost end of the rock jetty with adjacent wooden walkway, located on Dosoris Island, northerly of the mouth of West Pond (local names, local landmarks.)] between lines extending 500 feet northwesterly from the seaward ends of the rock jetties on each side of the entrance to West Pond (local names, local landmarks).*

Subparagraph 41.3(b)(4)(xiv) is amended to read as follows:

(xiv) [Noyac] *Noyack Creek. During the period May 1st 1 through November 30th 30 (both dates inclusive) all that area of [Noyac] Noyack Creek lying southerly of a line extending southwesterly from the southwesternmost point of land on Clam Island to the opposite shoreline located at Morton National Wildlife Refuge in Noyack.*

Clauses 41.3(b)(4)(xv)(a), (b) and (c) are amended to read as follows:

(a) During the period May 15th 1 through [October 15th] *November 30 (both dates inclusive), all that area of Cold Spring Pond within the former Lobster Inn Boat Basin (local names, local landmark), lying northwest of a line extending northeasterly along the fixed wooden dock of the former Lobster Inn Restaurant to the opposite shoreline, and all that area lying southeast of a line extending southwesterly from the northwesternmost point of land on the unnamed peninsula bordering the northeastern side of the cove, continuing southwesterly to the opposite shoreline (adjacent to the former Lobster Inn Restaurant).*

(b) During the period January 1st 1 through December 31st 31 (both dates inclusive), all that area of the *former Lobster Inn Boat Basin lying southeast of a line extending northeasterly along the fixed wooden dock of the former Lobster Inn Restaurant to the opposite shoreline.*

(c) During the period May 1st 1 through November 30th 30, both dates inclusive, all that area of Cold Spring Pond lying northeast of a line extending southeasterly from an orange marker located on the northern shoreline in the northeastern corner of the pond to another orange marker located on the eastern shoreline adjacent to Shrubland Road.

Subparagraph 41.3(b)(5)(vii) is amended to read as follows:

(vii) [During the period May 15th through October 15th (both dates inclusive), all] *Napeague Bay, Devon Yacht Club. All that area of the Devon Yacht Club Boat Basin (local name), located on the southern side of Napeague Bay.*

Clause 41.3(b)(5)(viii)(a) is amended to read as follows:

(a) *Alewife Pond. All that area of Alewife Pond, including entrance channel and all that area of Northwest Harbor, within [50] 300 yards in all directions from the inlet of Alewife Pond.*

Clause 41.3(b)(5)(ix)(c) is amended to read as follows:

(c) In the absence of [the] *one or both* painted markers, all of Northwest Creek is uncertified.

Clause 41.3(b)(7)(iii)(c) is amended to read as follows:

(c) *Wickham Creek. During the period of May 15 through October 31, both dates inclusive, all that area of Wickham Creek and its tributaries.*

Subclauses 41.3(b)(7)(iii)(c)(1) and (2) are repealed.

Subclause 41.3(b)(7)(iii)(c)(3) is renumbered Subclause 41.3(b)(7)(iii)(c)(1).

Clause 41.3(b)(7)(xi)(e) is amended to read as follows:

(e) *West Creek. During the period of [May 1st through November 30th] January 1 through December 31, both dates inclusive, all that area of West Creek [including], and all that area of Great Peconic Bay within 750 feet in all directions of the southernmost point of the jetty on the east side of the mouth of West Creek.*

Subclause 41.3(b)(7)(xii)(b)(2) is amended to read as follows:

(2) During the period [April 15th to December 31st] *May 1 through November 30, both dates inclusive, all that area of Jockey Creek, Town Creek and tributaries, lying west of a line extending southerly from the south end of Terry Road directly to the opposite shore.*

Clause 41.3(b)(7)(xii)(d) is amended to read as follows:

(d) *Goose Creek. During the period [April 15th through December 31st] May 1 through November 30, both dates inclusive, all that area of Goose Creek lying south and west of the Goose Creek Bridge (local landmarks).*

Clause 41.3(b)(7)(xiii)(a) is amended to read as follows:

(a) *Oyster Ponds Creek. During the period May 1st through October 31st, both dates inclusive, all that area of Orient Harbor [lying east of a line extending northerly from the tip of the northwesternmost dock of the Orient Yacht Club to the northernmost corner of the bulkhead*

at the shoreline at the foot of the Harbor River Road] and its tributaries lying north and east of the fixed dock at Orient Yacht Club and then east of a line extending northerly from the northwestern corner of the northwestern most dock of the Orient Yacht Club to the highest peak on the front of the residence with a crescent shaped window at 20075 Main Road, to a point on the opposite shore of Orient Harbor 275 yards northwest of the northernmost corner of the bulkhead at the foot of Harbor River Road and all that area of Oyster Ponds Creek in its entirety.

Clauses 41.3(b)(7)(xiii)(c) and (d) are repealed.

Clause 41.3(b)(7)(xiii)(e) is renumbered Clause 41.3(b)(7)(xiii)(c).

Renumbered Clause 41.3(b)(7)(xiii)(c) is amended to read as follows:

(c) *Spring Pond. During the period January 1st through December 31st, both dates inclusive, all that area of Spring Pond including tributaries, and all that area of Orient Harbor within 500 feet in all directions of the southeastern end of the easternmost bulkhead at the entrance to Spring Pond.*

Clause 41.3(b)(7)(xiii)(f) is repealed.

Subparagraph 41.3(b)(7)(xv) is amended to read as follows:

(xv) *Little Peconic Bay, Richmond Creek. During the period [April 1st] May 1 through October 31st, both dates inclusive, all that area of Richmond Creek lying west of a line extending north from the easternmost point of land at the south side of the mouth of Richmond Creek to the opposite shore.*

Paragraph 41.3(b)(10) is amended to read as follows:

(10) *Town of [Smith Town] Smithtown.*

Clauses 41.3(b)(10)(i)(a) and (b) are amended to read as follows:

(a) All that area of *Smithtown Bay, including the Nissequoque River and its tributaries and Sunken Meadow Creek, lying south of a line extending northeasterly from the flagpole at the East Bath House at Sunken Meadow State Park (local landmark) to Buoy BW "NR", located (at coordinates 40° 55.395' N latitude and 73° 13.745' W longitude), approximately one mile north of the mouth of the Nissequoque River, thence southeasterly to the flagpole located at the Town of Smithtown Beach at Short Beach (local landmark).*

(b) All that area within a one-half mile radius of Buoy BW "NR", (at coordinates 40° 55.395' N latitude and 73° 13.745' W longitude), approximately one mile north of the mouth of the Nissequoque River.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 41.3(b)(5) and (7).

Text of rule and any required statements and analyses may be obtained from: Matthew Richards, Department of Environmental Conservation, 205 North Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0491, email: matt.richards@dec.ny.gov

Additional matter required by statute: Pursuant to Article 8 of the Environmental Conservation Law, the State Environmental Quality Review Act and Title 6 Part 617.5, this action is listed as Type II and no further review is required.

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

Non-substantive changes were made to the regulation that did not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement. Two non-substantive changes were made to the text of the proposed rule: omitted words were added to clarify the location of Devon Yacht Club in Napeague Bay, and the description of the reference point for the shellfishing closure line at Oyster Ponds Creek in Orient Harbor was improved. The original Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement as published in the Notice of Proposed Rulemaking, remain valid and do not need to be amended.

Initial Review of Rule

As a rule that requires a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Regulations Governing the Recreational Fishing of Black Sea Bass

I.D. No. ENV-28-18-00001-A
Filing No. 1047
Filing Date: 2018-10-30
Effective Date: 2018-11-14

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.
Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105 and 13-0340-f
Subject: Regulations governing the recreational fishing of black sea bass.
Purpose: To revise regulations concerning the recreational harvest of black sea bass in New York State.
Text or summary was published in the July 11, 2018 issue of the Register, I.D. No. ENV-28-18-00001-EP.
Final rule as compared with last published rule: No changes.

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

Additional matter required by statute: Pursuant to Article 8 of the ECL, the SEQRA, a Short EAF and a negative declaration have been prepared, and are on file with the Department. A Coastal Assessment Form is on file with the Department.

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

Assessment of Public Comment
 The agency received no public comment.

Department of Financial Services

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

Regulations Implementing the Comprehensive Motor Vehicle Insurance Repairs Act-Claims for Personal Injury Protection Benefit

I.D. No. DFS-46-18-00014-P

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

Proposed Action: Amendment of Subpart 65-3 (Regulation 68-C) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301, 5221 and art. 51

Subject: Regulations Implementing the Comprehensive Motor Vehicle Insurance Repairs Act-Claims for Personal Injury Protection Benefit.

Purpose: To give insurer option to void assignment of benefits when insurer issues denial for EIP’s failure to attend IME or EUO.

Text of proposed rule: Section 65-3 is amended as follows:
 NYS forms NF-3 and NF-AOB to Appendix 13 are repealed, and new NYS forms NF-3 and NF-AOB to Appendix 13 are added.

Subdivision 65-3.11(e) is re-lettered as 65-3.11(f), and a new subdivision 65-3.11(e) is added to read as follows:

(e)(1) Notwithstanding subdivisions (a), (b), (c), and (d) of this section, if an insurer denies a claim arising from an accident occurring on or after July 1, 2019, for health service benefits because the eligible injured person violated a condition of the policy by failing to appear for a medical examination or examination under oath at the insurer’s request, then any assignment of any benefits made by the eligible injured person to a provider of health care services (other than a hospital) shall be voidable by the insurer and shall not be enforceable against the insurer, and the

insurer shall not be obligated to pay benefits directly to any provider of health care services other than a hospital. The insurer shall clearly state on the denial of claim form (NYS form NF-10) the specific policy issue upon which the denial is based. As used in this subdivision, hospital shall have the meaning ascribed by section 52.2(m) of Part 52 of this Title (Insurance Regulation 62).

(2) If, pursuant to paragraph (1) of this subdivision, an insurer voids the assignability of all rights, privileges, and remedies to a health care provider under an executed assignment of benefits form, the insurer shall send the NYS form NF-10 to the eligible injured person and a copy to the provider who submitted the claim. The insurer also shall include with the NYS form NF-10 a notice to an eligible injured person and the health care provider that the assignment is void pursuant to this subdivision, and that the eligible injured person may contest the denial as described on the NYS form NF-10.

(3) Every insurer shall maintain a list of all claims that were denied because the eligible injured person violated a condition of the policy by failing to appear for a medical examination or examination under oath at the insurer’s request and the assignment was voided because of the denial. The insurer also shall maintain a total number of the claims so denied annually. An insurer that is not a self-insurer shall maintain the lists in accordance with Part 243 of this Title (Insurance Regulation 152). Every self-insurer shall maintain the lists for six calendar years after all elements of the claim upon which the denial is based are resolved and the file is closed.

Text of proposed rule and any required statements and analyses may be obtained from: Camielle Barclay, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5299, email: Camielle.Barclay@dfs.ny.gov

Data, views or arguments may be submitted to: Same as above.
Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority: Sections 202 and 302 of the Financial Services Law, and Sections 301 and 5221 and Article 51 of the Insurance Law.

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

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

Insurance Law Section 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation with respect to the payment of no-fault benefits to qualified persons.

Article 51 of the Insurance Law governs the no-fault insurance system.

2. Legislative objectives: Article 51 of the Insurance Law is popularly referred to as the “no-fault law.” No-fault legislation was introduced to rectify problems that were inherent in the existing tort system with respect to motor vehicle accidents, under which injured parties sought claims settlement and the prompt payment of health care and loss of earnings benefits. Article 51 applies both to insurance provided by motor vehicle insurance companies and entities permitted to self-insure under the Vehicle and Traffic Law (collectively “insurers”).

3. Needs and benefits: Pursuant to 11 NYCRR 65-3.11, an eligible injured person (“EIP”) may currently assign to his or her treating provider all of the EIP’s rights, privileges, and remedies to payment for health care services to which the EIP is entitled under Article 51. Once the treating provider properly executes an assignment of benefits form, the provider is entitled to receive payment from the no-fault insurer or to file a dispute in arbitration or court if the claim is denied, even though in certain circumstances the EIP may be more suitable to contest the denial. Of particular concern is when the EIP violates a condition of the policy by failing to appear for an independent medical examination or an examination under oath (collectively referred to as “examination”).

This entitlement has been subjected to widespread abuse by unscrupulous medical mills that often obtain patients from accident “runners” who are paid to steer injured persons to the mills, or are persons who are part of a staged accident ring. These EIPs are unlikely to appear for an examination, and if an insurer denies a claim on that basis, the medical mills – armed with an executed assignment that permit them to contest the denial – will file multiple cases in court or arbitration (a separate filing for each health service provider) and oftentimes in multiple jurisdictions, in the hope that insurers will offer to settle cases rather than pay multiple attorney’s fees to litigate these cases, even though the denials of these cases have merit.

The amendment will allow an insurer to void an assignment where the insurer denies the claim because the EIP failed to appear for an examination. This will mean that only the EIP may litigate the denial. This should reduce the number of hearings because the disposition of the case would apply to all related claims of the EIP arising out of the accident.

This amendment should reduce the number of filings in court and arbitration since EIPs connected to staged accident rings or otherwise engaged in fraudulent activities concerning no-fault are unlikely to contest insurers' denials for failing to appear for an examination. However, this amendment should not impact the rights of legitimate EIPs and treating providers. An EIP continues to be able to challenge improper denials, such as when the EIP had a valid reason for failing to appear for the examination.

Hospitals are excepted from this amendment because they are unlikely to participate in fraudulent activity such as staged accidents, and by law must treat all injured persons, as opposed to other health service providers who may opt not to treat an EIP, particularly one the provider may suspect is engaging in insurance fraud.

This amendment also does not vitiate an insurer's obligation to comply with all requirements when requesting that an EIP appears for an examination. The amendment requires insurers to maintain a list of all claims that have been denied based on an EIP's failure to appear for an examination and for which the insurer voids the assignment, so the Department may monitor any abusive practices by insurers resulting from the amendment's implementation.

4. Costs: Any cost impact on insurers, self-insurers and state and local government, to the extent that they are self-insurers, is likely to be minimal. The amendment will require insurers and self-insurers to include a notice to the EIP and the provider when voiding an assignment and maintain a copy of all denials based on an EIP's failure to appear for an examination and where the insurer or self-insurer opts to void the assignment based on the denial. Providing the notice to the EIP and the provider when issuing an NF-10 form may add a negligible cost. The recordkeeping requirement should not impose an undue burden on authorized insurers because they are already subject to the recordkeeping requirements prescribed in 11 NYCRR 243 (Insurance Regulation 152). Self-insurers are unlikely to incur any significant costs because it is likely that they already maintain such records in the ordinary course of business. In fact, the Department anticipates that the amendment will reduce costs to insurers and self-insurers, especially attorney's fees associated with handling multiple filings and backlog of pending lawsuits and arbitrations. Because the amendment should result in only one hearing on the issue of whether the EIP failed to appear for an examination, insurers and self-insurers will only incur one set of attorney's fees to litigate the matter.

This amendment should have no cost impact on EIPs. The regulation does not require an EIP to be represented in court or arbitration by an attorney. If the EIP opts to retain an attorney and prevails, the insurer is responsible for paying the EIP's attorney's fees pursuant to 11 NYCRR 65-4.6(c), which permits the prevailing attorney to be paid \$70 per hour, up to a maximum of \$1,400 for litigating the policy issue, in addition to up to \$80 per hour for each appearance before the arbitration forum or court.

Health service providers also should experience no cost impact. A provider always has the option to collect its fees directly from the EIP. Since a legitimate EIP would likely contest the denial, if the EIP is successful, the provider will get paid without having to pursue the assignment itself. If the EIP is unsuccessful, the provider is in no worse position than if it had been unsuccessful in bringing the action to court or arbitration.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district except where the local government is a self-insurer. In that case, the local government will have to include a notice to the EIP and the provider when voiding the assignment and maintain records of the denials, but it is likely that the local government would do that anyway.

6. Paperwork: This amendment does not impose any additional paperwork on any persons affected by the rule. However, insurers should generate less paperwork because they no longer will be required to file separate responses in multiple lawsuits involving the same denial.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Department considered, as an alternative, creating a separate arbitration proceeding for denials based on an EIP's failure to appear for an examination. This proceeding would have solely focused on resolving the basis for the denial at one hearing before any other issues, such as medical necessity, are heard at the arbitration proceeding. The Department decided that this approach would be too complex because it would require an insurer to notify all interested parties – health service providers – of the hearing, some of which may be unknown at the time of the hearing if they have not yet filed claims with the insurer. A separate arbitration proceeding also would increase the costs of administering the no-fault arbitration system.

9. Federal standards: There are no minimum federal standards for the same or similar subject areas. The rule is consistent with federal standards or requirements.

10. Compliance schedule: The amendment shall take effect on July 1, 2019 and shall apply to all claims arising from accidents occurring on and after that date.

Regulatory Flexibility Analysis

1. Effect of the rule: This amendment, which gives an insurer the option to void an assignment when it denies a claim for the failure of an eligible injured person ("EIP") to appear for an independent medical examination or an examination under oath (collectively referred to as "examination"), affects no-fault insurers authorized to do business in New York State and self-insurers of no-fault benefits. The Department is unaware of any insurer writing automobile liability insurance that is a "small business" as defined in State Administrative Procedure Act Section 102(8) as being both independently owned and having less than one hundred employees. The Department of Financial Services ("Department") does not have any information to indicate that any self-insurer, which must have the financial ability to self-insure losses, is a small business as defined in State Administrative Procedure Act Section 102(8).

Local government units make independent determinations on the feasibility of becoming self-insured for no-fault benefits or having these benefits provided by authorized insurers. There are no provisions in the State's financial security laws that require local governments to report to the Departments of Financial Services or Motor Vehicles whether they are self-insured. Therefore, the Department has no way to estimate how many local government units are self-insured for no-fault benefits.

Health service providers are small businesses that may be impacted by this rule. However, their participation in the no-fault system is optional and the Department has established no preauthorization or reporting requirements with respect to these small businesses. Additionally, providers have the option to collect fees for their services directly from the EIPs. Furthermore, because the Department does not maintain records of the number of health service providers licensed in this state, the number of such providers rendering services to injured persons eligible for no-fault benefits, or the number of attorneys that represent such providers in no-fault disputes, the Department is not able to estimate the number of health service providers that will be affected by this rule.

2. Compliance requirements: The proposed amendment imposes compliance requirements on local governments, to the extent that they are self-insurers, because the amendment requires self-insurers to maintain a copy of all denials based on an EIP's failure to appear for an examination and where the self-insurer opts to void the assignment based on the denial. The rule does not impose any compliance requirements on health service providers that are small businesses other than to use the no-fault forms mandated by the regulation, but that is an existing requirement.

3. Professional services: This amendment does not require any small business or local government, to the extent that it is a self-insurer affected by the amendment, to use any professional services beyond those currently used to comply with this rule.

4. Compliance costs: Any cost impact to self-insurers and state and local government, to the extent that they are self-insurers, is likely to be minimal. The amendment requires insurers and self-insurers to maintain a copy of all denials based on an EIP's failure to appear for an examination and where the insurer or self-insurer opts to void the assignment based on the denial. This requirement should not impose an undue burden on authorized insurers because they are subject to the recordkeeping requirements prescribed in 11 NYCRR 243 (Insurance Regulation 152). Self-insurers are unlikely to incur any significant costs because it is likely that they already maintain such records in the ordinary course of business. In fact, the Department anticipates that the amendment will reduce costs to insurers and self-insurers, especially attorney's fees associated with handling multiple filings and backlog of pending lawsuits and arbitrations. Because the amendment should result in only one hearing on the issue of whether the EIP failed to appear for an examination, insurers and self-insurers will only incur one set of attorney's fees to litigate the matter.

The Department anticipates that no health service provider that is a small business will experience a cost increase as a result of this amendment, because providers may require payment for services directly from an EIP.

5. Economic and technological feasibility: Small businesses and local governments affected by this amendment should not incur any economic or technological impact as a result of this amendment, because the amendment does not impact the economy or require the use of technology.

6. Minimizing adverse impact: This rule should have no adverse impact on legitimate small businesses or local governments, to the extent that they are self-insurers, affected by this amendment. As explained in item 4 above, health service providers may pursue payment directly from the EIP and any recordkeeping costs incurred by local governments should be minimal, since it is likely that they already maintain the records in the ordinary course of business.

7. Small business and local government participation: Interested parties, including small businesses and local governments, will be given the opportunity to comment on the proposed rule during the comment period after it is published in the State Register.

Rural Area Flexibility Analysis

The Department of Financial Services (the "Department") finds that the proposed rule does not impose any additional burden on persons located in

rural areas, and will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Job Impact Statement

The proposed rule should have no adverse impact on jobs or employment opportunities in this state, because it only gives an insurer the option to void an assignment when the insurer issues a denial based on the failure of an eligible injured person (“EIP”) to attend an independent medical examination or examination under oath. Therefore, only an EIP may contest such a denial in court or arbitration.

The proposed rule may promote jobs and employment opportunities for attorneys if an EIP opts to be represented by an attorney in court or arbitration to contest an insurer’s denial.

Office of General Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Service-Disabled Veteran-Owned Business Enterprises

I.D. No. GNS-46-18-00001-P

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

Proposed Action: This is a consensus rule making to amend sections 252.1(c), (e), 252.2(i)(2)(iv), (v), (n)(1)(ii), (iv); and add section 252.2(n)(1)(v) to Title 9 NYCRR.

Statutory authority: Executive Law, sections 200 and 369-i(5)

Subject: Service-Disabled Veteran-Owned Business Enterprises.

Purpose: To establish standards, procedures and criteria with respect to the Service-Disabled Veteran-Owned Business Enterprise program.

Text of proposed rule: Amend Subdivisions 252.1(c) and (e)
252.1 Definitions

* * *

(c) Business enterprise shall mean any entity, including a sole proprietorship, partnership, limited liability partnership, limited liability company or corporation, [including not-for-profit corporations,] which is authorized to and engages in lawful business transactions in accordance with New York law.

* * *

(e) Certified service-disabled veteran-owned business enterprise shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation [, including not-for-profit corporations] that is:

Amend Subparagraphs 252.2 (i)(2)(iv) and 252.2(i)(2)(v)

252.2 State agency responsibilities: purpose, scope and applicability

* * *

(iv) the estimated or, if known, actual dollar amounts to be paid to [and performance dates of each component of a State contract which the contractor intends to be performed by] a certified service-disabled veteran-owned business enterprise; and

(v) a statement that the utilization of certified service-disabled veteran-owned business enterprises for non-commercially useful functions may not be counted towards utilization of certified [minority and women-owned business enterprises] *service-disabled veteran-owned business enterprises* in the utilization plan.

Amend Subparagraphs 252.2(n)(1)(ii) and (iv) and add a new Subparagraph 252.2(n)(1)(v)

(n) Contractor’s efforts to utilize certified business enterprises

(1) Contractors must document their good faith efforts toward utilizing certified service-disabled veteran-owned business enterprises, including but not limited to, those identified within a utilization plan. Such documented efforts, shall include, at a minimum:

(i) copies of its solicitations of certified service-disabled veteran-owned business enterprises and any responses thereto;

(ii) if responses to the contractor’s solicitations [that] were received, but a certified service-disabled veteran-owned business enterprise was not selected, [and] the specific reasons that such enterprise was not selected;

(iii) the dates of attendance at any pre-bid, pre-award, or other

meetings, if any, scheduled by the State agency awarding the State contract, with certified service-disabled veteran-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;

(iv) information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified service-disabled veteran-owned business enterprises[.]; and

(v) other information required by the agency.

Text of proposed rule and any required statements and analyses may be obtained from: Paula B. Hanlon, Esq., Office of General Services, 41st Floor, Corning Tower, Empire State Plaza, Albany, NY 12242, (518) 474-5607, email: RegsReceipt@ogs.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.

Consensus Rule Making Determination

This rule is being proposed as a consensus rule because, in accordance with State Administrative Procedure Act § 102 (11) (b) and (c), it implements or conforms to non-discretionary statutory provisions and makes technical changes or is otherwise non-controversial.

Chapter 22 of the Laws of 2014 amended the Executive Law by creating a new Article 17-B, which established a program to increase participation of service-disabled veteran-owned business enterprises, in State contracting.

Emergency rulemakings were filed on July 31, 2014 and November 17, 2014, and the proposed rulemaking was adopted on January 28, 2015. This rulemaking is necessary to make technical and clarification changes to 9 NYCRR § § 252.1 and 252.2.

Subdivisions 252.1(c) and 252.1(e) are being amended to correct the definition of “Business enterprise” to eliminate erroneous references to “not-for-profit corporations.”

Subparagraph 252.2(i)(2)(iv) is being amended to remove a requirement that contractors provide estimated performance dates for each component of the contract, that the contractor intends to have performed by a service-disabled veteran-owned businesses, because this requirement has been found to be unnecessary and has served no benefit to the program.

Subparagraph 252.2(i)(2)(v) is being amended to remove an erroneous reference to minority and women-owned business enterprises and replace it with a correct reference to service-disabled veteran-owned businesses.

Subparagraph 252.2(n)(1)(ii) is being amended to make the requirement less confusing.

Subparagraph 252.2(n)(1)(iv) is being amended and subparagraph 252.2(n)(1)(v) is being added to clarify that individual agencies may have additional required documents.

Job Impact Statement

The Office of General Services projects no substantial adverse impact on jobs or employment opportunities in the State of New York as a result of the amendment of this rule. The amendment simply fixes unintended technical errors in the original regulations and further clarifies the intent of the regulations. The amendment implements or conforms to non-discretionary statutory provisions of the Service-Disabled Veteran-Owned Business Enterprise program, established pursuant to Chapter 22 of the Laws of 2014, and makes technical changes or is otherwise non-controversial. Nothing in the proposed regulations will substantially increase or decrease the number of jobs in New York State, have an adverse impact on specific regions in New York State, or negatively impact jobs in New York State.

Department of Health

EMERGENCY RULE MAKING

Controlled Substances

I.D. No. HLT-46-18-00015-E

Filing No. 1048

Filing Date: 2018-10-30

Effective Date: 2018-10-30

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

Action taken: Amendment of section 80.3 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3307(5)

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

Specific reasons underlying the finding of necessity: On September 28, 2018, the Drug Enforcement Administration recently issued a final order placing certain drug products that have been approved by the U.S. Food and Drug Administration (FDA) and which contain cannabidiol (CBD) in schedule V of the Controlled Substances Act. Specifically, the order places FDA-approved drugs containing CBD derived from cannabis and no more than 0.1 percent tetrahydrocannabinols in schedule V. These FDA-approved CBD products have been found to be effective for the treatment of seizures associated with severe and dangerous forms of epilepsy that are notoriously treatment-resistant. This regulatory amendment is necessary to immediately reclassify these products as schedule V substances. This will allow patients in New York state to be prescribed these medications as soon as possible. Any delay in reclassifying these FDA-approved products containing CBD would limit access to these medications and could put patients at risk.

Subject: Controlled Substances.

Purpose: To reclassify cannabidiol (CBD) from a Schedule I controlled substance to a Schedule V controlled substance.

Text of emergency rule: Paragraph (b) of Section 80.3 is amended to read as follows:

(b) Reclassifications.

(1) The following drugs listed in schedule II(c) of section 3306 of the Public Health Law are hereby reclassified as schedule III substances.

* * *

(2) The following drug classified under schedule I of section 3306 of the Public Health Law is hereby reclassified as a schedule V substance:

a drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols.

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 January 27, 2019.

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

Regulatory Impact Statement

Statutory Authority:

The Commissioner of Health is authorized pursuant to Section 3307(5) of the Public Health Law (PHL) to reclassify, by regulation or emergency regulation, any compound, mixture or preparation containing any substance listed as a schedule I substance, to a schedule II, III, IV or V substance, if that same compound, mixture or preparation is redesignated or rescheduled other than under schedule I under the federal Controlled Substance Act, or deleted under the federal Controlled Substances Act.

Legislative Objectives:

Section 3307(5) of the Public Health Law permits the Commissioner to respond quickly and flexibly to actions by the U.S. Drug Enforcement Agency (DEA) that reclassify scheduled substances, particularly in circumstances where a new medical use of a scheduled substance has been approved by the U.S. Food and Drug Administration (FDA) and is permitted as a result of the reclassification. The purpose of this statute is to ensure that patients in New York can have access to medication that would otherwise be prohibited under the Public Health Law.

Needs and Benefits:

On September 28, 2018, the DEA issued a final order placing certain drug products that have been approved by the U.S. Food and Drug Administration (FDA) and which contain cannabidiol (CBD) in schedule V of the Controlled Substances Act. Specifically, the order places FDA-approved drugs containing CBD derived from cannabis and no more than 0.1 percent tetrahydrocannabinols in schedule V. These FDA-approved CBD products have been found to be effective for the treatment of seizures associated with severe and dangerous forms of epilepsy that are notoriously treatment-resistant. This regulation is necessary to immediately reclassify these products as schedule V substances, allowing patients in New York state to be prescribed these medications as soon as possible.

Costs:

Costs to the Regulated Entity:

The Department of Health (Department) does not anticipate any additional costs to regulated entities.

Costs to Local Government:

This regulation does not require local governments to perform any additional tasks; therefore, it is not anticipated to have an adverse fiscal impact.

Costs to the Department of Health:

The Department does not anticipate any additional costs.

Local Government Mandates:

This amendment does not impose any new programs, services, duties or responsibilities on local government.

Paperwork:

The department does not anticipate any change in required paperwork by the adoption of this amendment.

Duplication:

No relevant rules or legal requirements of the State government duplicate or conflict with this rule. The amendment reflects federal reclassification of FDA approved cannabidiol substances.

Alternatives:

An alternative to this regulatory amendment would be to not reclassify FDA-approved cannabidiol products as schedule V controlled substances. However, by not reclassifying these FDA approved drugs, patients in New York state would not be able to benefit from these medications.

Federal Standards:

The DEA, on September 28, 2018, reclassified FDA approved cannabidiol products as schedule V substances. This regulatory amendment would reflect that change.

Compliance Schedule:

There is no compliance schedule imposed by these amendments, which shall be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

NOTICE OF WITHDRAWAL

Sale of Electronic Cigarette Flavored Liquids

I.D. No. HLT-45-18-00006-W

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

Action taken: Notice of proposed rule making, I.D. No. HLT-45-18-00006-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on November 7, 2018.

Subject: Sale of Electronic Cigarette Flavored Liquids.

Reason(s) for withdrawal of the proposed rule: A draft rule intended for discussion purposes only was prematurely filed and is immediately withdrawn for further review.

NOTICE OF ADOPTION

Medical Staff — Sepsis Protocols

I.D. No. HLT-25-18-00003-A

Filing No. 1039

Filing Date: 2018-10-26

Effective Date: 2018-11-14

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

Action taken: Amendment of section 405.4 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800 and 2803

Subject: Medical Staff — Sepsis Protocols.

Purpose: Update definitions and guidelines of sepsis and associated protocols for treatment to align with the latest evidence-based practices.

Text of final rule: Subdivision (a) of Section 405.4 is amended to read as follows:

(a) Medical staff accountability. The medical staff shall be organized and accountable to the governing body for the quality of the medical care provided to all patients.

(1) The medical staff shall establish objective standards of care and conduct to be followed by all practitioners granted privileges at the hospital. Those standards shall:

(i) be consistent with prevailing standards of medical and other licensed health care practitioner standards of practice and conduct; and

(ii) afford patients their rights as patients in accordance with the provisions of this Part.

(2) The medical staff shall establish mechanisms to monitor the ongoing performance in delivering patient care of practitioners granted privileges at the hospital, including monitoring of practitioner compliance with bylaws of the medical staff and pertinent hospital policies and procedures.

(3) The medical staff shall review and, when appropriate, recommend to the governing body, the limitation or suspension of the privileges of practitioners who do not practice in compliance with the scope of their privileges, medical staff bylaws, standards of performance and policies and procedures, and assure that corrective measures are developed and put into place, when necessary.

(4) The medical staff shall adopt, implement, periodically update and submit to the Department evidence-based protocols for the early recognition and treatment of patients with severe sepsis and septic shock ("sepsis protocols") that are based on generally accepted standards of care. Sepsis protocols must include components specific to the identification, care and treatment of adults, and of children, and must clearly identify where and when components will differ for adults and for children. These protocols must include the following components:

(i) a process for the screening and early recognition of patients with sepsis, severe sepsis and septic shock;

(ii) a process to rapidly identify and document individuals appropriate for treatment through severe sepsis and septic shock protocols, including explicit criteria defining those patients who should be excluded from the protocols, such as patients with certain clinical conditions or who have elected palliative care;

(iii) guidelines for hemodynamic support [with explicit physiologic and biomarker treatment goals, methodology for invasive or non-invasive hemodynamic monitoring], including monitoring, therapeutic endpoints and timeframe goals;

(iv) for infants and children, guidelines for fluid resuscitation with explicit timeframes for vascular access and fluid delivery consistent with current, evidence-based guidelines for severe sepsis and septic shock with defined therapeutic goals for children; and

(v) a procedure for identification of infectious source and delivery of early antibiotics with timeframe goals; and

(vi) criteria for use, where appropriate, of an invasive protocol and for use of vasoactive agents].

(5) The medical staff shall ensure that professional staff with direct patient care responsibilities and, as appropriate, staff with indirect patient care responsibilities, including, but not limited to laboratory and pharmacy staff, are periodically trained to implement sepsis protocols required pursuant to paragraph (4) of this subdivision. Medical staff shall ensure updated training when the hospital initiates substantive changes to the protocols.

(6) [Hospitals shall submit sepsis protocols required pursuant to paragraph (4) of this subdivision to the Department for review not later than September 3, 2013. Hospitals must implement these protocols after receipt of a letter from the Department indicating that the proposed protocols have been reviewed and determined to be consistent with the criteria established in this Part. Protocols are to be implemented no later than December 31, 2013.] Hospitals must update *sepsis* protocols required pursuant to paragraph (4) of this section based on newly emerging evidence-based standards. Protocols are to be [resubmitted] submitted to the Department at the request of the Department[, not more frequently than once every two years unless the Department identifies hospital-specific performance concerns].

(7) Collection and Reporting of Sepsis Measures.

(i) The medical staff shall be responsible for the collection, use, and reporting of quality measures related to the recognition and treatment of severe sepsis for purposes of internal quality improvement and hospital reporting to the Department. Such measures shall include, but not be limited to, data sufficient to evaluate each hospital's adherence [rate to its own sepsis protocols, including adherence] to timeframes and implementation of all protocol components for adults and children.

(ii) Hospitals shall submit data specified by the Department to permit the Department to develop risk-adjusted severe sepsis and septic

shock mortality rates in consultation with appropriate national, hospital and expert stakeholders. *Hospitals shall submit data to the Department or the Department's designee in the form and format, and according to such specifications as may be required by the Department.*

(iii) Such data shall be reported annually, or more frequently at the request of the Department, and shall be subject to audit at the discretion of the Department.

(8) Definitions. *Sepsis is a life threatening medical emergency that requires early recognition and intervention.* For the purposes of [this section] *hospital data collection*, the following terms shall have the following meanings:

(i) sepsis shall mean a [proven] *confirmed* or suspected infection accompanied by *two* [a] *systemic inflammatory response syndrome (SIRS) criteria*;

(ii) [for adults,] severe sepsis shall mean sepsis *complicated by* [plus at least one sign of hypoperfusion or organ dysfunction; for pediatrics, severe sepsis shall mean sepsis plus one of the following: cardiovascular organ dysfunction or acute respiratory distress syndrome (ARDS) or two or more] organ [dysfunctions] *dysfunction*; and

(iii) for adults, septic shock shall mean [severe sepsis with persistent] *sepsis-induced hypotension persisting* [or cardiovascular organ dysfunction] despite adequate IV fluid resuscitation *and/or evidence of tissue hypoperfusion*; for pediatrics, septic shock shall mean [severe] sepsis and cardiovascular *organ* dysfunction [despite adequate IV fluid resuscitation].

Final rule as compared with last published rule: Nonsubstantive changes were made in section 405.4(a)(6) and (8)(iii).

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: regsqa@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 New York State Department of Health (Department) received comments from a patient advocate and a health care association.

COMMENT: A commenter stated that there is a new test and technology that can detect sepsis in minutes and the commenter felt the new test could help hospitals and the Department in its efforts to improve sepsis detection and care. No additional information was provided by the commenter.

RESPONSE: The Department continuously reviews new evidence and seeks information on new technologies and processes that may enhance patient care and outcomes. The Department will take the comment under advisement. No changes to the regulation were made as a result of this comment.

COMMENT: A commenter stated that the Department should further modify the regulation at section 405.4(a)(6) to remove the requirement for hospitals to submit written sepsis protocols to the Department. The commenter stated that the requirement is no longer necessary as all hospitals have written protocols in place to meet State and Federal reporting requirements. The commenter stated that the reporting requirements have evolved and compliance with reporting ensures little variation among hospital protocols. The commenter stated that given the small amount of variation across hospitals and given that the differences in protocols among hospitals are limited to internal processes and systems but not clinical processes, that the Department should instead accept an affirmative attestation from hospitals related to their use of written triage and treatment protocols.

RESPONSE: The Department agrees that there is no benefit to requiring ongoing submission of protocols each time a protocol is revised by hospitals. As a result of this comment, the final regulation requires that protocols are only submitted to the Department at the request of the Department. In addition, the final regulation eliminates the requirement that hospitals must receive a letter from the Department indicating that the proposed protocols have been reviewed and determined to be consistent with the criteria in section 405.4(a)(4).

COMMENT: A commenter stated that the Department should reduce the burden and frequency of hospital data submission audits from quarterly to annually. The commenter stated that quarterly audits require significant hospital resources and that because of the work that has been done by

hospitals to improve the integrity of the data, the Department requirement should be aligned with the annual Federal requirement.

RESPONSE: Section 405.4(a)(7)(iii) requires hospitals to submit sepsis clinical data annually or more frequently and permits the Department to audit the data at the discretion of the Department. The regulation does not specify a timeframe for audit of sepsis clinical data. The Department will take the comment under advisement. No changes to the regulation were made as a result of this comment.

NOTICE OF ADOPTION

Prescription Contraceptive Drugs

I.D. No. HLT-30-18-00003-A

Filing No. 1040

Filing Date: 2018-10-26

Effective Date: 2018-11-14

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

Action taken: Amendment of section 505.3(d) and (e) of Title 18 NYCRR.

Statutory authority: Social Services Law, section 365-a; Public Health Law, section 201(1)(v)

Subject: Prescription Contraceptive Drugs.

Purpose: Allow for a written order of prescription contraceptives for family planning purposes to be filled 12 times within one year.

Text or summary was published in the July 25, 2018 issue of the Register, I.D. No. HLT-30-18-00003-P.

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

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

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

Public comments were submitted to the NYS Department of Health ("Department") in response to this regulation. The public comment period for this regulation ended on 09/24/2018. The Department received 13 comments.

These comments and the Department's response are summarized below:

Comment: The organizations listed below stated that they fully support the proposed rulemaking in its entirety, and recommended swift adoption. They stated that the proposed regulations are critical due to persistent barriers to contraceptive access for low-income women and women of color. They stated that the proposed regulations will improve access to contraception for Medicaid members, and promote health equity by appropriately aligning the Medicaid program's policies for the dispensing of contraceptive drugs with the regulations for commercial insurance.

The American College of Obstetricians and Gynecologists (ACOG), District II

Health Care for All New York (HCFANY)

The League of Women Voters of New York State

The National Women's Law Center

New York Civil Liberties Union (NYCLU)

Physicians for Reproductive Health

Planned Parenthood Empire State Acts (PPESA)

Planned Parenthood of New York City (PPNYC)

Planned Parenthood of the Southern Finger Lakes

PowHer New York

Raising Women's Voices-New York (RWV-NY)

Reproductive Health Access Project

Women's Health and Reproductive Rights (WHARR)

Response: The Department acknowledges the comments in support of the proposed regulation. No changes were made to the proposed regulation.

Higher Education Services Corporation

EMERGENCY RULE MAKING

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

I.D. No. ESC-46-18-00002-E

Filing No. 1043

Filing Date: 2018-10-29

Effective Date: 2018-10-29

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

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

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

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students attending New York State public institutions of higher education beginning with the fall 2014 term and students attending private degree-granting institutions of higher education located in New York State beginning with the fall 2018 term. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students who, beginning in August, pursue an undergraduate program of study in science, technology, engineering, or mathematics at a New York State institution of higher education. High school students entering college in August must inform the institution of their intent to enroll no later than May 1. Therefore, it is critical that the terms of the program as provided in the regulation be available immediately in order for HESC to process scholarship applications so that students can make informed choices. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Science, Technology, Engineering and Mathematics Incentive Program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Administration.

(1) Applicants for an award shall:

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

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

(2) Recipients of an award shall:

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

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

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

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

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

(f) Amounts.

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

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

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

(g) Failure to comply.

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire January 26, 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 Science, Technology, Engineering and Mathematics Incentive Program ("Program") is codified within Article 14 of the Education Law. Part G of Chapter 56 of the Laws of 2014 created the Program by adding a new section 669-e to the Education Law, which was subsequently amended by Part BB of Chapter 56 of the Laws of 2018. Subdivision 5 of section 669-e of the Education Law authorizes HESC to promulgate emergency regulations to administer this Program.

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

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

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

Legislative objectives:

The Education Law was amended to add a new section 669-e to create the "New York State Science, Technology, Engineering and Mathematics Incentive Program" (Program). This Program is aimed at increasing the number of individuals working in the fields of science, technology, engineering and mathematics (STEM) in New York State to meet the increasingly critical need for those skills in the State's economy.

Needs and benefits:

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

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

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

Costs:

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

b. The maximum cost of the program to the State is \$8 million in the first year based upon budget estimates. At private degree granting institutions of higher education \$1 million was appropriated for the 2018-19 academic year in the State Budget.

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

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

Local government mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal standards:

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

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

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

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

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

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

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

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

EMERGENCY RULE MAKING

Enhanced Tuition Awards Program

I.D. No. ESC-46-18-00003-E

Filing No. 1044

Filing Date: 2018-10-29

Effective Date: 2018-10-29

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

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

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

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Emergency Rule Making seeking to add a new section 2201.19 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2017 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students pursuing their undergraduate studies at a New York State private institution of higher education. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of the Program as provided in the regulation be effective immediately in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the Program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: Enhanced Tuition Awards program.

Purpose: To implement the Enhanced Tuition Awards program.

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

Section 2201.19 Enhanced Tuition Awards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) *In the program's first year:*

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

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

(2) *After the program's first year:*

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

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

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

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

(1) *Applicants for an award shall:*

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

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

(2) *Recipients of an award shall:*

(i) *execute a contract with the corporation agreeing to reside in*

New York State for a continuous number of years equal to the duration of the award received and, if employed during such time, to be employed in New York State;

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

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

(3) Institutions.

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

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

(f) Amounts.

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

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

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

(g) Contractual obligation.

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

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

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

(4) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, discharge the amount owed, or take such other appropriate action. Notwithstanding, the corporation shall prorate the amount owed commensurate with the length of time the recipient complied with the residency and employment requirements.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire January 26, 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 Enhanced Tuition Awards (Program) is codified within Article 14 of the Education Law. Part III of Chapter 59 of the Laws of 2017 created the Program by adding a new section 667-d to the Education Law, which was amended by Part W of Chapter 56 of the Laws of 2018. Subdivision 9 of section 667-d of the Education Law authorizes HESC to promulgate emergency regulations to administer this Program.

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

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

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

Legislative objectives:

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

Needs and benefits:

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

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

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

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

Costs:

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

b. Private colleges that opt to participate in the Program are required to credit each recipient's remaining tuition expenses in an amount equal to the recipient's award ("matching award") unless the college qualifies for

an exemption from providing the matching award. Such credit may be part of the recipient's institutional aid package. The maximum amount of the matching award to a recipient is \$3,000.

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

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

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

Local government mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal standards:

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

Compliance schedule:

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

Regulatory Flexibility Analysis

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

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

Rural Area Flexibility Analysis

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

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

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

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New

York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.19 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

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

EMERGENCY RULE MAKING

Excelsior Scholarship

I.D. No. ESC-46-18-00004-E

Filing No. 1045

Filing Date: 2018-10-29

Effective Date: 2018-10-29

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

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

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

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Emergency Rule Making seeking to add a new section 2201.18 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2017 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for full tuition benefits to college-going students pursuing their undergraduate studies at a New York State public institution of higher education. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of the Program as provided in the regulation be effective immediately in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the Program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: Excelsior Scholarship.

Purpose: To implement the Excelsior Scholarship.

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

Section 2201.18 Excelsior Scholarship.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Applicants for an award shall:

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

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

(2) Recipients of an award shall:

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

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

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

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

(e) Amounts.

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

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

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

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

(f) Contractual obligation.

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

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

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

(4) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, discharge the amount owed, or take such other appropriate action. Notwithstanding, the corporation shall prorate the amount owed commensurate with the length of time the recipient complied with the residency and employment requirements.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire January 26, 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 Excelsior Scholarship (Program) is codified within Article 14 of the Education Law. Part HHH of Chapter 59 of the Laws of 2017 created the Program by adding a new section 669-h to the Education Law, which was amended by Part T of Chapter 56 of the Laws of 2018. Subdivision 6 of section 669-h of the Education Law authorizes HESC to promulgate emergency regulations to administer this Program.

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

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

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

Legislative objectives:

The Education Law was amended to add a new section 669-h to create the Excelsior Scholarship (Program). This Program makes college tuition-free for New York’s middle class families at all State University of New York (SUNY) and City University of New York (CUNY) two-year and four-year colleges.

Needs and benefits:

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

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

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

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

Costs:

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

b. The maximum cost of the program to the State is \$87 million in the first year and \$118.418 million in the second year, based upon budget estimates.

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

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

Local government mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal standards:

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

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s (HESC) Emergency Rule Making, seeking to add a new section 2201.18 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

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

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s Emergency Rule Making, seeking to add a new section 2201.18 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

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

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

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s Emergency Rule Making seeking to add a new section 2201.18 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

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

Office for People with Developmental Disabilities

EMERGENCY RULE MAKING

Eligibility of Services

I.D. No. PDD-26-18-00003-E

Filing No. 1038

Filing Date: 2018-10-26

Effective Date: 2018-10-26

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

Action taken: Addition of Part 629 to Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The emergency adoption of the regulation that identifies the process by which individuals is determined eligible and provisionally eligible for OPWDD authorized services is necessary to protect the health, safety, and welfare of individu-

als receiving services in the OPWDD system. The proposed emergency regulation establishes a regulatory framework for OPWDD authorized services and details the review process used by OPWDD to determine eligibility.

The regulations must be filed on an emergency basis to ensure individuals applying for services are aware of the process by which eligibility and provisional eligibility is determined for OPWDD authorized services. Additionally, the emergency filing is necessary to ensure that the eligibility determination process for services, as provided for in statute, is articulated as part of the regulations to assist in requesting these services.

Subject: Eligibility of Services.

Purpose: The eligibility for individuals applying for OPWDD authorized services.

Text of emergency rule: A new Part 629 is added to 14 NYCRR as follows:

Part 629 Eligibility for Services.

Section 629.1 Eligibility Determination Process.

(a) Applicability. OPWDD will determine whether individuals are eligible for OPWDD operated, certified, funded and/or authorized services (hereinafter "services")

(b) General Eligibility Provisions

(1) Eligibility is determined by the application of consistent criteria based on the definition of developmental disability established in Mental Hygiene Law (MHL) section 1.03(22).

(2) Provisional eligibility may be determined in children, up to the age of eight, who manifest substantial delays, or specific congenital or acquired conditions that result in a high probability of a developmental disability if services are not provided, and whose condition and/or functioning may improve significantly over time, as a result of treatments and services.

(3) OPWDD may review or re-review an individual's eligibility at any time. Applicants determined ineligible may reapply for services upon receipt of new or differing information that supports eligibility at any time.

(4) OPWDD, through its Developmental Disabilities Regional Office (DDRO), is responsible for determining whether a person is eligible for OPWDD services. A Three-Step process, as described herein, is used by OPWDD to make an eligibility determination of developmental disability.

(5) A determination that a person is eligible to receive OPWDD services based on the individual meeting the criteria for a developmental disability does not mean the person is automatically eligible for all OPWDD services, as some OPWDD services have additional eligibility criteria.

(c) Eligibility Determination Process

(1) Eligibility Request.

(i) A request for eligibility in a form and format specified by OPWDD must accompany all requests submitted to the DDRO for eligibility determinations. The request for eligibility includes the name of the person, the name of the person's representative, and relevant contact information. The request for eligibility also includes documentation of the person's developmental disability including information related to condition/diagnosis, standardized intelligence testing, standardized measures of adaptive functioning, information related to history and presence of disability prior to age 22, a full report of all contemporary diagnoses or classifications of health, physical, developmental, or psychiatric conditions that are relevant to the determination of eligibility, and other information that may be requested by OPWDD.

(2) 1st Step Review.

(i) DDRO staff review the eligibility request for completeness and share the information with staff designated by the Director, as necessary. After this review, the DDRO notifies the person in writing that:

(a) Eligibility or provisional eligibility has been determined; or

(b) The request requires additional documentation; or

(c) The request has been forwarded for a 2nd Step Review.

(3) 2nd Step Review.

(i) DDRO clinicians designated by the DDRO Director conduct a 2nd Step Review of the eligibility request forwarded by the 1st Step Review, along with any additional documentation provided by the person. If these clinicians require additional information, the person is notified in writing of the type of information needed and the date by which it must be submitted to the DDRO.

(ii) Following the 2nd Step Review, the DDRO provides the individual with written notification of its determination. If the person is found ineligible for OPWDD services because he or she does not meet the criteria for a developmental disability, as defined in MHL Section 1.03(22) and associated guidelines, the letter shall offer the person and his or her representative the opportunity to:

(a) Meet with DDRO staff to discuss the determination and documentation reviewed; and/or

(b) Request a 3rd Step Review; and/or

(c) Request a Medicaid Fair Hearing in cases where Medicaid funded services are sought.

(iii) A Notice of Decision informing the person of his or her right to request a Medicaid fair hearing is sent only when the request for services indicates that the person is interested in receiving Medicaid funded services if determined eligible. If the person has not indicated Medicaid funded services, no fair hearing is required and the decision of the DDRO is final.

(iv) If a fair hearing is requested, a 3rd Step Review will automatically be conducted.

(4) 3rd Step Review.

(i) 3rd Step Eligibility Determination Committee conducts the 3rd Step Reviews. Committee members include licensed practitioners who are not directly involved in the determinations made at the 1st and 2nd Step Reviews. The Committee reviews the submitted eligibility request and any additional documentation provided by or on behalf of the person. The Committee forwards its recommendations to the DDRO. The DDRO considers the 3rd Step recommendations and informs the person of any change in the DDRO's determination. 3rd Step Reviews will be made prior to any fair hearing date.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. PDD-26-18-00003-EP, Issue of June 27, 2018. The emergency rule will expire December 24, 2018.

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

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

Regulatory Impact Statement

1. Statutory authority:

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

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

c. OPWDD has the statutory authority to adopt regulations concerned with the operation of programs and the provision of services, as stated in the NYS Mental Hygiene Law Section 16.00. The regulation also ensures compliance by OPWDD certified and operated residences with the proper provision of services.

2. Legislative objectives: The proposed regulations further legislative objectives embodied in sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. The regulations add a new Part 629 and Section 629.1 on eligibility for OPWDD-authorized services.

3. Needs and benefits: The proposed regulations add a new Section 629.1 concerning eligibility for individuals applying for OPWDD authorized services.

The proposed regulations in Section 629.1 identifies the process by which individuals will be determined eligible or provisionally eligible for OPWDD-authorized services. The purpose of the proposed regulation establishes a regulatory framework for individuals applying for OPWDD-authorized services as provided under the agency's statutory authority. The regulation is designed to assist and benefit regulated parties, by detailing the 3-step review process used by OPWDD to determine eligibility, including the role of Developmental Disabilities Regional Offices' in the eligibility determination process. As statutory authority authorizes OPWDD to determine eligibility, these regulations will aid regulated parties by setting forth the specific process used in making those determinations.

4. Costs: The proposed regulation will not have any fiscal impact on State and local governments. Furthermore, OPWDD expects that there will be no cost to private regulated parties as a result of this regulation.

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

6. Paperwork: Providers will not experience an increase in paperwork as a result of this regulation.

7. Duplication: This regulation does not substantively duplicate, overlap, or conflict with other state or federal rules.

8. Alternatives: OPWDD did not consider any other alternatives to the proposed regulations, as the proposed regulation directly mirrors the process already used to determine eligibility and provisional eligibility. The

regulation is necessary to detail the process used by individuals applying for eligibility or provisional eligibility for OPWDD-authorized services.

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

10. Compliance schedule: OPWDD is planning to adopt the proposed amendments as soon as possible within the timeframes mandated by the State Administrative Procedure Act. The proposed regulation will be reviewed by clinicians in advance of this proposal. Requirements of the proposed regulation will be achieved by the effective date, as the regulation reflects the current process already in place to determine eligibility.

Regulatory Flexibility Analysis

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

The proposed regulation identifies the process by which individuals are eligible or provisionally eligible for OPWDD authorized services. The regulation proposed will not result in costs or new compliance requirements for regulated parties and consequently, and the regulation will not have any adverse effects on providers of small business and local governments.

Rural Area Flexibility Analysis

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

The emergency/proposed regulation is added as Title 14 NYCRR Section 629.1 to identify the process by which individuals are eligible or provisionally eligible for OPWDD authorized services. OPWDD expects that providers will be in compliance with the emergency/proposed requirements at the time of its effective date. The proposed regulation will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers in rural areas and local governments.

Job Impact Statement

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

The emergency/proposed amendments to Title 14 NYCRR Section 629.1 identifies the process by which individuals are eligible or provisionally eligible for OPWDD authorized services. The regulation will not result in costs, including staffing costs, or new compliance requirements for providers and consequently. The regulation will not have a substantial impact on jobs or employment opportunities in New York State.

Assessment of Public Comment

This document contains responses to public comments submitted during the public comment period for emergency/proposed regulations that establishes a regulatory framework for individuals applying for OPWDD-authorized services as provided under the agency's statutory authority.

Comment: There are concerns with OPWDD's ability to re-review an individual's eligibility at any time. Individuals benefiting from urgently needed services should not be at risk for removal of those services.

Response: This comment was considered and the text will not be changed. Re-reviewing an individual's eligibility ensures OPWDD can continue its mission to provide services to individuals with developmental disabilities, as defined in MHL 1.03(22). Note, there is a low likelihood of re-reviewing eligibility, unless a rereview is warranted (e.g., provisional eligibility is ending, or new information calling eligibility into question is found). This is not a change from prior practice and is supported by case law.

Comment: There is not an unfettered right to review eligibility determinations. The statement regarding a review/re-review is open-ended without giving cause for such scrutiny. OPWDD should specify when a re-review would be appropriate.

Response: This comment was considered and the text will not be changed. OPWDD provides services to individuals who meet consistent criteria based on the definition of developmental disability in Mental Hygiene Law section 1.03(22). OPWDD must retain the right to review or re-review in order to ensure that services are provided only to people who have a developmental disability. Further guidance regarding when a re-review of eligibility is appropriate will be forthcoming.

Comment: There are concerns with MSC's administering DDP2 evaluations without the consent of the individual's guardian and how that will affect the review/re-review process in the regulation.

Response: The DDP2 is not used for determining an individual's eligibility for OPWDD services.

Comment: The regulation does not specify any criteria upon which eligibility will be based, and does nothing to correct the ongoing problem of OPWDD making eligibility determinations without reference to any clear standard based on an official policy or published regulation.

Response: OPWDD has considered this comment and will not be changing the text. OPWDD eligibility is based on the criteria set forth in MHL 1.03(22). OPWDD has issued additional guidance further clarifying the eligibility determination process, including: Policy Advisory issued August 10, 2001; Clarification Memo issued December 12, 2002; Psychological Testing Memos issued October 2008 and April 2010; and the Important Facts sheet issued August 2012.

Comment: There is no mention of the current eligibility guidelines and policies in the proposed Regulation 629.1. The public should be informed of the continued use of these guidelines as these guidelines provide the details of the clinical professionals' education level and the testing criteria necessary to determine the presence of intellectual and/or developmental disability.

Response: OPWDD has considered this comment and will not be changing the text. OPWDD's eligibility guidelines are publicly available on the OPWDD website and remain in effect until superseded by new guidance.

Comment: Part 629.1 is open-ended and without reference to the current Guidance specifying the nature of comprehensive professional evaluations and the CAS/UAS is not adequate to evaluate and determine eligibility for people with intellectual and developmental disabilities.

Response: OPWDD has considered this comment and will not be changing the text. OPWDD's eligibility determination process is not changing from the processes in place for the last 17 years. The CAS/UAS is not used to determine eligibility.

Comment: There are no time limits delineating the processing of applications for eligibility or at any point in the 3-part review. This proposed Regulation 629.1 does not specify due process for individuals who have been subject to re-review and there are no specific procedures to address the due-process rights to contest any such review that results in a denial of eligibility.

Response: OPWDD has considered this comment and will not be changing the text. Timeframes for review and a description of the rights of due process are outlined in the OPWDD eligibility guidelines.

Comment: Notice of decision for denial of eligibility should indicate that the decision is final and subject to judicial review under Article 78. Notice should disclose the factors used in making a final determination.

Response: OPWDD has considered this comment and will not be changing the text. Individuals are issued a Notice of Decision (NOD) if denied eligibility for OPWDD services. The NOD outlines how to access the individual's due process rights, including how to request a Fair Hearing. If the Fair Hearing is held, and the determination to deny is affirmed, the determination is then final and subject to judicial review under Article 78. The Fair Hearing decision notice notifies the individual of the Article 78 process.

Comment: The proposed regulation could substantially impact the number of individuals determined eligible for services and would cause the provider to withhold services from people who could significantly benefit from such services. Changes to the process to include requirements not consistent with current law will cause undue hardship.

Response: OPWDD has considered this comment and will not be changing the text. This regulation will not affect the number of individuals determined eligible. The eligibility determination process used for the last 17 years is not being changed by this regulation.

Comment: The applicability section of 629.1 includes Article 16 clinics. Currently, assessment documentation is maintained as part of the individual's file and subject to review at any time by OPWDD; however, there is no requirement that OPWDD determine the individual's eligibility prior to the provision of services. The Clinic Providers feel that the current practice is appropriate and ensures that only eligible individuals receive services and that such services are not delayed due to any additional processes. If it was not OPWDD's intent to include the Article 16 clinics under Part 629, it is important that 629.1 be modified so it is clear that the clinics are exempt from this process.

Response: OPWDD has considered this comment and will not be changing the text. Article 16 clinics provide services pursuant to 14 NYCRR 679 regulations, therefore, 629.1 will not impact the requirements set forth in 679.3(r), regarding the eligibility process for individuals receiving treatment through an Article 16 clinic.

Comment: Many commentators note a lack of notice provided to families and stakeholders, including poor timing of publication of this regulation (June) and that the regulation was not "an emergency".

Response: OPWDD has considered this comment and will not be changing the text. Because the regulation reflects longstanding eligibility determination practice, OPWDD did not anticipate significant comment from

families or stakeholders but has responded directly to many questions and concerns.

Comment: OPWDD's "associated guidelines" narrowly construe developmental disability to a greater extent than MHL 1.03(22). Individuals who are genuinely developmentally disabled, but whose situations fall outside the guidelines, will have greater difficulty challenging their ineligibility determinations at hearings. These guidelines contain new rules that subject individuals to "heightened scrutiny" in an eligibility determination. Eligibility should not be limited beyond the statutory definition of DD.

Response: OPWDD has considered this comment and will not be changing the text. OPWDD uses the definition of developmental disability as defined by MHL 1.03(22). Individuals will not have greater difficulty becoming eligible for OPWDD services due to this criteria, as it is the same process that has been used by OPWDD for the last 17 years.

Comment: The regulation will make it more likely for dual-diagnosed individuals to "fall in the cracks" between agencies and not have access to services. The regulation restricts service delivery options for dually-diagnosed individuals.

Response: OPWDD has considered this comment and will not be changing the text. This regulation does not restrict dually diagnosed individuals from becoming eligible for OPWDD services.

Comment: Concern with the proposed change that OPWDD services must be applied to before age 22 and the requirement that significant impairment of adaptive behavior be documented prior to age 22. As individuals age out of school, and family members age, and adaptive demands of independent adulthood become more apparent, many individuals are no longer able to function. So often the need for OPWDD home and community services is not apparent until after age 22. An individual should not be penalized for having a supportive family, or for trying for greater independence before recognizing that they need OPWDD assistance. Regulation should address documentation issues for older individuals.

Response: OPWDD has considered this comment and will not be changing the text. Individuals are not penalized for having supportive families or maximizing independence. OPWDD's 2001 guidelines address concerns related to older individuals and OPWDD eligibility. The requirement that deficits occur prior to age 22 is taken directly from Mental Hygiene Law.

Comment: Regulation should define "attributable to" and "substantial hardship" Should explicitly provide for the use of retrospective assessments of adaptive functioning during the development period for those seeking eligibility when older than 22.

Response: OPWDD has considered this comment and will not be changing the text. These issues are addressed in the OPWDD eligibility guidelines.

Comment: Requiring proof of onset prior to age 22 creates an additional obstacle for older individuals.

Response: OPWDD has considered this comment and will not be changing the text. This regulation does not establish additional requirements for older individuals seeking OPWDD eligibility.

Comment: The 2001/2002 guidance contains rules and must be in the regulation.

Response: OPWDD has considered this comment and will not be changing the text.

Comment: The 2002 guidance limits eligibility determinations to "central nervous system disorders."

Response: OPWDD has considered this comment and will not be changing the text.

Comment: OPWDD guidelines create a new definition of DD, which is more restrictive.

Response: OPWDD has considered this comment and will not be changing the text. OPWDD uses the definition of developmental disability as defined by MHL 1.03(22).

Comment: Regulation needs to distinguish provisional eligibility for children under age 8, as a child under age 8 may be determined eligible (not provisionally). Regulation makes it appear that all children under age 8 must be re-reviewed.

Response: OPWDD has considered this comment and will not be changing the text. Provisional eligibility may be determined in children up to the age of eight. A child younger than 8 years old may be determined eligible (i.e., not provisionally eligible) for OPWDD services.

Public Employment Relations Board

NOTICE OF ADOPTION

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

I.D. No. PRB-33-18-00003-A

Filing No. 1046

Filing Date: 2018-10-30

Effective Date: 2018-11-14

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

Action taken: Amendment of section 204.4 of Title 4 NYCRR.

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

Subject: Rules and regulations to effectuate the purposes of the Public Employees' Fair Employment Act (Civil Service Law Art. 14).

Purpose: Allow for expedited treatment of cases which present issues of law relating to the scope of the duty of fair representation.

Text or summary was published in the August 15, 2018 issue of the Register, I.D. No. PRB-33-18-00003-EP.

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

Text of rule and any required statements and analyses may be obtained from: Sarah Coleman, Deputy Chair, Public Employment Relations Board, PO Box 2074, Empire State Plaza, Bldg. 2, Floor 20, Albany, NY 12220-0074, (518) 457-2578, email: scoleman@perb.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

PERB received one comment agreeing that an expedited process is needed and warranted, but expressing concern that the process does not start until after a conference is scheduled and asking for consideration of a priority system for scheduling the conference.

PERB does not believe a formal priority system for scheduling the conference is necessary, as PERB's administrative law judges already schedule conferences based in part on the urgency of the matter before them.

PERB received one comment querying what topics are covered by the phrase "or related question" in the rule and specifically questioning whether the phrase would cover issues such as an employer ceasing the deduction of dues from current union members' wages unless the union "re-proves" union membership.

PERB intends that the phrase "or related question" be interpreted broadly to include issues arising from or concerning the recent amendments to the Taylor Law from which the subjects explicitly stated in the rule were drawn. Thus, the issue raised by the commenter would fall within the scope of the rule.

PERB received one comment questioning why expedited review was necessary and stating that the party saw no reason why PERB's normal processes should not apply. The commenter also suggested that PERB should specifically state what "related questions" would receive expedited treatment. The commenter suggested that the public should again have the opportunity to comment on the proposed rule after PERB enumerated the "related questions" that would receive expedited treatment.

PERB believes that expedited review is necessary for the reasons given in the notice of emergency/proposed rulemaking. PERB notes that the application of the expedited rule is limited to specific cases which in the discretion of both the director of employment practices and representation and the board require such treatment to prevent destabilization of collective bargaining relationships and/or to minimize harm to public employers, public employee organizations, their members, and non-members employed within the bargaining unit. In view of the lack of judicial precedent applying *Janus v. AFSCME*, 138 S.Ct. 2448 (2018), and the recent Taylor Law amendments, PERB believes that the flexibility of a standard is warranted as opposed to a rigid proscription that might prove to be inadequate in dealing with unanticipated consequences.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Acquisition of Cable Television Assets and Franchises

I.D. No. PSC-46-18-00013-EP

Filing Date: 2018-10-30

Effective Date: 2018-10-30

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

Proposed Action: The Commission adopted an order on October 30, 2018 granting a petition, filed by Slic Network Solutions, Inc. and HCCI LLC on October 29, 2018, requesting approval, pursuant to Public Service Law (PSL) § 222, for the acquisition of certain of the cable television system assets, including franchises, certificates of confirmation and facilities, owned by Hamilton County Cable T.V., Inc. (HCC) pursuant to PSL § 222.

Statutory authority: Public Service Law, section 222

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

Specific reasons underlying the finding of necessity: Hamilton County Cable T.V., Inc. (HCC), is an independently owned and operated cable television system in rural communities in the Adirondack Park. The five municipalities served by HCC are; the Towns of Wells, Lake Pleasant, Indian Lake, and Johnsbury, and the Village of Speculator. The Company stated that its owners are unable to continue operation of the cable television system and that they intend to cease operations on November 1, 2018. Slic Network Solutions, Inc. and HCCI LLC request immediate consideration of a transfer of control that would ensure that customers' service is not interrupted. Access to news, information and emergency alerts via cable television is important for those that rely on such service in rural areas of New York State. Therefore, action was necessary to protect the safety, and welfare of the Company's customers. Approval of Slic and HCCI's acquisitions needed to be taken on an emergency basis because of the need to ensure service is continued without delay.

Subject: Acquisition of cable television assets and franchises.

Purpose: To ensure continued service to Hamilton County Cable customers.

Substance of emergency/proposed rule: The Public Service Commission is considering, in response to a petition filed on October 29, 2018 by Slic Network Solutions, Inc. and HCCI LCC, whether to approve the transfer of certain of the cable television system assets, including franchises, certificates of confirmation and facilities, owned by Hamilton County Cable T.V., Inc. (HCC) to Slic and HCCI pursuant to PSL § 222. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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 January 27, 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-V-0674EP1)

NOTICE OF ADOPTION

Submetering of Electricity and Waiver Request

I.D. No. PSC-26-18-00011-A

Filing Date: 2018-10-24

Effective Date: 2018-10-24

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

Action taken: On 10/18/18, the PSC adopted an order approving Mezuyon LLC's (Mezuyon) notice of intent to submeter electricity at 572 11th Avenue, New York, New York and request for waiver of 16 NYCRR section 96.5(k)(3).

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

Subject: Submetering of electricity and waiver request.

Purpose: To approve Mezuyon's notice of intent to submeter electricity and request for waiver of 16 NYCRR section 96.5(k)(3).

Substance of final rule: The Commission, on October 18, 2018, adopted an order approving Mezuyon LLC's notice of intent to submeter electricity at 572 11th Avenue, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc., and request for waiver of the energy audit and energy efficiency plan requirements in 16 NYCRR section 96.5(k)(3), subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-E-0273SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-28-18-00009-A

Filing Date: 2018-10-24

Effective Date: 2018-10-24

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

Action taken: On 10/18/18, the PSC adopted an order approving 2255 Broadway Property Owner, L.L.C.'s (2255 Broadway) notice of intent to submeter electricity at 250 West 81st Street, New York, New York.

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

Subject: Submetering of electricity.

Purpose: To approve 2255 Broadway's notice of intent to submeter electricity.

Substance of final rule: The Commission, on October 18, 2018, adopted an order approving 2255 Broadway Property Owner, L.L.C.'s notice of intent to submeter electricity at 250 West 81st Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-E-0381SA1)

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

Proposed Rate Filing to Increase Annual Revenues

I.D. No. PSC-46-18-00005-P

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

Proposed Action: The Commission is considering a proposal filed by Terrel Hills Water Company, Inc. to increase its annual revenues by \$51,003 or 103.39%.

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

Subject: Proposed rate filing to increase annual revenues.

Purpose: To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.

Substance of proposed rule: The Commission is considering a proposal filed by Terrel Hills Water Company, Inc. (Terrel Hills or the Company), on October 24, 2018, to amend its tariff entitled P.S.C. No. 1 – Water, to increase its annual revenues by approximately \$51,003 or 103.39%.

Terrel Hills provides metered water service to 227 customers in the Town of Northumberland, Saratoga County. The Company states that this increase is necessary to cover increased operating and maintenance costs since rates were last set in 1988. The Company is also proposing to increase its restoration of service charges to be consistent with charges in the standard small water company tariff. In addition, the Company proposes to establish and maintain a replenishable, interest bearing escrow account with a maximum balance of \$45,400, not including account interest, for the purpose of making emergency and extraordinary repairs and/or plant improvements. The proposed amendments have an effective date of March 1, 2019.

The full text of the rate filing and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-W-0670SP1)