RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

NOTICE OF ADOPTION

General Provisions

I.D. No. ASA-51-18-00019-A
Filing No. 508
Filing Date: 2019-05-14
Effective Date: 2019-05-29

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

Action taken: Amendment of Part 800 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01 and 32.07(a)

Subject: General provisions.

Purpose: Update provisions consistent with treatment developments, definitions, technical language, gender neutral language.

Text or summary was published in the December 19, 2018 issue of the Register, I.D. No. ASA-51-18-00019-P.

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

Revised rule making(s) were previously published in the State Register on March 27, 2019.

Text of rule and any required statements and analyses may be obtained from: Carmelita Cruz, NYS OASAS, 1450 Western Ave., Albany, NY 12203, (518) 485-2312, email: carmelita.cruz@oasas.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

Public comment was received from one entity requesting:

1. References to MAT be amended to "all FDA approved medications for opioid use disorder treatment". OASAS supports the use of all FDA approved medications to treat addiction. OASAS programs are required to treat substance use disorder, not just opioid use disorder, and amending language would limit the scope of the regulatory intent.

2. Clarification of prohibition on patient discrimination based on medication use at admission. This provision is included in both Part 800 and Part 815, additional guidance is unnecessary.

3. Request for expansion of requirements around naloxone accessibility and administration at program sites, which is already addressed in a separate OASAS policy on naloxone.

Department of Audit and Control

NOTICE OF ADOPTION

Reporting Requirements for Service Credit Involving Public Safety Overtime

I.D. No. AAC-07-19-00017-A
Filing No. 501
Filing Date: 2019-05-14
Effective Date: 2019-07-01

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

Action taken: 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 or summary was published in the February 13, 2019 issue of the Register, I.D. No. AAC-07-19-00017-P.

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

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

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: 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.

Revised 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 approaches 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.

Revised Rural Area Flexibility Analysis

1. Types and estimated 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.

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 New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System (collectively, the Retirement System) received comments from the Quinn Law Firm, the Tuttle Law Firm and the Village of Ryebrook (hereinafter the "commenters") during the public comment period for the amendment of Section 315.5 of Part 315 of Title 2 NYCRR as well as a letter in support from the New York State Professional Firefighters Association, Inc. While none of the comments require changes in the proposed regulation, it has been determined that the issues presented are valid and are best addressed in this response.

Of the three commenters, two inquired about the retroactivity of the regulation and one asked for a clarification of the phrase "mandatory special duty assignment." In an effort to capture the comments in an easy to read format, they are laid out by subject below.

Retroactivity

It has been determined by the Retirement System that this regulation will not be applied retroactively. If it were to be applied retroactively it would be inordinately burdensome to participating employers and the Retirement System. Participating employers would be required to look back at all overtime amounts ever paid to both retirees and active members who may fall under covered titles. Additionally, participating employers and the Retirement System would be required to obtain and provide all contracts with private entities, collective bargaining agreements and employer policies including both past and present; a nearly impossible task.

Finally, any adjustments to previously reported salary would require the payment of additional employer and member contributions as well as the recalculation of benefits. This is not feasible. Therefore, for the above stated reasons, this regulation was written to encompass all public safety overtime worked on or after July 1, 2019.

Clarification of "Mandatory Special Duty Assignment"

A mandatory special duty assignment is an assignment which an employer orders the employee to work, or, in the case where an employee is not so ordered, the special duty assignment must be made available to employees in a manner consistent with the employer's policy or practice for the assignment of overtime, which may be from procedures provided in a collective bargaining agreement or written department policy.

Conclusion

The Retirement System has determined that none of the comments received require changes in the proposed regulation. A retroactive application would be inordinately burdensome to participating employers and the Retirement System.

The clarification of the phrase "mandatory special duty assignment" presented above clearly establishes the criteria by which special duty overtime is deemed "mandatory".

State Board of Elections

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Audit Status for Early Voting

I.D. No. SBE-22-19-00001-EP
Filing No. 460
Filing Date: 2019-05-08
Effective Date: 2019-05-08

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

Proposed Action: Addition of section 6210.18(l) to Title 9 NYCRR.

Statutory authority: Election Law, sections 9-211 and 3-102(17)

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 the general welfare. Chapter 6 of the Laws of 2019 requires that Early Vot-

ing be implemented by the November 5, 2019 general election. Local boards of elections will not have adequate time to budget and plan for early voting by the general election, including the auditing of voting machines and systems used for early voting, if this amendment were to be adopted in the normal course of business.

Subject: Audit Status for Early Voting.

Purpose: Establishes Process for Auditing Early Voting Machines and Systems.

Text of emergency/proposed rule: Section 6210.18 is amended to add a new subdivision (l) to read as follows:

(l) Notwithstanding any other provision of this section, voting machines or systems used for early voting shall be separately audited pursuant to this subdivision and the provisions of this section not inconsistent with this subdivision after the date of the election. For purposes of selecting the voting machine(s) or system(s) used in early voting to be audited, each separate memory storage device containing election results, exclusive of any redundant memory storage devices, used during early voting from which a result tape is generated shall be considered a separate voting machine or system for purpose of the audit. As provided by the procedures of the state board of elections and the provisions of this Part consistent with this subdivision, initially three percent of such voting machines or systems used for early voting shall be audited in addition to the initial audit of three percent of voting machines or systems used on election day as provided for in subdivision (a) of this section. The audit expansion steps for ballots voted early shall be the same as for other ballots, and both early voted ballots and all other ballots counted by machine shall be included in any full manual count conducted pursuant to this section. The cast ballots corresponding to each memory storage device containing election results shall be kept together and not intermingled with any other voted ballots. This subdivision is applicable in relation to any election at which early voting is held pursuant to title VI of article 8 of the election law as enacted by chapter 6 of the laws of 2019.

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 August 5, 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.

Regulatory Impact Statement

1. Statutory authority: Chapter 6 of the Laws of 2019 requires that Early Voting be implemented by the November 5, 2019 general election. Election Law § 9–211 outlines audit procedures of voting machines or systems after each general, special, village or primary election. Election Law § 3-102(17) authorizes the State Board of Elections to "perform such other acts as may be necessary to carry out the purposes of this chapter."

2. Legislative objectives: The legislative objective furthered by the proposed regulation is the establishment of audit procedures for early voting machines and systems.

3. Needs and benefits: The regulation outlines the process local boards of elections must undertake in auditing voting machines and systems.

4. Costs: No additionally costs are anticipated, as county boards of elections are already obligated to audit voting machines and systems. This regulation clarifies that such audits include early voting machines and systems.

5. Local government mandates: There are no additional local mandates, as county boards of elections are already obligated to audit voting machines and systems. This regulation clarifies that such audits include early voting machines and systems.

6. Paperwork: This proposal imposes no new reporting or regulatory filing requirements.

7. Duplication: There is no jurisdictional duplication created by this rulemaking.

8. Alternatives: The alternative is to have no regulation, which could lead to early voting machines and systems not getting audited after an election.

9. Federal standards: Not applicable.

10. Compliance schedule: Compliance can be immediate upon publication of Emergency Rulemaking.

Regulatory Flexibility Analysis

1. Effect on Small Businesses and Local Governments:

Local boards of elections will be affected by the proposed regulations. There are 58 local boards of elections.

2. Compliance Requirements:

The proposed regulations implement Election Law § 9–211 with respect to early voting, in that statute requires audit procedures of voting machines or systems after each general, special, village or primary election.

3. Professional Services:

It is anticipated that the requirements imposed by the proposed regulations will be implemented by existing local board of elections work staff.

4. Compliance Costs:

No additionally costs are anticipated, as county boards of elections are already obligated to audit voting machines and systems. This regulation clarifies that such audits include early voting machines and systems.

5. Economic and Technological Feasibility:

The proposed regulations requires that voting machines and systems be audited as required by statute.

6. Minimizing Adverse Impact:

The standards set forth in the proposed regulations reflect requirements as prescribed in Chapter 6 of the Laws of 2019 and the § 9–211 of the Election Law.

7. Small Business and Local Government Participation:

By e-mail dated, April 19, 2019, the State Board of Elections informed the commissioner of each local County Board of Elections in the State of New York of the amendments to the regulations that are necessitated by Chapter 6 of the Laws of 2019. The e-mail included a draft of the proposed amendments.

Rural Area Flexibility Analysis

Under SAPA 202-bb(4)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application, providing an auditing process for early voting machines and systems. Accordingly, this rule has no adverse impact.

Job Impact Statement

Under SAPA 201-a(2)(a), when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. The proposed amendment provides a process for auditing early voting voting machines and systems. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Related to the Minimum Required Voting Machines and Privacy Booths Needed for Early Voting Polling Sites

I.D. No. SBE-22-19-00002-EP

Filing No. 461

Filing Date: 2019-05-08

Effective Date: 2019-05-08

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

Proposed Action: Amendment of section 6210.19 of Title 9 NYCRR.

Statutory authority: Election Law, sections 7-203(2) and 3-102(17)

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 the general welfare. Chapter 6 of the Laws of 2019 requires that Early Voting be implemented by the November 5, 2019 general election. Local boards of elections will not have adequate time to budget and plan for early voting by the general election, including planning for the number of voting machines and systems required for an early voting site, if this amendment were to be adopted in the normal course of business.

Subject: Related to the Minimum Required Voting Machines and Privacy Booths needed for Early Voting Polling Sites.

Purpose: Establishes the Minimum Required Voting Machines and Privacy Booths needed for Early Voting Polling Sites.

Text of emergency/proposed rule: Section 6210.19 is amended as follows:

§ 6210.19 Minimum number of voting machines

(a) The purpose of these determinations is to establish the minimum number of required voting machines and privacy booths needed for each polling place based upon *whether the voting system is used on election day or for the early voting period, and* [,] the type of voting system and the number of registered voters (excluding voters in inactive status) assigned to use that specific voting device in accordance with NYS Election Law, sections 7-200*,* [and] 7-203 *and 8-600*.

(b) [Determinations by type of voting system.] *Minimum Number of Voting Machines For Election Day Polling Sites*

(1) Direct recording electronic voting systems.

(i) There shall be at least one direct recording electronic voting device for every 550 registered voters (excluding voters in inactive status) [at the] *assigned to a* polling place.

(2) Precinct based optical scan voting systems.

(i) There shall be at least one scanning device for every 4,000 registered voters (excluding voters in inactive status) [at the] *assigned to a* polling place.

(ii) Privacy booths:

(a) there shall be at least one privacy booth for every 300 registered voters (excluding voters in inactive status), except that in a general election for governor, or at elections at which electors for President of the United States are selected there shall be at least one privacy booth for every 250 registered voters (excluding voters in inactive status);

(b) at polling places that accommodate more than 6,000 registered voters (excluding voters in inactive status), there shall be one privacy booth for every 350 registered voters (excluding voters in inactive status) in a general election for governor, or at elections at which electors for President of the United States shall be selected; and one privacy booth for every 400 active voters in all other elections; and

(c) a sufficient number of the privacy booths must be accessible to voters with disabilities.

(c) *Minimum Number of Voting Machines for the Early Voting Period*

(1) Direct recording electronic voting systems.

(i) There shall be at least one direct recording electronic voting device for every 3,000 registered voters (excluding voters in inactive status) assigned to the early voting period polling place; provided, however, no early voting site shall have less than two direct recording electronic devices.

(2) Precinct based optical scan voting systems.

(i) There shall be at least one scanning device for every 25,000 registered voters (excluding voters in inactive status) assigned to the early voting polling place; provided, however, no early voting site shall have less than two optical scanners.

(ii) Privacy booths:

(a) there shall be at least one privacy booth for every 4,200 registered voters (excluding voters in inactive status), except that in a general election for governor, or at elections at which electors for President of the United States are selected there shall be at least one privacy booth for every 3,600 registered voters (excluding voters in inactive status);

(b) a sufficient number of the privacy booths must be accessible to voters with disabilities.

(d) Obligations of the county boards of elections.

(1) County boards shall deploy sufficient voting equipment, election workers and other resources so that voter waiting time at a poll site does not exceed 30 minutes. Each county board of elections may increase in a non-discriminatory manner, the number of voting devices used in any specific polling place. *If the voter waiting time at an early voting site exceeds thirty minutes the board of elections shall deploy such additional voting equipment, election workers and other resources necessary to reduce the wait time to less than thirty minutes as soon as possible but no later than the beginning of the next day of early voting.*

(2) The inspectors in each election district *and at each early voting site* shall record the number of persons using audio, tactile or pneumatic switch ballot devices. The county board of elections shall furnish additional voting machines equipped with audio, tactile or pneumatic switch ballot devices when it appears that the number of persons historically using such devices warrant additional devices.

([d]*e*) The State Board of Elections may authorize a reduction in the number of voting devices provided in these regulations upon application of a county board of elections which demonstrates that such a reduction will not create excessive waiting time by voters. *The request for such a reduction shall be made by both commissioners, in writing, to the co-executive directors of the state board and shall set forth the rationale being used for the requested reduction. The request for such reduction shall be made no later than twenty days before the beginning of the early voting period.*

(f) Provisions of this section applicable to early voting shall apply in relation to any election at which early voting is held pursuant to title VI of article 8 of the election law as enacted by chapter 6 of the laws of 2019.

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 August 5, 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.

Regulatory Impact Statement

1. Statutory authority: Chapter 6 of the Laws of 2019 requires that Early Voting be implemented by the November 5, 2019 general election. Election Law § 7-203(2) provides that ''the State Board of Elections shall establish … for each election, the minimum number of voting machines required in each polling place and the maximum number of voters that can vote on one machine''. Election Law § 3-102(17) authorizes the State Board of Elections to "perform such other acts as may be necessary to carry out the purposes of this chapter."

2. Legislative objectives: The legislative objective furthered by the proposed regulation is the establishment of the minimum number of voting machines and systems required to be located at an early voting site.

3. Needs and benefits: Statute requires that the State Board '' establish … for each election, the minimum number of voting machines required in each polling place.''

4. Costs: The regulatory amendments are required by Chapter 6 of the Laws of 2019 and Election Law § 7-203(2). The implementation of the proposed regulations will result in additional costs to local county boards of election, as local county boards will have to setup and maintain voting machines and systems required for early voting. However, the SFY 2019-20 state budget provides $10 million dollars available to county boards for reimbursement of costs related to early voting, subject to the approval of the State Division of Budget.

5. Local government mandates: As noted in the Costs section, pursuant to Chapter 6 of the Laws of 2019 and Election Law § 7-203(2), county boards of election are charged with establishing and operating early voting sites, including setting up and maintaining voting machines and systems; however, much of these costs were addressed in the SFY 2019-20 state budget.

6. Paperwork: This proposal imposes no new reporting or regulatory filing requirements.

7. Duplication: There is no jurisdictional duplication created by this rulemaking.

8. Alternatives: The alternative is to have no regulation; however, as a consequence, the State Board would not be in compliance with Election Law § 7-203(2).

9. Federal standards: Not applicable.

10. Compliance schedule: Compliance can be immediate upon publication of Emergency Rulemaking.

Regulatory Flexibility Analysis

1. Effect on Small Businesses and Local Governments:

Local boards of elections will be affected by the proposed regulations. There are 58 local boards of elections.

2. Compliance Requirements:

The proposed regulations implement Election Law § 7-203(2) with respect to the minimum number of machines and systems required at early voting poll sites.

3. Professional Services:

It is anticipated that the requirements imposed by the proposed regulations will be implemented by existing local board of elections work staff.

4. Compliance Costs:

The regulatory amendments are required by Chapter 6 of the Laws of 2019 and Election Law § 7-203(2). The implementation of the proposed regulations will result in additional costs to local county boards of election, as local county boards will have to setup and maintain voting machines and systems required for early voting. However, the SFY 2019-20 state budget provides $10 million dollars available to county boards for reimbursement of costs related to early voting, subject to the approval of the State Division of Budget.

5. Economic and Technological Feasibility:

The proposed regulations requires a minimum number of voting machines and systems to be located at early voting poll sites.

6. Minimizing Adverse Impact:

The standards set forth in the proposed regulations reflect requirements as prescribed in Chapter 6 of the Laws of 2019 and Election Law § 7-203(2).

7. Small Business and Local Government Participation:

By e-mail dated, April 19, 2019, the State Board of Elections informed the commissioner of each local County Board of Elections in the State of

New York of the amendments to the regulations that are necessitated by Chapter 6 of the Laws of 2019. The e-mail included a draft of the proposed amendments.

Rural Area Flexibility Analysis

Under SAPA 202-bb(4)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application, providing a minimum number of voting machines and systems at early voting poll sites. Accordingly, this rule has no adverse impact.

Job Impact Statement

Under SAPA 201-a(2)(a), when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. The proposed amendment establishes a minimum number of voting machines and systems for early voting poll sites. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Process for Early Voting

I.D. No. SBE-22-19-00003-EP
Filing No. 462
Filing Date: 2019-05-08
Effective Date: 2019-05-08

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

Proposed Action: Addition of Part 6211 to Title 9 NYCRR.

Statutory authority: Election Law, sections 8-602 and 3-102(17)

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 the general welfare. Chapter 6 of the Laws of 2019 requires that Early Voting be implemented by the November 5, 2019 general election. Local boards of elections will not have adequate time to budget and plan for early voting by the general election if this amendment were to be adopted in the normal course of business.

Subject: Process for Early Voting.

Purpose: Establishing Process for Early Voting.

Text of emergency/proposed rule: A new Part 6211 is added to read as follows:

PART 6211- Early Voting Regulations

6211.1 Early Voting Site Designations.

(a) Deadline for Early Voting Site Designations. By May first of each year, the board of elections shall designate early voting sites for the general election held in such year. Early voting sites for primaries and special elections shall be designated no later than forty-five days before such an election.

(b) Minimum Number of Early Voting Sites

(1) For a general election, the board of elections shall designate at least the number of early voting sites required by this Part, based on the number of registered voters in each county, including voters in active and inactive status as of February 1, as follows:

(i) If the number of voters in the county is less than 99,999, the county must have at least one early voting site.

(ii) If the number of voters in the county is equal to or more than 100,000 and less than or equal to 149,999, the county must have at least two early voting sites.

(iii) If the number of voters in the county is equal to or more than 150,000 and less than or equal to 199,999, the county must have at least three early voting sites.

(iv) If the number of voters in the county is equal to or more than 200,000 and less than or equal to 249,999, the county must have at least four early voting sites.

(v) If the number of voters in the county is equal to or more than 250,000 and less than or equal to 299,999, the county must have at least five early voting sites.

(vi) If the number of voters in the county is equal to or more than 300,000 and less than or equal to 349,999, the county must have at least six early voting sites.

(vii) If the number of voters in the county is equal to or more than 350,000, the county must have at least seven early voting sites.

(2) For a primary election or special election, the minimum number of early voting sites shall be based on the number of voters eligible to participate in the election pursuant to subparagraph 1 of this subdivision, unless the board of elections adopts a resolution determining that a lesser number of early voting sites is sufficient to meet the needs of early voters. Such resolution shall state the basis of such determination and shall specify how the board of elections will monitor voter wait times at early voting sites and ensure compliance with 6210.19 (d) throughout the period of early voting.

(3) The board of elections may designate more early voting sites than the minimum number required for the convenience of voters.

(4) All sites must be open for voting for the sixty-hours required by Election Law § 8-600, but the board of elections may expand the hours the early voting sites are open beyond the statutory minimums.

(c) Standards For Early Voting Site Designation

(1) Adequate and Equitable Access. Early voting sites shall be located so that voters in each county have adequate and equitable access to early voting, and such sites shall comply with the provisions of the Election Law related to poll sites and accessibility for voters with physical disabilities. A polling place accessibility survey shall be completed, filed and updated for each early voting site as required by Part 6206.

(2) The board of elections shall consider, in totality, the following factors when designating early voting sites:

(i) population density;

(ii) travel time to the early voting location from the voter's place of residence;

(iii) proximity of an early voting site to other early voting sites;

(iv) whether the early voting site is on or near public transportation routes;

(vi) commuter traffic patterns;

(vii) any other factors the board of elections deems appropriate.

6211.2 Canvass of Ballots Cast During Early Voting.

(a) All ballots cast during early voting period, by any method allowed under law, shall be canvassed and counted as if cast on Election Day. At the end of each day of early voting, all voted and unvoted ballots shall be reconciled and, along with any portable memory devices containing voting information and registration poll records, returned to the board of elections or otherwise secured pursuant to a plan approved by the state board at least sixty days before the first election at which such plan shall be applicable. Such plan submitted by the commissioners of a board of elections shall be approved or rejected by the co-executive directors of the state board no later than two weeks after receipt.

(b) The manner of canvassing the voting machines used at early voting and announcing the results shall be consistent with section 8-600 of the election law and in the same manner as provided by title one of article 9 of the election law and the procedures of the state board of elections, except that the canvass of ballots cast during the early voting period may begin no earlier than at eight o'clock p.m. on Election Day, provided the board of elections adopts procedures to prevent the public release of any election results prior to the close of polls on election day. Such procedures must be consistent with the regulations of the state board of elections and must be filed with the state board of elections at least thirty days before any early voting period for an election to which they will apply. To prevent the premature release of voting results prior to the close of all polls on Election Day, all persons lawfully present at the canvass of ballots cast during early voting period shall remain incommunicado with all persons outside of the place of canvass and shall remain at the room or area of the canvass once the canvass has begun, absent exigency or a board of elections purpose that requires leaving the canvass room or area, until at least the close of polls on the day of election.

6211.3 Ballots Cast When Scanner Unavailable During the Early Voting Period.

At the end of each day of early voting, those ballots which were not scanned because a scanner was not available or because the ballot was abandoned at the ballot scanner, shall, if a scanner is then available, be

scanned by the election inspectors as provided for by Election Law § 9-110. Any ballots that are unscannable because it is rejected by the scanner or because of an overvote or wholly blank vote warning provided by the ballot scanner, shall be secured in the manner applicable to voted ballots on election day and shall remain unexamined until the time of canvass on the day of the election, at which time they shall be examined as provided for in Election Law § 9-110 and duly canvassed. Such ballots shall be reconciled as required by the procedures of the state board and must be held inviolate until the time of canvass on election day under tamper evident seal and lock and key.

6211.4 Affidavit Ballots Cast During Early Voting.

Affidavit ballots cast during early voting shall be accounted for in the manner of affidavit ballots cast on election day. Boards of elections shall complete the bi-partisan review of the affidavits to determine the eligibility of such voter prior to the canvass of affidavit ballots cast during the early voting period, in the same manner as for affidavit ballots submitted on election day. Until the time of canvassing, affidavit ballot envelopes shall be secured, when not in bipartisan custody for processing and researching, under tamper evident seal and lock and key as required by the procedures of the state board.

6211.5 Privacy of Voting.

To ensure an efficient and fair early voting process that respects the privacy of the voter, the manner of voting on days of the early voting period shall be the same as the manner of voting on the day of election.

6211.6 Voter History and Prevention of Duplicate Voting.

(a) During the early voting period, the voting history record for each voter shall be continually updated to reflect that a voter has voted early. A record indicating a voter has voted during the early voting period shall be available to poll workers at every early voting site at which a voter is eligible to vote in near real time. In such instance where a voter is only eligible to vote at one early voting site, the single poll book at such site for such voter may serve as the continually updated record of voter history throughout the early voting period.

(b) By Election Day, the voting history record of each voter who has cast a ballot during the early voting period shall be entered into the voter registration system of the board of elections. Such voting history shall be included in the voter registration poll record that is used on Election Day to determine the eligibility of voters. Such Election Day record must differentiate voters who voted early from those who appeared to vote on the day of election.

(c) Any voter who the board of elections has identified as having voted during the early voting period shall not be eligible to vote on Election Day, except such voter shall be entitled to complete an affidavit ballot if such voter claims not to have voted early. Such affidavit shall be marked as such.

(d) No later than the seventh day after a primary or special election or the tenth day after the general election, the voting history record of each voter who has signed a poll record and thus cast a ballot on such election day shall be entered into the voter registration system of the board of elections, and the voter history for such election day voters and early voters shall be uploaded to the statewide voter registration list.

(e) Not later than the seventh day after a primary or special election or the tenth day after a general election, by five o'clock p.m. on such day, the board of elections shall prepare a list, including data elements prescribed by the board of elections and in the format specified by the state board of elections, of all persons who submitted an affidavit ballot. Such list shall be provided to the state board of elections, and the state board of elections shall provide a combined list of all affidavit ballots submitted statewide to the boards of elections.

(f) No later than seven businesses days after the completion of the canvass, the voting history record of each voter who has cast an absentee, military, special or federal ballot on Election Day or who has cast an affidavit ballot during early voting or on Election Day shall be entered into the voter registration system of the board of elections and the statewide voter registration list.

(g) Boards of elections shall provide information regarding voter registration records or voting records in their custody to other boards of elections, upon request, as soon as reasonably practicable.

(h) The board of elections, as required by Election Law § 8-600 (1), shall establish procedures to ensure that persons who vote during early voting shall not be permitted to vote subsequently in the same election. Such procedures shall remain in effect until amended by the board of elections and shall be filed with the state board of elections on or before the sixtieth day preceding the first day of the early voting period. Such procedures shall be approved or rejected by the co-executive directors of the state board of elections within one week of filing. If such procedures are rejected, notice shall be provided to the board of elections of the reasons therefor. The board of elections shall then have three business days to amend their procedures and resubmit the same to the state board of elections for approval.

(i) Boards of elections shall provide to the state board, in the manner specified by the state board, the number of voters who vote early on each day of early voting by the next business day after such day of early voting.

6211.7 Early Voting Communications Plan.

(a) Early Voting Information. The board of elections shall provide at least the following information to media outlets within the county:

(i) The location of early voting sites and their dates and hours of operation;

(ii) A statement that all early voting sites are accessible to voters with physical disabilities;

(iii) A clear statement that if a voter casts a ballot during early voting the voter will not be allowed to vote on election day or on a subsequent day of early voting;

(iv) If early voting sites are specific to particular cities, towns or other political subdivisions, a statement describing the area served by each early voting site.

(b) Communications Outreach. County board of elections may also provide early voting information by using social media venues and any other communication mechanisms, including but not limited to broadcast advertisements, direct mail or newspaper advertisements. The board of elections communications plan shall identify the community based groups that were involved in the development of the plan or were provided early voting information.

(c) Filing Communications Plan With State Board of Elections. The board of elections shall annually file a copy of the communications plan on or before June 1, except in the first year of early voting, on or before the first day of July.

6211.8 Applicability.

This part shall apply in relation to any election at which early voting is held pursuant to title VI of article 8 of the election law as enacted by chapter 6 of the laws of 2019.

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 August 5, 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.

Regulatory Impact Statement

1. Statutory authority: Chapter 6 of the Laws of 2019 requires that Early Voting be implemented by the November 5, 2019 general election. Election Law § 8-602 provides that ''the state board of elections shall promulgate rules or regulations necessary for the implementation of the provisions of (early voting). Such rules and regulations shall include, but not be limited to, provisions to (i) ensure that ballots cast early, by any method allowed under law, are counted and canvassed as if cast on election day, (ii) ensure an efficient and fair early voting process that respects the privacy of the voter, and (iii) require that the voting history record for each voter be continually updated to reflect each instance of early voting by such voter''. Election Law § 3-102(17) authorizes the State Board of Elections to "perform such other acts as may be necessary to carry out the purposes of this chapter."

2. Legislative objectives: The legislative objective furthered by the proposed regulation is the implementation of early voting.

3. Needs and benefits: The regulation outlines the process local boards of elections must undertake in implementing early voting.

4. Costs: The regulatory amendments are required by Chapter 6 of the Laws of 2019. The implementation of the proposed regulations will result in additional costs to local county boards of election, as local county boards are charged with establishing and operating early voting sites during the early voting period. However, the SFY 2019-20 state budget provides $10 million dollars available to county boards for reimbursement of costs related to early voting, subject to the approval of the State Division of Budget.

5. Local government mandates: As noted in the Costs section, pursuant to Chapter 6 of the Laws of 2019, county boards of election are charged with establishing and operating early voting sites; however, much of these costs were addressed in the SFY 2019-20 state budget.

6. Paperwork: This proposed rule requires local county boards of election to upload the voting history record of each voter who has cast an affi-

davit, absentee, military, special or federal ballot to NYSVoter no later than seven businesses days after the completion of the canvass. This requirement is a safeguard against persons attempting to vote more than once. Additionally, this rule requires county boards of elections to provide information regarding voter registration records or voting records in their custody to other boards of elections, upon request, as soon as reasonably practicable. This requirement ensures that persons who may be registered in another county in the state are franchised.

7. Duplication: There is no jurisdictional duplication created by this rulemaking.

8. Alternatives: This rulemaking amends the existing regulations to conform to the requirements of Chapter 6 of the Laws of 2019. The alternative is to have no regulation, which could potentially disenfranchised voters.

9. Federal standards: Not applicable.

10. Compliance schedule: Compliance can be immediate upon publication of Emergency Rulemaking.

Regulatory Flexibility Analysis

1. Effect on Small Businesses and Local Governments:

Local boards of elections will be affected by the proposed regulations. There are 58 local boards of elections.

2. Compliance Requirements:

The proposed regulations implement Chapter 6 of the Laws of 2019, in that such law provides New York voters with an opportunity for early voting.

3. Professional Services:

It is anticipated that the requirements imposed by the proposed regulations will be implemented by existing local board of elections work staff.

4. Compliance Costs:

The regulatory amendments are required by Chapter 6 of the Laws of 2019. The implementation of the proposed regulations will result in additional costs to local county boards of election, as local county boards are charged with establishing and operating early voting sites during the early voting period. However, the SFY 2019-20 state budget provides $10 million dollars available to county boards for reimbursement of costs related to early voting, subject to the approval of the State Division of Budget.

5. Economic and Technological Feasibility:

The proposed regulations require the input of certain information into the NYSVoter system (the statewide voter registration database) and any existing local county database.

6. Minimizing Adverse Impact:

The standards set forth in the proposed regulations reflect requirements as prescribed in Chapter 6 of the Laws of 2019 and the Election Law.

7. Small Business and Local Government Participation:

By e-mail dated, April 19, 2019, the State Board of Elections informed the commissioner of each local County Board of Elections in the State of New York of the amendments to the regulations that are necessitated by Chapter 6 of the Laws of 2019. The e-mail included a draft of the proposed amendments.

Rural Area Flexibility Analysis

Under SAPA 202-bb(4)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application, providing a process for early voting. Accordingly, this rule has no adverse impact.

Job Impact Statement

Under SAPA 201-a(2)(a), when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. The proposed amendment provides a process for early voting. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

Department of Environmental Conservation

NOTICE OF ADOPTION

CO_2 Emissions Standards for Major Electric Generating Facilities

I.D. No. ENV-20-18-00006-A
Filing No. 466
Filing Date: 2019-05-09
Effective Date: 30 days after filing

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

Action taken: Amendment of Parts 200 and 251 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303 and 19-0305

Subject: CO_2 Emissions Standards for Major Electric Generating Facilities.

Purpose: To establish CO_2 emissions standards for non-modified existing fossil fuel fired major electric generating facilities.

Substance of final rule: The Department is proposing to revise 6 NYCRR Part 251, CO_2 Performance Standards for Major Electric Generating Facilities (Part 251). Part 251 currently imposes carbon dioxide (CO_2) emission limits on new major electric generating facilities, as well as on existing electric generating facilities that increase capacity by at least 25 megawatts (MW). The proposed revisions to Part 251 would establish CO_2 emission rate requirements applicable to non-modified existing major electric generating facilities, and would also include attendant revisions to 6 NYCRR Part 200, General Provisions. The revisions to Part 200 are necessary to update incorporated references to federal rules.

Section 251.1, Definitions: There are no changes being proposed to the definitions section.

Changes to Section 251.2, Applicability: July 12, 2012, the effective date of the original Part 251, was added to subdivision (a) to clarify the applicability of Part 251 to new sources and modified existing sources. In addition, this subdivision was amended for organizational purposes to include "Modified Existing Sources." Notwithstanding these revisions, the substantive applicability to such new sources and modified existing sources is unchanged by the proposed revisions.

Subdivision (b) of Section 251.2 was amended as follows: "(b) 'Non-Modified Existing Sources'. The provisions of subdivision 251.3(b) would apply to owners or operators of fossil fuel-fired non-modified existing major electric generating facilities that provide more than 10 percent of their annual electric output to the electric grid and that are not subject subdivision 251.3(a)." Through this proposed revision, Part 251 would also apply to non-modified existing sources, in addition to its current applicability to new sources and modified existing sources.

Section 251.3, Emission limits: The section was reorganized to differentiate between (1) the current CO_2 limits for new and modified existing sources, and (2) the proposed new CO_2 emission limits for non-modified existing sources. The limits in subdivision 251.3(a) apply to new and modified existing sources, and are unchanged by the proposed revisions. The limits in proposed subdivision 251.3(b) apply to non-modified existing sources and are as follows: "(1) Beginning on December 31, 2020, owners or operators of a non-modified existing source are required to meet an emission rate of 1,800 pounds of CO_2 per MW hour gross electrical output (output-based limit) or 180 pounds of CO_2 per million Btu of input (input-based limit) for each fossil fuel combusted. As of December 31, 2020, owners or operators of a non-modified existing source shall not fire any single fossil fuel, alone or in combination with any other fuel, with an emission rate that is greater than or equal to 1,800 pounds of CO_2 per MW hour gross electrical output or 180 pounds of CO_2 per million Btu of input." In addition, these emission limits in subdivision (b) would be measured on an annual basis, calculated by dividing the annual total of CO_2 emissions for the calendar year by either the annual total (gross) MW generated (output-based limit) or the annual Btu input (input-based limit) over the same calendar year for each fuel combusted. As provided for in the current Section 251.4, an owner or operator of a non-modified existing facility subject to the CO_2 emission limits in subdivision 251.3(b) must specify which form of CO_2 emission limit the owner or operator will comply with, the input-based limit or the output-based limit.

No substantive changes were made to Sections 251.4, Permit requirements or 251.5, Monitoring.

Section 251.6, Recordkeeping and reporting was amended to include annual report requirements, if an owner or operator is unable to demonstrate compliance with the provisions in subdivision 251.3(b) by following the other monitoring, recordkeeping, and reporting provisions in Part 251. An additional reporting option was included to allow sources subject to the reporting requirements of 40 CFR Part 98 the option to use their annual submission to EPA to satisfy the reporting requirements of Part 251.

No changes were made to Section 251.7, Severability.

Changes to Section 200.9 Referenced Material: This Section was amended to update references incorporated throughout Part 251.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 200.9, 251.2(b) and 251.6(f).

Text of rule and any required statements and analyses may be obtained from: Laura Stevens, NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: air.regs@dec.ny.gov

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

Summary of Revised Regulatory Impact Statement

INTRODUCTION

Governor Andrew M. Cuomo has established a State goal of reducing carbon dioxide (CO_2) emissions from the energy sector by 40 percent by 2030. To help achieve this goal, New York State must ensure that electric generating units (EGUs) burning coal are repowering to a cleaner fuel or closed no later than 2020.

The Department is proposing to revise 6 NYCRR Part 251, CO_2 Performance Standards for Major Electric Generating Facilities and 6 NYCRR Part 200, General Provisions. The revisions to Part 200 update incorporated references to federal rules. This is not a mandate on local governments. It applies equally to any fossil fuel fired major electric generating facility. Part 251 does not mandate any particular project or activity by any local government.

STATUTORY AUTHORITY

The statutory authority to promulgate revisions to Part 251 is derived from the Department's obligation to prevent and control air pollution, as set out in the Environmental Conservation Law (ECL) at Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, and 19-0305.

LEGISLATIVE OBJECTIVES

The proposed revisions to Part 251 would mitigate higher CO_2 emission rates from the State's existing fleet of fossil fuel-fired electric generating facilities, while retaining more stringent CO_2 performance standards for new and modified sources. Part 251 and the proposed revisions work in conjunction with other State programs - such as the Regional Greenhouse Gas Initiative (RGGI) as implemented by the Department in 6 NYCRR Part 242, CO_2 Budget Trading Program - in order to minimize CO_2 emissions from the power sector in the State. This in turn serves to lessen the State's contribution to atmospheric concentrations of GHGs. Increased atmospheric concentrations of GHGs are contributing to global climate change, and hence endangering public health and welfare in the State.

Part 251 will serve to prevent the operation of high-carbon sources of energy, such as coal-fired major electric generating facilities that do not utilize carbon capture and sequestration (CCS) or some other advanced CO_2 emission reduction technology.

To meet the State's commitments, and consistent with existing legislative enactments, the Department is empowered to promote the safety, health and welfare of the public, protect the State's natural environment, and also help ensure a safe, dependable and economical supply of energy to the people of the State. There is strong scientific evidence that the earth's climate is changing and that greenhouse gases (GHGs) from fossil fuel combustion and other human activities are the major contributor to this change. Climate change represents an enormous environmental challenge for the State because, unabated, it will have serious adverse impacts on the State's natural resources, public health and infrastructure.

Among the GHGs, CO_2 is the chief contributor to climate change. Emission sources that fire carbon-containing material, such as fossil fuels, emit significant quantities of CO_2. Electricity generation is responsible for approximately 17 percent of all GHGs emitted in New York State. In 2014, fuel combustion by the electricity generation sector in New York State emitted approximately 33.5 million tons of CO_2 into the atmosphere.[1] In 2016, electric generating units in the State subject to RGGI emitted approximately 30.7 million tons[2] of CO_2 into the atmosphere.

NEEDS AND BENEFITS

As part of Governor Cuomo's 40 percent by 2030 CO_2 emission reduction goal, the State must ensure that EGUs burning coal are repowering to a cleaner fuel or closed no later than 2020. Climate change represents one of the most pressing environmental challenges for the State, the nation, and the world, and reducing GHG emissions, including CO_2 is a means to reduce or stem the pace of climate change. The proposed revisions to Part 251 serve to further CO_2 emissions reductions from the power sector, in order to mitigate the State's contribution to climate change.

Stakeholder Outreach

The Department held stakeholder meetings on August 21, 2017 and August 28, 2107 to discuss the likely elements of the proposed revisions to Part 251, and to obtain feedback. The stakeholder group consisted of the regulated community (electric generating facility representatives) to be affected by the proposed regulation, consultants (both technical and legal), and interested environmental advocacy groups. The Department reviewed these comments, and incorporated considerations of issues discussed at the stakeholder meeting, in further developing the revisions to Part 251.

CO_2 Emission Standards and Requirements

The proposed revisions will establish CO_2 emissions standards for non-modified existing major electric generating facilities, while leaving unchanged the existing CO_2 emission standards for new and modified major electric generating facilities. All non-modified fossil-fuel fired existing major electric generating facilities that are not currently subject to Part 251, that provide more than 10 percent of their annual electric output to the electric grid, would be required to meet an emissions limit of either 1,800 lbs/MW-hr gross electrical output or 180 lbs/mmBTU of input.

COSTS

Potential Impacts on Electricity Prices and Reliability

No existing coal-fired electric generation emission sources are expected to continue operating in New York beyond December 31, 2020 based in part on the proposed revisions to Part 251. Such a unit could apply CCS technology to reduce its CO_2 rate to comply with the proposed emission standard. The required application of CCS technology would create a significant increase in capital and operation costs when compared to base coal without CCS technology. Natural gas and oil-fired units will be able to meet the proposed emissions standards, and thus will not have to contend with CCS technology.

The Department does not anticipate any reliability issues as a result of affected electric generating facility closings attributable to the proposed Part 251 revisions. The 2016 NYSIO Reliability Needs Assessment analyzed various scenarios to determine their impact. The scenario in which there were no coal-fired power plants operating in New York State found a relatively small increase in the loss of load expectancy (LOLE) from 0.04 to 0.06 days per year in 2017. This scenario assesses the retirement of the last coal plant in New York State, which would represent the loss of approximately 687 MW of capacity.

Costs to the Regulated Community

Existing coal-fired major EGUs will not be able to meet the proposed CO_2 emission standard without the installation of controls (such as CCS). CCS technology would add significantly to the cost of construction and operation of existing coal-fired EGUs, and ultimately this expenditure would be anticipated to be passed along as increased electricity costs for the end user. Natural gas and oil-fired units will be able to meet the proposed emission limits, and thus will not have to contend with CCS technology. Absent the installation of CCS or other technology, coal-fired major EGUs will need to repower to a cleaner fuel or cease operations. Either option will impose associated costs upon the facility, and possibly the surrounding community. The communities surrounding Cayuga and Somerset could incur significant tax implications if the facilities shut down. However, these tax revenue losses could be offset by the Electric Generation Facility Cessation Mitigation Program.[3] This program provides grant funding to local government entities that suffered tax revenue or PILOT payment losses as a result of an electric generating facility ceasing operation.

The communities surrounding Cayuga and Somerset could incur significant tax implications if the facilities cease operations beyond 2020. Both of these facilities, however, have other compliance options under the proposed revisions to Part 251, including repowering to a cleaner fuel or employing CCS or another advanced CO_2 abatement technology. Further, even absent these revisions and as previously stated, market forces have already resulted in a shift away from coal generation toward other generating technologies. In particular, for both of the facilities impacted by the proposed revisions, a review of available operating data shows a significant decline in their operating capacities over the past few years.

Costs to the Department

The Department will not incur additional costs associated with the implementation of the proposed revisions and can properly administer the proposed revisions with the application of existing resources. Current Department staff will review permit applications and monitoring plans, as well as executing and modifying permits and inspecting subject sources.

PAPERWORK

This rule will impose minimal additional paperwork for recordkeeping and monitoring to demonstrate compliance with the annual CO_2 emission standards, but it is not expected to be unduly burdensome. Facilities subject to this regulation are already required to meet regulatory requirements for CO_2 emissions under Subpart 202-2 and Part 242 and are already required to meet emission standards for other air contaminants and have systems in place to monitor emissions and submit annual and semi-annual reports to the Department. The facility owner may need to modify the data acquisition handling system software, in order to compute and report CO_2 monitoring data in pounds per gross electric output rate in terms of megawatt/hr, or fuel input rate in terms of million Btu per hour. Facilities subject to the proposed revisions to Part 251 are already subject to Subpart 202-2 and Part 242 and would already have to compute and report CO_2 emissions data under Subpart 202-2 and Part 242. Based upon comments received, the Department has included an additional reporting option for sources. Sources subject to the reporting requirements of 40 CFR Part 98 may use their annual submission to EPA to satisfy the requirements of subdivision 251.6. The records and reports will be required to be kept and submitted in the same formats used to track other pollutants with emission standards.

LOCAL GOVERNMENT MANDATES

This is not a mandate on local governments. It applies equally to any entity that owns or operates a subject source. Local governments have no additional compliance obligations as compared to other subject entities. There are currently three municipally owned major electric generating facilities in New York State. All three facilities are non-modified existing major electric generating facilities that would be subject to the proposed revisions to Part 251. Since all three facilities burn gas or oil, and have CO_2 emission rates less than the proposed limits, they are already in compliance with the proposed revisions to Part 251.

DUPLICATION

Facilities subject to Part 251 are also be subject to the Part 242 requirements. Therefore, this proposed regulation does not duplicate any existing monitoring or record keeping requirements.

ALTERNATIVES

The following alternatives have been evaluated to address the goals of Part 251 as set forth above:

(1) Take no Action: This option was rejected as it would not prevent the most carbon intensive existing non-modified sources of electricity generation.

(2) RGGI Cap Adjustment: A reduction of the RGGI annual cap would increase CO_2 allowance prices, making it less economically feasible for the most carbon intensive electric generating facilities to continue to operate. However, the allowance price increase may not be sufficient to ensure that the most carbon intensive existing electric generating facilities would cease operation or repower to a cleaner fuel by 2020. Therefore, this option was rejected.

(3) Establish a different CO_2 emission limit or specific CO_2 emission standard for each source and fuel type. However, a single CO_2 emission standard that applies equally to all non-modified existing major electric generating facilities best serves the Department's objective of furthering CO_2 emission reductions.

FEDERAL STANDARDS

As a result of several actions by EPA, GHGs, including CO_2, became "subject to regulation" under the Act as of January 2, 2011. EPA modified the relevant applicability thresholds for GHGs for purposes of PSD and Title V permitting under the Act in the GHG Tailoring Rule. The Department incorporated these modified thresholds into its Parts 200, 201, and 231. This means that new major stationary sources, and major modifications at existing stationary sources, are subject to BACT for GHGs under the PSD permitting program, if the source emits GHGs above the relevant applicability threshold. While the applicability provisions are separate and not identical, a source that is subject to Part 251 may also be subject to BACT for GHGs under the PSD permitting program.

There currently is no specific federal CO_2 emission standard for stationary sources. Therefore, the proposed revisions may be considered more stringent than the current federal standards. The proposed Part 251 standards are protective of public health and the environment in the absence of similar federal emission standards. The potential adverse impact to global air quality and New York State's environment from CO_2 emissions necessitates that New York State take action now to halt the increase in CO_2 emissions that contribute to climate change.

COMPLIANCE SCHEDULE

The CO_2 emission limit applicable to non-modified existing sources in the proposed revisions to Part 251 will be effective as of December 31, 2020. Owners or operators of non-modified existing major electric generating facilities will not be required to comply with the proposed CO_2 limits until December 31, 2020. Notwithstanding this compliance schedule, pursuant to Article 19 of the ECL, the revisions to Part 251 will be effective thirty days after its filing with the Department of State.

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[1] New York State Greenhouse Gas Inventory: 1990-2014 and Forecast 2012-2030. Final Report, December 2016, Revised February 2017, New York State Energy Research and Development Authority, Albany, NY.

[2] https://rggi-coats.org/eats/rggi

[3] https://esd.ny.gov/electric-generation-facility-cessation-mitigation-program

Revised Regulatory Flexibility Analysis

EFFECT OF RULE ON SMALL BUSINESSES AND LOCAL GOVERMENTS

There are currently three municipally owned major electric generating facilities in New York State. The Samuel A. Carlson Generating Station is owned by the Jamestown Board of Public Utilities (JBPU). The JBPU consists of two coal-fired stoker boilers that were converted to burn gas and oil and a natural gas-fired combustion turbine. The Village of Freeport owns and operates two natural gas-fired combustion turbines. Finally, Rockville Center owns and operates stationary internal combustion engines. All three facilities are subject to the proposed revisions to Part 251, however, since all three facilities burn gas or oil and have CO_2 emission rates less than the emissions limit proposed in the revision to Part 251, they are already in compliance with the emissions limit being proposed in the revision to Part 251.

None of the existing facilities mentioned above are owned or operated by a small business. Sources of applicable size and capacity are not generally operated by small businesses, due to the significant capital costs necessary to operate such a facility.

COMPLIANCE REQUIREMENTS

This is not a mandate on local governments. Local governments have no additional compliance obligations as compared to other subject entities. Under the proposed revisions to Part 251, all non-modified fossil-fuel fired existing major electric generating facilities, not currently subject to Part 251, that provide more than 10 percent of their annual electric output to the electric grid would be required to meet a carbon dioxide (CO_2) emissions limit of either 1,800 lbs/MW-hr gross electrical output (output-based limit) or 180 lbs/mmBtu of input (input-based limit). Facilities subject to this Part will also be required to meet a 12-month rolling average or annual CO_2 emission standard. They are also required to meet regulatory requirements for other regulated pollutants (e.g., a limit for emissions of SO_2 and/or NO_x). To demonstrate compliance with other applicable regulations already in place, including in Part 242 and via federal monitoring requirements contained within 40 CFR Part 75, both a CO_2 continuous emission monitoring system (diluent monitor) and a fuel flow monitor would already have been installed. Thus, as monitoring equipment is generally already required by other existing State and federal regulations, there will be no additional costs incurred by regulated facilities to demonstrate compliance with the proposed CO_2 standard. Newly subject sources will have standard operating expenses associated with operating permit requirements, including provisions for recordkeeping, monitoring and reporting necessary to demonstrate compliance with this rule.

PROFESSIONAL SERVICES

The Department believes that professional services would be required to support the employment of CCS or another advanced CO_2 emission reduction technology, a conversion of the existing coal units to natural gas or for the replacement of the units with combined cycle units at the two coal-fired facilities impacted by the proposed revisions to Part 251. There may also be a need for professional services, if the facilities opt to shut down, for decommissioning, dismantling and clean-up as needed. Given the number of options available and the variability of the costs associated with each option, the Department does not have a cost estimate for professional services. The Department anticipates that any costs for professional services would represent a small percentage of the overall costs for the selected option.

COSTS

The Department has determined that existing combined cycle combustion turbines, existing natural gas-fired boilers, existing natural gas-fired stationary internal combustion engines, existing oil-fired simple cycle combustion turbines, and existing oil-fired stationary internal combustion engines can meet the proposed CO_2 emission standards in Part 251.

No existing coal-fired electric generation emission sources are expected to continue operating in New York beyond 2020 based in part on the proposed revisions to Part 251. If, however, the owner or operator of such a unit wishes, it could apply 15 to 20 percent CCS or other advanced CO_2 emission reduction technology to reduce the unit's CO_2 rate to a level that complies with the proposed emission standard revisions in Part 251. While the Department does not have cost estimates for retrofitting an existing coal facility with CCS, based on a review of existing data for new installations it is the Department's belief that application of that technology as a response to the revisions to Part 251 would be cost prohibitive. This is fur-

ther supported by a Global CCS Institute publication where the costs of retrofitting relative to a sources unique circumstances are evaluated. It is noted in that publication that "… the actual impact of the factors driving retrofitting cost will be site and situation specific. It is estimated that retrofitting CCS is unlikely for plants older than ten to twelve years, as total CCS cost would be at least 30 percent higher compared to new power plants (for same scale plants), and possibly much more, depending on the specific case. There are two exceptions when the retrofit cost penalty could be significantly lower. The first is for very young (less than five to seven years), and very efficient coal power plants. If the plant was built as 'capture ready', and the retrofit planned to minimize downtime, the additional costs could be 10 percent or even lower…"[1]

MINIMIZING ADVERSE IMPACTS

The Department has considered the issues and determined that Part 251 will not have an adverse impact on small businesses or local governments. The ability of a source to meet the requirements of Part 251 will not be influenced by whether the source is owned by a local government or small business, as compared to some other entity. The proposed regulation establishes specific CO_2 emission standards for non-modified existing major electric generating facilities.

In satisfying the requirements of section 202-b for minimizing adverse impacts to small business, the State Administrative Procedures Act (SAPA) requires that each proposal address the following:

(1) 'Establishment of differing compliance requirements or reporting times.' The compliance and reporting times are consistent with other air permitting regulations and quarterly, semi-annual and annual reporting that affected facilities would already be subject to.

(2) 'Use of performance rather than design standards.' Part 251 is a unit-specific rule making based on performance standards and technology currently available. Part 251 restricts emissions of CO_2 at subject facilities, but does not dictate what design or control strategies facilities must implement to achieve compliance with applicable rates.

'Exemption from coverage by the rule for small business and local governments.' The Department has determined that Part 251 should apply to sources regardless of ownership. CO_2 emissions may be significant from municipally-owned power stations and facilities and the objectives of this rule would not be met if certain owners or operators were exempted from its provisions.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The State Administrative Procedures Act requires agencies to provide public and private interests in rural areas the opportunity to participate in the rule making process and or public hearings. The Department held a stakeholder meetings on August 21, 2017 and August 28, 2017 to discuss the likely elements of the proposed Part 251 and to obtain feedback. The Department also conducted additional stakeholder outreach during the development of Part 251, prior to its formal proposal for public comment. The Department will hold public hearings on Part 251 and small businesses and local governments will be able to comment on the proposed rule during the notice and comment period.

CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other additional opportunity for ameliorative action is included in Part 251. First, because of the nature of Part 251 as a performance standard that only applies to certain facilities, Part 251 will not result in immediate violations or impositions of penalties for existing facilities. However, the CO_2 emission limit applicable to non-modified existing sources in the proposed revisions to Part 251 will be effective as of December 31, 2020. Therefore, owners and operators of non-modified existing major electric generating facilities will not be required to comply with the CO_2 emission limit of either 1,800 lbs/Mw-hr gross electrical output (output-based limit) or 180 lbs/mmBtu of input (input based limit) until December 31, 2020. This will allow owners and operators of affected sources time to comply with the proposed revisions to Part 251.

[1] https://hub.globalccsinstitute.com/publications/carbon-capture-storage-assessing-economics/52-cost-variations-between-ccs-applications

Revised Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED

The proposed rulemaking will apply statewide, however the areas surrounding the two coal-fired major electric generating facilities, namely Tompkins and Niagara Counties, will be affected the most.

Rural areas are defined as rural counties in New York State that have populations of less than 200,000 people, towns in non-rural counties where the population densities are less than 150 people per square mile, and villages within those towns.

COMPLIANCE REQUIREMENTS

Under the proposed revisions to Part 251, all non-modified fossil-fuel fired existing major electric generating facilities, not currently subject to Part 251, that provide more than 10 percent of their annual electric output to the electric grid would be required to meet a carbon dioxide (CO_2) emissions limit of either 1,800 lbs/MW-hr gross electrical output (output-based limit) or 180 lbs/mmBtu of input (input-based limit). Facilities subject to this Part will also be required to meet a 12-month rolling average or annual CO_2 emission standard. They are also required to meet regulatory requirements for other regulated pollutants (e.g., a limit for emissions of SO_2 and/or NO_x). To demonstrate compliance with other applicable regulations already in place, including in Part 242 and via federal monitoring requirements contained within 40 CFR Part 75, both a CO_2 continuous emission monitoring system (diluent monitor) and a fuel flow monitor would already have been installed. Thus, as monitoring equipment is generally already required by other existing State and federal regulations, there will be no additional costs incurred by regulated facilities to demonstrate compliance with the proposed CO_2 standard. Newly subject sources will have standard operating expenses associated with operating permit requirements, including provisions for recordkeeping, monitoring and reporting necessary to demonstrate compliance with this rule.

COSTS

In order to meet the proposed CO_2 emission standard, coal-fired major electric generating units that do not employ carbon capture and sequestration (CCS) or other advanced CO_2 emission reduction technology will need to repower to a cleaner fuel or cease operations by December 31, 2020. Either option will impose associated costs upon the owners or operators of the facility, and possibly the surrounding community. Cayuga Operating Company has prepared a Repowering Proposal,[1] and a Revised Repowering Proposal,[2] which detail its projection of economic and employment effects the facility and surrounding community will face under various repowering options. The Cayuga facility is currently the largest taxpayer in all three local tax bases: the county (1.3 percent), town (6.9 percent) and school district (10.5 percent) tax bases. In 2012, AES Energy, the owners of the Somerset electric generating facility at that time, contributed 80 percent of the Town of Somerset tax base, 70 percent of the Baker School District tax base, and five percent of the Niagara County tax base.

To improve a coal-fired plant's CO_2 emission rate, an existing facility could co-fire with natural gas, convert to natural gas, repower to natural gas-fired combustion turbines or replace the facility with a natural gas combined cycle plant. Since the CO_2 performance standard in the proposed revisions applies to each fossil fuel combusted at a non-modified existing facility, the costs associated with co-firing with natural gas are not being evaluated as part of this proposal But an analysis, discussion and cost data for conversion, repowering and replacement is provided below. In an October 1, 2013 article in Power,[3] "capital costs for implementing a complete coal to natural gas conversion (outside of new pipeline costs) can range from $100,000 to $250,000 per MW." The article also notes that there could be additional costs associated with decommissioning (demolition, removal and remediation) that could range from $3,000 to $30,000 per MW.[4] The article further touches on the savings as they relate to the risks when completing a life cycle analysis to compare the cost associated with repowering versus a complete replacement with a new combined cycle plant. In a January 2017 EIA document, the total overnight capital costs of new electric generating technology in upstate New York could cost as much as $1,283 per kW.[5] Independent of the option chosen, there would also be gas infrastructure costs associated with any new pipelines or other infrastructure needed to supply fuel for the conversion, repower or replacement.

No existing coal-fired electric generation emission sources are expected to continue operating in New York beyond 2020 based in part on the proposed revisions to Part 251. If, however, such a unit wishes, it could apply 15 to 20 percent CCS or other advanced CO_2 emission reduction technology to reduce its CO_2 rate to a level that complies with the proposed emission standard revisions in Part 251. While the Department does not have cost estimates for retrofitting an existing coal facility with CCS, based on a review of existing data for new installations it is the Department's belief that application of that technology as a response to the revisions to Part 251 would be cost prohibitive. This is further supported by a Global CCS Institute publication where the costs of retrofitting relative to a sources unique circumstances are evaluated. It is noted in that publication that "… the actual impact of the factors driving retrofitting cost will be site and situation specific. It is estimated that retrofitting CCS is unlikely for plants older than ten to twelve years, as total CCS cost would be at least 30 percent higher compared to new power plants (for same scale plants), and possibly much more, depending on the specific case. There are two exceptions when the retrofit cost penalty could be significantly lower. The first is for very young (less than five to seven years), and very efficient coal power plants. If the plant was built as 'capture ready', and the retrofit planned to minimize downtime, the additional costs could be 10 percent or even lower…"[6]

MINIMIZING ADVERSE IMPACT

The Department has considered the issues and determined that Part 251 will not have an adverse impact on rural areas. Just like coal-fired facilities in suburban or urban areas, coal-fired facilities located in rural areas would have to install CCS or some other advanced carbon control technology in order to comply with Part 251, or else repower to a cleaner fuel or cease operations, as described above. Further, even absent these revisions and as previously stated, market forces have already resulted in a shift away from coal generation toward other generating technologies. In particular, for both of the facilities impacted by the proposed revisions, a review of available operating data shows a significant decline in their operating capacities over the past few years.

However, should the communities surrounding Cayuga and Somerset incur significant tax implications as a result of the facilities shutting down, these tax revenue losses could be at least partially offset by the Electric Generation Facility Cessation Mitigation Program.[7] This program provides grant funding to local government entities that suffered tax revenue or PILOT payment losses as a result of an electric generating facility ceasing operation.

RURAL AREA PARTICIPATION

The Department held stakeholder meetings on August 21, 2017 and August 28, 2107 to discuss the likely elements of the proposed revisions to Part 251, and to obtain feedback. The stakeholder group consisted of the regulated community (electric generating facility representatives) to be affected by the proposed regulation, consultants (both technical and legal), and interested environmental advocacy groups. During these meetings, the Department presented some of the draft conditions of the rule, answered questions regarding the proposed rule, and requested feedback on the proposed revisions. The Department reviewed these comments, and incorporated considerations of issues discussed at the stakeholder meeting, in further developing the revisions to Part 251. The Department also met with the New York Independent System Operator (NYISO) on September 14, 2017. The Department will hold public hearings on Part 251 in upstate and other rural areas and will notify interested parties of this proposed rulemaking.

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[1] Cayuga Repowering Proposal, March 26, 2013. Available at: http://www3.ps.ny.gov/W/PSCFC9542CC5BE76085257FE300543D5E?OpenDocument

[2] Cayuga Repowering Proposal, Revised Repowering Proposal, February 6, 2015. Available at: http://www3.ps.ny.gov/W/PSCFC9542CC5BE76085257FE300543D5E?OpenDocument

[3] http://www.powermag.com/utility-options-for-leveraging-natural-gas/?pagenum=1

[4] Ibid.

[5] https://www.eia.gov/outlooks/aeo/assumptions/pdf/table_8.2.pdf

[6] https://hub.globalccsinstitute.com/publications/carbon-capture-storage-assessing-economics/52-cost-variations-between-ccs-applications

[7] https://esd.ny.gov/electric-generation-facility-cessation-mitigation-program

Revised Job Impact Statement

NATURE OF IMPACT

Under the proposed Part 251 revisions, a non-modified existing coal-fired major electric generating facility could not continue firing coal without the use of advanced carbon dioxide (CO_2) emission reduction technology, such as Carbon Capture and Sequestration (CCS). Alternatively, the owners or operators of such a facility could choose to repower to a cleaner fuel or cease operations by December 31, 2020, in order to comply with the proposed revisions. Under all scenarios, including utilizing CCS, repowering or ceasing operation, there will be economic and employment effects associated with the action that the owners or operators of the facility choose to comply with the proposed Part 251 revisions.

CATEGORIES AND NUMBERS OF EMPLOYMENT OPPORTUNITIES AFFECTED

To estimate the potential impacts on jobs and local communities, the Department pulled data from publicly available documents that referenced potential actions that the facilities most likely to be impacted by the revisions to Part 251 could undertake to comply. For example, Cayuga Operating Company, which operates a facility that would be subject to the revisions to Part 251, has prepared a Repowering Proposal,[1] and a Revised Repowering Proposal[2] which detail the company's projection of economic and employment effects the facility and surrounding community will face under various repowering options. The Cayuga facility is currently the largest taxpayer in all three local tax bases: the county (1.3 percent), town (6.9 percent) and school district (10.5 percent) tax bases. The following options were highlighted in the Repowering Proposal:

- Option 1 would be to repower two existing coal boilers to operate on natural gas, while maintaining the remainder of the existing facility. Under this option, Cayuga projects that there would be 67 construction jobs, and 30 permanent jobs. Under this option, Cayuga projects that their property tax obligation for the 2017-2036 period would be $82,634.
- Option 2 would be to repower to simple cycle natural gas fired units. Under this option, Cayuga projects 312 construction jobs, and five permanent jobs. Under this option, Cayuga projects that their property tax obligation for the 2017-2036 period would be $167,870.
- Option 3 would be to construct a new gas-fired combined cycle unit, using an existing steam powered turbine, and repowering one existing coal-fired unit to natural gas. Under this option, Cayuga projects 233 construction jobs, and 30 permanent jobs. Under this option, Cayuga projects that their property tax obligation for the 2017-2036 period would be $139,695.
- Option 4 would be to construct two new natural gas-fired combined cycle units. Under this option, Cayuga projects 397 construction jobs, and 30 permanent jobs. Under this option, Cayuga projects that their property tax obligation for the 2017-2036 period would be $219,423.

Under the Revised Repowering Proposal, units 1 and 2 would be repowered to natural gas, with one of the units retaining the capability to fire coal as a back-up fuel. Under this revised option, Cayuga projects 118 construction jobs, and 30 permanent jobs. The company also projects there would be indirect employment benefits of 60 jobs in the region. Cayuga projects the decreased tax revenue would result in a decrease of 7.4 percent to the local budget, and an 11.7 percent decrease in the school district budget, resulting in the elimination of 15 teacher positions, and cuts to educational programs and extracurricular activities. Homeowner tax bills are projected to increase by about $600 per year.[3] It should be noted that a proposal that retained the capability to fire some coal would not comply with the proposed revisions to Part 251. Moreover, while the various repowering options at Cayuga could have various impacts, these options were already being considered prior to the proposed revisions to Part 251. Therefore, any such costs are not necessarily a result of the proposed revisions to Part 251.

In January 2010, AES Energy, the owners of the Somerset electric generating facility at that time, along with Eastern Energy, Niagara County, the Barker School District and the Town of Somerset entered into a PILOT agreement whereby AES would make payments of $15.8 million yearly for five years.[4] In September 2010 and again in October 2010, AES requested amendments to the PILOT agreement to lower their payments. In their request dated October 29, 2010, AES cited several factors increasing the financial stress on the company. Those factors were reduced natural gas pricing, low energy demand and economic recession, high coal and transportation costs, and state-driven energy efficiency and demand-side management programs. In 2012, AES contributed 80 percent of the Town tax base, 70 percent of the school tax base, and five percent of the county tax base.

In May 2016 Riesling Power, with its subsidiary Heorot Power, purchased both the Cayuga and Somerset facilities. As of that time, there were 74 people employed at Somerset.[5]

REGIONS OF ADVERSE IMPACT

As detailed above, the communities surrounding the Cayuga and Somerset facilities could incur significant employment and tax implications if the facilities cease operations.

MINIMIZING ADVERSE IMPACT

The Cayuga and Somerset facilities have several compliance options under the proposed revisions to Part 251, including repowering to a cleaner fuel or employing CCS or another advanced CO_2 abatement technology. Further, even absent these revisions and as previously stated, market forces have already resulted in a shift away from carbon-intensive coal generation toward other less carbon intensive generating technologies. In particular, for both of the facilities impacted by the proposed revisions, a review of available operating data shows a significant decline in their operating capacities over the past few years. Should the owners or operators of these facilities choose to cease operations, any resulting tax revenue losses could be at least partially offset by the Electric Generation Facility Cessation Mitigation Program.[6] This program provides grant funding to local government entities that suffered tax revenue or PILOT payment losses as a result of an electric generating facility ceasing operation.

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[1] Cayuga Repowering Proposal, March 26, 2013. Available at: http://www3.ps.ny.gov/W/PSCFC9542CC5BE76085257FE300543D5E?OpenDocument

[2] Cayuga Repowering Proposal, Revised Repowering Proposal, February 6, 2015. Available at: http://www3.ps.ny.gov/W/PSCFC9542CC5BE76085257FE300543D5E?OpenDocument

[3] Cayuga Repowering Proposal, Revised Repowering Proposal, February 6, 2015. Available at: http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=12-e-0577

[4] Available at www.niagaracountybusiness.com

[5] http://www.ithacajournal.com/story/news/local/2016/07/29/new-cayuga-plant-owner-eyes-continued-operation/87672984/

[6] https://esd.ny.gov/electric-generation-facility-cessation-mitigation-program

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 New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Part 251, CO_2 Performance Standards for Major Electric Generating Facilities, and adopting revisions to 6 NYCRR Part 200, General Provisions (collectively "Part 251"). The Department proposed Part 251 on May 16, 2018. Public hearings were held in Albany on July 16, 2018, in New York City on July 18, 2018, and in Avon on July 24, 2012. The public comment period closed at 5:00 P.M. on July 29, 2018. The Department received 5,684 written and oral comments, all of which have been reviewed, summarized, and responded to by the Department.

Overall, the vast majority of comments received by the Department expressed support for the Department's proposed amendments to Part 251.

A small number of commenters objected to the proposed amendments, including on the basis of questioning the Department's statutory authority to adopt the revisions. The Department responded by explaining that the statutory authority to promulgate the revisions to Part 251 is derived from the Department's obligation to prevent and control air pollution, including emissions of CO_2 and other greenhouse gases (GHGs). As explained in the Regulatory Impact Statement (RIS), this statutory authority is set forth in various provisions of the Environmental Conservation Law (ECL), including ECL Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, and 19-0305.

Three commenters, representing facilities that would be affected by the revisions to Part 251, objected to the applicability in the proposed amendments. In particular, these commenters highlighted the apparently unintentional inclusion of certain cogeneration or so-called "behind-the-meter" sources, given that the revisions would apply to any non-modified existing electric generating facility with a generating capacity of at least 25MW. The Department responded to these comments by acknowledging the unintentional inclusion of certain facilities, which were inadvertently captured by the applicability provisions in the proposed amendments. The Department reiterated that the intent behind the revisions to Part 251 was to capture emissions from all non-modified existing fossil fuel-fired major electric generating facilities that sell at least a minimum percentage of their electricity to the grid. To provide additional clarification and in response to comments received, the Department has included non-substantive revisions to the applicability provisions for non-modified existing sources in Subdivision 251.2(b) to clarify the rule's inapplicability to certain cogeneration or "behind-the-meter" sources. In particular, the revision clarifies that Part 251 applies to fossil fuel-fired non-modified existing sources that provide more than 10 percent of their annual electric output to the electric grid.

Some commenters highlighted the fact that market forces have already resulted in reduced operation of coal-fired electric generating facilities in the State. One commenter specifically objected to the Department's proposed amendments to Part 251, largely on the basis that coal-fired electric generation is already being phased out of New York due to economic forces, and therefore the revisions to Part 251 are unnecessary. The Department responded to these comments by acknowledging that market forces and other State programs have already resulted in a shift away from coal toward other generating technologies. Moreover, the Department explained that under no scenario do market forces guarantee that the CO_2 emission limits set forth in Part 251 will be achieved at all facilities, or that coal-fired units repower to a cleaner fuel or shut down by December 31, 2020.

One commenter objected to the reporting requirements, specifically the costs associated with installing continuous emission monitoring system (CEMS) equipment to report fuel usage for multiple fuels. In response to this and other similar concerns, the Department clarified the applicability provisions for non-modified existing sources as described above. In addition, the Department has included supplemental reporting requirements in subdivision 251.6(f) to address this concern, provide additional flexibility, and further support the ability to assess a facility's compliance with Part 251's CO_2 emission limits. This non-substantive revision will allow sources to supplement their emissions reports following the U.S. Environmental Protection Agency's (EPA's) mandatory greenhouse gas reporting requirements under 40 CFR Part 98.

Even among those comments that supported the Department's adoption of the proposed revisions to Part 251, many comments focused on increasing the stringency of the proposed amendments to include biomass and lower CO_2 emission limits to a level that no fossil fuel-fired facility could meet. The Department responded to these comments by explaining that the revisions to Part 251 are just one of many ongoing efforts in New York to address GHG emissions from the energy sector. While these revisions are important, the Department acknowledges that this regulatory action alone does not fully address climate change. The Department and the State will continue to take additional actions, including in the form of regulations and other programs and policies, to reduce the GHG emissions that cause climate change.

Some commenters suggested that the Department should account for methane emissions as well as CO_2 emissions. The Department responded to these commenters by agreeing that methane is a potent GHG, and by noting that the State has developed the Methane Reduction Plan to reduce methane emissions. This includes regulatory action and other efforts by the Department and other relevant agencies and authorities to reduce methane emissions from the oil and gas sector.

A large number of commenters expressed opposition to coal-fired facilities potentially converting to gas, particularly "fracked" gas. The Department responded to these comments by explaining that any decision to repower a facility is not generally made by the Department or the State and is instead generally made by the facility's owners or operators, with oversight by applicable authorities. Furthermore, this decision is influenced by a number of factors, including, but not be limited to, environmental permitting and regulatory requirements, changes in the energy market as a result of the State's clean energy and environmental policies that promote increased usage of renewables, energy storage and energy efficiency, and the continued reduction in the Regional Greenhouse Gas Initiative (RGGI) cap by an additional 30 percent by 2030. In addition, any repowering proposal would also require environmental review pursuant to the State Environmental Quality Review Act, ECL Article 8 (SEQRA) or may be subject to review and approval by the State Board on Electric Generation Siting and the Environment pursuant to Article 10 of the Public Service Law (Article 10). Both the SEQRA and Article 10 review process would consider CO_2 emissions as well as additional potential environmental impacts associated with any repowering proposal, and would include multiple opportunities for public input. The Department also noted that, as part of the Green New Deal, the Governor is proposing, among other things, meeting 100 percent of the State's electricity demand with clean energy by 2040.

Some commenters suggested that the Department should provide for periodic revisions and updates to the CO_2 performance standards. These commenters noted that technologies change over time and that the standards should reflect technological advances that may be made in the future.

In response, the Department stated that no regulations are required in order to provide the Department with the ability to update the standards in the future based on technological advancements. The Department already has the ability to revise, at any time, the CO_2 emission standards in Part 251, pursuant to a subsequent rulemaking process under the State Administrative Procedure Act (SAPA). The Department may consider additional revisions to Part 251, including to further reduce the CO_2 emission limits applicable to non-modified existing electric generating facilities, pursuant to such future rulemakings. Additionally, SAPA requires periodic reviews of regulations to ensure they remain appropriate and adequate. Regulations that required a Regulatory Flexibility Analysis for Small Business and Local Government, a Rural Area Flexibility Analysis, and a Job Impact Statement are subject to a review three years after initial adoption, and thereafter, at five-year intervals. Notice of these reviews are published in the first January issue of the New York State Register and include submission deadlines for public comments on the continuation or modification of the regulation.

Some commenters were concerned with the effects that facility closures may have on the communities in which they are located, such as negative tax implications and job losses. The Department responded by first noting that affected facilities have other compliance options aside from closure under the revisions to Part 251, including but not limited to repowering to a cleaner fuel. Provided that these and other non-modified existing sources comply with the CO_2 emission limits in subdivision 251.3(b), they can remain in operation in compliance with the revisions to Part 251. Second, the Department reiterated that the shutdown or repowering of these facilities will be influenced by a number of factors. If the owners or operators of an affected facility chooses to cease operations, any resulting tax revenue losses could be at least partially offset by the Electric Generating Cessation Mitigation Program. The State budget for the 2019-2020 fiscal year includes the continuation of the Electric Generation Cessation Mitigation Fund to continue assisting communities impacted by the transition from fossil fuel industries to clean energy technologies, specifically those communities impacted by the retirement of fossil fuel-fired electric generating units.

Several commenters were concerned with the data collection and reporting requirements in Part 251. Some of these commenters were concerned

that the reporting requirements were insufficient to ensure facilities are able to calculate and report fuel-specific annual CO_2 emission rates. The Department responded to these concerns by explaining that, pursuant to Subpart 202-2, fuel usage and CO_2 emissions reporting is done at the process level for every facility subject to the regulatory requirements of Part 251. This includes the requirement for reporting fuel throughput and heat content for each fuel that is necessary to determine heat input at the process level. Subpart 202-2 also requires the reporting of CO_2 emissions. However, to provide additional flexibility and further support the Department's ability to assess compliance, the Department included a non-substantive revision to subdivision 251.6(f) to allow facilities to supplement their emissions reports following EPA's mandatory greenhouse gas reporting requirements under 40 CFR Part 98.

Some commenters feel there is a need for grid reliability analyses to be done prior to any facility closures. Other commenters state that the affected facilities are no longer needed, and there will not be any reliability issues if they cease operation. The Department responded by noting, that as stated in the RIS, no grid reliability issues are anticipated as a result of the proposed amendments. Given the limited operation of each of the two remaining coal-fired facilities and their limited overall contribution to the existing electrical system, the Department believes that the standard deactivation process is sufficient for evaluating the shutdown of such facilities. Further analysis will be completed once a deactivation notice is filed. While the Department does not itself make a reliability assessment for particular plants, the Department believes that the existing process to support that analysis is adequate and is subject to oversight by other entities including the New York Independent System Operator (NYISO).

Many commenters also stressed that the Department should not assume that biomass is carbon neutral, and that different types of biomass may have different carbon intensities. The Department responded that it does not assume that all biomass is carbon neutral, and that it agrees that different types of biomass may have different carbon intensities. When considering the full lifecycle emissions of biomass, the carbon intensity depends in part on factors such as the type of biomass used, the source of the material, and the manner in which the forest or other source of the material is managed. While the revisions to Part 251 are designed to address CO_2 emissions from fossil fuel-fired non-modified existing facilities, new sources and modified existing sources that combust biomass are subject to a case-specific CO_2 emission limit pursuant to 6 NYCRR Section 251.3(a)(3).

Many commenters are concerned about the health effects of fossil fuel-fired emissions including ozone, mercury, nitrogen oxides (NO_x) and sulfur dioxide (SO_2). Some support lower emission limits, while a majority favor phasing out fossil fuel combustion in favor of renewables. The Department agrees that reducing emissions from power plants can improve air quality, which can benefit the environment and human health. The Department also agrees that climate change has ongoing and anticipated adverse impacts on the environment and human health. While this revision to Part 251 is focused on CO_2 emissions, which along with other GHGs cause climate change, the repowering or shutdown of existing coal-fired major electric generating facilities would also result in reductions of SO_2, NO_x, mercury, and other air pollutant emissions.

Many commenters are also concerned with climate change and the impact that fossil fuels, particularly coal, have on our climate. The Department responded to these comments by stating that the Department agrees that climate change poses a serious threat to public health, and that the proposed amendments will help to combat climate change by reducing GHG emissions. At the same time, the Department acknowledged that additional action is necessary to address climate change, and reiterated that this rulemaking is just one of many ongoing actions to reduce GHG emissions and encourage the transition to clean energy.

Department of Financial Services

EMERGENCY RULE MAKING

Charges for Professional Health Services

I.D. No. DFS-08-19-00003-E
Filing No. 459
Filing Date: 2019-05-08
Effective Date: 2019-05-08

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

Action taken: Amendment of Part 68 (Regulation 83) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301, 2601, 5221 and art. 51

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

Specific reasons underlying the finding of necessity: Chapter 892 of the Laws of 1977 recognized the necessity of establishing schedules of maximum permissible charges for professional health services payable as no-fault insurance benefits to contain the costs of no-fault insurance. To that end, and in accordance with Insurance Law section 5108(b), the Superintendent of Financial Services ("Superintendent") adopted medical fee schedules promulgated by the Chairman of the Workers' Compensation Board (the "Chair"). In addition, the Superintendent, after consulting with the Chair and the Commissioner of Health, established fee schedules for those services for which the Chair has not prepared and established fee schedules.

The Chair's medical fee schedules initially adopted in 1977 underwent annual revisions until the mid-1990s to reflect inflationary increases and to incorporate other necessary enhancements. In turn, the Superintendent adopted those fee schedules through amendments to Insurance Regulation 83. However, in 2002, the Superintendent promulgated an amendment to Insurance Regulation 83, which prescribed that any changes the Chair made to the workers' compensation fee schedules automatically would apply to no-fault, and as such, no longer necessitated adoption of the workers' compensation fee schedules as changes were made to them.

In December 2018, the Chair adopted expansive amendments to its fee schedules for medical, chiropractic, behavioral health (otherwise known as the psychological fee schedule), and podiatric services (collectively the "medical fee schedules") to take effect on April 1, 2019. The Chair contended in its Regulatory Impact Statement, published in the December 26, 2018 issue of the New York State Register, that such changes were necessary to ensure that treating providers are paid a reasonable fee for their services so that injured workers may receive high quality medical care in the workers' compensation system.

Although the expansive changes to the fee schedules may be necessary to maintain quality health services for the workers' compensation system, the automatic adoption of such sweeping changes for use in the no-fault system within a relatively short period (April 1, 2019) would have a significant adverse impact on insurers' ability to absorb the health-service-related costs resulting from those changes within that timeframe. Those changes will result in a substantial overall increase (at least 10% increase has been reported) in total loss payments for no-fault-related health services, which insurers could not have anticipated. Because health service payments account for more than 90% of the total loss costs in no-fault, insurers will need time to carefully study the impact of the changes in the workers' compensation medical fee schedules on no-fault in order to appropriately adjust no-fault premium rates to absorb the noticeable increase in no-fault claims costs. Furthermore, pursuant to Insurance Law Sections 3425 and 3426, there is a one-year "required policy period" for automobile policies, which may not be canceled during that period unless as prescribed in the statutes; therefore, policies that are already in effect could not be altered to reflect the sudden increase in loss costs. The Superintendent, therefore, deems it necessary to delay for 18 months the adoption of the medical fee schedules that the Chair has prepared and established, to take effect on April 1, 2019, and so those fee schedules will take effect on October 1, 2020 for use in no-fault pursuant to Insurance Law 5108.

For the reasons stated above, emergency action is necessary for the preservation of the general welfare.

Subject: Charges for Professional Health Services.

Purpose: To delay the effective date of the Workers' Compensation fee schedule increases for no-fault reimbursement.

Text of emergency rule: Section 68.1(a) and (b)(1) is amended to read as follows:

§ 68.1 Adoption of certain workers' compensation schedules

(a)*(1)* The existing fee schedules prepared and established by the [chairman] *chair* of the Workers' Compensation Board for industrial accidents are hereby adopted by the Superintendent of Financial Services with appropriate modification so as to adapt such schedules for use pursuant to the provisions of [section 5108 of the] Insurance Law *section 5108.*

(2)(i) Notwithstanding paragraph (1) of this subdivision, and except as provided in subparagraph (ii) of this paragraph, the amendments to the fee schedules set forth in Parts 329, 333, 343, and 348 of 12 NYCRR that were promulgated by the chair of the Workers' Compensation Board on December 11, 2018, shall take effect for purposes of Insurance Law section 5108 on October 1, 2020, and shall only apply to all charges for health services performed on or after October 1, 2020.

(ii) The following ground rules in the amendments to the fee schedules set forth in Parts 329, 333, 343, and 348 of 12 NYCRR that were promulgated by the chair of the Workers' Compensation Board on December 11, 2018, shall take effect for purposes of Insurance Law sec-

tion 5108 on April 1, 2019, and shall apply to all charges for health services performed on or after April 1, 2019:

(a) General Ground Rule 10 in the Workers' Compensation Chiropractic Fee Schedule set forth in 12 NYCRR 348;

(b) General Ground Rule 19 in the Workers' Compensation Medical Fee Schedule set forth in 12 NYCRR 329;

(c) General Ground Rule 13 in the Workers' Compensation Behavioral Health Fee Schedule (formerly the Psychology Fee Schedule) set forth in 12 NYCRR 333, and;

(d) General Ground Rule 16 in the Workers' Compensation Podiatry Fee Schedule set forth in 12 NYCRR 343.

(b)(1) The charges for services specified in [paragraph one of subsection (a) of section 5102 of the] Insurance Law *section 5102(a)(1)* and any further health service charges [which] *that* are incurred as a result of the injury and [which] *that* are in excess of basic economic loss, shall not exceed the charges permissible under the schedules prepared and established by the chair of the Workers' Compensation Board for industrial accidents *that are in effect for purposes of no-fault at the time the charges are incurred*. However, references to workers' compensation reporting and procedural requirements in such schedules do not apply *to no-fault*, e.g., requirements that provide for authorization to perform surgical procedures[, is not applicable to no-fault]. The general instructions and ground rules in the workers' compensation fee schedules apply, but those rules [which] *that* refer to workers' compensation claim forms, preauthorization approval*, time limitations within which health services must be performed, enhanced reimbursement for providers of certain designated services,* and dispute resolution guidelines do not apply, unless specified in this Part.

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. DFS-08-19-00003-P, Issue of February 20, 2019. The emergency rule will expire July 6, 2019.

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law Sections 202 and 302, and Insurance Law Sections 301, 2601, 5221, and Article 51.

Insurance Law Section 301 and Financial Services Law Sections 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law.

Insurance Law Section 2601 prohibits insurers from engaging in unfair claim settlement practices and requires insurers to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

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

Article 51 of the Insurance Law contains the provisions authorizing the establishment of a no-fault reparations system for persons injured in motor vehicle accidents. Section 5108(b) specifically authorizes the Superintendent to adopt the fee schedules prepared and established by the Chairman of the Workers' Compensation Board (the "Chair") or to promulgate fee schedules for health care benefits payable under the no-fault system for any services for which the Chair has not prepared and established; and subsection (c) prohibits a provider of health services, as defined in Article 51, in addition to the amount authorized pursuant to Insurance Law Section 5108.

2. Legislative objectives: Chapter 892 of the Laws of 1977 recognized the necessity of establishing schedules of maximum permissible charges for professional health services payable as no-fault insurance benefits to contain the costs of no-fault insurance. To that end, and pursuant to Insurance Law Section 5108(b), the Superintendent adopted those fee schedules promulgated by the Chair. In addition, the Superintendent, after consulting with the Chair and the Commissioner of Health, established fee schedules for those services for which the Chair has not prepared and established fee schedules.

Since 1977, the workers' compensation fee schedules underwent annual revisions until the mid-1990s to reflect inflationary increases and to incorporate other necessary enhancements. In turn, the Superintendent adopted those fee schedules through amendments to Insurance Regulation 83. However, in 2002, the Superintendent promulgated an amendment to Insurance Regulation 83, which prescribed that any changes the Chair made to the workers' compensation fee schedules automatically would apply to no-fault, and therefore, no longer necessitated adoption of the workers' compensation fee schedules as changes were made to them.

3. Needs and benefits: In December 2018, The Chair adopted expansive amendments to its fee schedules for medical, chiropractic, behavioral health (otherwise known as the psychological fee schedule), and podiatric services (collectively the "medical fee schedules") to take effect on April 1, 2019. The Chair contended, in its Regulatory Impact Statement in the December 26, 2018 issue of the New York State Register, that such changes were necessary to ensure that treating providers are paid a reasonable fee for their services so that injured workers may receive high quality medical care in the workers' compensation system.

Although the expansive changes to the fee schedules may be necessary to maintain quality health services for the workers' compensation system, the automatic adoption of such sweeping changes for use in the no-fault system within a relatively short period (April 1, 2019) would have a significant adverse impact on insurers' ability to absorb the health-service-related costs resulting from those changes within that timeframe. Those changes will result in a substantial overall increase (at least a 10% increase has been reported) in total loss payments for no-fault-related health services, which insurers could not have anticipated. Because health service payments account for more than 90% of the total loss costs in no-fault, insurers will need time to carefully study the impact of the changes in the medical fee schedules on no-fault to appropriately adjust no-fault premium rates to absorb the noticeable increase in no-fault claims costs.

Furthermore, pursuant to Insurance Law Sections 3425 and 3426, there is a one-year "required policy period" for automobile policies, which may not be canceled during that period unless as prescribed in the statutes; therefore, policies that are already in effect could not be altered to reflect the sudden increase in loss costs. The Superintendent therefore, deems it necessary to delay for 18 months the adoption of the medical fee schedules that the Chair has prepared and established to take effect on April 1, 2019, and so those fee schedules will take effect on October 1, 2020 for use in no-fault pursuant to Insurance Law 5108.

However, this amendment to Insurance Regulation 83 will exclude certain workers' compensation ground rules from the 18-month delay, to wit: General Ground Rule 10 in the Workers' Compensation Chiropractic Fee Schedule, General Ground Rule 13 in the Workers' Compensation Behavioral Health Fee Schedule, and General Ground Rule 16 in the Workers' Compensation Podiatry Fee Schedule, which prohibit providers to whom these fee schedules apply from billing under current procedural terminology ("CPT") codes not listed in their respective fee schedules; and General Ground Rule 19 in the Workers' Compensation Medical Fee Schedule, which prohibits any chiropractor, podiatrist or provider of behavioral health services from billing under CPT codes in the medical fee schedule. Per the Chair, these rules are not new but clarification of existing rules; therefore, the Superintendent determined it was not necessary to delay their implementation.

Insurance Regulation 83 also is being amended to provide that any references in any workers' compensation ground rules regarding time limitations within which health services must be performed, as well as any enhanced reimbursement for providers of certain designated services, are inapplicable to no-fault. Insurance Law Section 5102(a) specifically prescribes any time limitations on receiving necessary health-related services. With respect to enhanced reimbursement for providers (20% in addition the fee schedule rate), the Chair, in General Ground Rule 17 of the Workers' Compensation Medical Fee Schedule, stated that this enhancement was necessary to increase the number of Board-authorized providers in the general medicine specialties. There is no requirement that providers be authorized by the Department to treat no-fault patients, nor is there a shortage of no-fault treating providers in general medicine specialties. Therefore, the Superintendent determined an additional 20% reimbursement increase solely for general medicine specialty providers of no-fault-related health services is unwarranted, and will not be adopted for use pursuant to Insurance Law Section 5108.

4. Costs: This amendment should have no compliance cost impact on applicants for no-fault benefits, insurers, self-insurers, or state and local governments. With respect to any cost impact to health service providers not regulated by the Department, participation in the no-fault system is optional, and the Department has imposed no preauthorization or reporting requirements on these applicants for no-fault benefits. Notwithstanding, this rule only delays the adoption of changes that the Chair has made to the workers' compensation fee schedules, which the Department is required to adopt pursuant to Insurance Law Section 5108.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district.

6. Paperwork: This rule does not impose any additional paperwork on any persons affected by the rule.

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

8. Alternatives: The Superintendent carefully evaluated alternatives to the 18-month delay in adopting the workers' compensation medical fee schedules. The Superintendent determined that delaying only increases

and not decreases in the fee schedules would cause significant systems issues for both insurers and health service providers, from having to utilize separate fee schedules and apply different ground rules. The Superintendent also considered a shorter implementation delay period, but determined, based on the Superintendent's expertise as insurance regulator, that an 18-month delay was most appropriate to permit insurers sufficient time to study the cost impact of the fee schedule changes to determine when and how to adjust their rates.

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

10. Compliance schedule: This amendment shall take effect upon filing with the Department of State. However, the 18-month delay in adopting the Chair's amended medical fee schedules shall commence on April 1, 2019, the effective date of those fee schedules.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule affects no-fault insurers authorized to do business in New York State and self-insurers, none of which fall within the definition of "small business" as defined in State Administrative Procedure Act Section 102(8), because none are both independently owned and have less than one hundred employees. Self-insurers are typically large enough to have the financial ability to self-insure losses and the Department of Financial Services (the "Department") does not have any information to indicate that any self-insurers are small businesses.

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

The types of small businesses affected by this rule are applicants for no-fault benefits, who are typically health service providers not regulated by the Department. Their participation in the no-fault system, however, is optional and the Department has established no preauthorization or reporting requirements with respect to these small businesses. Further, because the Department does not maintain records of either the number of applicants licensed in this state or the number of applicants providing services to injured persons eligible for no-fault benefits, it cannot provide the number of these entities that will be affected by this rule. Notwithstanding, this rule only delays for 18 months the adoption of the most recent amendments to the workers' compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108. Although this amendment may have a temporary impact on small businesses in that they may not bill at the higher fee schedule rate for their services until October 1, 2020, such an impact is outweighed by the need to give no-fault insurers time to study the impact the fee schedule changes will have on loss costs so they may appropriately adjust premiums to cover those costs.

2. Compliance requirements: This amendment will not impose any additional reporting, recordkeeping or other compliance requirements on any small businesses or self-insured local governments affected by this rule.

3. Professional services: This rule does not require the use of professional services.

4. Compliance costs: This amendment does not impose any additional compliance costs on small businesses or self-insured local governments.

5. Economic and technological feasibility: There should not be any issues pertaining to economic or technological feasibility because this rule only delays the adoption of the most recent amendments to the workers' compensation fee schedules for use in no-fault pursuant to Insurance Law Section 5108.

6. Minimizing adverse impact: This rule should have no adverse impact on small businesses or local governments affected by this amendment because the amendment only delays the adoption of the most recent amendments to the workers' compensation fee schedules for use pursuant to Insurance Law Section 5108. The Department anticipates that no small businesses subject to the rule, if any, or self-insured local governments will experience any cost increase because of this amendment.

7. Small business and local government participation: Interested parties, including small businesses and local governments, will be given an opportunity to review and comment on the rulemaking once it is published in the New York State Register.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Health service providers, insurers, and self-insurers affected by this regulation do business in every county in this state, including rural areas as defined in State Administrative Procedure Act Section 102(10). Some government entities that are self-insurers for no-fault benefits may be located in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: This amendment will not impose any additional reporting, recordkeeping or other compliance requirements on insurers, self-insurers, self-insured local governments, and health service providers affected by this rule.

Insurers, self-insurers, self-insured local governments, and health service providers affected by this rule should not need to retain professional services to comply with this rule. This rule only delays for 18 months the adoption of the most recent amendments to the workers' compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108.

3. Costs: This amendment does not impose any additional costs on no-fault insurers, self-insurers, self-insured local governments, and health service providers, because this rule only delays for 18 months the adoption of the most recent amendments to the workers' compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108.

4. Minimizing adverse impact: This rule uniformly affects insurers, self-insurers, self-insured local governments, and health service providers throughout New York State. Therefore, it does not impose any adverse impact on rural areas.

5. Rural area participation: Interested parties, including those located in rural areas, will be given an opportunity to review and comment on the rulemaking once it is published in the New York State Register.

Job Impact Statement

This rule should not adversely impact jobs or employment opportunities in New York State. The amendment only delays for 18 months the adoption of the workers' compensation fee schedules for use pursuant to Insurance Law Section 5108.

Assessment of Public Comment

The agency received no public comment.

Department of Health

NOTICE OF ADOPTION

Medicaid Reimbursement of Nursing Facility Reserved Bed Days for Hospitalizations

I.D. No. HLT-07-18-00002-A

Filing No. 507

Filing Date: 2019-05-14

Effective Date: 2019-05-29

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

Action taken: Amendment of section 86-2.40 of Title 10 NYCRR and section 505.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 363-a, 365-a(2); Public Health Law, sections 201 and 206

Subject: Medicaid Reimbursement of Nursing Facility Reserved Bed Days for Hospitalizations.

Purpose: To make changes relating to reserved bed payments made by Medicaid to nursing facilities.

Text or summary was published in the February 14, 2018 issue of the Register, I.D. No. HLT-07-18-00002-P.

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

Revised rule making(s) were previously published in the State Register on January 30, 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

Revised Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single State agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, which shall be consistent with law, and as may be necessary to implement the State's Medicaid program. SSL section 365-a authorizes Medicaid coverage for specified medical care, services and supplies, together with such

medical care, services and supplies as authorized in the regulations of the Department.

Legislative Objectives:

Chapter 57 of the Laws of 2017 amended Public Health Law (PHL) § 2808(25), which places limits on the availability of Medicaid payments to nursing facilities to reserve a bed for a Medicaid recipient 21 years of age or older who is temporarily absent from the facility. Generally, the amendments eliminated reserved bed payments for recipients age 21 and over who are temporarily hospitalized. However, it was not the intent of the Legislature or the Department to affect the availability of reserved bed payments for temporary hospitalizations with respect to recipients under age 21 or recipients receiving hospice services in the nursing facility.

Needs and Benefits:

The proposed amendments are necessary to conform Department regulations governing Medicaid's reserved bed policy with the changes made to PHL § 2808(25) by Chapter 57 of the Laws of 2017, and to provide clarity with respect to the scope and intent of those statutory revisions.

The proposed amendments would make changes to paragraphs (1), (2), (6), and (7) of subdivision (d) of section 505.9 of 18 NYCRR. Paragraph (1), which sets forth the general rule regarding reserved bed payments, would be amended to provide that Medicaid will not pay to reserve a bed for a recipient in a nursing facility who is 21 years of age or older and temporarily hospitalized unless the recipient is receiving hospice services in the facility.

Paragraph (2) would be amended to provide that the department pays 95 percent of the Medicaid rate otherwise payable to the facility for a leave of absence, and 50 percent of such rate for a temporary hospitalization for recipients who are receiving hospice services in the facility.

Paragraphs (6) would be amended to provide that, as a condition of participating in the Medicaid program, nursing facilities must reserve beds in accordance with the regulation.

Paragraph (7) would be amended to make minor clarifications.

The proposed amendments would also make conforming changes to subdivision (a) and paragraph (4) of subdivision (ac) of section 86-2.40 of 10 NYCRR. These changes would clarify that reserve bed days are included in the methodology utilized to calculate residential health care rates for specialty facilities and would set forth payment amounts for Medicaid recipients 21 years of age or older.

A new subparagraph (v) would be added to provide that reserved bed day payments for Medicaid recipients 21 years of age or older in nursing facilities who are hospitalized will be made: only with respect to patients who are receiving hospice services within the facility; at 50 percent of the Medicaid rate otherwise payable to the facility with regard to such days of care; and for up to a combined aggregate of 14 days for any 12-month period.

A new subparagraph (vi) would be added to provide that reserved bed day payments for Medicaid recipients 21 years of age or older in nursing facilities during a leave of absence from the facility will be made: at 95 percent of the Medicaid rate otherwise payable to the facility with regard to such days of care; and for up to a combined aggregate of 10 days for any 12-month period.

Costs:

Costs to Regulated Parties:

The elimination of reserved bed day payments for those aged 21 and over in nursing facilities, and who are not receiving hospice services in the facility, will impose varying costs to nursing facilities based on the volume and length of reserved bed days within their facilities. For all nursing facilities reporting reserved bed days, the aggregate impact is estimated to be approximately $14M annually.

Costs to State Government:

There will be no additional costs to state government as a result of the proposed amendment.

Costs to Local Government:

There will be no additional costs to local government as a result of the proposed amendment.

Costs to the Department of Health:

There will be no additional costs to the Department as a result of the proposed amendment.

Local Government Mandates:

This amendment will not impose any program, service, duty, additional costs, or responsibility on any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The proposed amendments would not increase paperwork requirements.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

The proposed amendments would conform the regulations to changes made to Public Health Law (PHL) § 2808(25) and to the legislative intent underlying such changes. Therefore no alternatives were considered.

Federal Standards:

The regulatory amendment exceeds the minimum requirements set out in 42 CFR 483.15 on patient admission, transfer, and discharge rights. This amendment exceeds those requirements due to the sensitive nature and complex needs of Medicaid beneficiaries within nursing facilities. Residents of nursing facilities are often elderly and/or severely disabled, present with two or more chronic conditions, or are afflicted with mental/cognitive impairments.

Compliance Schedule:

Regulated parties are expected to comply with the proposed regulations when they become effective.

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 Department of Health ("Department") received comments from two stakeholders, representing nursing home facilities and services for the aging. These comments are summarized below along with the Department's responses.

COMMENT: Commenters requested that rate changes should be prospective and that such changes require a State Plan Amendment (SPA).

RESPONSE: These regulations codify rate changes pursuant to a 2017 statutory change to section 2808 of the Public Health Law. The Department has submitted a SPA (#18-0042) with an effective date of January 1, 2019.

COMMENT: Commenters requested confirmation that the regulations, as amended, do not require nursing homes to hold a bed for days where no Medicaid payment is available.

RESPONSE: The Department confirms that the regulations, as amended, do not require nursing homes to reserve a bed for days where no Medicaid payment is available.

COMMENT: Commenters asserted that the rate to reserve a bed for persons 21 and over who are temporary hospitalized while receiving hospice should be greater than 50% of the rate otherwise provided for nursing home care, as provided in the amended regulations.

RESPONSE: The Department considers the rate to be appropriate for reserving a bed, and the establishment of the rate is within the Department's rate-making authority. The Department notes that the rate of 95% only applies to certain leaves of absence. Further, the regulation authorizing a 50% rate for persons 21 and over who are temporary hospitalized while receiving hospice, is an exception to the "full rate" otherwise authorized by 18 NYCRR 505.9(d)(3).

COMMENT: One commenter suggested that the amendment to 10 NYCRR 86-2.40(a), which added a reference to subdivision (ac)(2), is at odds with PHL 2808(2-c)(c), insofar as the statute generally provides that the non-capital component of rates for specialty facilities shall be the rates in effect for such facilities on January 1, 2009, adjusted for inflation and rate appeals.

RESPONSE: The Department agrees that the non-capital component of rates for specialty facilities will continue to reflect the rates in effect for such facilities on January 1, 2009, adjusted for inflation and rate appeals, consistent with PHL 2808(2-c)(c). The regulatory amendment clarifies that patient days include reserved bed days for purposes of calculating the January 1, 2009 rate.

COMMENT: Commenters supported regulatory amendments to provisions authorizing reserve bed day payments for certain leaves of absence.

RESPONSE: The Department acknowledges these supportive comments.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Residents' Rights

I.D. No. HLT-22-19-00015-P

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

Proposed Action: Amendment of sections 415.2 and 415.3 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800 and 2803-c

Subject: Residents' Rights.

Purpose: Require nursing homes provide information about home and community based services and community transition programs to residents upon admission.

Text of proposed rule: Section 415.2 is amended to add a new subdivision (v) to read as follows:

(v) Local Contact Agency shall mean an agency designated by the Department to accept referrals of nursing home residents that wish to receive information about services in the community. Local Contact Agencies shall contact referred nursing home residents and provide them with information and counseling on available home- and community-based services. Local Contact Agencies shall also either assist residents directly with transition services or refer residents to organizations that assist with transition services, as appropriate.

Section 415.3(a) is amended to read as follows:

(a) The facility shall ensure that all residents are afforded their rights to a dignified existence, self-determination, respect, full recognition of their individuality, consideration and privacy in treatment and care for personal needs, and communication with and access to persons and services inside and outside the facility. The facility shall protect and promote the rights of each resident, and shall encourage and assist each resident in the fullest extent possible exercise of these rights as set forth in subdivisions (b) – [(h)] *(i)* of this section. The facility shall also consult with the residents in establishing and implementing facility policies regarding residents' rights and responsibilities.

(1) The facility shall advise each member of the staff of his or her responsibility to understand, protect and promote the rights of each resident as enumerated in this section.

(2) The facility shall fully inform the resident and the resident's designated representative both orally and in writing in a method of communication that the individuals understand the resident's rights and all rules and regulation governing resident conduct and responsibilities during the stay in the facility. Such notification shall be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, shall be acknowledged in writing. A summary of such information shall be provided by the Department and posted in the facility in large print and in language that is easily understood.

(3) The written information provided pursuant to paragraph (2) of this subdivision shall include but not be limited to a listing of those resident rights and facility responsibilities enumerated in subdivisions (b) through [(h)] *(i)* of this section. The facility's policies and procedures shall also be provided to the resident and the resident's designated representative upon request.

(4) The facility shall communicate to the resident an explanation of his or her responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of other residents.

(5) Any written information required by this Part to be posted shall be posted conspicuously in a public place in the facility that is frequented by residents and visitors, posted at wheelchair height.

Subdivisions (c) and (d) of section 415.3 of Title 10 of the NYCRR are re-lettered (d)-(e) and a new subdivision (c) is added to read as follows:

(c) Right to Information on Home and Community-Based Services. The nursing home shall ensure that all residents are provided with information on home and community-based services and community transitions programs that may be available to support the resident in returning to the community. To ensure that all residents are afforded the right to exercise their right to live in the most integrated setting, the facility shall:

(1) advise all residents upon admission, of their right to live in the most integrated and least restrictive setting, with considerations for the resident's medical, physical, and psychosocial needs;

(2) provide all residents upon admission with information on home and community-based services and community transition programs;

(3) refer all residents to the Local Contact Agency or a community-based provider of the resident or designated representative's choosing whenever the resident requests information about returning to the community, or whenever the resident requests to talk to someone about returning to the community during any state or federally mandated assessment;

(4) post in a public area of the facility, at wheelchair height, contact information for the Local Contact Agency;

(5) have staff available to discuss options for discharge planning, with consideration for the resident's medical, physical, and psychosocial needs; and

(6) ensure that all discharge activities align with subdivision (i) of this section.

Subdivision (e) of section 415.3 is re-lettered (f) and amended to read as follows:

[(e)] *(f)* Right to Clinical Care and Treatment. (1) Each resident shall have the right to:

(i) adequate and appropriate medical care, and to be fully informed by a physician in a language or in a form that the resident can understand, using an interpreter when necessary, of his or her total health status, including but not limited to, his or her medical condition including diagnosis, prognosis and treatment plan. Residents shall have the right to ask questions and have them answered;

(ii) refuse to participate in experimental research and to refuse medication and treatment after being fully informed and understanding the probable consequences of such actions;

(iii) choose a personal attending physician from among those who agree to abide by all federal and state regulation and who are permitted to practice in the facility;

(iv) be fully informed in advanced about care and treatment and of any changes in that care of treatment that may affect the resident's well-being;

(v) participate in planning care and treatment or changes in care and treatment. Residents adjudged incompetent or otherwise found to be incapacitated under the laws of the State of New York shall have such rights exercised by a designated representative who will act in their behalf in accordance with State law;

(vi) self-administer drugs of the interdisciplinary team, as defined by Section 415.11, has determined for each resident that this practice is safe.

(2) With respect to its responsibilities to the resident, the facility shall:

(i) inform each resident of the name, office address, phone numbers and specialty of the physician responsible for his or her own care.

(ii) except in a medical emergency, consult with the resident immediately if the resident is competent, and notify the resident's physician and designated representative within 24 hours when there is:

(a) an accident involving the resident which results in injury requiring professional intervention;

(b) a significant improvement or decline in the resident's physical, mental, or psychosocial status in accordance with generally accepted standards of care and services;

(c) a need to alter treatment significantly; or

(d) a decision to transfer or discharge the resident from the facility as specified in subdivision [(h)] *(i)* of this section; and

(iii) provide all information a resident or the resident's designated representative when permitted by State law, may need to give informed consent for an order not to resuscitate and comply with the provisions of section 405.53 if this Subchapter regarding orders not to resuscitate. Upon resident request the facility shall furnish a copy of the pamphlet, "Do Not Resuscitate Orders – A Guide for Patients and Families".

Subdivisions (f)-(h) of section 415.3 are re-lettered (g)-(i).

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

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

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

Regulatory Impact Statement

Statutory Authority:

Section 2800 of Article 28 of the Public Health Law provides that the Department of Health (Department) has the central and comprehensive responsibility for the development and administration of the State's policies with respect to hospital and residential health care facilities, including nursing homes, in order to provide for the protection and promotion of the health of the inhabitants of the state.

Section 2803-c of Article 28 of the Public Health Law provides, in part, that the Commissioner shall require every nursing home and facility providing health related services to adopt and make public a statement of the rights and responsibilities of the patients who are receiving care in such facilities. Section 2003-c sets forth the minimum content of such a statement and requires that each facility provide a copy of the statement to each patient prior to, or at, the time of admission to the facility.

Legislative Objectives:

The proposed rule accords with the legislative objectives of PHL § § 2800 and 2803-c, which are to protect and promote the health and rights of all nursing home residents, and to ensure that nursing home residents are made aware of their rights prior to, or at, their admission to such a facility.

Needs and Benefits:

This rule furthers the Department's efforts to promote the right of all nursing home residents to live in the most integrated setting possible.

In 1999, the United States Supreme Court, in Olmstead v. L. C. by Zimring, 527 U.S. 581 (1999), ruled that the segregation of individuals with disabilities violated title II of the Americans with Disabilities Act (ADA). The Court ruled that individuals with disabilities must be provided services through community-based organizations when (1) such services are appropriate; (2) the affected persons do not oppose community-based treatment; and (3) community-based services can be reasonably accommodated.

Since the Olmstead decision, the Department has sought to ensure that individuals are afforded the right to live in the most integrated setting possible. The Department currently oversees and operates the federally funded Money Follows the Person program, which provides transition assistance and support to those residents of nursing homes that express a

desire to return to the community. Residents are asked on at least a quarterly basis if they wish to receive information about returning to the community. Any resident that answers affirmatively is to be referred to the Local Contact Agency and connected with a Transition Specialist who will assist them with transitioning to community living, as appropriate.

To further the State's efforts to encourage and facilitate community-based living for individuals with disabilities, Governor Andrew M. Cuomo released his Able New York agenda, a multi-agency initiative aimed at enhancing accessibility to state programs and services for New Yorkers with disabilities. This proposal is part of a series of actions to support the Able New York agenda and promote community living for New Yorkers.

Costs:

Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

There will be little to no additional cost to regulated entities for the implementation of or continuing compliance with the regulation. Currently, nursing homes are required to provide a statement of residents' rights to the resident and their designated representative prior to or upon admission. This proposed regulation will require nursing homes to replace their existing resident rights materials with an amended version, requiring some cost for the printing of the materials. Nursing homes will also be required to replace their existing signage with new signage that includes the amended residents' rights.

Costs to State and Local Governments:

The proposed changes are not expected to impose any costs upon State or local governments, unless they operate a nursing home. In such cases, the impact will be the same as for regulated entities, discussed above.

Costs to the Department of Health:

The Department owns and operates five veterans' homes. The impact on these facilities will be the same as for regulated entities, discussed above.

Local Government Mandates:

The proposed regulations do not impose any new mandates on local governments, except where they operate nursing homes. In such cases, the impact will be the same as for regulated parties, discussed above.

Paperwork:

All nursing homes will be expected to replace their residents' rights signage and replace their residents' rights materials as soon as they are available from the Department. Nursing homes may be subject to review upon annual survey to ensure compliance with the rule.

Duplication:

This rule does not duplicate, overlap, or conflict with any other legal requirements of the state or federal government. This rule aligns with the federal resident rights guidelines outlines in Section 483.10 of Title 42 (Health) of Code of Federal Regulations.

Alternatives:

Alternatives considered included issuing a mandate requiring nursing facilities to provide information to all residents on the availability of home and community-based services. This alternative was not chosen as the issuance of a mandate would be duplicative of what is already required of nursing facilities. The amendment language proposed provides additional clarity to the type of information to be provided to nursing facility residents upon admission and builds upon the requirement of nursing facilities to ensure that residents are made aware of their rights prior to, or at, their admission to a nursing facility.

Federal Standards:

This rule meets the minimum standards set forth in Section 483.10 of Title 42 (Health) of Code of Federal Regulations.

Compliance Schedule:

This regulation will 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 proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

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

Job Impact Statement

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.

Higher Education Services Corporation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State Teacher Loan Forgiveness Program

I.D. No. ESC-22-19-00004-EP
Filing No. 468
Filing Date: 2019-05-10
Effective Date: 2019-05-10

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

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

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

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Notice of Emergency Adoption and Proposed Rule Making seeking to add a new section 2201.21 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for loan forgiveness awards to be made to teachers serving in high need school districts or subject areas for which a shortage of teachers exits. Eligible applicants will receive up to $5,000 per year for up to four years in loan forgiveness payments. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible applicants and award payments to eligible recipients. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Teacher Loan Forgiveness Program.

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

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

Section 2201.21 The New York State Teacher Loan Forgiveness Program.

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

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

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

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

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

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

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

(7) "Interruption of full time employment" shall mean an allowable temporary leave for a definitive length of time due to circumstances approved by the corporation, including, but not limited to, parental leave,

medical leave, death of a family member, or military duty that exceeds forty-two calendar days, excluding legal holidays, regardless of whether such absence or leave is paid or unpaid.

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

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

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

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

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

(b) Eligibility. Applicants and recipients must:

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

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

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

(c) Administration.

(1) An applicant for an award shall:

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

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

(2) A recipient of an award shall:

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

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

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

(3) The outstanding student loan debt shall:

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

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

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

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

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

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

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

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

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

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 7, 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

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

Statutory authority:

The New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate regulations and administer The New York State Teacher Loan Forgiveness Program (Program) is codified within Article 14 of the Education Law. Specifically, Part AA of Chapter 56 of the Laws of 2018 created the Program by adding a new section 679-j to the Education Law. Pursuant to subdivision 6 of section 679-j of the Education Law, HESC is required to promulgate rules and regulations for the administration of this Program.

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

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

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

Legislative objectives:

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

Needs and benefits:

Data from New York State United Teachers (NYSUT) suggests a teacher shortage is on the horizon for New York State, as well as nationally, due in part to many educators being on the verge of retirement (32 percent within the next 5 years) and a significant drop in recent years of students enrolling in teacher training programs (49 percent decrease since 2009). Further, approximately 10 percent of New York's teacher education graduates are leaving the state for employment elsewhere and 11 percent of New York teachers leave their school or profession annually; this number increases for early career teachers and those working in high-poverty areas. Former State University of New York (SUNY) Chancellor, Nancy Zimpher, predicts New York will need more than 180,000 new teachers in the next decade and the U.S. Department of Education projects New York's student enrollment will grow by 2 percent by 2024, with high-need school districts experiencing the largest increases.

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

According to a report issued in August 2016 by the U.S. Department of

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

Costs:

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

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

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

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

Local government mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

Given the statutory language as set forth in section 679-j(6) of the Education Law, a "no action" alternative was not an option.

Federal standards:

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

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Notice of Emergency Adoption and Proposed Rule Making seeking to add a new section 2201.21 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have a negative impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts by providing loan forgiveness benefits to teachers serving in high need school districts or subject areas for which a shortage of teachers exits. Providing these benefits will encourage individuals to pursue and/or maintain careers as elementary and secondary school teachers throughout New York State, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

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

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

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Notice of Emergency Adoption and Proposed Rule Making seeking to add a new section 2201.21 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have a negative impact on jobs or employment opportunities. Rather, it has potential positive impacts by providing loan forgiveness benefits to teachers serving in high need school districts or subject areas for which a shortage of teachers exits. Providing these benefits will encourage individuals to pursue and/or remain in careers as elementary and secondary school teachers throughout New York State.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State Masters-in-Education Teacher Incentive Scholarship Program

I.D. No. ESC-22-19-00005-EP
Filing No. 469
Filing Date: 2019-05-10
Effective Date: 2019-05-10

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

Proposed Action: Addition of section 2201.17 to Title 8 NYCRR.

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

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") Notice of Emergency Adoption and Proposed Rule Making seeking to add a new section 2201.17 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 2016 term. The statute provides for tuition benefits to college-going students attending a New York State public institution of higher education who pursue a graduate program of study in an education program leading to a career as a teacher in public elementary or secondary education. Decisions on applications for this Program are made prior to the beginning of the term, which generally begins in August. Therefore, emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants and award payments to eligible recipients. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Masters-in-Education Teacher Incentive Scholarship Program.

Purpose: To implement the New York State Masters-in-Education Teacher Incentive Scholarship Program.

Text of emergency/proposed rule: New section 2201.17 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.17 New York State Masters-in-Education Teacher Incentive Scholarship Program.

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

(1) "Academic excellence" shall mean the attainment of a cumulative grade point average of 3.5 or higher upon completion of an undergraduate program of study from a college or university located within New York State.

(2) "Approved master's degree in education program" shall mean a program registered at a New York State public institution of higher education pursuant to Part 52 of the Regulations of the Commissioner of Education.

(3) "Award" shall mean a New York State Masters-in-Education Teacher Incentive Scholarship Program award pursuant to section 669-f of the New York State education law.

(4) "Classroom instruction" shall mean elementary and secondary education instruction, as required by the New York State Education Department, including enrichment and supplemental instruction that may be offered to a subset of students. Classroom instruction shall not include support services, such as counseling, speech therapy or occupational therapy services.

(5) "Elementary and secondary education" shall mean prekindergarten through grade 12 in a public school recognized by the board of regents or the university of the state of New York, including charter schools authorized pursuant to article fifty-six of the education law.

(6) "Full-time study" shall mean the number of credits required by the institution in each term of the approved master's degree in education program. A recipient may complete fewer credits than required for full-time study if he or she is in their last term and fewer credit hours are necessary to complete their degree program. In this case, the award amount shall be based on the tuition reported by the institution.

(7) "Initial certification" shall mean any certification issued pursuant to part 80 of this title which allows the recipient to teach in a classroom setting on a full-time basis.

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

(9) "Program" shall mean the New York State Masters-in-Education Teacher Incentive Scholarship Program codified in section 669-f of the education law.

(10) "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, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.

(11) "Rank" shall mean an applicant's position, relative to all other applicants, based on cumulative grade point average upon completion of an undergraduate program of study from a college or university located within New York State.

(12) "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.

(13) "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-f of the Education Law; (ii) maintained full-time status as defined in this section; and (iii) possessed a cumulative grade point average of 3.5 or higher as of the date of the certification by the institution.

(14) "Teach in a classroom setting on a full-time basis" shall mean continuous employment providing classroom instruction in a public elementary or secondary school, including charter schools, Boards of Cooperative Educational Services (BOCES) and public pre-kindergarten programs, located within New York State, for at least 10 continuous months, each school year, for a number of hours to be determined by the labor contract between the teacher and employer, or if none of the above apply, the chief administrator of the school.

(b) Eligibility. An applicant must satisfy the eligibility requirements contained in both sections 669-f and 661 of the education law, provided however that an applicant for this Program must meet the good academic standing requirements contained in section 669-f 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 pursuant to section 669-f of the education law for the academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic term for which payment is sought. First priority shall include applicants who received payment of an award pursuant to section 669-f of the education law, were subsequently granted an interruption in graduate study by the corporation for the academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic term 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 up to five hundred 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 rank, starting at the applicant with the highest cumulative grade point average beginning in the 2016-17 academic year. In the event of a tie, distribution of any remaining funds shall be done 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 not more than four academic terms, or its equivalent, of full-time graduate study leading to certification as a public elementary or secondary classroom teacher, including charter schools, excluding any allowable interruption of study;

(iv) facilitate the submission of information from their employer attesting to the recipient's job title, the full-time work status of the recipient, 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 669-f 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 grade point average and other eligibility requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships limited to tuition, as authorized by section 669-f 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 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 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 as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 7, 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

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

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Masters-in-Education Teacher Incentive Scholarship Program ("Program") is codified within Article 14 of the Education Law. In particular, Subpart A of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-f to the Education Law. Subdivision 6 of section 669-f of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

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

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

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

Legislative objectives:

The Education Law was amended to add a new section 669-f to create the "New York State Masters-in-Education Teacher Incentive Scholarship

Program" (Program). The objective of this Program is to incent New York's highest-achieving undergraduate students to pursue teaching as a profession.

Needs and benefits:

According to a recent Wall Street Journal article, many experts call teacher quality the most important school-based factor affecting learning. Studies underscore the impact of highly effective teachers and the need to put them in classrooms with struggling students to help them catch up. To improve teacher quality, New York State has significantly raised the bar by modifying the three required exams and adding the Educative Teacher Performance Assessment, known as edTPA, as part of the licensing requirement for all teachers. To supplement this effort, this Program aims to incentivize top undergraduate students to pursue their master's degree in New York State and teach in public elementary and secondary schools (including charter schools) across the State.

The Program provides for annual tuition awards to students enrolled full-time, at a New York State public institution of higher education, in a master's degree in education program leading to a career as a classroom teacher in elementary or secondary education. Eligible recipients may receive annual awards for not more than two academic years of full-time graduate study. The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending a graduate program full-time at the State University of New York (SUNY). Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Masters-in-Education Teacher Incentive Scholarship Program award must sign a service agreement and agree to teach in the classroom at a New York State public elementary or secondary school, which includes charter schools, for five years following completion of their master's degree. 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. There are no application fees, processing fees, or other costs to the applicants of this Program.

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

c. The maximum cost of the Program to the State is $1.5 million in the first 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, together with supporting documentation, for eligibility. Each year recipients will file an electronic request for payment together with supporting documentation for up to two years of award payments. 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 the State Education Department, the State University of New York and the City University of New York with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal undergraduate unsubsidized Stafford loan rate in the event that the award is converted to 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") Notice of Emergency Adoption and Proposed Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary 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 Notice of Emergency Adoption and Proposed Rule Making, seeking to add a new section 2201.17 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 students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which benefits rural areas around the State as well.

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

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Notice of Emergency Adoption and Proposed Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State Get on Your Feet Loan Forgiveness Program

I.D. No. ESC-22-19-00006-EP
Filing No. 470
Filing Date: 2019-05-10
Effective Date: 2019-05-10

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

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

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

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

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

This regulation implements a statutory student financial aid program providing for awards to be made to students who receive their undergradu-

ate degree from a college or university located in New York State in December 2014 and thereafter. The statute provides for student loan relief to such college graduates who continue to live in New York State upon graduation, earn less than $50,000 per year, participate in either the federal Pay as You Earn (PAYE), Revised Pay as You Earn (REPAYE) or Income Based Repayment (IBR) program, which cap a federal student loan borrower's payments at 10 percent of discretionary income, and apply for this program within two years after graduating from college. Eligible applicants will have up to twenty-four payments made on their behalf towards their federal income-based repayment plan commitment. Therefore, emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible applicants and award payments to eligible recipients. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Administration.

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

(2) A recipient of an award shall:

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

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

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

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

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

(d) Amounts and duration.

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

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

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

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

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

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

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

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

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

(3) Repayment must be made within five years.

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

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 7, 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

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

Statutory authority:

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

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State

financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

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

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

Legislative objectives:

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

Needs and benefits:

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

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

Costs:

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

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

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

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

Local government mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal standards:

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

Compliance schedule:

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

Regulatory Flexibility Analysis

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

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

Rural Area Flexibility Analysis

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

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

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

Job Impact Statement

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

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

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

NYS Part-Time Scholarship (PTS) Award Program

I.D. No. ESC-22-19-00007-EP

Filing No. 471

Filing Date: 2019-05-10

Effective Date: 2019-05-10

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

Proposed Action: Addition of section 2201.20 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 667-c-1

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) Notice of Emergency Adoption and Proposed Rule Making seeking to add a new section 2201.20 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 2017-18 academic year. The statute provides for tuition benefits to college-going students pursuing their undergraduate studies at a community college at the State University of New York or the City University of New York. Decisions on applications for student financial aid programs are customarily made prior to the beginning of the term, which generally starts in August. Therefore, emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants and award payments to eligible 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 Part-Time Scholarship (PTS) Award Program.

Purpose: To implement the NYS Part-Time Scholarship (PTS) Award Program.

Text of emergency/proposed rule: New section 2201.20 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.20 New York State Part-Time Scholarship (PTS) Award Program.

(a) Definitions. As used in Education Law, section 667-c-1 and this section, the following terms shall have the following meanings:

(1) "Good academic standing" shall mean having a minimum cumulative grade point average of 2.0.

(2) "Interruption of study" 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, death of a family member, medical leave, military service, service in the Peace Corps or parental leave.

(3) "Program" shall mean the New York State Part-time Scholarship (PTS) Award Program codified in Education Law, section 667-c-1.

(b) Eligibility. An applicant must satisfy the requirements of Education Law, section 667-c-1 and the general eligibility requirements provided in Education Law, section 661.

(c) 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) For purposes of determining priority, financial need shall be established based on the federal expected family contribution reflected on the applicant's federal student aid report, with the lowest expected family contribution evidencing the greatest financial need.

(3) Recipients of an award shall:

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

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

(4) The corporation shall maintain data relating to the performance of award recipients including, but not limited to, degree completion rates. All such data shall be deemed confidential and the corporation shall only disclose aggregate data unless otherwise required by law.

(d) Awards.

(1) The amount of the award shall be determined in accordance with section 667-c-1 of the education law.

(2) A recipient of an award must remain in good academic standing, as defined in this section, and remain continuously enrolled (excluding summer and winter terms) to be eligible for payment of future awards, excluding any allowable interruption of study.

(3) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time after verification and certification by the institution of the recipient's grade point average and other eligibility requirements.

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 August 7, 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

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

Statutory authority:

The New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate regulations and administer the NYS Part-time Scholarship (PTS) Award Program (Program) is codified within Article 14 of the Education Law. In particular, Part KKK of Chapter 59 of the Laws of 2017 created the Program by adding a new section 667-c-1 to the Education Law. Subdivision 6 of section 667-c-1 of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

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

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

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

Legislative objectives:

The Education Law was amended to add a new section 667-c-1 to create the Program, which is aimed at reducing tuition expenses for students who attend a State University of New York (SUNY) or City University of New York (CUNY) community college.

Needs and benefits:

Many studies have underscored the necessity of a college degree in today's global economy. The Center on Education and the Workforce (CEW) at Georgetown University found that 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. Furthermore, 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 a high school diploma, the rapidly rising college costs and mounting student loan debt, this Program awards students attending a public community college up to $1,500 per semester to offset their tuition costs. To be eligible for a Program award, students must be enrolled in at least six but less than 12 credits per semester at a SUNY or CUNY community college and maintain a grade point average of 2.0. Payments will be made directly to colleges on behalf of students upon certification of their eligibility at the end of the academic term.

Costs:

a. The estimated cost to the agency for the implementation of, or continuing compliance with this rule is $719,344.

b. The maximum cost of the program to the State is $3,129,000 in the first 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 (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 together with supporting documentation for each year they wish to receive an award up to and including two consecutive years of eligibility.

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 at SUNY and CUNY with regard to this Program. Several alternatives were considered in the drafting of this regulation, such as the definition of financial need. Given the statutory language as set forth in section 667-c-1 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) Notice of Emergency Adoption and Proposed Rule Making, seeking to add a new section 2201.20 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 community college at the State University of New York or City University of the State of New York. 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 community college students with additional tuition award benefits. Providing students with direct financial assistance will encourage them to attend college in New York State, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Notice of Emergency Adoption and Proposed Rule Making, seeking to add a new section 2201.20 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 by providing community college students with additional tuition award benefits. Providing students with direct financial assistance will encourage them to attend college in New York State, which benefits rural areas around the State as well.

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

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Notice of Emergency Adoption and Proposed Rule Making seeking to add a new section 2201.20 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 by providing community college students with additional tuition award benefits. Providing students with direct financial assistance will encourage them to attend college in New York State and possibly seek employment opportunities in the State as well, which will benefit the State.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. ESC-22-19-00008-EP
Filing No. 472
Filing Date: 2019-05-10
Effective Date: 2019-05-10

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

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

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

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

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

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2015 term. The statute provides New York high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in New York State. Five thousand awards, of $500 each, will be granted annually in 2015-16 and 2016-17. Therefore, emergency adoption is necessary to avoid adverse impact on the processing of award payments to eligible recipients. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

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

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

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

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

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

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

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

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

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

(b) Eligibility. An applicant must:

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

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

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

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

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

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

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

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

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

(d) Administration.

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

(2) Recipients of an award shall:

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

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

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

(e) Awards.

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

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

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

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 7, 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

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

Statutory authority:

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

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

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

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

Legislative objectives:

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

Needs and benefits:

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

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

Costs:

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

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

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

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

Local government mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal standards:

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

Compliance schedule:

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

Regulatory Flexibility Analysis

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

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

Rural Area Flexibility Analysis

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

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

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

Job Impact Statement

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

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

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Home and Community Based Services

I.D. No. PDD-11-19-00001-A

Filing No. 502

Filing Date: 2019-05-14

Effective Date: 2019-05-29

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

Action taken: Addition of Subpart 636-2; amendment of section 633.4 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16

Subject: Home and Community Based Services.

Purpose: Establishes a regulatory framework for delivery and support of HCBS in a way that encourages and supports the service recipient.

Text or summary was published in the March 13, 2019 issue of the Register, I.D. No. PDD-11-19-00001-P.

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

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

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

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Person Centered Planning: Care Management and Home and Community Based Services

I.D. No. PDD-22-19-00010-P

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

Proposed Action: Amendment of Subpart 636-1 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 13.15(a) and 16.00

Subject: Person Centered Planning: Care Management and Home and Community Based Services.

Purpose: To ensure consistency with person-centered planning regulations.

Text of proposed rule: Subdivision 636-1.1(a) is amended as follows:

(a) This Subpart applies to:

(1) [OPWDD funded Home and Community Based Services (HCBS) Medicaid services; and] *Medicaid Home and Community Based Services (HCBS) that are operated, certified, funded, or subject to oversight by OPWDD;* and

(2) [OPWDD funded service coordination services,] *Care Management,* by whatever name known*,* [(e.g., Medicaid Service Coordination),] *that is subject to oversight by OPWDD and* provided to individuals who receive [OPWDD funded HCBS Medicaid services.] *HCBS that are operated, certified, funded, or subject to oversight by OPWDD.*

Subdivision 636-1.2(b) is amended as follows:

(b) A person-centered planning process is required for developing the person-centered service plan (see section 636-1.3 of this subpart), including the HCBS Waiver service [habilitation] plan, with the individual and parties chosen by the individual. The person-centered planning process involves:

Subdivision 636-1.3(a) is amended as follows:

(a) The person-centered service plan is created using the planning process described in section 636-1.2 of this subpart. The person-centered service plan may also be known as the individualized service plan (ISP, see definition in section 635-99.1 of this Title) *or Life Plan*.

Subdivision 636-1.3(b) is amended as follows:

(b) The individual's [service coordinator] *Care Manager* must develop a person-centered service plan with the individual. The plan must include and document the following:

Paragraph 636-1.3(b)(7) is amended as follows:

(7) if an individual resides in a certified residential setting, document that the residence was chosen by the individual, and document the alternative residential settings considered by the individual, including alternative residential settings that are available to individuals without disabilities (Note: The setting chosen by the individual is integrated in, and supports full access of individuals receiving services to the [greater] *broader* community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community [having] *with* the same degree of access [to] *as* the *broader* community [as individuals not receiving services]. The individual may choose service and support options that are available to individuals without disabilities for his or her residence and other areas of his or her life);

Subdivision 636-1.3(c) is amended as follows:

(c) The [service coordinator] *Care Manager* must develop the person-centered service plan in a way that is understandable to the individual and parties chosen by the individual. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to the individual, to the extent possible, and parties chosen by the individual.

Subdivision 636-1.3(e) is amended as follows:

(e) The [service coordinator] *Care Manager* must distribute the person-centered service plan to the individual and parties involved in the implementation of the plan.

Subdivision 636-1.3(f) is amended as follows:

(f) The individual, parties chosen by the individual, the service provider, and [service coordinator] *Care Manager* must review the person-centered service plan described in subdivision (b) of this section and [subdivisions 636-1.4(c) and (d)] *paragraphs 636-1.4(a)(3) and (4)* of this subpart, and the [service coordinator] *Care Manager* must revise such plan if necessary, as follows:

Subdivision 636-1.4(a) is amended as follows:

(a) *Effective before October 1, 2021:*

(1) This section only applies to HCBS Medicaid Waiver services in settings certified by OPWDD. (Note: See section 633.16 of this Title for documentation requirements concerning person-centered behavioral intervention and section 633.4 of this Title for documentation requirements concerning modifications of rights of individuals receiving services that are not duplicated in *sub*paragraphs [(b)(1)-(4)] *636-1.4(a)(2)(i)-(iv)* of this section.)

Existing subdivisions 636-1.4(b) through 636-1.4(d) are renumbered to be paragraphs 636-1.4(a)(2) through 636-1.4(a)(4).

Renumbered paragraph 636-1.4(a)(2) is amended as follows:

(2) Modifications to the rights identified in [paragraphs (1)-(4)] *subparagraphs (i)-(iv)* of this [subdivision] *paragraph* of an individual receiving services in a setting described in [subdivision (a)] *paragraph (1)* of

this [section] *subdivision* must be supported by a specific assessed need and justified in the individual's person-centered service plan *or other planning/service related document(s)*:

(i) Each individual's residence is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under [the] applicable landlord/tenant law. For a residence [to] *in* which landlord/tenant laws do not apply, there must be a lease, residency agreement, or other form of written agreement for each individual that provides for eviction processes and appeals comparable to those provided under [the] applicable landlord/tenant law.

(ii) Each individual [has] *must have* privacy in his or her [sleeping or living unit] *residence and bedroom to the extent applicable*.

(a) [Units] *Residences and bedrooms within residences must* have entrance doors lockable by the individual, with only appropriate [staff] *parties* having keys*/access* to doors *as needed*.

(b) The individual sharing a [unit has] *residence or bedroom must have* a choice of roommates in that setting.

(c) The individual [has] *must have* freedom to furnish and decorate his or her [sleeping or living unit] *residence and bedroom* within the lease or other agreement.

(iii) Each individual [has the] *must have* freedom and support to control his or her own schedules and activities, and [has] *must have* access to food at any time.

(iv) Each individual [is] *must be* able to have visitors of his or her choosing at any time.

Renumbered paragraph 636-1.4(a)(3) is amended as follows:

(3) The [service coordinator] *Care Manager* must ensure documentation of the following in the individual's person-centered service plan *or other planning/service related document(s)*:

Existing paragraphs 636-1.4(c)(1) through 636-1.4(c)(8) are renumbered to be subparagraphs 636-1.4(a)(3)(i) through 636-1.4(a)(3)(viii).

Renumbered paragraph 636-1.4(a)(4) is amended as follows:

(4) In the event that a rights modification affects another individual receiving services in the setting who does not require a rights modification, the [service coordinator] *Care Manager* must ensure documentation of the following in such individual's person-centered service plan *or other planning/service related document(s)*:

Existing paragraphs 636-1.4(d)(1) through 636-1.4(d)(3) are renumbered to be subparagraphs 636-1.4(a)(4)(i) through 636-1.4(a)(4)(iii).

A new subdivision 636-1.4(b) is added as follows:

(b) Effective beginning October 1, 2021:

(1) This section applies to HCBS Medicaid Waiver services in settings operated or certified by OPWDD and in other provider owned or controlled residential and non-residential settings.

(Note: Providers subject to section 633.16 of this Title must consult that section for additional documentation requirements concerning person-centered behavioral intervention. Providers subject to section 633.4 of this Title must consult that section for documentation requirements concerning modifications of rights of individuals receiving services that are not duplicated in subparagraphs 636-1.4(b)(2)(i)-(iv) of this section.)

(2) Modifications to the rights identified in subparagraphs (i)-(iv) of this paragraph of an individual receiving services in a setting described in paragraph (1) of this subdivision must be supported by a specific assessed need and justified in the individual's person-centered service plan or other planning/service related document(s):

(i) The individual's residence is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under applicable landlord/tenant law. For a residence in which landlord/tenant laws do not apply, there must be a lease, residency agreement, or other form of written agreement for the individual that provides for eviction processes and appeals comparable to those provided under applicable/landlord tenant law.

(ii) The individual must have privacy in his or her residence and bedroom to the extent applicable.

(a) Residences and bedrooms within residences must have entrance doors lockable by the individual, with only appropriate parties having keys/access to doors as needed.

(b) The individual sharing a residence or bedroom must have a choice of roommates in that setting.

(c) The individual must have freedom to furnish and decorate his or her residence and bedroom within the lease or other agreement.

(iii) The individual must have freedom and support to control his or her own schedules and activities, and must have access to food at any time consistent with the same or similar settings for the broader community.

(iv) The individual must be able to have visitors of his or her choosing at any time consistent with the same or similar settings for the broader community.

(3) The Care Manager must ensure there is documentation of the following in the individual's person-centered service plan or other service/planning related document(s):

(i) a specific and individualized assessed need underlying the reason for the modification;

(ii) the positive interventions and supports used prior to any modifications;

(iii) less intrusive methods of meeting the need that were tried but did not work;

(iv) a clear description of the condition that is directly proportionate to the specific assessed need;

(v) a regular collection and review of data to measure the ongoing effectiveness of the modification;

(vi) established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

(vii) an assurance that interventions and supports will cause no harm to the individual; and

(viii) the informed consent of the individual and/or the party chosen by the individual to assist the individual in decision-making, except to the extent that decision-making authority is conferred on another by state law.

(4) In the event that a rights modification affects another individual receiving services in the setting who does not require a rights modification, the Care Manager must ensure there is documentation of the following in the individual's person-centered service plan or other planning/service related document(s):

(i) the impact that the rights modification has on the individual;

(ii) the efforts taken to lessen the impact on the individual; and

(iii) the informed consent of the individual and/or the party chosen by the individual to assist the individual in decision-making, except to the extent that decision-making authority is conferred on another by state law.

Subdivision 636-1.5(a) is amended as follows:

(a) The [service coordinator] *Care Manager* must give notice of the individual's right to a person-centered planning process in accordance with section 636-1.2 of this [S]*s*ubpart and to a person-centered plan in accordance with section 636-1.3 of this [S]*s*ubpart, and of the right to object to services pursuant to section 633.12 of this Title, to the individual and the person upon whom decision-making authority is conferred by state law (see [section] *paragraph* 636-1.2[a][1] of this subpart), if any, *prior to the initiation of the person-centered planning process and development of the plan.* [in the following manner:

(1) for individuals who do not have an ISP in place on November 1, 2015, the service coordinator must give written notice prior to the initiation of the person-centered planning process and deelopment of the plan; or

(2) for individuals who have an ISP in place on November 1, 2015, the service coordinator must give written notice at the time of the individual's next ISP review.]

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

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

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

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

2. Legislative objectives: The proposed regulations further legislative

objectives embodied in MHL sections 13.07, 13.09(b), and 16.00. The regulations amend Title 14 New York Codes Rules and Regulations (NYCRR) subpart 636-1 relating to Person Centered Planning.

3. Needs and benefits: The proposed regulations amend Title 14 NYCRR Subpart 636-1 to make technical changes regarding person centered planning of home and community-based services (HCBS) and expand applicability of those rights to individuals receiving services in non-residential settings where HCBS services are delivered. These amended regulations will conform to the Federal Home and Community Based Settings rule (42 CFR 441.301) and further comply with federal requirements for state regulatory adoption prior to the March 2022 enforcement date.

4. Costs:

a. Costs to the Agency and to the State and its local governments:

There is no anticipated impact on Medicaid expenditures as a result of the proposed regulations. The regulations will ensure HCBS service recipients have services planned according to their individual needs.

These regulations will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

There are no anticipated costs to OPWDD in its role as a provider of services to comply with the new requirements. The proposed regulations may result in increased Federal reimbursement to providers that are in compliance with the federal rules and provide these services to an individual.

b. Costs to private regulated parties:

There are no anticipated costs to regulated providers to comply with the proposed regulations. The amendments/additions merely allow services to be delivered in a way that does not isolate service recipients from the broader community and extends those services to individuals in non-residential settings, to comply with Federal rules.

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

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

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

8. Alternatives: OPWDD did not consider any other alternatives to the proposed regulations. The regulations are necessary to comply with Federal rules.

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

10. Compliance schedule: OPWDD plans to adopt the regulations as final upon adoption. The effective date for enforcement of the regulation will vary. The text of the regulation specifies which pieces are effective upon adoption and which regulations would be effective for enforcement on October 1, 2021, prior to the federal enforcement date of March 2022. The proposed regulations were discussed with and reviewed by representatives of providers in advance of this proposal. OPWDD expects that providers will be in compliance with the proposed requirements at the time of their effective date(s).

Regulatory Flexibility Analysis

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

The proposed regulation makes technical changes to comport with the HCBS settings rule (42 CFR 441.301) and terminology changes due to the creation of Care Coordination Organizations. It further serves to expand the rights of individuals receiving services to be applicable in non-residential settings where HCBS services are provided. The regulation proposed will not result in costs or new compliance requirements for regulated parties due to the fact that these requirements coincide with existing federal requirements. The regulation will not have any adverse effects on providers of small business and local governments.

Rural Area Flexibility Analysis

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

The proposed regulation is amending Title 14 NYCRR Subpart 636-1 to make technical changes to the language (Care Manager, rather than service coordinator), in order to develop a person-centered service plan with the individual receiving services through the Home and Community Based Services (HCBS) that are operated, certified, funded, or subject to review by OPWDD. In addition, to comport with federal regulation 42 CFR 441.301 effective October 1, 2021, the rights of individuals receiving HCBS services will be expanded to apply in non-residential settings where HCBS is delivered. The regulation will not result in an adverse impact on rural communities because the regulation only proposes technical terminology changes and changes to those providing HCBS services. The proposed regulation will not result in costs for regulated parties. These requirements coincide with existing federal requirements thus, no new compliance is required by the state. Therefore, the amendments will not have any adverse effects on providers in rural areas and local governments.

Job Impact Statement

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

The proposed amendments to Title 14 NYCRR Subpart 636-1 make technical changes to the language in order to comport with federal regulation, 42 CFR 441.301, and terminology used in other parts of Title 14. The changes include requiring a Care Manager, rather than a service coordinator, to develop a person-centered service plan with the individual receiving HCBS services. In addition, effective October 1, 2021, the rights of individuals receiving HCBS waiver services will apply to non-residential settings where HCBS is delivered. The regulation will not result in new compliance requirements for providers, only consistency with those already required by federal law. Additionally, the scope of the regulation is limited to HCBS settings. The regulation will not have a substantial impact on jobs or employment opportunities in New York State.

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Proposed Major Increase in KEDNY's Gas Delivery Revenues by $236.8 Million (13.6% Increase in Total Revenues)

I.D. No. PSC-22-19-00011-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 proposal filed by The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) to make changes in rates, charges, rules and regulations as contained in Tariff Schedules P.S.C. No. 12 — Gas.

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

Subject: Proposed major increase in KEDNY's gas delivery revenues by $236.8 million (13.6% increase in total revenues).

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

Public hearing(s) will be held at: 10:00 a.m., January 21, 2020 at Department of Public Service, Three Empire State Plaza, Albany, NY. (Evidentiary Hearing)*

*On occasion, the evidentiary hearing date may be rescheduled or postponed. In that event, public notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 19-G-0309.

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.

Substance of proposed rule: The Commission is considering a proposal, filed on April 30, 2019 by The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY), to increase its gas delivery revenues for the rate year ending March 31, 2021 as contained in P.S.C. No. 12 — Gas.

KEDNY is requesting an increase of approximately $236.8 (a 19% increase, or a 13.6% increase in total revenues) in gas delivery revenues.

KEDNY anticipates total average monthly bills to increase by approximately $16.66 (17.78% on the delivery portion of the bill or 11.99% on the total bill) for an average residential heating customer using 100 therms per month. The major cost drivers of this rate filing include increasing property taxes, environmental remediation costs, and other operating costs associated with working in an urban environment. The initial suspension period for the proposed filing runs through March 28, 2020.

The full text of the proposal 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 also 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-G-0309SP1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Proposed Major Rate Increase in KEDLI's Gas Delivery Revenues by $49.4 Million (4.1% Increase in Total Revenues)

I.D. No. PSC-22-19-00014-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 a proposal filed by KeySpan Gas East Corporation d/b/a National Grid (KEDLI) to make changes in rates, charges, rules and regulations as contained in Tariff Schedule P.S.C. No. 1 — Gas.

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

Subject: Proposed major rate increase in KEDLI's gas delivery revenues by $49.4 million (4.1% increase in total revenues).

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

Public hearing(s) will be held at: 10:00 a.m., January 21, 2020 at Department of Public Service, 3 Empire State Plaza, Albany, NY. (Evidentiary Hearing)*

*On occasion, the evidentiary hearing date may be rescheduled or postponed. In that event, public notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 19-G-0310.

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.

Substance of proposed rule: The Commission is considering a proposal, filed on April 30, 2019 by KeySpan Gas East Corporation d/b/a National Grid (KEDLI), to increase its gas delivery revenues for the rate year ending March 31, 2021 as contained in P.S.C. No. 1 — Gas.

KEDLI is requesting an increase of approximately $49.4 (a 6% increase in delivery revenues or a 4.1% increase in total revenues). KEDLI anticipates total average monthly bills to increase by approximately $7.14 (6.92% on the delivery portion of the bill or 5.15% on the total bill) for the average residential heating customer using 100 therms per month. The major cost drivers of this rate filing include increasing property taxes, environmental remediation costs, and other operating costs. The initial suspension period for the proposed filing runs through March 28, 2020.

The full text of the proposal 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 also resolve related matters.

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

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

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

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

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

(19-G-0310SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-22-19-00012-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 the notice of intent of VBG 990 AOA LLC to submeter electricity at 70 West 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: 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 VBG 900 AOA LLC, on April 25, 2019, to submeter electricity at 70 West 37th Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison).

By stating its intent to submeter electricity, VBG 990 AOA 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 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-0300SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-22-19-00013-P

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

Proposed Action: The Commission is considering the notice of intent of 22nd and 11th Associates, L.L.C. to submeter electricity at 555 West 22nd 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: 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 22nd and 11th Associates, L.L.C. on April 26, 2019, requesting authorization to submeter electricity at 555 West 22nd Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison).

In the notice of intent, 22nd and 11th Associates L.L.C 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-0303SP1)

Workers' Compensation Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Group Self-Insured Trusts that are Inactive but not Insolvent

I.D. No. WCB-22-19-00009-P

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

Proposed Action: Amendment of section 317.20 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117, 50(3-a); Public Authorities Law, section 1680-q

Subject: Group self-insured trusts that are inactive but not insolvent.

Purpose: Provide assistance with inactive but not insolvent group self-insured trusts to purchase ALPs to wind down liabilities.

Text of proposed rule: Section 317.20 of Title 12 NYCRR is hereby amended to read as follows:

Section 317.20. Insolvent; assessments; termination and dissolution of the group

(a) [Definition.] Insolvent, in the context of a determination by the Chair, or his or her designee, to levy an assessment pursuant to the provisions of Workers' Compensation Law section 50(5)(g), shall mean the inability of a private group self-insurer, to pay its outstanding lawful obligations under the Workers' Compensation Law as they mature in the regular course of business, as may be shown by:

(1) the self-insurer being under-funded as defined in Workers' Compensation Law, section 50 (3-a); and

(2) the sum of the self-insurer's assets, as defined by section 317.2(n) of this Part, plus the available security deposit held by the Chair pursuant to Workers' Compensation Law, section 50(3-a) and section 317.5 of this Part, being less than the total cost of all of the self-insurers anticipated workers' compensation liabilities, as defined by section 317.2(o) of this Part, that will accrue within the succeeding six months.

(b) The Chair shall levy an assessment against all private group self-insurers, pursuant to Workers' Compensation Law, section 50(5)(g), whenever he or she, or his or her designee, determines that workers' compensation benefits may be unpaid by reason of the default of an insolvent private group self-insurer as defined in subdivision (a) of this section.

(c) [Termination and dissolution of the group.] The group shall continue for such time as may be necessary to accomplish the purpose for which it was created, and so long as all requirements to maintain authorization as set forth in this Part continue to be met. Upon termination of the group's status as a group self-insurer, the group will continue to administer the workers' compensation liabilities incurred by the group. *Such a group shall be designated terminated.*

(1) In the event a terminated group is deemed underfunded by the Chair, the group remains subject to provisions of this Part relative to underfunded groups. In connection therewith the group may be required to levy an assessment upon the group members as part of an overall plan of dissolution designed to extinguish all of the group's accrued liabilities. Such plan should contemplate the execution of an assumption of workers' compensation liability insurance policy securing the group's contingent and future liability arising out of prior workers' compensation claims.

(2) As part of a plan of dissolution a terminated group may apply to the Chair for financial assistance in meeting any unfunded claims obligations as defined in Workers' Compensation Law section 50(3-a). The unfunded claims liabilities set forth in such plan shall be quantified based upon the quoted price for an assumption of liability policy issued by an insurance carrier authorized to execute same. In no event shall the Chair be required to provide any group qualifying under this section more than forty percent of the cost of an assumption of workers' compensation liability policy premium nor more than fifty million dollars regardless of the percentage of the assumption of workers' compensation liability policy premium. Subject to this maximum threshold the Chair, in his or her discretion, may supply funding to the group in the amount of such unfunded claims obligations provided the following criteria have been met by the group:

(i) The group has submitted a dissolution plan setting forth the manner in which the group shall wind down all of its remaining obligations and operations including, but not limited to, the execution of an assumption of workers' compensation liability insurance policy, the issuance of releases of joint and several liability and/or the return of funds to the employer members of the group who supply the agreements set forth in paragraph three below. Said plan shall include the retainer of independent legal counsel for such purpose and shall, to the extent that the Board requires additional funds to fully recoup any financial assistance provided hereunder, provide for the remittance of funds from the group to the Board, from the members of the group that do not supply the agreements referenced in paragraph three below. The Chair shall review said plan for reasonableness and approve said plan where appropriate; and

(ii) The group has levied an assessment on all of the group's members in an amount sufficient to discharge the full value of the group's unfunded claims liability and all other remaining liabilities of the group.

(3) In the event that a terminated group meets the terms and conditions enumerated in paragraph two above, the group shall provide, in a form acceptable to the Chair, signed and notarized repayment agreements and confessions of judgment in favor of the workers' compensation board from the former members of the group in the aggregate amount of the funds sought by the group. In connection therewith, if deemed necessary by the Chair, the group shall reconcile the previously levied assessment to account for any members of the group that have been deemed unable to contribute to the group's liabilities and/or otherwise participate in the plan of dissolution.

(4) Upon the receipt and approval of agreements referenced above, the Chair shall use reasonable efforts to facilitate the group's execution of an assumption of liability policy, including, where appropriate, releasing the security held by the Chair on behalf of the group in furtherance of the execution of the assumption of liability policy and providing the funding referenced in paragraph two above to the assumption of liability policy carrier. In connection therewith, the group shall remain liable to provide all additional funding for the execution of the assumption of liability policy including but not limited to all required premium surcharges as set forth in Workers' Compensation Law section 50(3-a)(7)(a). In the event that the assumption of liability policy is ultimately disapproved by the superintendent of the department of financial services or is not executed for any other reason, the Chair shall be under no obligation to provide funding assistance to the terminated group and shall retain the security held by the Chair on behalf of the group.

(d) Upon failure on the part of the group to properly administer such liabilities, the Chair shall assume the administration and final distribution of the group's assets and liabilities.

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

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

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

Regulatory Impact Statement

1. Statutory Authority

The statutory authority for this rule comes from § 50(3-a) of the Workers' Compensation Law (WCL), and § 1680-q of the Public Authorities Law.

2. Legislative Objectives

Group self-insured trusts were designed as a way for smaller companies to be able to receive the benefit of self-insuring for workers' compensation insurance. However, mismanagement by the groups key agents and excessive premium discounting led to a crisis of group self-insured trust insolvencies in 2008. This led to amendments to the law and regulations to manage the significant liabilities of the insolvent groups – at one point estimated at approximately one billion dollars.

The Board has assumed administration of 25 insolvent groups, most of which have entered into long term repayment plans with the Board. However, there are 27 "inactive but not insolvent" groups currently managing their own liabilities, most of which are attempting to wind down operations. The proposed regulation allows the Board to assist in funding a portion of an assumption of loss policy ("ALP") consistent with section 1680-q of the Public Authorities Law and section 50(3-a)(2)(b) of the WCL. An ALP quantifies a group's liabilities with certainty, allowing the exact cost to be known.

3. Needs and Benefits

The proposed regulation would permit small and mid-sized businesses that are jointly and severally liable for their obligations to meet these obligations themselves and avoid becoming insolvent and shifting those obligations to unrelated self-insurers and/or the State.

The proposed rule assists these groups in procuring sufficient funds to purchase an ALP in order to wind down their liabilities. The ALP assures that claimants receive benefits they are entitled to without the risk of the groups becoming insolvent and unable to pay – thereby requiring the State to manage the liabilities of these groups.

These amendments represent a step toward finally resolving the crisis that began in 2008 and a way for these inactive but not insolvent groups to manage their liabilities and avoid the liabilities becoming the responsibility of other unrelated self-insurers and/or the State as a whole.

4. Costs

Because the Workers' Compensation Board will be facilitating the purchase of an ALP for these groups, there is an upfront cost to the Board. However, the proposal also includes provisions for repayment agreements, as well as requiring confessions of judgment for the amount of any financial assistance supplied by the Board. In the event of an insolvency, the administration of these liabilities would have become the obligation of the State in any event, but without the benefit of the financial security provided by repayment agreements and confessions of judgment.

The proposal places limits on the costs of ALPs – the Chair is not required to provide more than 40% of the cost of an ALP or more than 50 million dollars regardless of the percentage.

If an ALP is ultimately not executed, the Chair is not obligated to provide funding assistance to that group, and shall retain the security held by the Chair on behalf of that group.

5. Local Government Mandates

The proposed regulation does not impose any program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork

Groups meeting the qualifications under the proposal must submit a dissolution plan. The group must also provide signed and notarized repayment agreements and confessions of judgments in favor of the Board. The format of these agreements will be prescribed by the Board.

7. Duplication

There is no duplication of state or federal regulations or standards.

8. Alternatives

One alternative would be to not intervene and allow these inactive but not insolvent groups to continue administering their own claims. However, this would mean that unrelated self-insurers and/or the State as a whole would, in all likelihood, have to assume liability for these claims when these groups became insolvent. This would probably increase frictional costs and would involve much uncertainty.

The Board believes that this proposal provides certainty and the best way to allow these groups to meet their liabilities without imposing additional costs on the State or unrelated self-insurers, and ending the crisis of insolvent self-insured trust groups.

9. Federal Standards

There are no applicable federal standards or regulations related to the proposed amendments.

10. Compliance Schedule

The process will be based on underfunded groups applying to the Chair, and the funding will be provided by the Chair only once the application process is complete and the criteria in the proposal have been met.

The Board already has the authority from the NYS Dormitory Authority to obtain bond proceeds that can be used to sell the liabilities on a group by group basis to a carrier via an ALP.

Regulatory Flexibility Analysis

1. Effect of rule

There are 27 "inactive but not insolvent" groups currently managing their own liabilities, most of which are attempting to wind down operations. The proposed regulation allows the Board to assist in funding a portion of an assumption of loss policy ("ALP") consistent with section 1680-q of the Public Authorities Law and section 50(3-a)(2)(b) of the WCL.

It is expected that some or all of these groups (which are made up of small to mid-sized businesses unable to self-insure on their own) will be affected positively by the proposal – both in purchasing the ALP to assist in winding down their liabilities, and avoiding other unrelated self-insurers from being required to provide funding for any defaults that could occur without the purchase of an ALP.

2. Compliance requirements

Groups meeting the qualifications under the proposal must submit a dissolution plan. The group must also provide signed and notarized repayment agreements and confessions of judgments in favor of the Board. The format of these agreements will be prescribed by the Board.

The process will be based on underfunded groups applying to the Chair, and the funding will be provided by the Chair only once the application process is complete and the criteria in the proposal have been met.

The Board already has the authority from the NYS Dormitory Authority to obtain bond proceeds that can be used to sell the liabilities on a group by group basis to a carrier via an ALP.

3. Professional services

It is not expected that small businesses or local governments will need to engage any professional services outside those they already maintain in order to comply with the proposal.

4. Compliance costs

The inactive but insolvent groups this proposal is intended to assist will be responsible for purchasing a portion of an ALP at the outset of the process, as well as signing and notarizing repayment agreements and confessions of judgments in favor of the Board in order to get an ALP.

Once the ALP has been purchased, the groups will be able to wind down their liabilities with safeguards to the unrelated self insurance community and the state, as well as injured workers.

5. Economic and technological feasibility

The proposal seeks to assist groups attempting to wind down their liabilities without becoming insolvent, but most do not have the funds to purchase an ALP without assistance. The proposed regulation makes it possible for these groups to purchase ALPs and avoid insolvency – making it economically feasible for them to wind down their liabilities and enter into a repayment plan with the Board.

6. Minimizing adverse impact

The proposal is designed to help end the crisis of group self-insured trust insolvency that began in 2008. The premium for an ALP must be paid in advance in a lump sum, even though the liabilities themselves will be paid out over many years.

The Chair is not required to provide any group qualifying under this section more than forty percent of the cost of an assumption of liability policy premium nor more than fifty million dollars regardless of the percentage of the assumption of liability policy premium.

The idea behind the proposal is to avoid insolvency for these groups and ensure that the injured workers receive the benefits that they are entitled to without unrelated self-insured employers or the State having to take on those liabilities.

7. Small business and local government participation

The Board will duly consider all public comments made by small businesses and local government stakeholders in response to the proposed rulemaking.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas

The proposal is not expected to have any impact on rural areas specifically. The impact is to the inactive but not insolvent groups that could qualify for assistance in purchasing an ALP in accordance with this proposal, without regard to whether or not the employers in this groups are rural.

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

Groups meeting the qualifications under the proposal must submit a dissolution plan. The group must also provide signed and notarized repayment agreements and confessions of judgments in favor of the Board. The format of these agreements will be prescribed by the Board. There are no additional requirements for public and private entities in rural areas.

3. Costs

Because the Workers' Compensation Board will be facilitating the purchase of an ALP for these groups, there is an upfront cost to the Board. However, the proposal also includes provisions for repayment agreements, as well as requiring confessions of judgment for the amount of any financial assistance supplied by the Board. In the event of an insolvency, the administration of these liabilities would have become the obligation of the State in any event, but without the benefit of the financial security provided by repayment agreements and confessions of judgment.

The proposal places limits on the costs of ALPs – the Chair is not required to provide more than 40% of the cost of an ALP or more than 50 million dollars regardless of the percentage.

If an ALP is ultimately not executed, the Chair is not obligated to provide funding assistance to that group, and shall retain the security held by the Chair on behalf of that group.

There are not expected to be any costs specific to rural areas in connection with this proposal.

4. Minimizing adverse impact

The proposal is designed to help end the crisis of group self-insured trust insolvency that began in 2008. The premium for an ALP must be paid in advance in a lump sum, even though the liabilities themselves will be paid out over many years.

The Chair is not required to provide any group qualifying under this section more than forty percent of the cost of an assumption of liability policy premium nor more than fifty million dollars regardless of the percentage of the assumption of liability policy premium.

The idea behind the proposal is to avoid insolvency for these groups and ensure that the injured workers receive the benefits that they are entitled to without unrelated self-insured employers or the State having to take on those liabilities.

There is not expected to be any adverse impact specific to rural areas as a result of this proposal.

5. Rural area participation

The Board will duly consider all public comments made by rural area stakeholders in response to the proposed rulemaking.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The proposed amendments offer a way to prevent inactive but not insolvent groups from becoming insolvent while attempting to wind down their liabilities. The proposal provides a means for these groups to purchase an assumption of loss policy (ALP) to quantify their liabilities with certainty and provide finality with respect to the amounts owed – it is not expected to have any impact on jobs.