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

Consultation with the public was obtained through agency-sponsored rule making and other public activities.

**Initial Review of Rule**

As a rule that requires a RF A, RAF A 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:** Amendment of Part 800 of Title 14 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 authorize the Comptroller to make rules and regulations as he may deem necessary in the performance of the duties imposed upon him by law. Additionally, Section 34 of Retirement and Social Security Law (RSSL) provides legal authorization for collecting salary and service for nonmembers.

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


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. As such, 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 RAFA, RARA 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.
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 amended 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.


10. Compliance schedule: Compliance can be immediate upon publica-

tion 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 re-

spect 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 regulation 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 require 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 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


Filing No. 461

Filing Date: 2019-05-08

Effective Date: 2019-05-08

PUSSUANT TO THE PROVISIONS OF THE STATE Administrative Procedural 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 [1] 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.
   (ii) Privacy booths:
      (a) there shall be at least one privacy booth for every 500 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); and
      (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 are selected; and one privacy booth for every 400 registered voters (excluding voters in inactive status); 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.
         (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 warrants additional devices.
         (d) 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 Voters 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. 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 set up 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).


10. Compliance schedule: Compliance would 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 set up 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-at2(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


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 (i) 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 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;

(v) commuter traffic patterns;

(vi) 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 the 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 scan-
ner or because of an overvote or wholly blank vote warning provided by
the ballot scanner, shall be secured in the manner applicable to voted bal-
lots 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
be held inviolate until the time of canvass on election day under tamper
evident seal and lock and key.

621.4 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
be the bi-partisan review of the affidavits to determine the eligibil-
ity 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.

621.5 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 pe-
riod shall be the same as the manner of voting on the day of election.

621.6 Voter History and Prevention of Duplicative 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 the poll worker at every early voting site at which the 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 vote
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 dif-
f erentiate 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 cast a ballot in the early voting period 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) Not later than seven business days after the completion of the can-
vass, 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 af-
fi davit 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, 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 elec-
tions 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, the count of early voting ballots cast by each board,
and a copy of the canvass conducted after each day of early voting.

621.7 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 opera-
tion;
(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 vot-
ing 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.

621.8 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

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. Elec-
tion Law § 8-602 provides that “the state board of elections shall promul-
gate rules or regulations necessary for the implementation of the pro-
cedures 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 elec-
tion 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 Divi-
sion of Budget.

5. Local government mandates: As noted in the Costs section, pursuant
ton 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.
davit, absentee, military, special or federal ballot to NYSVoter no later than seven business 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.


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.
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.

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 (CO₂) 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 earlier than 2030.

The Department is proposing to revise 6 NYCRR Part 251, CO₂ 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 10-0101, 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 CO₂ emission rates from the State’s existing fleet of fossil-fuel electric generating facilities, while retaining more stringent CO₂ 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, and the Dynamic Emissions Management-and-Cost (REM-C) tool to monitor potential market impacts of CO₂ price signals.

The Department does not anticipate any reliability issues as a result of the proposed revisions to Part 251. Such a unit could apply CCS technology to reduce its CO₂ 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-fired major electric generating facilities.

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. However, the proposed revisions to Part 251 could have an impact on the power sector. The Department evaluated the potential impacts on the power sector and determined that the proposed revisions would not result in any major changes to the power system.

Potentially significant impacts to operators of non-modified 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 1.8 lbs/MW-hr gross electrical output or 180 lbs/mmBTU of input.

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. 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 shut down. However, these tax revenue losses could be offset by the Electric Generation Facility Cessation Mitigation Program. 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 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.
This rule will impose minimal additional paperwork for recordkeeping and monitoring to demonstrate compliance with the annual CO₂ emission standards, but it is not expected to be unduly burdensome. Facilities subject to this regulation are already required to meet regulatory requirements for CO₂ emissions under Subpart 202-2 and Part 242 and are already required to meet emission standards for other air contaminants. The department has 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 CO₂ emissions data in pounds per hour or tons 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 CO₂ emissions data under Subpart 202-2 and Part 242. Based upon comments received, the Department has identified additional reporting or monitoring 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 no state or locally-mandated or regulated 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 CO₂ emission rates less than the proposed limits, they are already in compliance with the proposed revisions to Part 251.

Facilities subject to Part 251 are also 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 CO₂ 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 CO₂ emission limit or specific CO₂ emission standard for each source and fuel type. However, a single CO₂ emission standard that applies equally to all non-modified existing major electric generating facilities best serves the Department’s objective of furthering CO₂ emission reductions.

FEDERAL STANDARDS

As a result of several actions by EPA, GHGs, including CO₂, 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 CO₂ 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 emission health and environmental standards in the absence of similar federal emission standards. The potential adverse impact to global air quality and New York State’s environment from CO₂ emissions necessitates that New York State take action now to halt the increase in CO₂ emissions that contribute to climate change.

COMPLIANCE SCHEDULE

The CO₂ 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 CO₂ 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.


2 https://rggi.coasts/eats/rggi

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

Revised Regulatory Flexibility Analysis

TOP RULE ON SMALL BUSINESSES AND LOCAL GOVERNMENTS

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 comprises two coal-fired boilers that were converted to burn gas 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 CO₂ 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 subject to the proposed CO₂ emission limits 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 CO₂ emission standard. They are also required to meet regulatory requirements for other regulated pollutants (e.g., a limit for emissions of SO₂ and/or NOₓ). 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 CO₂ continuous emission monitoring system (diluent monitor) and a fuel flow monitoring to demonstrate compliance with the proposed CO₂ 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 CO₂ emission reduction technology, a conversion of the existing coal units to natural gas or technology capable of serving 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 CO₂ emission standards in Part 251. No existing coal-fired electric generation emission sources are expected to continue operating in New York beyond 2020 based 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 CO₂ emission reduction technology to reduce the unit’s CO₂ 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 plants into a source of energy 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 retrofit planning to minimize downtime, the additional costs could be 10 percent or even lower…’

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 CO2 emission standards for non-modified existing major electric generating facilities.

In section 202-b of the proposed rule making process, 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 and operating permit requirements, including provisions for recordkeeping 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 CO2 at subject facilities, but does not directly establish design strategies or standards for existing facilities. The objective 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 public hearings. The Department held a stakeholder meeting 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 business 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 CO2 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 CO2 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.

COSTS

In order to meet the proposed CO2 emission standard, coal-fired major electric generating units that do not employ carbon capture and sequestration (CCS) or other advanced CO2 emission reduction technology will need to retrofit to a cleaner fuel or cease operations by December 31, 2020.

The Department 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 these repowering proposals. The Cayuga Operating Company has prepared a Repowering Proposal,3 and an associated cost estimate.
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, 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 implications would be at least partially offset by the Electric Generation Facility Cessation Mitigation Program. 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, 2017 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 Part 251, and to obtain feedback. 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.


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 (CO2) 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 proposed revisions. The Department has considered the comments and incorporated the comments into the proposed Part 251 revisions.

CATEGORIES AND NUMBERS OF EMPLOYMENT OPPORTUNITIES AFFECTED

To estimate the potential impacts on jobs and local communities, the Department has utilized 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, and a Revised Repowering Proposal, which detail the company’s decision 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 (6.2 percent) and school district (10.5 percent) tax bases. The following options are highlighted in the Revised Repowering Proposal:

- Option 1 would be to repower two existing coal boilers to operate on natural gas, while maintaining the remaining 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 unit. Under this option, Cayuga projects 235 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 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 a 10 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. It should be noted that a proposal that retained the capability to fire some coal would not comply with the proposed Part 251. Moreover, while more 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. In September 2010 and again in October 2010, AES requested amendments to the PILOT agreement. 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 Heort Power, purchased both the Cayuga and Somerset facilities. As of that time, there were 74 people employed at Somerset.

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 ceased 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 CO2 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. 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.
explained that under no scenario do market forces guarantee that the CO
Department responded to these comments by acknowledging that market
proposed amendments to Part 251, largely on the basis that co al-fired
resulted in reduced operation of coal-fired electric generating facilities in
output to the electric grid.

the revision clarifies that Part 251 applies to fossil fuel-fired non-modified
substantive revisions to the applicability provisions for non-modified
revisions to Part 251, objected to the applicability in the p roposed
electric generating facilities that sell at least a minimumpercentage of
Department reiterated that the intent behind the revisions to Part 251 was
captured by the applicability provisions in the proposed amendments. The
the unintentional inclusion of certain facilities, which were inadvertently
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-
eter” 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 inapplicabil-
ity to certain cogeneration or “behind-the-meter” sources. The Depart-
ment also added additional revisions to Part 251 to apply 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 reductions 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 eco-
nomic 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
emission limits set forth in Part 251 will be achieved at all facilities, or
that coal-fired units retire to a cleaner fuel or shut down by December

One commenter objected to the reporting requirements, specifically the
costs associated with installing continuous emission monitoring system (CEMS)
emissions reporting requirements 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 addi-
tion, the Department has included supplemental reporting requirements in
subdivision 251.6(b) to address this concern, provide additional flexibility, and
further support the ability to assess a facility’s compliance with Part
251’s CO\textsubscript{2} emission limits. This non-substantive revision will allow
sou rces to supplement their emissions reports following the U.S. Environment-
mental 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\textsubscript{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 State will continue to take additional actions, including in the form of regula-
tions and other programs and policies, to reduce the GHG emissions that
cause climate change.

A large number of commenters expressed opposition to coal-fired facil-
ities potentially converting to gas, particularly “fracked” gas. The Depart-
ment 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 influ-
enced by a number of factors, including, but not limited to, environmen-
tal permitting and regulatory requirements, changes in the energy market
as well as the wholesale energy and natural gas markets, technologies
that promote increased usage of renewables, energy storage and energy effi-
ciency, and the continued reduction in the Regional Greenhouse Gas Ini-
tiative (RGGI) cap by an additional 30 percent by 2030. In addition, any
repowering proposal would also require environmental reviews pursuant to
the State Environmental Quality Review Act (SEQRA) or may be subject to review and approval by the State Board on Electric Genera-
Sitting 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\textsubscript{2} emissions as well as additional potential environmen-
tal 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\textsubscript{2} performance standards. These
commenters noted that technologies change over time and that the stan-
dards 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\textsubscript{2} emission standards in Part
251, pursuant to a subsequent rulemaking process under the State
Administrative Procedures Act (SAPA). The Department also added ad-
ditional revisions to Part 251, including to further reduce the CO\textsubscript{2} emis-
sion limits applicable to non-modified existing electric generating facili-
ties, pursuant to such future rulemakings. Additionally, SAPA requires
periodic reviews of regulations to ensure they remain appropriate and ade-
arded, and regulations that are reduced to a minimum basis 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 other non-modified existing sources
comply with the CO\textsubscript{2} emission limits in subdivision 251.3(b), they can remain in operation under the revisions with the
Department’s approval. Second, the Department reiterated that the shutdown or repowering of these facil-
ties will be influenced by a number of factors. If the owners or operators of
an affected facility choses to cease operations, any resulting tax reve-
ue losses could be at least partially offset by the Electric Generating Cess-
ation 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 com-
unities impacted by the retirement of fossil fuel-fired electric generating
units.

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

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

Rule Making Activities
NYS Register/May 29, 2019
that the reporting requirements were insufficient to ensure facilities are able to calculate and report fuel-specific annual \( \text{CO}_2 \) emission rates. The Department responded to these concerns by explaining that, pursuant to Subpart 202-2, fuel usage and \( \text{CO}_2 \) 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 \( \text{NO}_x \) 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, 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 material is managed. While the revisions to Part 251 are designed to address \( \text{CO}_2 \) emissions from fossil fuel-fired non-modified existing facilities, new sources and modified existing sources that combust biomass are subject to a case-specific \( \text{CO}_2 \) emission limit pursuant to 6 NYCRR Section 251.3(h)(6).

Many commenters are concerned about the health effects of fossil fuel-fired emissions including ozone, mercury, nitrogen oxides (\( \text{NO}_x \) and \( \text{SO}_2 \)). 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 \( \text{CO}_2 \) 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 \( \text{SO}_2 \), \( \text{NO}_x \), mercury, and other air pollutant emissions.

Many commenters are also concerned with climate change and the impact that fossil fuels particularly coal has 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**

**L.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, 2521 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 without 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, in 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 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, dental, vision (collectively known as 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 all existing providers are paid a reasonable fee for their services to those who injured 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, and 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 adopt such schedules for use pursuant to the provisions of [section 5108 of the] Insurance Law section 5108.

(ii) Notwithstanding paragraph (1) of this subdivision, 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 Superintendent of Financial Services 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.

(iii) The following revisions to 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, stated that this
(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 with services 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 schedule apply, but those rules [which] that refer to workers’ compensation claim forms, pre-authORIZATION 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


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 fee schedules 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.
Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Health service providers affected by this rule should not need to retain professionals to indicate that any self-insurers are small businesses.

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.

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 NYCCR and section 503.5 of Title 18 NYCCR.

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)(y) 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 other matters as are necessary.
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 to eliminate 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) and (7) 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:

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(v) Local Contact Agency shall mean an agency designated by the Department to accept referrals of nursing home residents 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 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's policies and procedures shall ensure that all residents 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 regulations governing resident rights 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 a 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 use the premises, 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 as 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 or to ensure that all residents can 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 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) make 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:

[f] (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 contract with all federal and state regulation and who are permitted to practice in the facility;

(iv) be fully informed in advance 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 151.11, has determined for each resident that this practice is safe.

(2) With respect to resident's new residents, the facility shall:

(i) inform each resident of the name, office address, phone numbers and specialty of the physician responsible for him 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 (b) (i) of this section; and

(e) 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 Ceralo, 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 residents of the State.

Section 2803-c of Article 28 of the Public Health Law provides, in part, that the Commissioner of Health 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 2803-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
duty 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 entities, 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 operate a nursing home. This proposed regulation 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 it is not apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.
medical leave, death of a family member, or military duty that exceeds forty-two calendar days, 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 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.

(9) Eligibility. Applicants and recipients must:

(a) 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 original qualifying subject or district ceases to be designated as a subject shortage area or hard to staff district;

(b) 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

(c) 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:

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

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

(2) A recipient of an award shall:

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

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

(c) 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 selections.

(i) 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 or 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.

(ii) 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 codified 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 § 655(2), HESC was established for improving educational, vocational, and financial 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 (2 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 New York State Education Department (SED) reported the following statewide teacher shortages 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...
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

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 pre-kindergarten 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.

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 2201.21 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 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 primary 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 2201.21 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.21 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 2201.21 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.21 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 2201.21 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.21 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 2201.21 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:
(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) “Teach in a classroom setting on a full-time basis” 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 202 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 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 of 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 if 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, or discharge the student loan, 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.
The Program aims to incentivize top undergraduate students to pursue their master’s degree in education programs leading to a career as a teacher in public elementary or secondary schools across the State. The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending a graduate program leading to a career as a teacher in public elementary or secondary schools (including charter schools) across the State.

The Program provides 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 programs leading to a career as a 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.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-b 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 economic 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 will provide an economic benefit to the State’s small businesses and local governments as well.

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 impose an adverse 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
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 toward 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) be a participant in a federal income-driven repayment plan whose payment amount is generally ten percent of discretionary income; and

- (3) have adjusted gross income of less than fifty thousand dollars; and

(c) Administration. A recipient is not eligible to receive a Program award if:

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

- (2) have in the State, at or after the time of the program, 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.

(d) Amounts and payment terms.

- (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.

(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.

(h) Extension of time. A recipient must be a participant in a federal income-driven repayment plan.

(i) Provision of information. A recipient is required to provide any other information or documentation necessary for the corporation to determine compliance with the program’s requirements.

(j) Amounts and payment terms.

- (1) 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.

- (2) 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.

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 duties, functions; and the Administration 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, the current 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-bh 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
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 NYCCR.
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 (2) 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) “Interrupted study” shall mean a temporary period of leave for a definite 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

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, 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 the 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 or on-the-job 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.

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.

Papework:

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.

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

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

L.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 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 655(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 3.5 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 by 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:
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-b 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.

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**Office for People with Developmental Disabilities**

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**NOTICE OF ADOPTION**

**Home and Community Based Services**

L.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, L.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 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 an 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.

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**PROPOSED RULE MAKING**

**NO HEARING(S) SCHEDULED**

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

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**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;

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 (NYSRR). 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] or 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)(5) 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 subsections [(b)(1)-(4)] 636-1.4(a)(2) 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) subparas (i)-(iv) of this subdivision paragraph of an individual receiving services in a setting described in subsection (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 which the 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) 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] 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 the 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.

(2) Modifications to the rights identified in subparagraphs (i)–(iv) of paragraph (a) of an individual receiving services in a setting described in paragraphs (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 services or other 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 planning/service related document(s):

(i) The 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 subdivision and to a person-centered plan in accordance with section 636-1.3 of this subdivision, 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), any person, prior to the initiation of the person-centered planning process and development of the plan.

(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 development 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
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 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 service 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 (17.76% 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.

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.

Substance of proposed rule: The Commission is considering the notice of intent filed by VBG 990 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.

Subject: Notice of intent to submeter electricity.

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

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.

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.

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(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 990 AOA LLC, on April 25, 2019, 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.

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 total revenues). KEDLI anticipates total average monthly bills to increase by approximately $7.14 (6.92% on the delivery portion of the bill or 4.1% 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.
**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.

**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 as prescribed by 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(e) of this Part, that will accrue as of the date of the Notice.

(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 the 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 underfund 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 include the execution of an assumption of liability 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(5)(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 insurance policy premium nor more than fifty million dollars regardless of the percentage of the assumption of workers’ compensation liability insurance 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 and allocates the full value of the group’s assessment to 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 submit, 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-f)(7)(a). In the event that the assumption of liability policy is ultimately undisapproved 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.

(4) 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.
The proposed regulation would permit small and mid-sized businesses that are jointly and severally liable for their obligations to manage their liabilities 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 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.

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 assets owned by the group, to be provided by the Board. In the event of any financial assets, 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.

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.

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.

Duplication
There is no duplication of state or federal regulations or standards.

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.

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 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 manage their liabilities 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 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.

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 assets owned by the group, to be provided by the Board. In the event of any financial assets, 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.
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.