

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 Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reporting Requirements for Service Credit Involving Public Safety Overtime

I.D. No. AAC-07-19-00017-P

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

Proposed Action: Renumbering of section 315.5 to section 315.6; addition of new section 315.5 to Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11, 34, 41, 311 and 334

Subject: Reporting requirements for service credit involving public safety overtime.

Purpose: To allow certain special duty assignments to qualify as public safety overtime and be considered allowable service.

Text of proposed rule: Section 315.5 is renumbered section 315.6 and a new section 315.5 is added to read as follows:

Section 315.5 Reporting requirements for service credit involving public safety overtime.

(a) Background. The Retirement System has long considered certain special duty assignments that consisted primarily of security work performed by public safety professionals at the request of a private entity on a voluntary basis, paid or reimbursed by the private entity, performed under the direction of the private entity, or primarily for the benefit of the private entity not to be creditable because such assignments did not constitute paid public service with a participating employer. Courts have up-

held the Retirement System's position that such work, often referred to as "private entity overtime" was not allowable service, and was not within the realm of the employee's duties for the participating employer.

In recent years, however, the manner in which special duty assignments performed at the request of private entities are assigned, supervised, and compensated has changed. Today, special duty assignments are often mandatory and are directed and controlled by the public employer. Compensation to the employee is paid by the public employer, not the private entity. In recognition of the changing nature of special duty assignments, the Retirement System has determined that those special duty assignments that meet the criteria established by the Retirement System, qualify as "public safety overtime" and shall be considered allowable service.

(b) Definition. For purposes of the section, "public safety overtime" shall mean overtime service for hours worked in excess of regularly scheduled hours that is performed by a member as a special duty assignment that meets the criteria set forth in subdivision (g) of this section.

(c) Applicability. This section applies to the following members: Active members of the New York State and Local Police and Fire Retirement System who are engaged in police or fire service as defined in Subdivision 11 of Section 302 of the Retirement and Social Security Law; and

Active members of the New York State and Local Employees' Retirement System who are employed as sheriffs, under-sheriffs or regular deputy sheriffs engaged directly in criminal law enforcement activities that aggregate fifty per centum of his or her job duties as certified by the county.

(d) Reporting. The employer of any member covered by this section shall report all special duty assignments to the Retirement System at such time and in such manner as prescribed by the Retirement System. The Retirement System is authorized to audit all such reports to confirm that only those special duty assignments that qualify as public safety overtime are treated as allowable service.

(e) Information required from employers. The employer shall provide any and all documents requested by the Retirement System for the purpose of confirming that the reported special duty assignment is allowable public safety overtime. Examples of the documents that may be requested shall include, but are not limited to, the following:

1. The contract or other written agreement between the private entity and the employer describing the services to be performed as the special duty assignment;

2. The employer's overtime policy and/or collective bargaining agreement; and

3. Payroll documents associated with the special duty assignment.
(f) Contributions. Contributions for earnings associated with special duty assignments deemed allowable service shall be made by employees and employers in the manner prescribed by the Retirement System.

(g) Criteria for allowable service. The following criteria apply to the determination of whether a special duty assignment qualifies as public safety overtime and is to be reported to the Retirement System as allowable service:

1. There is a contract for services between the participating employer and the private entity;

2. The services provided are for the benefit of the public at large, as opposed to for the exclusive benefit of the private entity;

3. The duties performed by the employee for the private entity are police, fire or sheriff department duties that are provided for public safety;

4. Payment to the employee for the special duty assignment is made by the participating employer, not by the private entity;

5. The special duty assignment is available to all employees in the public safety title, consistent with the participating employer's policy or practice for the assignment of overtime;

6. The work performed for the special duty assignment is directed, supervised and controlled by the participating employer;

7. The special duty assignment is mandatory, consistent with the participating employer's policy or practice for the assignment of overtime; and

8. *The employee is indemnified by the employer when performing the special duty assignment.*

(h) *Limitations. Notwithstanding any other provision of this section, the creditability of public safety overtime is subject to the limitations provided for in sections 443, 512, 608 and 1209 of the Retirement and Social Security Law.*

Effective Date of Section. This section shall become effective July 1, 2019.

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

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:** This rule is authorized under sections 11 and 311 of the Retirement and Social Security Law. These Sections authorize the Comptroller to make rules and regulations as he may deem necessary in the performance of the duties imposed upon him by law. Additionally, Section 34 of Retirement and Social Security Law (RSSL) provides legal authorization for collecting salary and service for nonmembers.

2. **Legislative Objectives:** The Retirement System has long considered certain special duty assignments that consisted primarily of security work performed by public safety professionals at the request of a private entity on a voluntary basis, paid or reimbursed by the private entity, performed under the direction of the private entity, or primarily for the benefit of the private entity not to be creditable because such assignments did not constitute paid public service with a participating employer. Courts have upheld the Retirement System's position that such work, often referred to as "private entity overtime" was not allowable service, and was not within the realm of the employee's duties for the participating employer.

In recent years, however, the manner in which special duty assignments performed at the request of private entities are assigned, supervised, and compensated has changed. Today, special duty assignments are often mandatory and are directed and controlled by the public employer. Compensation to the employee is paid by the public employer, not the private entity. In recognition of the changing nature of special duty assignments, the Retirement System has determined that those special duty assignments that meet the criteria established by the Retirement System, qualify as "public safety overtime" and shall be considered allowable service.

3. **Needs and Benefits:** Special duty assignments are recognized as addressing important public safety concerns and, therefore, the Retirement System has determined that those special duty assignments that meet the criteria established by the Retirement System, should qualify as "public safety overtime" and should be considered allowable service.

4. **Costs:** There are no new costs to regulated parties for the implementation of this rule.

5. **Local Government Mandates:** Not applicable.

6. **Paperwork:** No new paperwork will be required.

7. **Duplication:** None.

8. **Alternatives:** No significant alternatives were considered.

9. **Federal Standards:** This rule does not exceed any Federal standard.

10. **Compliance Schedule:** It is estimated that regulated parties will be able to achieve compliance immediately. The proposed rule does not materially vary from the previously established regulatory guidelines.

Regulatory Flexibility Analysis

1. **Effect of rule:** The proposed rule requires Retirement System participating employers to report all public safety overtime assignments to the Retirement System. Thus, potentially all local governments may be affected by the rule and since small businesses are not participating employers, they will not be affected by the proposed rule.

2. **Compliance requirements:** Participating local government employers are required to comply with the reporting requirements for all public safety overtime assignments.

3. **Professional services:** There are no professional services that a local government will likely need to comply with the rule.

4. **Compliance costs:** There are no initial capital costs and no annual costs for local governments to comply with these rules because it is anticipated that the cost of public safety overtime billed to a private entity by a local government will include reimbursement for such allowable service.

5. **Economic and technological feasibility:** Since there are no compliance costs imposed upon local governments there is no need to conduct an assessment of the economic feasibility of compliance with such rule.

6. **Minimizing adverse impact:** No adverse impact is anticipated for local governments. This conclusion was reached because the rule essentially clarifies the definition of "allowable service" for the purposes of granting service credit for public safety overtime. Accordingly, none of the ap-

proaches for minimizing adverse economic impact suggested in SAPA section 202-b(1) were considered.

7. **Small business and local government participation:** In order to ensure local governments have an opportunity to participate in the rule making process, the text of the proposed rule will be posted on the Comptroller's website.

Rural Area Flexibility Analysis

1. **Types of and numbers of rural areas:** This rule will apply to all local governments located in rural areas that are participating employers with the Retirement System.

2. **Reporting, recordkeeping and other compliance requirements; and professional services:** Local governments located in rural areas that are participating employers with the Retirement System are required to comply with the reporting requirements set forth in the proposed rule. These requirements relate to public safety overtime. There are no professional services likely to be needed in a rural area to comply with the rule.

3. **Costs:** There are no initial capital costs and no annual costs for public entities in rural areas to comply with these rules because it is anticipated that the cost of public safety overtime billed to a private entity by a local government will include reimbursement for such allowable service.

4. **Minimizing adverse impact:** This rule will not adversely impact rural areas.

5. **Rural area participation:** In order to ensure rural areas have an opportunity to participate in the rule making process the text of the proposed rule will be posted on the Comptroller's website.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Update Provisions Relating to Employer Reporting; Service Credit Determination for Certain Members; and Notice of Hearings

I.D. No. AAC-06-18-00002-RP

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

Proposed Action: Amendment of sections 315.1, 315.3, 316.1, 316.2, 316.3, 317.2, 317.5 and 317.6 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11 and 311

Subject: Update provisions relating to Employer Reporting; Service Credit Determination for certain members; and Notice of Hearings.

Purpose: To update language necessitated by the modernization and redesign of the Retirement System's benefit administration system.

Text of revised rule: 315.1 Background.

Sections 34 and 334 of the Retirement and Social Security Law, as added by chapter 510 of the Laws of 1974, require that the Comptroller adopt rules and regulations, which shall have the force and effect of law, for the reporting of service, salary and deduction information for all [member] *employees* of employers which participate in the New York State and Local Employees' Retirement System and the New York State and Local [Policemen's] *Police* and [Firemen's] *Fire* Retirement System. Said statutes further provide that the chief fiscal officer of the participating employer, or other officer exercising similar duties, shall file the required report in such form and at such times as may be prescribed in the said rules and regulations. Sections 34 and 334 make the refusal or willful neglect to file the required report a violation which shall subject the officer so refusing or neglecting to a penalty of \$5 per day for each day's delay beyond seven days. Sections 11 and 311 of the Retirement and Social Security Law establish the Comptroller as the administrative head of the retirement system and authorize him to adopt and amend rules and regulations for the administration and transaction of the business of the retirement system. In accordance with the requirements of sections 11, 34, 311 and 334, this Part is promulgated.

315.3 Employer reporting.

(a) Timeliness of reporting.

All reporting as defined in subdivision (b) of this section shall be made so as to be received by the retirement system within seven days after the close of the month to which service and salary data apply.

(b) Reporting document.

Employers shall provide a legible certified document containing all information deemed necessary by, and in a format prescribed or approved by, the Comptroller for the purpose of making benefit determinations from service, salary and deduction records. Employers seeking to alter or change any reporting document, once approved, must submit the proposed changes to the Comptroller for approval prior to implementation of the

changes. In lieu of reporting salary and service information on a hard copy document, as described above, an employer may comply with the reporting requirements of sections 34 and 334 of the Retirement and Social Security Law by providing all information required by the retirement system over the internet pursuant to an electronic employer reporting system established for such purpose by the Comptroller. The reporting document shall include the following information for each [member] employee paid on any payroll paid during the month:

(1) Control information.

That information deemed necessary by the Comptroller for identifying and controlling specific records and accounts for each employee including, but not limited to, identification number, registration number, name, location code, report code, and report date.

(2) Contribution and payment information for each position held by an employee.

Normal contribution or mandatory amount, loan payment amount, and arrears payment amount.

(3) Salary information and all other amounts earned for each position held by an employee. All amounts shall be reported consistent with corresponding earnings codes established by the retirement system.

Gross salary paid (including value of maintenance, if any).

(4) Service information for each position held by an employee.

Number of days worked, determined in accordance with the following:

(i) Number of days worked shall be reported without reduction for paid sick leave, paid vacation, personal leave, bereavement leave, or time off in lieu of pay for overtime.

(ii) A full day worked shall be any day on which the employee performs paid service for at least the standard number of hours required for the position in which such service is rendered. In no event shall less than six hours be considered to be a full day. For full-time employees performing services pursuant to a collective bargaining agreement or contract that provides for other than a five day standard work week paid at straight time, an employer may report them at full-time per their payroll cycle, provided the cumulative number of hours equal at least 120 hours a month. A full day worked for such employees shall be a minimum of six hours of accumulated time worked and paid at the straight time rate. The minimum number of hours which shall be reported as days worked, for the purpose of reporting preliminary credit, for a full year of service credit for such employees is 1,560 hours.

(iii) In the event that less than a full day is worked, prorated credit shall be given by the ratio of the number of hours worked in that day to the greater of the standard number of hours required for the position in which such service is rendered or six hours.

(iv) Days worked, both full and fractional, shall be accumulated within a report period and the resulting total rounded to the next higher hundredth of a whole day. This total shall be reported as number of days worked.

(v) In the event that salary adjustments are made in conjunction with a report, any corresponding adjustment in days worked must also be reported in the same period in which such salary adjustment is reported.

(vi) In the event that salary and service adjustments are made but are not reflected on the regular report, a separate reporting form shall be submitted for employees to whom such adjustments apply, showing the amount of the adjustment and the control information applicable to the [members] employees for the report period to which the adjustments apply.

(vii) A full day worked for employees of the New York State Legislature shall be a minimum of six hours of accumulated time worked and the total number of days worked by such employees for the purpose of employer reporting shall be determined based on the cumulative number of hours worked in a calendar year. The number of hours which shall be reported as days worked, for the purpose of reporting preliminary credit, for a full year of service credit for employees of the State Legislature is 1,560 hours.

(5) Demographic and employment transaction information deemed necessary by the Comptroller such as date of hire or rehire, change of title or position, any unpaid leave periods and date of termination. All periods of service when an employee does not receive pay, including military leave and medical leave shall be reported.

(6) Control totals. Each employer shall provide, in connection with each monthly report, such control totals of dollar amounts reported and number of days worked as are deemed necessary by the retirement systems.

(c) Employees to be reported.

(1) [Only] All persons [who are active members] employed by an employer participating in [of] the New York State and Local Employees' Retirement System or the New York State and Local Police and Fire Retirement System [and who have been assigned a registration number] shall be included in the above reporting requirements. Employers shall provide the information deemed necessary by the retirement system for all employees except those who actively participate in another public retire-

ment system or program. In the case of employees who are in the process of being registered to membership, all service, salary and deduction data and mandatory contributions shall be accumulated by each employer and such accumulation shall be included with the first monthly report which is due after the employee's registration or identification number has been assigned. [Members of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System must be reported on separate reports.]

(2) Determination by employer. An individual serving the employer as an independent contractor or consultant is not an employee and should not be reported to the retirement system. The employer has the primary responsibility for determining whether an individual is rendering services as an employee or as an independent contractor. When making such a determination, the employer must consider the following:

(i) Factors supporting the conclusion that an individual is an employee rather than an independent contractor:

(a) the employer controls, supervises or directs the individual performing the services, not only as to result but as to how assigned tasks are to be performed;

(b) the individual reports to a certain person or department at the beginning or during each work day;

(c) the individual receives instructions as to what work to perform each day;

(d) the individual's decisions are subject to review by the employer;

(e) the employer sets hours to be worked;

(f) the individual works at established and fixed hours;

(g) the employer maintains time records for the individual;

(h) the employer has established a formal job description;

(i) the employer's governing board formally created the position with the approval of the local civil service commission where necessary;

(j) the employer prepares performance evaluations;

(k) the employer requires that the individual attend training;

(l) the employer provides permanent workspace and facilities (including, but not limited to, office, furniture and/or utilities);

(m) the employer provides the individual with equipment and support services (including, but not limited to, computer, telephone, supplies and/or clerical assistance);

(n) the individual is covered by a contract negotiated between a union and the employer;

(o) the individual is paid salary or wages through the employer's payroll system;

(p) tax withholding and employee benefit deductions are made from the individual's paycheck; and

(q) the individual is entitled to fringe benefits (including, but not limited to, vacation, sick leave, personal leave, health insurance and/or grievance procedures);

(ii) Factors supporting the conclusion that an individual is an independent contractor rather than an employee:

(a) the individual has a personal employment contract with the employer;

(b) the employer pays the individual for the performance of services through the submission of a voucher;

(c) the individual is authorized to hire others, at the expense of the individual or a third party, to assist the individual in performing work for the employer;

(d) the individual provides similar services to the public;

(e) the individual is concurrently performing substantially the same services for other public employers; and

(f) the individual is also employed or associated with another entity that provides services to the employer by contract, retainer or other agreement.

(iii) Presumption. Except as prohibited by section 2051 of part 3 of article 41 of the Education Law, which provides that a lawyer shall not simultaneously be an independent contractor and an employee of a school district or BOCES for the purpose of providing legal services, in the case of an individual whose services has been engaged by an employer in the capacity of attorney, physician, engineer, architect, accountant or auditor and who is also a partner, associate, including an attorney in an "of counsel" relationship, or employee of another organization or entity that has a contract, retainer or other agreement to provide professional services to the participating employer, it shall be presumed that the individual is an independent contractor and not an employee of the participating employer.

(iv) Examples.

(a) An attorney who, in providing services to a participating employer, sets his own hours, is not supervised in the manner in which the work is performed, uses his or her own office and staff and has no deductions from salary is considered to be an independent contractor.

(b) A physician who is performing examinations and providing medical services for a school district, is provided with office space in the

school, has set hours, is provided with supplies and receives a fixed salary with regular payroll deductions is considered to be an employee.

(3) Written explanation by participating employers; certain professions. In the case of an individual whose service has been engaged by a participating employer in the capacity of attorney, physician, engineer, architect, accountant or auditor and the participating employer has determined that the individual is rendering service as an employee and, therefore, may be eligible for credit with a retirement system, such employer shall submit to the retirement system, in a form prescribed by the Comptroller and certified by the chief fiscal officer of the employer, an explanation of the factors that led to the conclusion that the individual is an employee and not an independent contractor or consultant. Such certification shall be submitted to the retirement system at the time the individual is registered to membership or, in the case of an individual who is already a member of the retirement system, at the time the individual is first reported by the participating employer to the system. In addition, such employer shall submit copies of documentation pertaining to the appointment of the individual as an employee and the decision to report the individual to the retirement system as well as the acceptance of the appointment by the local civil service commission where necessary. In the event appointments are made by a governing board of the participating employer, such documentation shall include a copy of the minutes of the meeting of such employer's governing board.

(4) Explanation at the request of the retirement system. In the case of any individual who is currently a member or a retiree of a retirement system, the retirement system may require that an employer submit to the retirement system an explanation of the factors that led to the conclusion that an individual engaged by the employer was an employee. An employer receiving such a request shall submit a response within 30 days of the date of the request or provide an explanation as to why it is unable to do so.

(5) Adjustment reports. In the event the retirement system or an employer determines that an individual has been incorrectly reported to a retirement system, the employer, upon notification from the retirement system, or upon its own initiative, shall promptly file salary and service adjustment reports with the retirement system to correct the error.

316.1 Background.

Chapter 382 of the Laws of 1973, chapter 890 of the Laws of 1976 and chapter 414 of the Laws of 1983 imposed certain limitations upon the retirement benefits which are available to persons who join or rejoin the New York State and Local Employees' Retirement System or the New York State and Local [Policemen's] *Police* and [Firemen's] *Fire* Retirement System on or after July 1, 1973. One such limitation concerns the method whereby such members will receive service credit for other than full-time public service. The provisions of subdivision (e) of section 446, subdivision (d) of section 513 and subdivision (e) of section 609 of the Retirement and Social Security Law permit the State Comptroller to adopt rules and regulations, interpreting the provisions of sections 446, 513 and 609, which are consistent with the intent thereof.

316.2 Service credit determination for persons who last became members on or after July 1, 1973.

(a) Preliminary service credit.

Preliminary service credit for a report period shall be expressed as a fraction, the numerator of which shall be the number of days worked on the payrolls paid in the report period and the denominator of which shall be 260. The Retirement System will determine this preliminary service credit using the number of days worked as reported by the employer in accordance with the provisions of section 315[.2(b)] of this Title (2 NYCRR 315[.2(b)]). In no event shall preliminary service credit exceed the fraction obtained by dividing the gross salary paid in the report period by the product of the State's minimum wage and 2,000 hours.

(b) Allowable service credit.

Service credit allowed within any fiscal year of the State shall be equal to the accumulated preliminary service credit within that year upon determination by the Retirement System that the amount of reported preliminary service is accurate.

[316.3 Rounding off credit for fiscal years beginning April 1, 1982.

In determining the amount of credit for service rendered during any fiscal year beginning on or after April 1, 1982, credit shall be rounded to the next highest multiple of .05 years.]

317.2 Notice of hearings.

(a) After receipt of a timely written *or electronic* demand for a hearing and redetermination of an application, the retirement system shall notify the applicant, other parties and all counsel, if any, when a hearing on the application will be held.

(b) All notices of hearings shall specifically and plainly state the following:

- (1) the purpose of the hearing;
- (2) the time, place and date of the hearing;
- (3) the right of the applicant to be represented by counsel;
- (4) the procedure for obtaining an adjournment; and

(5) the consequences of the applicant's failure to appear at a scheduled hearing.

(c) Notices shall be mailed *or electronically transmitted* to the applicant, other parties and all counsel not less than three weeks before the date of the scheduled hearing.

(d) The statement of issue in the notice of hearing is intended for informational purposes. Issues may be raised or withdrawn during the course of the proceeding.

317.5 Adjournment before a scheduled hearing.

(a) The retirement system may adjourn or cancel a hearing at its discretion when it is not possible for the hearing to proceed as scheduled.

(b) A request for an adjournment by an applicant or a party other than the retirement system before a scheduled hearing must be:

- (1) in writing, *email or other acceptable electronic format*; and
- (2) received by the retirement system at least three business days before a scheduled hearing.

(c) An adjournment before any hearing shall be granted only by the retirement system.

(d) The applicant or a party other [that] *than* the retirement system shall be granted only one adjournment as of right or without the necessity of providing an explanation.

(e) A second adjournment may be granted for cause.

(1) Cause is defined as unusual, unexpected, or unavoidable circumstances beyond the control of the applicant or the other party, such as: a death in the immediate family, serious illness, unavoidable temporary inability to obtain counsel, or inclement weather that prevents all reasonable travel. It does not include any event that can be prevented or mitigated by the timely taking of reasonable action.

317.6 Scheduled hearings and adjournment requests at a hearing.

(a) The applicant and party other than the retirement system shall present its case at the initial hearing.

(1) In the event that a witness or evidence is not available at the time a hearing is scheduled, the applicant shall request an adjournment before the hearing as provided in section 317.5 of this Part.

(2) The hearing officer may in his or her discretion, and upon motion by the applicant or party, grant a continuance for additional witnesses to testify.

(i) The applicant or party granted the continuance must advise the retirement system within 45 days of the availability of the additional expert witness or the applicant or party's case will be deemed closed.

(ii) In the event that the retirement system is unable to schedule a hearing based on the availability dates provided by the applicant or other party, the retirement system will provide a written *or electronic* request for additional dates of availability.

(iii) The hearing officer has the discretion during a hearing to grant an adjournment of a hearing for cause, as defined by section 317.5(e)(1) of this Part.

(b) The applicant or party other than the retirement system may waive appearance at the hearing.

(1) Written *or electronic* requests to waive appearance must be received by the retirement system at least three business days prior to the scheduled hearing.

Revised rule compared with proposed rule: Substantial revisions were made in section 315.3.

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

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

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

Revised Regulatory Impact Statement

1. Statutory Authority:

This rule is authorized under sections 11 and 311 of the Retirement and Social Security Law. These Sections authorizes the Comptroller to make rules and regulations as he may deem necessary in the performance of the duties imposed upon him by law. Additionally, Section 34 of Retirement and Social Security Law (RSSL) provides legal authorization for collecting salary and service for nonmembers.

2. Legislative Objectives:

With the implementation of a new retirement benefit administration system, the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System (collectively referred to as "the Retirement System" or "NYSRLRS") is amending Title 2 of the New York Codes, Rules and Regulations Part 315.3 in order to collect additional payroll data for employees who work for a Retirement System participating employer. The New York State Teachers' Retirement System has been collecting data on all employees of their participating employers for quite some time.

Section 34 of Retirement and Social Security Law (RSSL) provides legal authorization for collecting salary and service for nonmembers:

The comptroller shall adopt rules and regulations, which shall have the force and effect of law, for the reporting of service and salary information for all employees of participating employers.

However, Part 315.3 currently requires only that employers report information on active members who have been assigned a registration number. Effective with the implementation of the Employer Reporting component of the new benefit administration system, the regulation is being amended to require the reporting of all employees except those who actively participate in another public retirement system or program to NYSLRS.

The business improvements that will result from collecting salary, service and other employment information for all employees of Retirement System employers except those who actively participate in another public retirement system or program are many.

Employer Reporting

Collecting payroll data on all employees except those who actively participate in another public retirement system or program will simplify payroll reporting for all participating employers.

Collecting this information also facilitates timelier billing for employer prior year adjustments for members who receive previous service credit, thus lessening the amount of interest owed by employers.

Mandatory Membership

Collecting payroll data on all employees except those who actively participate in another public retirement system or program will assist NYSLRS in determining if a new employee's membership in NYSLRS is optional or mandatory.

In general, Retirement System membership is mandatory for persons employed in full-time, permanent positions. In many cases, employers do not realize that a new employee is mandated to membership or already has a current or previous NYSLRS membership based on other employment. Once payroll data is reported for all employees, NYSLRS will be able to automatically enroll mandatory members, ensuring timely processing of membership. Employers will receive more timely notification of any required contributions, saving employees and employers from having to pay these costs later with the additional interest (often substantial) associated with delayed payment.

Optional Membership

Section 45 of the Retirement and Social Security Law requires employers hiring individuals whose Retirement System memberships are optional (generally part-time, temporary, or provisional employees) to inform such employees of their right to join the Retirement System. This Section states:

"Upon the employment of any employee whose right to membership in a public retirement system of the state, which for purposes of this section shall include any public retirement system other than the NYS Teachers' Retirement System, has been made optional by the head of the retirement system involved, the employer shall inform the employee in writing of the right to join the system. Each such employee shall acknowledge the receipt of such notice by signing a copy thereof and filing it with such employer; provided, however, the failure to inform such employee shall not in any way be construed to waive the requirement that membership for such an employee commences only when an application for membership is filed with the system".

The burden for Section 45 notification and recordkeeping falls on the employer and not the Retirement System, as the Retirement System has no way of knowing when employees are hired. Some employees have indicated that their employers are not always diligent in offering the right of membership to optional members.

Collecting information on all employees except those who actively participate in another public retirement system or program will input the data into our new benefit administration system for analysis and follow up. NYSLRS will be able to follow up with the employee to ensure they were properly advised at the time they were hired and proactively notify the employer/agency so they are also informed, although the employer maintains full responsibility for notifying new employees of their right to join the Retirement System. This will greatly reduce the problems and inconsistencies associated with the current process of relying solely on employers to explain the rights and benefits associated with membership.

Furthermore, if an employee decides to exercise the option and join the Retirement System days, months or even years after they were first hired, by gathering and storing data for all employees except those who actively participate in another public retirement system or program of participating employers, NYSLRS would already have in its possession the payroll information required to calculate the cost of purchasing the non-member service credit. As a result, NYSLRS would not require employers to research, complete and submit payroll certifications for that service, thus removing a substantial burden that employers currently face with the existing process. Delays related to this process add significant cost due to the compounding of interest for both the employer and the member.

Purchase of Previous Service

NYSLRS registers approximately 30,000 new members each year. We estimate that 90-95% of these new members list some type of previous employer service on their membership application that must be researched (27,000-28,500 cases per year). In addition, when new as well as current members request previous service with a participating employer, employment records are needed to verify salary and service. By obtaining this information from employers at the time the service is performed rather than years later when a service credit request is made, the System will be able to provide members with a more immediate cost and credit without delay. It will also help avoid administrative hearings due to employers being unable to provide salary and service information. Members will have better information when planning their retirement security.

Post-Retirement Employment

Collecting payroll data on all employees except those who actively participate in another public retirement system or program will assist NYSLRS with the process of monitoring the post-retirement employment of public retirees, as required by Sections 211 and 212 of RSSL. Early detection of instances where retirees are approaching or exceeding their post-retirement earnings limitations can avoid the suspension of pensions and potential pay back of pension payments.

Pension Integrity

Broader data collection will facilitate NYSLRS' enforcement of various provisions of law which prevent an individual from attempting to collect a benefit from one Retirement System while continuing to participate or initially join a second system, the existing ORP or the newer Voluntary Defined Contribution Program (VDCP).

Amendment of Title 2 of the New York Codes, Rules and Regulations Part 316

MEBEL (Member, Employer, Benefits, Executive and Legal) is the primary information system that supports the core business of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System (collectively, "the Retirement Systems"). Using MEBEL, Retirement System staff process over 10 million transactions per month for active member salary and service credit postings alone. The development of MEBEL began in 1983 and while it is a secure and battle tested system, it does not lend itself easily to enabling modern customer service, increased quality and integrity of pension information and workflow efficiencies that the Retirement System is looking to leverage. In 2013, the Retirement System began a multi-year project to replace MEBEL.

The limitations of MEBEL make difficult the calculation of complex service crediting situations. These limitations are acutely evident when calculating service for individuals with employment at educational institutions. Depending upon the particular type of educational institution, the Retirement and Social Security Law ("RSSL") and relevant regulations require the crediting of service on the basis of 170, 180 or 200 days. When such employment is rendered on a part-time basis and combined with part-time employment on the standard 260 day schedule, the proper crediting becomes even more difficult. The limitations of the computer system often required manual intervention by Retirement Systems examiners in order to reconcile the various crediting requirements.

To prevent variances in examiner methodology, the rounding artifact codified in subdivision 3 of section 316 was adopted by the Retirement Systems to standardize the process. In order to standardize the calculations, subdivision 3 of section 316 was promulgated to provide that service credit rendered during any fiscal year beginning after April 1, 1982 shall be rounded to the next highest multiple of .05 years. The calculation of service credit was performed with manual assistance when needed and then rounded pursuant to this provision to standardize possible variances in the calculation.

As the result of the implementation of the new system being designed and implemented for the Retirement Systems, the rounding artifact will become obsolete. With the advent of the new system, manual calculations and rounding are no longer necessary. Enhanced employer reporting, combined with the ability to collect and recognize discrete job data, logical breaks in service, complex combinations of employment and the associated service crediting requirements of the RSSL, enable the new system to calculate and reconcile service credit accurately to two decimal places. Accordingly, with the implementation of this capability for the 2019-20 fiscal year, subdivision 3 of section 316 will become obsolete. Service credit values reported through the close of state fiscal year end 2019 will be preserved and will not be affected by this repeal.

Amendment of Title 2 of the New York Codes, Rules and Regulations Part 317

With the advancement of technology and technological capabilities, it is necessary to update certain regulations relating to notice of hearings to reflect the modern practices of the retirement system specifically, the receipt and dissemination of information electronically.

Revised Regulatory Flexibility Analysis

This agency finds that the rule will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on

small businesses or local governments because it relates to updating language necessitated by the modernization and redesign of the retirement system's benefit administration system.

Revised Rural Area Flexibility Analysis

This agency finds that the rule will not impose any adverse impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in rural areas because it relates to updating language necessitated by the modernization and redesign of the retirement system's benefit administration system.

Assessment of Public Comment

The agency received no public comment.

\$7,000.00	\$7,500.00	State senate primary Statewide primary minimum NYC citywide primary minimum
\$21,100.00	\$22,600.00	Statewide primary maximum NYC citywide primary maximum
\$44,000.00	\$47,100.00	Statewide general NYC citywide general
\$11,000.00	\$11,800.00	State senate general
\$4,400.00	\$4,700.00	State assembly primary State assembly general
\$109,600.00	\$117,300.00	Party committees

State Board of Elections

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

Political Campaign Contribution Limits

I.D. No. SBE-07-19-00020-EP

Filing No. 70

Filing Date: 2019-01-29

Effective Date: 2019-01-29

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

Proposed Action: Amendment of section 6214.0 of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102(17) and 14-114(1)(c)

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

Specific reasons underlying the finding of necessity: The Commissioners determined that it is necessary for the preservation of the general welfare that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State. This amendment is adopted as an emergency measure because time is of the essence and to adopt the regulation in the normal course of business would be contrary to statute, as Election Law §§ 14-114(1)(c) requires that campaign contribution limits be adjusted for inflation on or before February 1st every fourth year. As relevant Consumer Price Index figures are not released until mid-January, it is impossible for the regulations to be issued by February 1st under the normal regulatory process.

Subject: Political Campaign Contribution Limits.

Purpose: Adjust contribution limits to reflect the consumer price index.

Text of emergency/proposed rule: Section 6214.0 Campaign Contribution Limits.

The following limits will apply to campaign contributions until such time as the State Board of Elections adjusts the limits to reflect changes in the consumer price index:

Previous Limit	Current Limit	Office/Election
[\$6,500.00	\$7,000.00	State senate primary Statewide primary minimum NYC citywide primary minimum
\$19,700.00	\$21,100.00	Statewide primary maximum NYC citywide primary minimum
\$41,100.00	\$44,000.00	Statewide general NYC citywide general
\$10,300.00	\$11,000.00	State senate general
\$4,100.00	\$4,400.00	State assembly primary State assembly general
\$102,300.00	\$109,600.00	Party committees]

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 April 28, 2019.

Text of rule and any required statements and analyses may be obtained from: Nicholas R. Cartagena, New York State Board of Elections, 40 N. Pearl Street, Suite 5, Albany, NY 12207, (518) 474-2063, email: nicholas.cartagena@elections.ny.gov

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

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

Additional matter required by statute: Statement required by SAPA section 202(1)(b)(i). No person is likely to object to this proposed rule because it adjusts the political contribution limits to reflect the consumer price index as required by state law.

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

The proposed rule is a consensus rule and, as such, is exempt from RIS, RFA and RAFA requirements.

Job Impact Statement

1. Nature of impact: This proposed rule adjusts the limits for political campaign contributions to reflect the consumer price index and will have no impact on jobs and employment opportunities.
2. Categories and numbers affected: This proposed rule has no negative effects on any category.
3. Regions of adverse impact: This proposed rule has no adverse impact on any region.
4. Minimizing adverse impact: This proposed rule has no adverse impact.
5. Self-employment opportunities: Not applicable.
6. Initial review of the rule, pursuant to SAPA section 207: Not applicable.

**Department of Environmental
Conservation**

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

Management of Striped Bass

I.D. No. ENV-07-19-00018-P

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

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

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0339 and 13-0347

Subject: Management of Striped Bass.

Purpose: To revise regulations concerning commercial striped bass fishing season.

Text of proposed rule: Existing subdivision 40.1(i) is amended to read as follows:

40.1(i) Table B—Commercial fishing.

Species	Open season	Minimum length	Trip limit
Striped bass (the area east of a line drawn due north from the mouth of Wading River Creek and east of a line at 73 degrees 46 minutes west longitude, which is near the terminus of East Rockaway Inlet)	[June 1] May 15- Dec. 15#	Not less than 28" TL nor greater than 38" TL*	See subdivision (j) of this section

Species Red drum through Atlantic menhaden remain the same.

Paragraph 40.1(j)(9) is amended to read as follows:

(9) Applications for striped bass commercial harvesters permits will be accepted until close of business [May 1st] April 15. Any application for a striped bass commercial harvesters permit received after close of business [May 1st] April 15 will not be entertained by the department.

Text of proposed rule and any required statements and analyses may be obtained from: Carol Hoffman, Department of Environmental Conservation, 205 Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0476, email: carol.hoffman@dec.ny.gov

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

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

Additional matter required by statute: Pursuant to Article 8 of the ECL, the State Environmental Quality Review Act, a Coastal Assessment Form and a Short Environmental Assessment Form with a negative determination have been prepared, and are on file with the Department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (“ECL”) section 13-0105 stipulates that the management of the state’s anadromous species, such as striped bass, shall be consistent with interstate or state-federal fishery management plans (“FMP”). ECL sections 11-0303 and 13-0339 authorizes the Department of Environmental Conservation (“DEC”) to establish by regulation measures for the management of striped bass, including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, and other management measures. ECL section 13-0347 establishes additional provisions for striped bass management in the Marine District.

Regulations adopted by DEC must be consistent with the requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of FMPs adopted pursuant to the Atlantic Coastal Fisheries Cooperative Management Act.

Amending 6 NYCRR Part 40 to open the striped bass fishing season on May 15 (two weeks earlier than it currently opens) is within DEC’s authority to regulate the fishery.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries in such a way as to protect this natural resource for its intrinsic value to the marine ecosystem and to optimize resource use for commercial and recreational harvesters while remaining compliant with marine fisheries conservation and management policies and interstate fishery management plans.

Amending 6 NYCRR Part 40 to open the striped bass fishing season on May 15 (two weeks earlier than it currently opens) would offer harvesters the opportunity to catch more fish and fulfill the quota that has been set with the protection of the natural resource for its intrinsic value in mind. Doing so will optimize resource use for harvesters.

3. Needs and benefits:

The proposal will open the commercial striped bass season two weeks earlier and require commercial striped bass harvesters to renew their permits two weeks earlier. The earlier opening of the commercial striped bass harvest season will provide increased opportunities for harvesters to catch striped bass when they are in the bays. The commercial quota would remain as specified in the Atlantic States Marine Fisheries Commission (“ASMFC”) Fishery Management Plan (“FMP”). The FMP and management measures are designed to promote the long-term sustainability of managed marine species, preserve the States’ marine resources, and protect the interests of both commercial and recreational fishermen. All member states must promulgate any regulations necessary to implement the provisions of the FMPs and remain compliant with the FMPs.

4. Costs:

The proposed rule does not impose any costs to DEC, local municipalities, or the regulated public.

5. Local government mandates:

The proposed rule does not impose any mandates on local governments.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

The “No Action” alternative would mean that New York would not open the commercial striped bass season two weeks earlier and not require commercial striped bass harvesters to renew their permits two weeks earlier. This would deny commercial harvesters increased opportunities to harvest striped bass when the fish are in the bays, and also deny them increased chances of harvesting their yearly quota. This has been rejected because commercial harvesters have been unable to fulfill the quota in 9 of the past 10 years.

9. Federal standards:

The amendment to 6 NYCRR Part 40 is in compliance with the most recently adopted Addendum (Addendum IV to Amendment 6) of the ASMFC FMP for Atlantic Striped Bass.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via DEC’s website of the changes to the regulations. Compliance with the proposed regulations is required upon the effective date of the rule.

Regulatory Flexibility Analysis

1. Effect of rule:

The amendment of 6 NYCRR Part 40 will implement a new open season date for the marine commercial fishery, and require commercial striped bass harvesters to renew their permits two weeks earlier. In 2018, DEC issued 436 Striped Bass Commercial Harvesters permits. Commercial striped bass harvesters must tag every fish they harvest. Each harvester is issued an individual quota of either a full share of tags or a part share of tags, depending on the percentage of their earned income that comes from fishing. 76,640 tags were issued in 2018. Ninety-five (95) part share tag holders received 35 tags each; and three hundred forty-one (341) full share tag holders received 215 tags each.

The regulations do not apply directly to local governments, and will not have any direct effects on local governments.

2. Compliance requirements:

All striped bass commercial harvester permit holders, as part of their mandatory reports to the Department of Environmental Conservation (“DEC”), are already required to maintain trip level fishing records of catch and effort expended, and to account for every tag they are issued.

3. Professional services:

None.

4. Compliance costs:

This rule making will not impose any costs to DEC or local governments. There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. There is no additional technology required for small businesses, and this action does not apply to local governments.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary to provide New York commercial harvesters increased opportunities to harvest striped bass so that they have an increased chance of meeting their yearly quota. The commercial quota would remain as specified in the Atlantic States Marine Fisheries Commission (“ASMFC”) Fishery Management Plan (“FMP”). The FMP and management measures are designed to promote the long-term sustainability of managed marine species, preserve the States’ marine resources, and protect the interests of both commercial and recreational harvesters. Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment, as well as wholesale and retail outlets and other support industries.

7. Small business and local government participation:

New York harvesters will have the opportunity to comment on the proposed regulatory change at Marine Resources Advisory Council (“MRAC”) meetings. There was no special effort to contact local governments because the proposed rule does not affect them.

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

Pursuant to SAPA 202-b (1-a) (b), no cure period is included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected.

9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

DEC will conduct an initial review of the proposed rule within three years, as required by SAPA section 207.

Rural Area Flexibility Analysis

The Department of Environmental Conservation (“DEC”) has determined that this rule will not impose an adverse impact on rural areas. This rule making only affects the Marine and Coastal District of the State; there are no rural areas within the Marine and Coastal District. The commercial striped bass fishery is located entirely within the Marine and Coastal District. The proposed rule will not impose any reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, DEC has determined that a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

The promulgation of this regulation would give striped bass commercial harvesters an extra two weeks to catch their yearly quota of fish. New York commercial harvesters have only met or exceeded their annual striped bass quota once during the past 10 years.

2. Categories and numbers affected:

In 2018, the Department of Environmental Conservation (“DEC”) issued 436 Striped Bass Commercial Harvesters permits. Commercial striped bass harvesters must tag every fish they harvest. Each harvester is issued an individual quota of either a full share of tags or a part share of tags, depending on the percentage of their earned income that comes from fishing. 76,640 tags were issued in 2018. Ninety-five (95) part share tag holders received 35 tags each; and three hundred forty-one (341) full share tag holders received 215 tags each.

3. Regions of adverse impact:

The commercial striped bass fishery is located entirely within New York’s Marine and Coastal District, but the rule is not expected to have any adverse impact.

4. Minimizing adverse impact:

Opening the commercial fishing season date on May 15 instead of June 1 may help offset economic hardships imposed regarding potential loss of income due to fishermen not catching the maximum quota they are allowed. Increasing the length of the commercial striped bass season will allow harvesters to harvest striped bass when they are inside the Marine and Coastal District, and give them more opportunities to catch their annual quota of fish. The annual pound quota would remain as specified in the Atlantic States Marine Fisheries Commission’s Fishery Management Plan.

5. Self-employment opportunities:

Most commercial harvesters are self-employed. A few individuals may work for local bait supply shops or marinas.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

DEC will conduct an initial review of the rule within three years, as required by SAPA section 207.

Text or summary was published in the October 17, 2018 issue of the Register, I.D. No. SGC-42-18-00015-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301, (518) 388-3407, email: gamingrules@gaming.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 2024, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The Commission received a public comment from a writer of online commentary about horse racing. The commentator opposed the proposal. He asserted that the current rule, which stemmed from the recommendations of Governor Andrew M. Cuomo’s 2012 New York Task Force on Racehorse Health and Safety, better protects horse safety. He stated that the proposal reflects a transactional approach that balances economic considerations with equine and human safety and questioned the criteria by which the Commission’s equine medical director would determine whether to permit any deviation from the general ratio rule.

The Commission shares the commentator’s concerns about equine safety and does not intend to permit deviations from the general rule that continues to apply (i.e., that the minimum price in a claiming race shall not be less than 50 percent of the value of the purse for the race) unless the racetrack has implemented appropriate protective measures for the subject races.

The Commission notes that there have been significant improvements to the regulatory racing environment for Thoroughbred horses in New York since the emergency adoption of the purse/price ratio rule in May 2012. Among these are improvements to the claiming rule to reduce an incentive to attempt to transfer an unsound horse to an unsuspecting claimant, as the rule now voids a claim if the horse dies before leaving the track and permits a claimant to void the claim for one hour after any race in which the horse is vanned from the track. There also have been improvements to the safe regulation of equine drug use, by banning the use of certain drugs within time periods that otherwise risk having a horse race while its ability to sense pain is impaired; requiring disclosure of recent corticosteroid joint injections; lengthening the time periods before a race in which corticosteroid joint injections may be administered; and making other improvements to equine drug regulation.

The Commission monitors all races and intends to further monitor the impact of the rule change and, if necessary, consider the circumstances under which the rule is applied, to promote the equine safety.

Department of Health

EMERGENCY/PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Controlled Substances

I.D. No. HLT-07-19-00006-EP

Filing No. 66

Filing Date: 2019-01-28

Effective Date: 2019-01-28

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

Proposed Action: 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: Emergency Justification 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 danger-

New York State Gaming Commission

NOTICE OF ADOPTION

Permit Greater Purse-to-Price Ratio in Thoroughbred Claiming Races

I.D. No. SGC-42-18-00015-A

Filing No. 71

Filing Date: 2019-01-29

Effective Date: 2019-02-13

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

Action taken: Amendment of section 4038.2 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Permit greater purse-to-price ratio in thoroughbred claiming races.

Purpose: To advance the best interests of thoroughbred racing and protect the safety of the race horses.

ous 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/proposed rule: Pursuant to the authority vested in the Commissioner of Health by section 3307 of the Public Health Law (PHL), Section 80.3 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (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 as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 28, 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

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

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

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

Regulatory Impact Statement

Statutory Authority:

The 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 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 publication of a Notice of Adoption in the New York State Register.

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 ADOPTION

Newborn Screening for Phenylketonuria and Other Diseases

I.D. No. HLT-31-18-00004-A

Filing No. 67

Filing Date: 2019-01-28

Effective Date: 2019-02-13

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

Action taken: Amendment of Subpart 69-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2500-a and 2500-f

Subject: Newborn Screening for Phenylketonuria and Other Diseases.

Purpose: To support timely collection and submission of specimens for the detection of diseases in newborn infants in New York State.

Text or summary was published in the August 1, 2018 issue of the Register, I.D. No. HLT-31-18-00004-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 requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department of Health ("Department") received comments from many members of the public, Greater New York Hospital Association, and New York City Department of Health & Mental Hygiene. Comments were

received regarding the newborn screening panel, transportation of specimens, and the responsibilities of local health officers. These comments are summarized below along with the Department's responses.

COMMENT: One commenter stated overall support of the regulation, but expressed concern about the use of the state contracted courier because of concerns among birth hospitals regarding delays in the transport of newborn screening specimens.

RESPONSE: The use of a specific overnight courier is awarded by State contract to ensure the Department receives newborn screening specimens in a timely manner. Comments related to the courier are outside the scope of the proposed regulatory amendments. No changes to the regulation are necessary as a result of this comment.

COMMENT: The New York City Department of Health and Mental Hygiene stated overall support of the regulation, but asked that the Department repeal Section 69-1.6 or amend the regulation to make the role of the local health officer at the New York City Department of Health and Mental Hygiene discretionary rather than mandatory.

RESPONSE: PHL §§ 2500-a and 2500-f authorize the State Commissioner of Health to promulgate regulations relating to newborn screening, including the manner in which testing, recording of test results, tracking, follow-up reviews and educational activities are conducted. Current regulations, promulgated pursuant to PHL §§ 2500-a and 2500-f, already require the local public health officer to take action to ensure that newborns receive newborn screening. Typically, such actions are only required if a repeat specimen is necessary and the Department and the hospital of birth have made multiple, unsuccessful attempts to locate the infant before the time the infant reaches six-weeks of age. The new regulations elaborate upon the existing requirements. No changes to the regulation were made as a result of this comment.

COMMENT: More than 40 commenters submitted comments in support of the regulatory amendments. These comments included positive statements about the inclusion of spinal muscular atrophy to the list of diseases to be screened for.

RESPONSE: The Department acknowledges these comments in support of the proposed regulation. No changes are necessary as a result of these comments.

Higher Education Services Corporation

EMERGENCY RULE MAKING

NYS Child Welfare Worker Incentive Scholarship Program

I.D. No. ESC-07-19-00001-E

Filing No. 56

Filing Date: 2019-01-24

Effective Date: 2019-01-24

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

Action taken: Addition of section 2201.23 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 679-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 2201.23 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Emergency adoption is necessary to avoid an adverse impact on the processing of scholarship awards to eligible applicants. This regulation implements a statutory student financial aid program that provides cost of attendance awards to be made to students pursuing their undergraduate or graduate degree from a college or university located in New York State beginning with the 2017-18 academic year, which generally starts in August. Decisions on applications for this program are typically made at the beginning of the academic year. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately in order for HESC to process applications so that recipients can be selected and payments can be made on behalf of program recipients expeditiously. To accomplish this mandate, the statute further provides for HESC to

promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: NYS Child Welfare Worker Incentive Scholarship Program.

Purpose: To implement the NYS Child Welfare Worker Incentive Scholarship Program.

Text of emergency rule: New section 2201.23 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.23 New York State Child Welfare Worker Incentive Scholarship Program.

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

(1) *Approved program of study shall mean those child welfare-related undergraduate and graduate degree programs designated by the corporation on an annual basis and published on the corporation's website conducted by an institution situated in the State, which has been approved and operating in this State for at least one year, and has been approved for participation in federal student financial aid programs authorized by Title IV of the Higher Education Act of 1965, as amended.*

(2) *Award shall mean a New York State Child Welfare Worker Incentive Scholarship Program award pursuant to section 679-h of the New York State Education Law.*

(3) *Child welfare worker shall mean an individual who provides direct-care services to children and families at a voluntary not-for-profit child welfare agency in New York State licensed by the New York State Office of Children and Family Services.*

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

(5) *Direct care services shall mean the provision of programs and services to children and families that require some degree of interaction between the child/family and the child welfare worker. Such direct care services include, but are not limited to, assessments, home visits, or direct implementation care plans.*

(6) *Full time basis, as required by Education Law, sections 679-h(2)(c) and 679-h(3)(a), shall mean employment as a child welfare worker, as defined in this section, for an average of 35 hours per week, or more, continuously over a calendar year, except for an allowable interruption of employment upon completion of an award recipient's degree program.*

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

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

(9) *Non-direct care services shall mean the provision of administrative and operational services in the child welfare sector.*

(10) *Program shall mean the New York State Child Welfare Worker Incentive Scholarship Program.*

(11) *Qualified experience, as required by Education Law, section 679-h(2)(a), shall mean the provision of direct-care services or non-direct care services as defined in this section. Such qualified experience may be obtained through employment, training, or education.*

(b) *Eligibility. Applicants and recipients must:*

(1) *satisfy the requirements provided in section 679-h(2) of the Education Law;*

(2) *satisfy the requirements provided in section 661(4)(f) of the Education Law;*

(3) *be matriculated in an undergraduate or graduate degree program, on a full-time or part-time basis, at an institution of higher education located within New York State in an approved program of study. A recipient is not required to be employed at a voluntary not-for-profit child welfare agency in New York State licensed by the New York State Office of Children and Family Services for the duration of his or her enrollment in an approved program of study.*

(4) *maintain good academic standing as set forth in section 665(6) of the Education Law, except that recipients enrolled in a graduate program of study must maintain a cumulative grade point average of 2.0 or higher as of the date of certification by the institution.*

(5) *make satisfactory progress towards completing his or her degree program within a reasonable timeframe, as determined by the corporation.*

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

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

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

(1) *First priority shall be given to applicants who have received payment of an award for the academic year immediately preceding the academic year for which payment is sought including those who were subsequently granted an interruption in study by the corporation for the academic year immediately preceding the academic year for which payment is sought. If there are more applicants than available funds, recipients shall be chosen by lottery.*

(2) *Second priority shall be given to new applicants, within the remaining funds available for the program, if any. If there are more applicants than available funds, recipients shall be chosen by lottery.*

(d) *Administration.*

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

(2) *Recipients of an award shall:*

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

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

(iii) *receive such awards for no more than: (A) two academic years for an associate's degree; (B) four academic years for a bachelor's degree or five academic years if the bachelor's degree program normally requires five years; or (C) two academic years for a graduate degree. Notwithstanding, such duration may be extended for an allow interruption of study;*

(iv) *facilitate the submission of information from their employer attesting to the recipient's job title, job duties, employment period, full time employment status, and any other information necessary for the corporation to determine compliance with the program's employment requirements on forms and in a manner prescribed by the corporation; and*

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

(e) *Amounts.*

(1) *The amount of the award shall be determined in accordance with section 679-h(4) of the Education Law.*

(2) *Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time upon certification by the institution of the recipient's eligibility for payment.*

(3) *Awards shall be reduced by the value of other educational grants and scholarships, as authorized by section 679-h(4) of the Education Law.*

(f) *Failure to comply.*

(1) *All award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to meet the statutory, regulatory, contractual, administrative or other requirements 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 was disbursed to the institution.*

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 23, 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 Child Welfare Worker Incentive Scholarship Program ("Program") is codified within Article 14 of the Education Law. In particular, Section 2 of Part MMM of Chapter 59 of the Laws of 2017 created the Program by adding a new section 679-h to the Education Law. Pursu-

ant to subdivision 9 of section 679-h of the Education Law, HESC is required to promulgate rules and regulations for the administration of this Program.

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

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

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

Legislative objectives:

This Program was created to enhance opportunities for committed child welfare workers in New York State by providing cost of attendance scholarship awards to support continued professional and skills development.

Needs and benefits:

New York State law provides various scholarship programs to attract and retain individuals in a needed area or profession. Providing the opportunity for affordable higher education through cost of attendance scholarship awards to current child welfare workers serves to help address the need to retain and promote those committed to serving communities in the not-for-profit sector.

According to the Council of Family and Child Caring Agencies (COFCCA), the landscape of the child welfare system in New York State has changed dramatically. With the State's focus on community based prevention services and efforts to preserve families, child welfare agencies are now providing services to the more vulnerable populations of children and families. As a result, there is a greater need for skilled child care workers.

COFCCA reports that jobs in the child welfare sector are among the lowest paying jobs across the State. As a result, this sector has a difficult time recruiting and retaining employees. The current annual turnover rate for this sector is approximately 33 percent. While there are career track opportunities and potential for advancement, the high cost of college makes it difficult for workers to advance their education. Child welfare agencies have a growing need for qualified individuals who have the education, training, and experience to fill the needs of this sector.

Costs:

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

b. The estimated cost to the agency for the implementation of, or continuing compliance with this rule is \$436,875.

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

d. Costs to the State shall not exceed available New York State budget appropriations for the Program. The 2017-18 State Budget contained an appropriation for this Program in the sum of \$50,000.

Local government mandates:

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

Paperwork:

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

Given the statutory language as set forth in section 679-h(9) 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 2201.23 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have a negative impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides cost of attendance awards to current child welfare workers pursuing undergraduate or graduate degrees at New York State colleges that will enhance their ability to work in voluntary not-for-profit child welfare agencies in New York State. Upon completion of their degree program, recipients are required to work as child welfare workers in voluntary not-for-profit child welfare agencies in New York State for five years and maintain residency in the State for such period of employment. Providing these benefits will encourage individuals to continue employment in the child welfare sector throughout New York State, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add new section 2201.23 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

HESC finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides cost of attendance awards to current child welfare workers pursuing undergraduate or graduate degrees at New York State colleges that will enhance their ability to work in voluntary not-for-profit child welfare agencies in New York State. Upon completion of their degree program, recipients are required to work as child welfare workers in voluntary not-for-profit child welfare agencies in New York State for five years and maintain residency in the State for such period of employment. Providing these benefits will encourage individuals to continue employment in the child welfare sector benefitting rural communities throughout New York State.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add new section 2201.23 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have a negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides cost of attendance awards to current child welfare workers pursuing undergraduate or graduate degrees at New York State colleges that will enhance their ability to work in voluntary not-for-profit child welfare agencies in New York State. Upon completion of their degree program, recipients are required to work as child welfare workers in voluntary not-for-profit child welfare agencies in New York State for five years and maintain residency in the State for such period of employment. Providing these benefits will encourage individuals to continue employment in the child welfare sector throughout New York State.

EMERGENCY RULE MAKING

Enhanced Tuition Awards Program

I.D. No. ESC-07-19-00002-E

Filing No. 57

Filing Date: 2019-01-24

Effective Date: 2019-01-24

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 status shall be considered as contributing toward full-time attendance. For a recipient who earned college credit toward his or her program(s) of study prior to*

enrolling in college as a matriculated student and who is making satisfactory progress toward timely completion of his or her program(s) of study, and is enrolled in coursework not applicable toward his or her program(s) of study, such coursework outside of his or her program(s) of study shall be considered as contributing toward full-time attendance.

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

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

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

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

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

(1) In the program's first year:

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

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

(2) After the program's first year:

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

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

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

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

(1) Applicants for an award shall:

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

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

(2) Recipients of an award shall:

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

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

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

(3) Institutions.

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

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

(f) **Amounts.**

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

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

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

(g) **Contractual obligation.**

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 23, 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 Trust-

ees 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-07-19-00003-E

Filing No. 58

Filing Date: 2019-01-24

Effective Date: 2019-01-24

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, sec-*

tion 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 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 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 April 23, 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.

EMERGENCY RULE MAKING

NYS Child Welfare Worker Loan Forgiveness Incentive Program

I.D. No. ESC-07-19-00004-E

Filing No. 59

Filing Date: 2019-01-24

Effective Date: 2019-01-24

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

Action taken: Addition of section 2201.22 to Title 8 NYCRR.

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

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 2201.22 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students who receive their undergraduate or graduate degree from a college or university located in New York State. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible applicants. The statute provides for student loan relief to such college graduates who continue to live in New York State upon graduation, agree to work as child welfare workers at not-for-profit agencies in New York State licensed by the New York State Office of Children and Family Services, on a full-time basis, for five years, and apply for this program within two years after graduating from college. Eligible applicants will receive up to \$10,000 per year for five years in loan forgiveness payments. Since individuals must apply within two years of college graduation, it is critical that the terms of this program as provided in the regulation be effective immediately in order for HESC to process applications so that timely payments can be made on behalf of program recipients. To accomplish this mandate, the statute further

provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: NYS Child Welfare Worker Loan Forgiveness Incentive Program.

Purpose: To implement the NYS Child Welfare Worker Loan Forgiveness Incentive Program.

Text of emergency rule: New section 2201.22 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.22 New York State Child Welfare Worker Loan Forgiveness Incentive Program.

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

(1) *Award shall mean a New York State Child Welfare Worker Loan Forgiveness Incentive Program award pursuant to section 679-i of the New York State Education Law.*

(2) *Child welfare worker shall mean an individual who provides direct-care services to children and families at a voluntary not-for-profit child welfare agency in New York State licensed by the New York State Office of Children and Family Services.*

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

(4) *Direct care services shall mean the provision of programs and services to children and families that requires some degree of interaction between the child/family and the child welfare worker. Such direct care services include, but are not limited to, assessments, home visits, or direct implementation of care plans.*

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

(6) *Full time shall mean employment as a child welfare worker providing direct-care services to children and families at a voluntary not-for-profit child welfare agency in New York State licensed by the New York State Office of Children and Family Services for an average of 35 hours per week, or more, continuously over a calendar year, except for an allowable interruption of employment.*

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

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

(9) *Outstanding student loan debt shall mean the total cumulative student loan balance required to be paid by the applicant at the time of selection for an award under this program, including the outstanding principal and any accrued interest covering the cost of attendance to obtain an undergraduate or graduate degree from a college or university located in New York State. Such outstanding student loan debt may be reduced as provided in subparagraph (iii) of paragraph (4) of subdivision (c) of this section.*

(10) *Program shall mean the New York State Child Welfare Worker Loan Forgiveness Incentive Program.*

(b) *Eligibility. Applicants and recipients must:*

(1) *satisfy the requirements provided in section 679-i(2) of the Education Law;*

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

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

(c) *Administration.*

(1) *An applicant for an award shall:*

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

(ii) *electronically transmit an application for program eligibility to the corporation on or before the date prescribed by the corporation.*

(2) *A recipient of an award shall:*

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

(ii) *confirm each year, for five years, employment as a child welfare worker providing direct-care services to children and families at a voluntary not-for-profit child welfare agency in New York State licensed by the New York State Office of Children and Family Services by submitting a certification from his or her employer attesting to the recipient's employ-*

ment setting, job title, job duties, employment period, full time employment status, and any other information necessary for the corporation to determine eligibility. Said submissions shall be on forms or in a manner prescribed by the corporation;

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

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

(3) If a recipient has been employed as a child welfare worker at a voluntary not-for-profit child welfare agency in New York State licensed by the New York State Office of Children and Family Services for less than one year upon his or her initial selection for an award, the final award payment shall be prorated based on the ratio of months in the year that the recipient worked in such capacity when initially selected and disbursed in two proportionate installments. The first disbursement shall be made as part of the regular annual payment and the second disbursement shall be made at the time such recipient completes his or her full year of employment as a child welfare worker at a voluntary not-for-profit child welfare agency in New York State licensed by the New York State Office of Children and Family Services.

(4) The outstanding student loan debt shall:

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

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

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

(d) Award selection.

(1) For the first year of this program's operation, awards shall be made in the following order of priority:

(i) applicants who are completing the second, third, fourth or fifth year of full-time employment as a child welfare worker at a voluntary not-for-profit child welfare agency in New York State licensed by the New York State Office of Children and Family Services;

(ii) applicants who can demonstrate economic need.

(2) For the second year of this program's operation and thereafter, awards shall be made in the following order of priority:

(i) applicants who received payment of an award in a prior year and remain eligible;

(ii) applicants who are completing the second, third, fourth or fifth year of full-time employment as a child welfare worker at a voluntary not-for-profit child welfare agency in New York State licensed by the New York State Office of Children and Family Services;

(iii) applicants who can demonstrate economic need but did not receive an award during the first year of this program's operation.

(3) All awards are contingent upon annual appropriations.

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 23, 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 Child Welfare Worker Loan Forgiveness Incentive Program ("Program") is codified within Article 14 of the Education Law. In particular, Section 3 of Part MMM of Chapter 59 of the Laws of 2017 created the Program by adding a new section 679-i to the Education Law. Pursuant to subdivision 5 of section 679-i of the Education Law, HESC is required to promulgate rules and regulations for the administration of this Program.

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

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

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

Legislative objectives:

This Program was created to enhance the ability of child welfare workers in New York State to meet the needs of the children and youth in care as well as provide them with the skills needed to operate in today's changing health landscape by alleviating the student loan debt burden for recent college graduates pursuing careers in child welfare.

Needs and benefits:

New York State law provides various loan forgiveness programs to encourage individuals to pursue careers in a needed area or profession. Providing student loan relief to college graduates pursuing careers in child welfare serves to help address the growing demand in this sector for a skilled workforce.

The landscape of the child welfare system in New York State has changed dramatically. According to the Council of Family and Child Caring Agencies (COFCCA), the closure of state-operated mental health and juvenile justice facilities and recent focus on community-based and prevention services have helped to preserve thousands of families and has kept hundreds of children and youth out of the State's care. However, the result has been that children and youth who are residentially placed or who require services from a not-for-profit child welfare agency have higher and more complex needs. Additionally, these children and their families living in poverty desperately need access to programs and services. With child welfare agencies now providing services to an extremely vulnerable population of children and families, there is a greater need for a higher skilled workforce than in the past.

COFCCA reports that jobs in the child welfare sector are among the lowest paying jobs across the State. Due to the low wages, this sector has a difficult time recruiting and retaining employees. The current annual turnover rate for this sector is approximately 33 percent. While there are career track opportunities and potential for advancement, it is extremely difficult for entry level staff and/or direct care workers to enhance their education while working. Child welfare agencies need qualified individuals who have the education, training, and experience to provide the care needed.

Costs:

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

b. The estimated cost to the agency for the implementation of, or continuing compliance with this rule is \$489,975.

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

d. Costs to the State shall not exceed available New York State budget appropriations for the Program. The 2017-18 State Budget contained an appropriation for this Program in the sum of \$50,000.

Local government mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

Given the statutory language as set forth in section 679-i(5) 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 2201.22 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have a negative impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts by providing loan forgiveness benefits to recent New York State college graduates who agree to work as child welfare workers at not-for-profit agencies in New York State licensed by the New York State Office of Children and Family Services, on a full-time basis, for five years. Providing such financial assistance will encourage individuals to pursue careers in child welfare throughout New York State, which will provide an economic benefit to the State’s small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s Emergency Rule Making seeking to add new section 2201.22 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

HESC finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas. Rather, it has potential positive impacts by providing loan forgiveness benefits to recent New York State college graduates who agree to work as child welfare workers at not-for-profit agencies in New York State licensed by the New York State Office of Children and Family Services, on a full-time basis, for five years. Providing such financial assistance will encourage individuals to pursue careers in child welfare benefitting rural communities throughout New York State.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s Emergency Rule Making seeking to add a new section 2201.22 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have a negative impact on jobs or employment opportunities. Rather, it has potential positive impacts by providing loan forgiveness benefits to recent New York State college graduates who agree to work as child welfare workers at not-for-profit agencies in New York State licensed by the New York State Office of Children and Family Services, on a full-time basis, for five years. Providing these benefits will encourage individuals to pursue careers in child welfare throughout New York State.

**EMERGENCY
RULE MAKING**

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

I.D. No. ESC-07-19-00005-E

Filing No. 60

Filing Date: 2019-01-24

Effective Date: 2019-01-24

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 April 23, 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 Ameri-

can 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.

Ogdensburg Bridge and Port Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Increase in Bridge Toll Structure

I.D. No. OBA-07-19-00019-P

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

Proposed Action: Amendment of Part 5704 of Title 21 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 1630, subsection 4; Public Authorities Law, section 703-b

Subject: Increase in Bridge Toll Structure.

Purpose: To increase bridge toll revenue in order to become financially self-supporting. Our bridge operations are resulting in deficit.

Public hearing(s) will be held at: 2:00 p.m., March 28, 2019 at One Bridge Plaza, Ogdensburg, NY.

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

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

Text of proposed rule: Section 5704.1 Schedule of Tolls is amended to read as follows:

Section 5704.1 Schedule of tolls
Effective April 15, 2019, pending approval of the Director of the Budget of the State of New York, tolls are as follows:

Type of vehicle	Proposed toll rate
Auto (one way)	\$[2.75] 3.25
2-axle truck	\$[5.00] 6.75
3-axle truck	\$[6.00] 8.50
4-axle truck	\$[6.50] 10.25
5-axle truck	\$[8.50] 12.00
6-axle truck	\$[10.00] 13.75
7-axle truck	\$[11.50] 15.50
8-axle truck	\$[13.00] 17.25
9-axle truck	\$[14.50] 19.00
10-axle truck	\$[16.00] 20.75
BUS	\$[5.00] 6.75
Additional axles	\$1.75
Commercial Truck Permit	\$65.00
Commercial Permit Fee (Overweight)	\$[100.00] 140.00
Commercial Escort Fee	\$[1000.00] 1000.00

Section 5704.4 – Special Toll Rates.
The Authority’s Special Toll Rates, effective April 15, 2019, are as follows:
The proposed commuter incentives: Prepaid Options - USD

Commuter Card Options-Passenger Vehicles

20 one way trips - Green Card - 20% discount	\$[37.00] 52.00
60 one way trips - Yellow Card - 20% discount	\$[100.00] 156.00
75 one way trips - Red Card - 20% discount	\$[90.00] 195.00
50 one way trip tickets - Auto-only Ticket Books	\$[75.00] 112.50

Commercial Vehicle Incentives: - USD

*Prepaid Commercial Vehicle: 6 one way trips - Blue Card - 20% \$66.00
Accounts greater than \$35,000 annually will be credited a 15% incentive credit for future travel.*

Text of proposed rule and any required statements and analyses may be obtained from: Wade A. Davis, Executive Director, Ogdensburg Bridge and Port Authority, 1 Bridge Plaza, Ogdensburg, NY 13669, (315) 393-4080, email: wadavis@ogdensport.com

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Office of Parks, Recreation and Historic Preservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Ice Fishing in Shaver Pond, Grafton Lake State Park, Saratoga Capital Region

I.D. No. PKR-07-19-00007-P

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

Proposed Action: This is a consensus rule making to amend section 417.3 of Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.02, 3.09(5), (8) and (10)

Subject: Ice Fishing in Shaver Pond, Grafton Lake State Park, Saratoga Capital Region.

Purpose: To remove the prohibition on ice fishing in Shaver Pond at Grafton Lakes State Park.

Text of proposed rule: Part 417.3 is amended to read as follows:

Section 417.3 of 9 NYCRR

Fishing

Fishing shall be permitted in all waters under the jurisdiction of the office by persons lawfully licensed by the State, by angling, trolling and through the ice only, except that fishing is prohibited in the following areas:

- (a) in all bathing areas;
- (b) in all areas closed to fishing by officially posted signs;
- [(c) through the ice in Shaver Pond, Rensselaer County.]

Text of proposed rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, NYS OPRHP, 625 Broadway, Albany, NY 12238, (518) 486-2921, email: rule.making@parks.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

The New York State Office of Parks, Recreation and Historic Preservation submits this proposal as a consensus rule making pursuant to SAPA § 202(1)(b)(i) having determined no person is likely to object to the amendment as it repeals an obsolete regulation and involves a non-controversial activity. This proposal removes the prohibition of ice fishing in Shaver Pond at Grafton Lakes State Park.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This amendment repeals an obsolete prohibition on recreational ice fishing in Shaver Pond at Grafton Lakes State Park.

Public Service Commission

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-31-17-00010-A

Filing Date: 2019-01-23

Effective Date: 2019-01-23

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

Action taken: On 1/17/19, the PSC adopted an order approving 11737 Owners Corp.’s (11737 Owners) notice of intent to submeter electricity at 117 East 37th 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 11737 Owners’ notice of intent to submeter electricity.

Substance of final rule: The Commission, on January 17, 2019, adopted an order approving 11737 Owners Corp.’s notice of intent to submeter electricity at 117 East 37th 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, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(17-E-0367SA1)

NOTICE OF ADOPTION**Submetering of Electricity****I.D. No.** PSC-22-18-00008-A**Filing Date:** 2019-01-23**Effective Date:** 2019-01-23

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

Action taken: On 1/17/19, the PSC adopted an order approving Madison 30 31 Owner LLC's (Madison 30 31) notice of intent to submeter electricity at 15 East 30th 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 Madison 30 31's notice of intent to submeter electricity.

Substance of final rule: The Commission, on January 17, 2019, adopted an order approving Madison 30 31 Owner LLC's notice of intent to submeter electricity at 15 East 30th 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, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0196SA1)

NOTICE OF ADOPTION**Submetering of Electricity****I.D. No.** PSC-28-18-00005-A**Filing Date:** 2019-01-23**Effective Date:** 2019-01-23

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

Action taken: On 1/17/19, the PSC adopted an order approving Greystone Realty Spring LLC's (Greystone Realty) petition to submeter electricity at 75 Spring 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 Greystone Realty's petition to submeter electricity.

Substance of final rule: The Commission, on January 17, 2019, adopted an order approving Greystone Realty Spring LLC's petition to submeter electricity at 75 Spring 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, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0340SA1)

NOTICE OF ADOPTION**Submetering of Electricity****I.D. No.** PSC-31-18-00012-A**Filing Date:** 2019-01-23**Effective Date:** 2019-01-23

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

Action taken: On 1/17/19, the PSC adopted an order approving 915 West End Avenue Owner II LLC's (915 West End) petition to submeter electricity at 915 West End Avenue, 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 915 West End's petition to submeter electricity.

Substance of final rule: The Commission, on January 17, 2019, adopted an order approving 915 West End Avenue Owner II LLC's petition to submeter electricity at 915 West End Avenue, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0280SA1)

NOTICE OF ADOPTION**Submetering of Electricity****I.D. No.** PSC-35-18-00009-A**Filing Date:** 2019-01-23**Effective Date:** 2019-01-23

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

Action taken: On 1/17/19, the PSC adopted an order approving 117 Seaman Avenue Realty Corp.'s (117 Seaman) petition to submeter electricity at 109-117 Seaman Avenue, 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 117 Seaman's petition to submeter electricity.

Substance of final rule: The Commission, on January 17, 2019, adopted an order approving 117 Seaman Avenue Realty Corp.'s petition to submeter electricity at 109-117 Seaman Avenue, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0449SA1)

NOTICE OF ADOPTION

Submetering of Electricity and Waiver Request

I.D. No. PSC-37-18-00005-A

Filing Date: 2019-01-23

Effective Date: 2019-01-23

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

Action taken: On 1/17/19, the PSC adopted an order approving Tax Credit Asset Management, LLC's (Tax Credit) notice of intent to submeter electricity at 106, 114 and 120 Birchez Lane, Schoharie, 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 Tax Credit'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 January 17, 2019, adopted an order approving Tax Credit Asset Management, LLC's notice of intent to submeter electricity at 106, 114 and 120 Birchez Lane, Schoharie, New York, located in the service territory of Niagara Mohawk Power Corporation, and request for waiver of the energy audit and energy efficiency plan requirements in 16 NYCRR § 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, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0400SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-42-18-00012-A

Filing Date: 2019-01-23

Effective Date: 2019-01-23

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

Action taken: On 1/17/19, the PSC adopted an order approving Alfa Gramercy Park LLC's (Alfa Gramercy) notice of intent to submeter electricity at 200 East 21st 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 Alfa Gramercy's notice of intent to submeter electricity.

Substance of final rule: The Commission, on January 17, 2019, adopted an order approving Alfa Gramercy Park LLC's notice of intent to submeter electricity at 200 East 21st 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, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0392SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether to Impose Consequences on AAA for Its Non-Compliance with Commission Requirements

I.D. No. PSC-07-19-00009-P

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

Proposed Action: The Public Service Commission is considering whether to impose consequences on AAA ESCO, LLC (AAA), an Energy Services Company (ESCO), for non-compliance with Commission requirements.

Statutory authority: Public Service Law, sections 4, 65 and 66

Subject: Whether to impose consequences on AAA for its non-compliance with Commission requirements.

Purpose: To insure the provision of safe and adequate energy service at just and reasonable rates.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to impose consequences, pursuant to section two of the Commissions Uniform Business Practices (UBP) on AAA ESCO, LLC (AAA), an energy services company (ESCO).

On January 18, 2019, the Commission issued an Order Instituting a Proceeding and to Show Cause (Show Cause Order), which detailed repeated AAA failures to comply with Commission-imposed obligations when due. In 2018, AAA failed to file its 3rd Quarter Historic Pricing data. The Show Cause Order stated that the Commission may revoke AAA's eligibility to operate in New York, or may impose any of the consequences set forth in the UBP section 2.D.6.b if AAA is found to have violated the UBP. The Show Cause Order required AAA to respond and explain why, based upon the allegations and findings described herein, its eligibility to provide services as an ESCO in New York should not be revoked or, alternatively, why other consequences should not be imposed.

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-G-0721SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rates and Charges for Non-Roadway LED Service Offerings for Outdoor Lighting Customers

I.D. No. PSC-07-19-00010-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid regarding new non-roadway light emitting diode (LED) service offerings.

Statutory authority: Public Service Law, section 66

Subject: Rates and charges for non-roadway LED service offerings for outdoor lighting customers.

Purpose: To determine whether to amend National Grid's P.S.C. No. 214—Outdoor Lighting Tariff to provide new LED service offerings.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed on December 28, 2018 by Niagara

Mohawk Power Corporation, d/b/a National Grid (National Grid), requesting approval of new non-roadway (i.e., decorative) light emitting diode (LED) service offerings under P.S.C. No. 214 – Outdoor Lighting Tariff.

National Grid states that the proposed LED lighting options, in combination with the Company's existing roadway LED offerings, will enable customers to convert their entire outdoor lighting systems to efficient LEDs and will allow the Company to further encourage LED conversions and provide localized lighting benefits for all types of lighting facilities used to serve customers.

The full text of the petition and the full record of the proceeding may be viewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the 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.

(19-E-0001SP1)

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

Amended Lease Agreement for Space in the NYSEG Facility

I.D. No. PSC-07-19-00011-P

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

Proposed Action: The Commission is considering a petition filed by New York State Electric & Gas Corporation (NYSEG) requesting the approval of an Amended Lease Agreement to lease space in the NYSEG facility located at 18 Link Drive, Binghamton, New York.

Statutory authority: Public Service Law, section 70

Subject: Amended Lease Agreement for space in the NYSEG facility.

Purpose: Review of Amended Lease Agreement between NYSEG and Coughlin & Gerhart, LLP.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed on December 10, 2018 by New York State Electric & Gas Corporation (NYSEG), requesting an approval of an Amended Lease Agreement to lease space in the NYSEG facility located at 18 Link Drive, Binghamton, New York.

An existing tenant, Coughlin & Gerhart, LLP/COIF Realty Corporation (Coughlin & Gerhart, LLP) has expressed interest in leasing additional space adjacent to its existing space.

The full text of the petition and the full record of the proceeding may be viewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the 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-M-0755SP1)

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

Initial Tariff Schedule, P.S.C. No. 1—Water and Waiver of Rate Setting Authority

I.D. No. PSC-07-19-00012-P

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

Proposed Action: The Commission is considering a proposal filed by Pond Shore Water Works, Inc. for approval of its Initial Tariff Schedule, P.S.C. No. 1—Water, effective July 1, 2019 and a request for a waiver of the rate setting provisions of Public Service Law section 5(4).

Statutory authority: Public Service Law, sections 5(4) and 89-e(2)

Subject: Initial Tariff Schedule, P.S.C. No. 1—Water and waiver of rate setting authority.

Purpose: To provide the rates, rules, and regulations under which water service will be provided to the customers of the system.

Substance of proposed rule: The Commission is considering a proposal filed by Pond Shore Water Works, Inc. (Pond Shore or the Company), on January 22, 2019, for approval of its initial tariff schedule P.S.C. No. 1 – Water, for water service in the Harmony Farms Subdivision in the Town of Pawling, Dutchess County, to become effective July 1, 2019.

The Company's water plant and waterworks will be controlled by The Highlands at Pawling Homeowners' Association, Inc. (Association) for the purpose of distributing water only to customers having an interest and voice in the Association's operation. Therefore, Pond Shore requests approval of its initial tariff schedule and exemption from the Commission's rate setting provisions, as authorized by Public Service Law Section 5(4). The actual operating and maintenance costs will be assessed equally among Association members, as incurred.

The tariff defines when a bill will be delinquent and establishes a late payment charge. The restoration of service charge will be a rate agreed upon by the Association members and will appear on all written notices of discontinuation of service.

The full text of the initial tariff schedule 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.

(19-W-0055SP1)

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

Transfer of Street Lighting Facilities to the Town of Skaneateles

I.D. No. PSC-07-19-00013-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid seeking authorization to transfer its street lighting facilities located in the Town of Skaneateles to the Town of Skaneateles.

Statutory authority: Public Service Law, section 70(1)

Subject: Transfer of street lighting facilities to the Town of Skaneateles.

Purpose: To determine whether to authorize the transfer street lighting facilities to the Town of Skaneateles.

Substance of proposed rule: The Public Service Commission (Commis-

sion) is considering a petition filed on January 15, 2019 by Niagara Mohawk Power Corporation, d/b/a National Grid (National Grid), requesting approval to transfer certain street lighting facilities located in the Town of Skaneateles, New York (Town) to the Town.

Based on plant records, National Grid states that the original book cost of the facilities is approximately \$105,135, and the net book value is \$52,421, as of October 31, 2018. National Grid proposes to transfer the street lighting facilities to the Town for approximately \$56,854. National Grid explains that the agreement between it and the Town provides that the purchase price will be adjusted (up or down) to the actual net book value at closing.

The full text of the petition and the full record of the proceeding may be viewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the 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.

(19-E-0043SP1)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-07-19-00014-P

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

Proposed Action: The Commission is considering the notice of intent of Sunrise Solars, LLC to submeter electricity at 2 and 3 Solar Way, Latham, New York.

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

Subject: Notice of intent to submeter electricity.

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

Substance of proposed rule: The Commission is considering the notice of intent filed by Sunrise Solars, LLC on January 22, 2019, to submeter electricity at 2 and 3 Solar Way, Latham, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid (National Grid).

By stating its intent to submeter electricity, Sunrise Solars, LLC requests authorization to take electric service from National Grid and then distribute and meter that electricity to its residents. Submetering of electricity to residential residents is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

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

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

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

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

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

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

(19-E-0052SP1)

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

Petition to Submeter Electricity

I.D. No. PSC-07-19-00015-P

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

Proposed Action: The Commission is considering the petition of 812 Amsterdam LLC to submeter electricity at 814-816 Amsterdam Avenue, New York, New York.

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

Subject: Petition to submeter electricity.

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

Substance of proposed rule: The Commission is considering the petition filed by 812 Amsterdam LLC on January 22, 2019, to submeter electricity at 814-816 Amsterdam Avenue, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison).

In the petition, 812 Amsterdam LLC requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its residents. Submetering of electricity to residential residents is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

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

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

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

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

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

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

(19-E-0051SP1)

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

Participation in New York State Lifeline Program

I.D. No. PSC-07-19-00016-P

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

Proposed Action: The Commission is considering a petition filed by Buffalo-Lake Erie Wireless Systems Co., LLC seeking approval to participate in the New York State Lifeline Program and receive financial support from the Targeted Accessibility Fund Administrator.

Statutory authority: Public Service Law, section 92-h

Subject: Participation in New York State Lifeline Program.

Purpose: To encourage enhanced services for low-income customers.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Buffalo-Lake Erie Wireless Systems Co., LLC, filed January 9, 2019, seeking approval to participate in the New York State Lifeline Program and receive distributions from the Targeted Accessibility Fund (TAF) Administrator, pursuant to Public Service Law § 92-h, which allows wireless providers to voluntarily participate in the State's Lifeline program, subject to all obligations such participation entails.

The petitioner, Buffalo-Lake Erie Wireless Systems specifically requests that the Commission (1) authorize Buffalo-Lake Erie Wireless

Systems to provide wireless Lifeline service pursuant to New York State's Lifeline program and (2) authorize Buffalo-Lake Erie Wireless Systems to receive distributions from the TAF in the amount of \$11.05 per household per month in order to fund Buffalo-Lake Erie Wireless Systems enhanced service offering.

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

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

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

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

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

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

(19-C-0046SP1)

Department of State

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Education and Experience Requirements for Original Appraiser Applications

I.D. No. DOS-07-19-00008-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 1102.2 and 1103.2 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d

Subject: Education and Experience Requirements for Original Appraiser Applications.

Purpose: To conform existing regulations to current federal guidelines.

Text of proposed rule: Section 1102.2 is amended as follows:

(a) Applicants for residential licensing must have at least [2,000] 1,000 hours of real estate appraisal experience over a period of not less than 24 months.

(b) Applicants for residential certification must have at least [2,500] 1,500 hours of real estate appraisal experience over a period of not less than 24 months. The residential experience must include experience in single-family, two-to-four family, cooperatives, condominiums, or other residential experience.

(c) Applicants for general certification must have at least 3,000 hours of experience over a period of not less than [30] 24 months, of which, a minimum of [1500] 1,500 hours must be in non-residential appraisal work.

Section 1103.2 is amended as follows:

(a) Education requirements for New York State appraiser assistants. An applicant must satisfactorily complete the following courses within the five (5) year period prior to the date of submission of an appraiser assistant application:

- (1) Residential 5 (R-5) - Basic Appraisal Principles 30 hours
- (2) Residential 6 (R-6) - Basic Appraisal Procedures 30 hours
- (3) USPAP or its equivalent, as further defined in 15 hours section

1103.7 of this Part

(4) Residential 7 (R-7) - Residential Market Analysis 15 hours and Highest and Best Use

(5) Residential 8 (R-8) - Residential Appraisal Site Valuation and Cost Approach

(6) Residential 9 (R-9) - Residential Sales Comparison 30 hours and Income Approach

(7) Residential 10 (R-10) - Residential Report 15 hours Writing and Case Studies

(8) Supervisory Appraiser/Trainee Appraiser Course 4 hours

Total 154 hours

(b) Education requirements for New York State licensed real estate appraisers.

(1) An applicant must satisfactorily complete the following courses:

(i) Residential 5 (R-5)- Basic Appraisal Principles 30 hours

(ii) Residential 6 (R-6)- Basic Appraisal Procedures 30 hours

(iii) USPAP or its equivalent as further defined in section 1103.7 of this Part 15 hours

(iv) Residential 7 (R-7)- Residential Market Analysis and Highest and Best Use 15 hours

(v) Residential 8 (R-8)- Residential Appraisal Site Valuation and Cost Approach 15 hours

(vi) Residential 9 (R-9)- Residential Sales Comparison and Income Approach 30 hours

(vii) Residential 10 (R-10)- Residential Report Writing and Case Studies 15 hours

Total 150 hours

(2) In addition to the education requirements in paragraph 1 of this subdivision, a licensed real estate appraiser applicant must also satisfactorily complete two years of real property appraisal experience as provided in section 160-k of the Executive Law. [Applicants for a license as a real estate appraiser shall also successfully complete 30 semester hours of college-level education from an accredited college, junior college, community college or university, or hold an associate degree, or higher from an accredited college, junior college, community college or university. The college or university must be a degree-granting institution accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. If an accredited college or university accepts the College-Level Examination Program (CLEP) and examination(s) and issues a transcript for the exam showing its approval, it will be considered as credit for the college course. Applicants with a college degree from a foreign country may have their education evaluated for equivalency by one of the following:

(i) An accredited, degree-granting domestic college or university;

(ii) The American Association of Collegiate Registrars and Admissions Officers (AACRAO);

(iii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES); or

(iv) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.]

(c) Education requirements for a New York State certified residential real estate appraisers:

(1) An applicant shall satisfactorily complete the following courses:

(i) Residential 5 (R-5) Basic Appraisal Principles 30 hours

(ii) Residential 6 (R-6) Basic Appraisal Procedures 30 hours

(iii) USPAP or its equivalent, as further defined in section 1103.7 of this Part 15 hours

(iv) Residential 7 (R-7) Residential Market Analysis and Highest and Best Use 15 hours

(v) Residential 8 (R-8) Residential Appraisal Site Valuation and Cost Approach 15 hours

(vi) Residential 9 (R-9) Residential Sales Comparison and Income Approach 30 hours

(vii) Residential 10 (R-10) Residential Report Writing and Case Studies 15 hours

(viii) Statistics, Modeling and Finance (SMF) 15 hours

(ix) Residential 11 (R-11) Advanced Residential Applications and Case Studies 15 hours

(x) Appraisal subject matter electives: Introduction to Residential Income Properties (RE-1), Fair Housing/Fair Lending and Environmental Issues (RE-2), or such other elective course approved by the Department. 20 hours

Total 200 hours

(2) In addition to the aforementioned education requirements, prospective licensees for a New York State certified residential real estate appraiser certification shall comply with the minimum qualifying education standards --- as established by the Appraiser Qualifications Boards pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI) in the publication entitled: "Real Property Appraiser Qualification Criteria" (Effective May 1, 2018) (herein after "2018 AQB") for qualifications for Certified Residential Real Property Appraisers --- appearing in Sections III.A; III.B.1., III.B.2., III.B.3., III.B.4., or III.B.5; or III.C, appearing on pages 19 to 20 of said publication, which is incorporated herein by reference.

(i) Copies of the 2018 AQB may be obtained from the publisher at the following address:

THE APPRAISAL FOUNDATION

*The Madison Building
1155 15th Street NW, Suite 1111
Washington, DC 20005*

*Copies may also be obtained from the publishers' website at:
www.appraisalfoundation.org.*

*(ii) Additional copies of the 2018 AQB may be obtained and are
available for inspection and copying at:*

*NYS Department of State
Division of Licensing Services
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231-0001*

[In addition to the aforementioned education requirements, prospective licensees for a New York State certified residential real estate appraiser certification shall hold a bachelor's degree or higher from an accredited college or university. The college or university must be a degree-granting institution accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education.

(3) Applicants with a college degree from a foreign country may have their education evaluated for equivalency by one of the following:

- (i) An accredited, degree-granting domestic college or university;
- (ii) The American Association of Collegiate Registrars and Admissions Officers (AACRAO);

(iii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES);

(iv) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.]

(d) Education requirements for a New York State certified general real estate appraisers.

- (1) An applicant shall satisfactorily complete the following courses:
 - (i) Residential 5 (R-5) Basic Appraisal Principles 30 hours
 - (ii) Residential 6 (R-6) Basic Appraisal Procedures 30 hours
 - (iii) USPAP or its equivalent, as further defined in section 1103.7 of this Part 15 hours
 - (iv) General 4(G-4) General Market Analysis and Highest and Best Use 30 hours
 - (v) Statistics, Modeling and Finance (SMF) 15 hours
 - (vi) General 5 (G-5) General Appraiser Sales Comparison Approach 30 hours
 - (vii) General 6 (G-6) General Appraiser Site Valuation and Cost Approach 30 hours
 - (viii) General 7 (G-7) General Appraiser Income Approach 60 hours
 - (ix) General 8 (G-8) General Appraiser Report Writing and Case Studies 30 hours
 - (x) Fair Housing, Fair Lending and Environmental Issues (GE-1) 15 hours
 - (xi) Appraisal subject matter electives:
 - (a) Specialty Appraisals (GE-2)
 - (b) Using the HP12C Financial Calculator (GE-3); or
 - (c) such other elective course approved by the Department. 15 hours

Total 300 Hours

(2) In addition to the aforementioned education requirements, prospective licensees for a NYS certified general real estate appraiser certification shall hold a bachelor's degree, or higher, from an accredited college or university. The college or university must be a degree-granting institution accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education.

(3) Applicants with a college degree from a foreign country may have their education evaluated for equivalency by one of the following:

- (i) An accredited, degree-granting domestic college or university;
- (ii) The American Association of Collegiate Registrars and Admissions Officers (AACRAO);

(iii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES);

(iv) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-

granting domestic college or university or by a state licensing board that issues credentials in another discipline.

(e) Course attendance requirements. To earn credit for any appraisal course in this section, a prospective licensee must attend 100 percent of the required instruction time.

(f) Appraisal courses completed prior to January 1, 1991. A prospective licensee seeking credit for an appraisal course completed prior to January 1, 1991 shall submit a written request for approval to the Department and must show that the appraisal course substantially covered the same subject matter, classroom hours of attendance and completed standards as prescribed by this Part. Applications must contain an official transcript or other documentation showing the subjects taken, the hours of instruction devoted to each subject, the hours attended by the prospective licensee and the date the appraisal course was completed. The application must also contain a course description or outline from the appraisal school. The Department may request additional supportive documentation to determine course equivalency based on criteria approved by the NYS Board of Real Estate Appraisal.

(g) Out-of-state courses. A prospective licensee who has taken an appraisal course in another state may apply to the Department for approval of that course. The application for approval of the course shall contain an original certification or transcript from the appraisal school showing the course title, date of course completion and the number of classroom hours attended. The Department will only consider awarding course credit if the prospective licensee attended the course and successfully completed a comprehensive final examination. The Department will only grant course approval in not less than 15 hour segments.

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

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

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

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

Consensus Rule Making Determination

This statement is being submitted pursuant to subparagraph (i) of paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of the State Board of Real Estate Appraisal's ("Board") Notice of Proposed Rule Making to conform original education and experience standards to current federal guidelines, and amend Sections 1102.2 and 1103.2 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR").

It is apparent from the nature and purpose of this rule that no person is likely to object to the adoption of the rule as written.

The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to, inter alia, Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB. In 2014, the AQB increased federal standards to obtain state licenses and certifications, which was adopted by the Board. The AQB has recently lowered the heightened 2014 standards citing to a shortage of qualified appraisers.

The instant proposal seeks to decrease current standards to conform to the new lower standards established by the AQB. By proposing this rule making, the Board seeks to make obtaining a license/certification easier by removing unnecessary barriers consistent with applicable federal guidelines. Based on the foregoing, the Board and the Department of State have determined that this proposal, which seeks to amend existing regulations to conform to newer federal standards, is non-controversial and, therefore no person is likely to object to its adoption.

Job Impact Statement

A Job Impact Statement is not required for the proposed regulatory amendments. It is apparent from the nature and the purpose of the proposed regulatory amendments that they will not have a substantial adverse impact on jobs and employment opportunities in either the public or private sectors. The proposed amendments will have a positive effect on employment opportunities by decreasing, consistent with newer federal guidelines, the education and experience requirements to obtain a state license or certification.

Department of Taxation and Finance

NOTICE OF ADOPTION

Metropolitan Transportation Business Tax Surcharge

I.D. No. TAF-48-18-00004-A

Filing No. 68

Filing Date: 2019-01-29

Effective Date: 2019-02-13

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

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

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

Subject: Metropolitan Transportation Business Tax Surcharge.

Purpose: To provide metropolitan transportation business tax rate for tax year 2019.

Text or summary was published in the November 28, 2018 issue of the Register, I.D. No. TAF-48-18-00004-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. Chase, Department of Taxation and Finance, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.Chase@tax.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 2024, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Office of Temporary and Disability Assistance

EMERGENCY RULE MAKING

Outreach, Homeless Services Plans and Outcome Reporting

I.D. No. TDA-49-18-00009-E

Filing No. 69

Filing Date: 2019-01-29

Effective Date: 2019-02-16

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

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

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

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

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

OTDA finds that immediate adoption of the rule is necessary for the

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

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

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

It is noted that, due to time constraints, the emergency rule is being readopted pursuant to a Notice of Emergency Adoption. To preserve public health, public safety, and general welfare, OTDA originally promulgated the emergency rule via a Notice of Emergency Adoption and Proposed Rule Making on November 20, 2018, and the emergency rule became effective on that date. The Notice of Emergency Adoption and Proposed Rule Making was published in the New York State Register on December 5, 2018 under I.D. No. TDA-49-18-00009-EP. OTDA will be accepting public comments on the current emergency rule through February 4, 2019. The current emergency rule expires on February 17, 2019.

This first re-adoption of the current emergency rule is necessary in order to avoid a lapse in the current emergency rule, insofar as expiration of the 60-day public comment period will not provide sufficient time for OTDA to publish a Notice of Adoption in the New York State Register before the current emergency rule expires on February 17, 2019.

Subject: Outreach, Homeless Services Plans and Outcome Reporting.

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

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

§ 304.2 Outreach, Homeless Services Plans and Outcome Reporting.

(a) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) *homelessness prevention services;*

(ii) *outreach;*

(iii) *assessment and coordinated entry services;*

(iv) *emergency shelter;*

(v) *transitional housing;*

(vi) *permanent housing, including rapid rehousing;*

(vii) *permanent supportive housing; and*

(viii) *housing retention services.*

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

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

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

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

This notice is intended to serve 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. TDA-49-18-00009-EP, Issue of December 5, 2018. The emergency rule will expire March 29, 2019.

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

Regulatory Impact Statement

1. Statutory authority:

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

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

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

2. Legislative objectives:

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

3. Needs and benefits:

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

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

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

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

items enumerated in its homeless services plan in homeless services outcome reports. The emergency rule: promotes effective planning and strategic use of resources by social services districts to combat homelessness; improves coordination and integration with other resources and programs assisting people experiencing homelessness; improves data collection and performance measurement; strengthens accountability with respect to the use of State funds, while allowing each social services district to individually tailor its homeless services plan to allocate funds and resources consistent with the district's unique strengths and challenges; and helps to ensure that persons experiencing homelessness, and in particular, unsheltered homeless persons, are linked to appropriate services, assistance and housing. The State will assist social services districts lacking expertise to prepare suitable homeless services plans.

4. Costs:

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

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

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

5. Local government mandates:

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

6. Paperwork:

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

7. Duplication:

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

8. Alternatives:

A possible alternative would be not to promulgate the emergency rule. However, such inaction would result in social services districts combating homelessness using State funds with less than adequate levels of accountability and oversight, and with limited opportunity for the State to gauge the success of the social services districts' programs and efforts. By enhancing planning at the local level and requiring social services districts to report on outcomes, OTDA believes that the emergency rule helps ensure that individuals and families experiencing homelessness are most efficiently provided with the critical services needed to help them secure

transitional and permanent housing, and to increase the ability to evaluate the effectiveness of social services districts' efforts to combat homelessness. OTDA further believes that the emergency rule helps to ensure that persons experiencing homelessness, and in particular, unsheltered homeless persons, are linked to appropriate services, assistance and housing. Therefore, OTDA does not consider inaction a viable alternative to the emergency rule.

9. Federal standards:

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

10. Compliance schedule:

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

Regulatory Flexibility Analysis

1. Effect of rule:

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

2. Compliance requirements:

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

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

3. Professional services:

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

4. Compliance costs:

The emergency rule will have no cost impact upon small businesses. Social services districts will incur some small additional administrative costs in regard to the compilation and submission of the comprehensive homeless services plan and homeless services outcome reports. The emergency rule may require some social services districts to better coordinate the provision of homeless services with other local providers. Similar information was requested of social services districts in August 2016 for the preparation of a statewide homeless services report issued by OTDA in January 2017, as required by Chapter 482 of the Laws of 2015.

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

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

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

7. Small business and local government participation:

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

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

While the emergency rule provides that OTDA may withhold or deny reimbursement, in whole or in part, to any social services district that fails to comply, this remedial provision is already expressly set forth in Social Services Law § 20(3)(e), which authorizes OTDA to “withhold or deny state reimbursement, in whole or in part, from or to any social services district or any city or town thereof, in the event of the failure of either of them to comply with law, rules or regulations of [OTDA] relating to public assistance and care or the administration thereof.”

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

Rural Area Flexibility Analysis

1. Types and estimate numbers of rural areas:

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

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

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

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

3. Costs:

Rural social services districts will incur some small additional administrative costs in regard to the compilation and submission of homeless services plans and homeless services outcome reports. The emergency rule may require some rural social services districts to better coordinate the

provision of homeless services with other local providers. Similar information was requested of rural social services districts in August 2016 for the preparation of a statewide homeless services report issued by OTDA in January 2017, as required by Chapter 482 of the Laws of 2015.

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

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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