RULE MAKING ACTIVITIES

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

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

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

Office of Children and Family Services

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State Child Care Market Rates

I.D. No. CFS-24-16-00005-EP
Filing No. 514
Filing Date: 2016-05-27
Effective Date: 2016-06-01

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

Proposed Action: Amendment of section 415.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 410-u through 410-z

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

Specific reasons underlying the finding of necessity: The adoption of these regulations on an emergency basis is necessary to protect the health, safety and welfare of families and children receiving subsidized child care in New York State. Federal statute, section 658E(c)(4)(A) of the Child Care and Development Block Grant Act, and federal regulation, 45 CFR 98.43(a), require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure equal access for eligible children. The market rates that are being replaced are based on a survey conducted in 2015 and as a result, continuing to maintain the existing rates could result in subsidized families losing equal access for eligible children to child care arrangements, or being unable to find appropriate child care.

Subject: New York State Child Care Market Rates.

Purpose: To establish payment rates for federally-funded child care subsidies to allow equal access to child care for eligible children.

Text of emergency/proposed rule: Subdivision (c) of section 415.9 is amended to read as follows:

(c) Part-day rates must be applied when the child care services are provided for at least three but less than six hours per day. Part-day rates also must be applied for children who are *attending pre-kindergarten, kindergarten or higher grade and who are* provided care before and/or after school for less than three hours per day by day care centers or school-age child care programs that do not charge on an hourly basis.

Subdivision (i) of section 415.9 is amended as follows:

(i) The rate of payment for caregivers of legally exempt group child care is the actual cost of care up to *75 percent of* the applicable market rate for day care center providers as set forth in this section.

Paragraph (1) of subdivision (j) of section 415.9 is amended to read as follows:

(1) Effective [April 1, 2014] *June 1, 2016*, the following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week.

Paragraph (3) of subdivision (j) of section 415.9 is repealed in its entirety.

A new paragraph (3) of subdivision (j) of section 415.9 is added as follows:

(3) The market rates are established for each of five groupings of social services districts. The rates established for a group apply to all districts in the designated group. The district groupings are as follows:

CHILD CARE MARKET RATES

Market rates are established for five groupings of social services districts as follows:

GROUP 1:	*Nassau, Putnam, Rockland, Suffolk, Westchester*
GROUP 2:	*Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Schenectady, Tompkins, Warren*
GROUP 3:	*Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, Yates*
GROUP 4:	*Albany, Dutchess, Orange, Saratoga, Ulster*
GROUP 5:	*Bronx, Kings, New York, Queens, Richmond*

GROUP 1 COUNTIES:
Nassau, Putnam, Rockland, Suffolk, and Westchester
DAY CARE CENTER

AGE OF CHILD

	Under 1 1/2	*1 1/2–2*	*3–5*	*6–12*
WEEKLY	*$350*	*$312*	*$289*	*$290*
DAILY	*$60*	*$57*	*$50*	*$57*
PART-DAY	*$40*	*$38*	*$33*	*$38*
HOURLY	*$9.50*	*$10.00*	*$10.00*	*$10.00*

FAMILY DAY CARE HOME AND GROUP FAMILY DAY CARE HOME

AGE OF CHILD

	Under 2	2	3–5	6–12
WEEKLY	$295	$275	$275	$265
DAILY	$60	$55	$53	$51
PART-DAY	$40	$37	$35	$34
HOURLY	$10.00	$10.00	$10.00	$10.00

SCHOOL-AGE CHILD CARE
AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$0	$0	$289	$290
DAILY	$0	$0	$50	$57
PART-DAY	$0	$0	$33	$38
HOURLY	$0	$0	$10.00	$10.00

(Group 1 Counties)
LEGALLY-EXEMPT GROUP CHILD CARE
AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$0	$0	$217	$218
DAILY	$0	$0	$38	$43
PART-DAY	$0	$0	$25	$29
HOURLY	$0	$0	$7.50	$7.50

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE
AGE OF CHILD

	Under 2	2	3–5	6–12
WEEKLY	$192	$179	$179	$172
DAILY	$39	$36	$34	$33
PART-DAY	$26	$24	$23	$22
HOURLY	$6.50	$6.50	$6.50	$6.50

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE
AGE OF CHILD

	Under 2	2	3–5	6–12
WEEKLY	$207	$193	$193	$186
DAILY	$42	$39	$37	$36
PART-DAY	$28	$26	$25	$24
HOURLY	$7.00	$7.00	$7.00	$7.00

GROUP 2 COUNTIES: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins and Warren
DAY CARE CENTER
AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$259	$242	$225	$200
DAILY	$53	$49	$45	$42
PART-DAY	$35	$33	$30	$28
HOURLY	$9.00	$8.50	$8.25	$8.00

FAMILY DAY CARE HOME AND GROUP FAMILY DAY CARE HOME
AGE OF CHILD

	Under 2	2	3–5	6–12
WEEKLY	$185	$175	$175	$165
DAILY	$40	$36	$35	$34
PART-DAY	$27	$24	$23	$23
HOURLY	$6.00	$6.00	$6.00	$6.00

SCHOOL-AGE CHILD CARE
AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$0	$0	$225	$200
DAILY	$0	$0	$45	$42
PART-DAY	$0	$0	$30	$28
HOURLY	$0	$0	$8.25	$8.00

(Group 2 Counties)
LEGALLY-EXEMPT GROUP CHILD CARE
AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$0	$0	$169	$150
DAILY	$0	$0	$34	$32
PART-DAY	$0	$0	$23	$21
HOURLY	$0	$0	$6.19	$6.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE
AGE OF CHILD

	Under 2	2	3–5	6–12
WEEKLY	$120	$114	$114	$107
DAILY	$26	$23	$23	$22
PART-DAY	$18	$16	$15	$15
HOURLY	$3.90	$3.90	$3.90	$3.90

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE
AGE OF CHILD

	Under 2	2	3–5	6–12
WEEKLY	$130	$123	$123	$116
DAILY	$28	$25	$25	$24
PART-DAY	$19	$17	$16	$16
HOURLY	$4.20	$4.20	$4.20	$4.20

GROUP 3 COUNTIES:
Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, and Yates
DAY CARE CENTER
AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$200	$190	$180	$170
DAILY	$43	$41	$38	$37
PART-DAY	$29	$27	$25	$25
HOURLY	$7.00	$7.50	$7.50	$7.00

FAMILY DAY CARE HOME AND GROUP FAMILY DAY CARE HOME
AGE OF CHILD

	Under 2	2	3–5	6–12
WEEKLY	$150	$150	$150	$143
DAILY	$33	$30	$30	$30
PART-DAY	$22	$20	$20	$20
HOURLY	$5.00	$5.00	$5.00	$5.00

SCHOOL-AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	*$0*	*$0*	*$180*	*$170*
DAILY	*$0*	*$0*	*$38*	*$37*
PART-DAY	*$0*	*$0*	*$25*	*$25*
HOURLY	*$0*	*$0*	*$7.50*	*$7.00*

(Group 3 Counties)
LEGALLY-EXEMPT GROUP CHILD CARE

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	*$0*	*$0*	*$135*	*$128*
DAILY	*$0*	*$0*	*$29*	*$28*
PART-DAY	*$0*	*$0*	*$19*	*$19*
HOURLY	*$0*	*$0*	*$5.63*	*$5.25*

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE

AGE OF CHILD

	Under 2	2	3–5	6–12
WEEKLY	*$98*	*$98*	*$98*	*$93*
DAILY	*$21*	*$20*	*$20*	*$20*
PART-DAY	*$14*	*$13*	*$13*	*$13*
HOURLY	*$3.25*	*$3.25*	*$3.25*	*$3.25*

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE

AGE OF CHILD

	Under 2	2	3–5	6–12
WEEKLY	*$105*	*$105*	*$105*	*$100*
DAILY	*$23*	*$21*	*$21*	*$21*
PART-DAY	*$15*	*$14*	*$14*	*$14*
HOURLY	*$3.50*	*$3.50*	*$3.50*	*$3.50*

GROUP 4 COUNTIES:
Albany, Dutchess, Orange, Saratoga, and Ulster
DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	*$262*	*$247*	*$225*	*$220*
DAILY	*$56*	*$51*	*$46*	*$46*
PART-DAY	*$37*	*$34*	*$31*	*$31*
HOURLY	*$8.50*	*$8.25*	*$8.50*	*$9.00*

FAMILY DAY CARE HOME AND GROUP FAMILY DAY CARE HOME

AGE OF CHILD

	Under 2	2	3–5	6–12
WEEKLY	*$225*	*$200*	*$200*	*$200*
DAILY	*$45*	*$45*	*$42*	*$40*
PART-DAY	*$30*	*$30*	*$28*	*$27*
HOURLY	*$8.75*	*$8.00*	*$8.00*	*$8.00*

SCHOOL-AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	*$0*	*$0*	*$225*	*$220*
DAILY	*$0*	*$0*	*$46*	*$46*
PART-DAY	*$0*	*$0*	*$31*	*$31*
HOURLY	*$0*	*$0*	*$8.50*	*$9.00*

(Group 4 Counties)
LEGALLY-EXEMPT GROUP CHILD CARE

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	*$0*	*$0*	*$169*	*$165*
DAILY	*$0*	*$0*	*$35*	*$35*
PART-DAY	*$0*	*$0*	*$23*	*$23*
HOURLY	*$0*	*$0*	*$6.38*	*$6.75*

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE

AGE OF CHILD

	Under 2	2	3–5	6–12
WEEKLY	*$146*	*$130*	*$130*	*$130*
DAILY	*$29*	*$29*	*$27*	*$26*
PART-DAY	*$20*	*$20*	*$18*	*$18*
HOURLY	*$5.69*	*$5.20*	*$5.20*	*$5.20*

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE

AGE OF CHILD

	Under 2	2	3–5	6–12
WEEKLY	*$158*	*$140*	*$140*	*$140*
DAILY	*$32*	*$32*	*$29*	*$28*
PART-DAY	*$21*	*$21*	*$20*	*$19*
HOURLY	*$6.13*	*$5.60*	*$5.60*	*$5.60*

GROUP 5 COUNTIES:
Bronx, Kings, New York, Queens, and Richmond
DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	*$371*	*$268*	*$242*	*$210*
DAILY	*$59*	*$51*	*$46*	*$42*
PART-DAY	*$39*	*$34*	*$31*	*$28*
HOURLY	*$15.75*	*$17.00*	*$15.75*	*$9.00*

FAMILY DAY CARE HOME AND GROUP FAMILY DAY CARE HOME

AGE OF CHILD

	Under 2	2	3–5	6–12
WEEKLY	*$200*	*$185*	*$175*	*$160*
DAILY	*$37*	*$35*	*$33*	*$32*
PART-DAY	*$25*	*$23*	*$22*	*$21*
HOURLY	*$12.00*	*$12.00*	*$10.00*	*$12.00*

SCHOOL-AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	*$0*	*$0*	*$242*	*$210*
DAILY	*$0*	*$0*	*$46*	*$42*
PART-DAY	*$0*	*$0*	*$31*	*$28*
HOURLY	*$0*	*$0*	*$15.75*	*$9.00*

(Group 5 Counties)

LEGALLY-EXEMPT GROUP CHILD CARE

AGE OF CHILD

	Under 1½	*1½–2*	*3–5*	*6–12*
WEEKLY	*$0*	*$0*	*$182*	*$158*
DAILY	*$0*	*$0*	*$35*	*$32*
PART-DAY	*$0*	*$0*	*$23*	*$21*
HOURLY	*$0*	*$0*	*$11.81*	*$6.75*

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE

AGE OF CHILD

	Under 2	*2*	*3–5*	*6–12*
WEEKLY	*$130*	*$120*	*$114*	*$104*
DAILY	*$24*	*$23*	*$21*	*$21*
PART-DAY	*$16*	*$15*	*$14*	*$14*
HOURLY	*$7.80*	*$7.80*	*$6.50*	*$7.80*

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE

AGE OF CHILD

	Under 2	*2*	*3–5*	*6–12*
WEEKLY	*$140*	*$130*	*$123*	*$112*
DAILY	*$26*	*$25*	*$23*	*$22*
PART-DAY	*$18*	*$16*	*$15*	*$15*
HOURLY	*$8.40*	*$8.40*	*$7.00*	*$8.40*

SPECIAL NEEDS CHILD CARE

The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

The highest full time market rate in the State is:
WEEKLY $ 371
DAILY $ 60
PART-DAY $ 40
HOURLY $ 17.00

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 24, 2016.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York, 12144, (518) 473-7793, email: info@ocfs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 34(3)(f) of SSL authorizes the Commissioner of the Office to establish regulations for the administration of public assistance and care within the State.

Section 410(1) of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Title 5-C (sections 410-u through 410-z) of the SSL governs the New York State Child Care Block Grant. It includes provisions regarding the use of funds by social services districts, the types of families eligible for services, the amount of local funds that must be spent on child care services, and reporting requirements. The Office is required to specify certain NYSCCBG requirements in regulation.

Section 410-x(4) of the SSL requires the Office to establish, in regulation, the applicable market-related payment rates that will establish the ceilings for State and federal reimbursement for payments made under the New York Child Care Block Grant.

Federal statute, 42 U.S.C. § 9858-c(c)(4)(A), and federal regulation, 45 CFR 98.43(a), also require that the state establish payment rates for federally-funded child care subsidies that are sufficient to ensure such equal access to care that is provided to children whose parents/caretakers are not eligible to receive assistance under federal or state programs. Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved state plan for the Child Care and Development Fund.

2. Legislative objectives:

The legislative intent of the child care subsidy program is to assist low income families in meeting their child care costs in programs that provide for the health and safety of their children. The legislative intent is to have child care subsidy payment rates that reflect market conditions and that are adequate to enable subsidized families to access child care services comparable to other families not in receipt of a child care subsidy.

The regulations support the legislative objectives underlying Sections 332-a, 334, 335 and 410 and Title 5-C of the SSL to provide child care services to public assistance recipients and low income families when necessary to promote self-sufficiency and protect children. In addition, the regulations provide social services districts with local flexibility to provide child care services in the manner that best meets the needs of their local communities.

3. Needs and benefits:

The state is required under federal regulation 45 CFR 98.43(b)(2) to adjust child care payment rates with each new State Plan based on a current survey of providers. The current State Plan covers the period October 1, 2013 through May 31, 2016; the proposed State Plan for the period June 1, 2016 through September 30, 2018 has been submitted for approval to the federal government. These regulations are needed to adjust existing rates that were established based on a survey conducted in 2013. A more recent survey of providers was conducted from January to April of 2015. Adjustments to the child care market rates based on that survey include both increases and decreases of rates in the five groupings of counties.

Decreases in the child care market rates reflect the market place as reported in the survey of providers and provide comparable access to those families in receipt of a child care subsidy as compared with families that do not receive a child care subsidy, which is required by federal and state laws.

The market rates for legally-exempt group child care were established based on a 75 percent (75%) differential applied to the market rates established for day care centers. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a licensed day care center.

The ages for two of the four age groups for family day care, group family day care, and legally-exempt family child care and in-home child care were changed. The current age groups are: under one and one-half years of age, one and one-half through two years of age, three through five years of age, and six through twelve years of age. This rule changes the age group of under one and one-half years of age to under two years of age, and the age group of one and one-half through two years of age to two years of age. This change is only made in rates for family day care, group family day care, and legally-exempt family child care and in-home child. This change is not made to the day care center rate or the newly created legally-exempt group child care rate. This change aligns the market rate regulation with the statutory requirement for family day care homes and group family day care homes to have one caregiver for every two children under two years of age.

The registered family day care market rate and the licensed group family day care market rate are being combined into one market rate.

The requirement to apply the part-day market rates for before and/or after school care provided for less than three hours per day by day care centers or school age child care programs that do not charge on an hourly basis has been clarified to make clear that the requirement includes children who are attending pre-kindergarten, kindergarten and higher grades.

The school age child care rates now include rates for children ages three to five years. These rates apply to pre-kindergarten children attending school age child care programs that have waivers to provide care for children who are enrolled in half-day or full-day pre-kindergarten classes.

Prior to conducting the 2015 survey, the composition of the county cluster groups was reassessed using the 2013 data. Saratoga County was moved from county cluster two to county cluster four.

4. Costs:

Under section 410-v(2) of the SSL, the state is responsible for reimbursing social services districts for 75 percent (75%) of the costs of providing subsidized child care services to public assistance recipients; and, social services districts are responsible for the other 25 percent (25%) of such costs. The state is responsible for reimbursing social services districts for

100 percent (100%) of the costs of providing child care services to other eligible low-income families. The state reimbursement for these child care services is made from the state and/or federal funds allocated to the New York State Child Care Block Grant, and is limited on an annual basis in each social services district to that district's New York State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2016-2017, social services districts will receive a total allocation of $805,928,001 in federal and state funds under the New York State Child Care Block Grant. Social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations. Social services districts may use block grant funds to serve the optional category of eligible individuals set forth in these regulations. The standard market rate for legally-exempt family child care and in-home child care categories will be 65 percent (65%) of the applicable registered family day care market rate. The enhanced market rate for legally-exempt family child care and in-home child care categories will be 70 percent (70%) of the applicable registered family day care market rate. Social services districts may also use block grant funds allocated to them to increase the enhanced rate for legally-exempt family child care and in-home child care categories from 70 percent (70%) up to 75 percent (75%), if social services districts select this option in the child care portion of its child and family services plan.

5. Local government mandates:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the applicable market rates. Social services districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. Payment adjustments will have to be made, as appropriate.

6. Paperwork:

Social services districts will need to process any required payment adjustments after conducting the necessary case reviews.

7. Duplication:

The new requirements do not duplicate any existing state or federal requirements.

8. Federal standards:

The regulations are consistent with applicable federal regulations. 45 CFR 98.43(a), (b)(2) and (d) require that the state establish payment rates that are sufficient to ensure equal access to comparable care received by unsubsidized families, based on a survey of providers, and consistent with the parental choice provisions in 45 CFR 98.30.

9. Compliance schedule:

These provisions must be effective on June 1, 2016.

10. Alternative approaches:

No alternative approaches were considered because federal regulation requires that payment rates be based on a local market rate survey.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:

The adjustments to the child care market rates will affect the 58 social services districts. There is a potential effect on over 20,000 licensed and registered child care providers and an estimated 44,000 informal providers that may provide child care services to families receiving a child care subsidy.

2. Compliance requirements:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the applicable market rates. Social services districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. Payment adjustments will have to be made, as appropriate.

3. Professional services:

Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

4. Compliance costs:

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for seventy-five percent (75%) of the costs of providing subsidized child care services to public assistance recipients; social services districts are responsible for the other twenty-five percent (25%) of such costs. In addition, the State is responsible for reimbursing social services districts for one hundred percent (100%) of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the New York State Child Care Block Grant, and is limited in each district to that district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2016-17, social services districts will receive allocations totaling $805,928,001 in federal and State funds under the New York State Child Care Block Grant. Social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

Social services districts will be required to provide an enhanced market rate on behalf of parents for subsidized child care services provided by legally-exempt family child care and in-home child care providers who have completed ten hours of training annually, as approved by the legally-exempt caregiver enrollment agency. Such an enhanced rate will be seventy percent (70%) of the family day care market rate. Social services districts will have the option to pay up to seventy-five percent (75%) of the family day care market rate as the enhanced market rate, if the social services district selects this option in its Children and Family Services Plan.

5. Economic and technological feasibility:

The child care providers and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

6. Minimizing adverse impact:

The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers, using standard statistical methodology, to minimize adverse impact. The Office applied standard statistical methods to choose a sample of 4,767 licensed and registered child care providers in such a manner that the survey was representative throughout the State. Prior to conducting the 2015 survey, the composition of the county cluster groups was reassessed using the 2013 data. Saratoga County was moved from county cluster two to county cluster four. The rates were analyzed to establish the market rates at the 69th percentile of the amounts charged. The market rates were clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. The rates established for counties are based on the actual costs of care that were reported in the survey within the counties. Adjustments to the child care market rates reflect the market place and provide access comparable to the access of families not receiving a child care subsidy.

Adjustments to the child care market rates reflect both increases and decreases in rates in the five groupings of counties. Where there are decreases in the child care market rates, they reflect the market place and provide comparable access for families receiving a child care subsidy to those families not receiving a child care subsidy, as required by federal and State laws. The adjustments in the rates will enable social services districts to provide temporary assistance recipients and low-income families receiving subsidized child care services with access to child care providers. This will enable temporary assistance and low-income families to work, thereby reducing the number of families in need of temporary assistance (TA). It also should assist the districts in meeting their federal participation rates for TA recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

The market rates for legally-exempt family child care and in-home child care were established based on a sixty-five percent (65%) differential applied to the market rates established for family day care. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a registered family day care provider. The enhanced market rate for legally-exempt family child care and in-home child care providers is based on a seventy percent (70%) differential applied to the child care market rates established for registered family day care. The additional five percent (5%) provides an incentive to legally-exempt providers to pursue a minimum of ten hours of approved training. Additionally, the regulation allows local social services districts, which so choose in their Child and Family Services Plans, to increase the enhanced market rate up to seventy-five percent (75%) of the applicable registered family day care market rate.

The market rates for legally-exempt group child care were established based on a seventy-five percent (75%) differential applied to the market rates established for day care centers. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a licensed day care center.

The registered family day care market rate and the licensed group family day care market rate are being combined into one rate.

The ages for two of the four age groups in the rates for family day care, group family day care, and legally-exempt family child care and in-home child care were changed in the proposed regulations. The current age groups are: under one and one-half years of age, one and one-half through two years of age, three through five years of age, and six through twelve years of age. This new rule changes the age group of under one and one-half years of age to under two years of age, and the age group of one and one-half through two years of age to two years of age. This change is only made in the rates for family day care, group family day care, and legally-exempt family child care and in-home child care. This change is not made to day care center rate, or the newly created legally-exempt group child care rate. This change aligns the market rate regulation with the statutory requirement for family day care homes and group family day care homes to have one caregiver for every two children under two years of age.

The requirement to apply the part-day market rates for before and/or after school care provided for less than three hours per day by day care centers or school age child care programs that do not charge on an hourly basis has been clarified to make clear that the requirement includes children who are attending pre-kindergarten, kindergarten and higher grades.

The school age child care rates now include rates for children ages three to five years. These rates apply to pre-kindergarten children attending school age child care programs that have waivers to provide care for children who are enrolled in half-day or full-day pre-kindergarten classes.

The regulations recognize that there may be differences in the needs among social services districts. To the extent allowed by statute, the regulations provide social services districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities.

7. Small business and local government participation:

In accordance with federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had the resources available to assist providers in other languages, if needed, as well. Rate data was collected from 4,767 providers and that information formed the basis for the updated market rates.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect the 44 social services districts located in rural areas of the state and the child care providers located in those social services districts.

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

The regulations will not result in any new reporting or recordkeeping requirements for social services districts.

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Social services districts will need to review cases to determine if the payments reflect the actual cost of care up to the appropriate market rate. Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

The market rates for legally-exempt group child care were established based on a 75 percent (75%) differential applied to the market rates established for day care centers. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a licensed day care center.

The ages for two of the four age groups in the rates for family day care, group family day care, and legally-exempt family child care and in-home child care were changed. The current age groups are: under one and one-half years of age, one and one-half through two years of age, three through five years of age, and six through twelve years of age. This rule changes the age group of under one and one-half years of age to under two years of age, and the age group of one and one-half through two years of age to two years of age. This change is only made in the rates for family day care, group family day care, and legally-exempt family child care and in-home child care. This change is not made to day care center rate or the newly created legally-exempt group child care rate. This change aligns the market rate regulation with the statutory requirement for family day care homes and group family day care homes to have one caregiver for every two children under two years of age.

The registered family day care market rate and the licensed group family day care market rate are being combined into one market rate.

Prior to conducting the 2015 survey, the composition of the county cluster groups was reassessed using the 2013 data. Saratoga County was moved from county cluster two to county cluster four.

3. Costs:

Under the State Budget for SFY 2016-2017, social services districts will receive a total allocation of $805,928,001 in federal and state funds under the New York State Child Care Block Grant. Social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their New York State Child Care Block Grant allocations.

Under section 410-v(2) of the Social Services Law, the state is responsible for reimbursing social services districts for 75 percent (75%) of the costs of providing subsidized child care services to public assistance recipients and social services districts are responsible for the other 25 percent (25%) of such costs. The state is responsible for reimbursing social services districts for 100 percent (100%) of the costs of providing child care services to other eligible low-income families. The state reimbursement for these child care services is made from the state and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis in each social services district to that social services district's State Child Care Block Grant allocation for that year.

Social services districts will be required to provide an enhanced market rate on behalf of parents for subsidized child care services provided by legally-exempt family child care and in-home child care providers who have completed ten hours of training annually, as approved by the legally-exempt caregiver enrollment agency. Such an enhanced rate will be 70 percent (70%) of the family day care rate. Social services districts have the option to pay up to 75 percent (75%) of the family day care market rate as the enhanced market rate, if the social services district selects this option in its Children and Family Services Plan.

4. Minimizing adverse impact:

The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers, using standard statistical methodology, to minimize adverse impact. The Office applied standard statistical methods to choose a sample of 4,767 licensed and registered child care providers so that the survey was representative throughout the state. The rates were analyzed to establish the market rates at the 69th percentile of the amounts charged. The market rates are different for each of five distinct groupings of counties that were created based on similarities in rates among the counties in each group. The rates established for each cluster of counties are based on the actual costs of care that were reported in the survey within the counties. Adjustments to the child care market rates reflect changes in the market place and provide access for families receiving subsidies comparable to those families not receiving a child care subsidy.

Adjustments to the child care market rates include both increases and decreases in the five groupings of counties. Decreases in the child care market rates reflect the market place and provide comparable access for families receiving a child care subsidy as for those families not receiving a child care subsidy, as required by federal and state laws. The adjustments in the rates will enable social services districts to provide temporary assistance (TA) recipients and low-income families receiving subsidized child care services with access to child care providers. This will enable temporary assistance and low-income families to work, thereby reducing the number of families in need of temporary assistance. It also should assist the districts in meeting their federal participation rates for temporary assistance recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

The market rates for legally-exempt family child care and in-home child care were established based on a 65 percent (65%) differential applied to the market rates established for family day care. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a registered family day care provider. The enhanced market rate for legally-exempt family and in-home child care providers is based on a 70 percent (70%) differential applied to the child care market rates established for registered family day care. The additional five percent (5%) differential provides an incentive to legally-exempt providers to pursue a minimum of ten hours of approved training. Additionally, the regulation allows local social services districts, which so choose in their Child and Family Services Plans, to increase the enhanced market rate to up 75 percent (75%) of the applicable registered family day care market rate.

The market rates for legally-exempt group child care were established based on a 75 percent (75%) differential applied to the market rates established for day care centers. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a day care center.

The requirement to apply the part-day market rates for before and/or after school care provided for less than three hours per day by day care centers or school age child care programs that do not charge on an hourly basis has been clarified to make clear that the requirement includes children who are attending pre-kindergarten, kindergarten and higher grades.

The school age child care rates now include rates for children ages three to five years. These rates apply to pre-kindergarten children attending school age child care programs that have waivers to provide care for children who are enrolled in half-day or full-day pre-kindergarten classes.

The regulations recognize that there may be differences in the needs among social services districts. To the extent allowed by statute, the regulations provide social services districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities.

5. Rural area participation:

Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved state plan for the Child Care and Development Fund. In accordance with the federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated

providers. The sample drawn was representative of the regions across the state and, therefore, providers located in rural areas were appropriately represented in the survey. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had resources available to assist providers in other languages. Rate data was collected from 4,767 providers, including providers from rural counties, and that information formed the basis for the updated market rates.

Job Impact Statement

Section 201-a of the State Administrative Procedures Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State.

Adjustments to the child care market rates reflect both increases and decreases of previous child care market rates. Decreases in the child care market rates reflect the market place and OCFS believes that they are not substantial enough to cause the loss of jobs in child care programs.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Child Care for Children Experiencing Homelessness

I.D. No. CFS-24-16-00001-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 404.1, 404.6, 404.8, 415.1, 415.2, 415.3, 415.4, 415.7, 415.8 and 415.9; and repeal of section 415.11 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 410(1) and title 5-C

Subject: Child care for children experiencing homelessness.

Purpose: To reduce barriers for children experiencing homelessness to receive child care assistance and to attend child care.

Text of proposed rule: Title 18, of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), is hereby amended to include amendments to sections 404.1, 404.6, 404.8, 415.1, 415.2, 415.3, 415.4, 415.7, 415.8 and 415.9. In addition, section 415.11 is hereby repealed.

18 NYCRR Section 404.1(d)(1)(ii) is amended to read as follows:

(ii) Except for the provision of child care services to certain families transitioning from family assistance as set forth in section 415.2(a)(1)[(iii)]*(iv)* of this Title, and protective services for adults as set forth in Part 457 of this Title, no reimbursement will be available for the provision of services prior to the date of actual determination of programmatic and/or financial eligibility unless such determination is made within 30 days of the date of application and the individual is determined to have been programmatically and/or financially eligible when services were initiated. In no event may the date of eligibility precede the date of application except for the provision of child care to transitioning families as set forth in section 415.2(a)(1)[(iii)]*(iv)* of this Title and protective services for adults.

18 NYCRR Section 404.6(a) is amended to read as follows:

(a) The social services district must impose and provide for the collection of such fees for service as are required in the then effective consolidated services plan or integrated county plan or, in the case of child care services, the family share for such services required by section 415.3[(f)]*(e)* of this Title. Failure of the service recipient to pay a fee or family share as required in this section must lead to suspension or termination of the service for which the fee or family share was imposed and not paid unless, in the case of child care services, satisfactory arrangements have been made, prior to the suspension or termination of such services, for the service recipient to make full payment of all delinquent family shares. No subsequent application nor any reapplication by the service recipient for any service suspended or terminated by reason of the failure to pay a required fee or family share will be considered until such time as all delinquent fees are paid or, in the case of child care services, unless and until arrangements satisfactory to the social services district are made for the service recipient to make full payment of all delinquent family shares. Notwithstanding the foregoing, failure of the service recipient to pay a fee or family share must not be a basis for denial or discontinuance of services as part of a plan of protective services for an adult or a child or for preventing placement of a child in foster care.

18 NYCRR Section 404.8(b) is amended to read as follows:

(b) The definition of child care services unit set forth in section 415.1[(f)]*(l)* of this Title must be used for all determinations and redeterminations of eligibility for child care services.

18 NYCRR Section 415.1(a) is amended to read as follows:

(a) Child care services means care for an eligible child provided on a regular basis either in or away from the child's residence for less than 24 hours per day which is provided by an eligible provider as defined in subdivision [(i)]*(g)* of this section. Child care services may exceed 24 consecutive hours when such services are provided on a short-term emergency basis or in other cases where the caretaker's approved activity necessitates care for 24 hours or more on a limited basis, if the district has indicated in its consolidated services plan or integrated county plan that it will provide for such care.

18 NYCRR Section 415.1(i) is amended to read as follows:

(i) Legally-exempt group child care means care provided by those caregivers, other than caregivers of informal child care as defined in subdivision [(c)]*(h)* of this section, which are not required to be licensed by or registered with the department or licensed by the City of New York but which meet all applicable State or local requirements for such child care programs. Caregivers of legally-exempt group child care include, but are not limited to:

A new subparagraph (v) is added to 18 NYCRR Section 415.2(a)(2) to read as follows:

(v) A family experiencing homelessness, in accordance with section 725 of Subtitle VII-B of the McKinney-Vento Act, with income up to 200 percent of the State income standard and child care services are needed for the child's caretaker(s) to seek housing and:

(a) for the child's caretaker(s) to seek employment as defined in section 415.1(p); or

(b) for the child's caretaker(s) to be engaged in work as defined in section 415.1(o); or

(c) for the child's caretaker(s) to attend educational or vocational activities as defined in section 415.2(a)(3)(vii)(b) or section 415.2(a)(3)(iv). Notwithstanding the potential for some of these educational or vocational training programs to allow for the eventual attainment of a bachelor's degree or like certificate of completion for a four-year college program, this regulation does not permit the renewal of such educational or vocational training program enrollment for any additional period in excess of 30 consecutive calendar months except as for those programs defined in section 415.2(a)(3)(iv), nor does it permit enrollment in more than one such program.

18 NYCRR Section 415.2(a)(3)(iii)(b) is amended to read as follows:

(b)[homeless or] receiving services for victims of domestic violence and needs child care in order to participate in an approved activity, or in screening for or an assessment of the need for services for victims of domestic violence; or

18 NYCRR Section 415.2(a)(3)(iii)(c) is amended to read as follows:

(c) in an emergency situation of short duration including, but not limited to, cases where the caretaker's absence from the home for a substantial part of the day is necessary because of extenuating circumstances such as a fire, [being dispossessed from the home, seeking living quarters,] or providing chore/housekeeper services for an elderly or disabled relative.

18 NYCRR Section 415.2(d)(1)(i) is amended to add clause (c), and to read as follows:

(a) families with very low income. Each social services district must establish in its consolidated services plan or integrated county plan an income level at or below 200 percent of the State income standard which will constitute the upper income level for families with very low income*;* [and]

(b) families with children who have special needs[.]*; and*

(c) families experiencing homelessness.

18 NYCRR Section 415.3(e)(1) is amended to read as follows:

(1) Each family receiving child care services, [with the] except[ion of] *for* a family where the parent(s) or caretaker relative(s) is receiving public assistance[,] *or a family experiencing homelessness*, must contribute toward the costs of such services by paying a family share based upon the family's income. A family share also may be required of any family to recoup an overpayment for a child care services regardless of whether any member of the family is receiving public assistance.

18 NYCRR Section 415.4(a)(1)(v) is amended to read as follows:

(v) a recipient's responsibility to contribute toward the costs of the child care services by paying a family share, if required as determined in accordance with section 415.3[(f)]*(e)* of this Part;

18 NYCRR Section 415.4(c)(1) is amended to read as follows:

(1) A recipient must have the option to choose between the eligible providers set forth in section 415.1[(h)]*(g)* of this Part; provided, however, that:

18 NYCRR Section 415.4(f)(7)(iv)(b) is amended to read as follows:

(b) if the caregiver of legally-exempt group child care is not required to operate under the auspices of another Federal, State or local

governmental agency, then the caregiver must meet the additional health and safety requirements set forth in [subparagraphs (iv) and (v) of this paragraph] *section 415.4(f)(7)*.

18 NYCRR Section 415.4(f)(7)(v)(w) is amended to read as follows:

(w) The caregiver *shall* [will] not[give] *provide* child care to any child unless the caregiver has been furnished with a statement signed by a physician or other authorized individual who specifies that the child has received age appropriate immunizations *in accordance with New York State Public Health Law* or a statement signed by a physician or other authorized individual who indicates that one or more of the immunizations would be detrimental to the child's health, or the child's caretaker provides a statement indicating that the child has not been immunized due to the caretaker's religious beliefs.

18 NYCRR Section 415.7(f)(2) is amended to read as follows:

(2) to receive a child care certificate, as defined in section 415.1[(p)]*(n)* of this Part, which permits the child's caretaker to arrange child care services with any eligible provider.

18 NYCRR Section 415.8(k)(2) is amended to read as follows:

(2) The parent or caretaker relative must document to the social services district, through the submission of new attestations in accordance with [subdivision (h) of this] section *415.8(i)* on a periodic basis as set forth by the social services district, that the parent or caretaker relative is continuing to attempt to locate the needed child care including following up on all new referrals from the social services district, child care resource and referral agency, and/or any other child care agency, as applicable, and by responding to all offers of child care from the social services district. New attestations must be submitted in accordance with a schedule developed by the district based on the parent's or the caretaker relative's employment plan.

18 NYCRR Section 415.8(l)(6) is amended to read as follows:

(6) Affordable means the parent or caretaker relative would have sufficient income to pay the family share for the child care services determined in accordance with section 415.3[(f)]*(e)* of this Part, if required, and/or to pay the cost of care above market rate, if applicable. If the potential provider is a provider of informal child care who would be providing care in the child(ren)'s home, affordable also means that the parent or caretaker relative would have sufficient income to pay the provider at least minimum wage, if required by State and/or Federal law, and to provide such provider with all employment benefits required by State and Federal law.

18 NYCRR Section 415.9(h) is amended to read as follows:

(h)*(1)* A social services district may establish *a* differential payment rate[s] for child care services provided by [regulated]*licensed or registered* child care providers that have been accredited by a nationally-recognized child care organization. *Legally-exempt child care providers are not eligible for a differential payment rate under this paragraph. If the social services district chooses to provide a differential rate, the differential rate must be at least five percent higher than the actual cost of care or the applicable market rate, whichever is less. The differential rate may not exceed 15 percent of the actual cost of care or the applicable market rate, whichever rate is less.*

(2) A social services district [may also]*must* establish differential payment rates for any eligible *child care* provider[s] as defined in section 415.1[(h)]*(g)* of this Part for child care services provided during nontraditional hours (evening, night or weekend hours). *The differential rate must be at least five percent higher than the actual cost of care or the applicable market rate, whichever is less. The differential rate may not exceed 15 percent of the actual cost of care or the applicable market rate, whichever is less.*

(3) *A social services district must establish differential payment rates for licensed and registered child care providers for child care services provided to a child experiencing homelessness. A social services district may establish differential payment rates for legally-exempt child care providers for a child experiencing homelessness. The differential rate for licensed and registered child care providers must be at least five percent higher than the actual cost of care or the applicable market rate, whichever is less. There is no minimum differential rate for legally-exempt child care providers. The differential rate may not exceed 15 percent of the actual cost of care or the applicable market rate, whichever is less.*

(4) [The differential payment rates established by the district may be up to 15 percent higher than the applicable market rates set forth in these regulations.] The differential payment rates the district sets [for accredited programs] may be different [than the rates set for care provided during nontraditional hours] *for each category established in this subdivision*. The social services district must indicate in the district's consolidated services plan or integrated county plan the percentage [above the applicable market rate(s)] that it [opts to allow] *will provide* for [accredited programs and/or for care provided during nontraditional hours] *each category*. *The social services district must indicate the rate that it will provide for child care providers that qualify for multiple differential payment rates, pursuant to this section. The total percentage must not exceed 25 percent of the applicable market rate or the actual cost of care.* A social services district may request a waiver from the [office] *Office* to establish a payment rate that is in excess of [15] *25* percent above the applicable market rate upon a showing that the [15] *25* percent maximum is insufficient to provide access within the district [to accredited programs and/or care provided during nontraditional hours]*to such child care providers,* as applicable.

Text of proposed rule and any required statements and analyses may be obtained from: Public Information Office, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 473-7793, email: info@ocfs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 34(3)(f) of SSL authorizes the Commissioner of the Office to establish regulations for the administration of public assistance and care within the State.

Section 410(1) of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Article 6, Title 5-C (sections 410-u through 410-z) of the SSL governs the New York State Child Care Block Grant. It includes provisions regarding the use of funds by social services districts, the types of families eligible for services, the amount of local funds that must be spent on child care services, and reporting requirements. The Office is required to specify certain NYSCCBG requirements in regulation.

The Child Care and Development Block Grant Act of 2014 (42 U.S.C. 9858 et seq) requires that the State give priority to families experiencing homelessness. In addition, the federal statute includes a number of provisions to improve access to high quality child care for children experiencing homelessness. The law requires the State to establish a grace period that allows children experiencing homelessness and children in foster care to receive child care services while allowing their families, a reasonable time to comply with immunization and other health and safety requirements.

2. Legislative objectives:

The legislative intent of the child care subsidy program is to assist low income families in meeting their child care costs in quality programs that provide for the health and safety of their children.

The regulations support the legislative objectives underlying Article 6, Title 5-C of the SSL to provide child care services to public assistance recipients and low income families when necessary to promote self-sufficiency and to protect the health and safety of children in care. In addition, the regulations provide social services districts with greater local flexibility to provide child care services in the manner that best meets the needs of their local communities.

3. Needs and benefits:

The Child Care and Development Block Grant Act of 2014 (42 U.S.C. 9858 et seq) requires that the State give priority to families experiencing homelessness, and establish a grace period that allows children experiencing homelessness and children in foster care to receive child care services while allowing their families a reasonable time to comply with immunization and other health and safety requirements.

The purpose of this proposed rule-making is to reduce barriers for children experiencing homelessness to receive child care assistance and to attend child care.

This package also makes technical revisions to correct inaccurate cross references.

4. Costs:

Under the State Budget for SFY 2016-2017, social services districts will receive their allocations of $805,928,000 in federal and State funds under the New York State Child Care Block Grant. Social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their New York State Child Care Block Grant allocations.

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for seventy-five percent (75%) of the costs of providing subsidized child care services to public assistance recipients; social services districts are responsible for the other twenty-five percent (25%) of such costs. In addition, the State is responsible for reimbursing social services districts for one hundred percent (100%) of the costs of providing child care services to other

eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant and is limited on an annual basis to each social services district's State Child Care Block Grant allocation for that year.

For families that do not fall under the child care guarantee, social services districts will be required to prioritize and provide child care subsidies to support homeless families to the extent that they have funding available. Social services districts may use block grant funds allocated to cover the costs of the differential market rate for care provided to children experiencing homelessness.

Social service districts will continue to have discretion with regard to establishing a differential payment rate for child care services provided by an accredited nationally-recognized child care organization, however those districts that choose to establish such a rate will be required to establish the rate at least five percent (5%) higher than the actual cost of care or the applicable market rate, whichever is less.

Social services districts will be required to provide licensed/registered child care providers with a differential market rate, for care provided to a child experiencing homelessness, of at least five percent (5%) higher than the actual cost of care or the applicable market rate, whichever is less. Social services districts have the option to pay up to fifteen percent (15%) above the actual cost of care or the applicable market rate, if the social services district selects this option in its consolidated services plan or integrated county plan.

Social services districts have the option to establish a differential payment rate for legally-exempt child care providers for child care services provided to a child experiencing homelessness, if the social services district selects this option in its consolidated services plan or integrated county plan. If a social services district chooses to provide a differential rate it will not be required to establish a minimum differential rate for legally-exempt child care providers. Social services districts will have the option to pay up to fifteen percent (15%) above the actual cost of care or the applicable market rate, whichever is less.

Social services districts will be required to establish differential payment rates for child care providers for child care services provided during nontraditional hours (evening, night or weekend hours). The differential rate for child care providers must be at least five percent (5%) higher than the actual cost of care or the applicable market rate, whichever is less. Social services districts may not establish a differential rate that exceeds fifteen percent (15%) of the actual cost of care or the applicable market rate, whichever is less.

Social services districts may establish different differential payment rates for each category: accredited child care programs, care provided during nontraditional hours, or care provided to a child experiencing homelessness. The social services district will be required to indicate in the district's consolidated services plan or integrated county plan the percentage that it will provide for each category. For child care providers that qualify for multiple differential payment rates, the total percentage must not exceed twenty-five percent (25%) of the applicable market rate or the actual cost of care. Social services district will be allowed to request a waiver to establish a payment rate that is in excess of twenty-five percent (25%) above the applicable market rate upon a showing that the twenty-five percent (25%) maximum is insufficient to provide access within the district to accredited programs and/or care provided during nontraditional hours and/or care provided to a child experiencing homelessness.

Social services districts will be required to waive the family fee for a family experiencing homelessness.

Social services districts will be required to include a family experiencing homelessness as a priority population, if the family is seeking housing, and: seeking employment or, engaged in work or, participating in an approved educational or vocational activity.

Child care providers will be required to provide child care and social services districts will be required to provide child care assistance for a grace period, consistent with New York State Public Health Law, that will allow parents to obtain required immunization paperwork.

5. Local government mandates:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the applicable market rates. Social services districts must identify which child care providers receive a differential payment rate for: serving a child/ren experiencing homelessness, providing care during non-traditional hours and/or, are accredited by a nationally-recognized child care organization. Social services districts must identify which child care providers are serving children experiencing homelessness and waive the family fee and adjust payments, as appropriate.

6. Paperwork:

Social services districts will need to review cases to determine whether the differential market rate applies to: accredited child care programs, care being provided during nontraditional hours, and/or the child care provider is caring for a child experiencing homelessness. Social services districts will need to review cases to determine whether or not the family fee should be waived. Payment adjustments will have to be made, as appropriate.

7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

8. Federal standards:

The regulations are consistent with the Child Care and Development Block Grant Act of 2014 (42 U.S.C. 9858 et seq) that require the State to prioritize families that are experiencing homelessness and provide a grace period for children experiencing homelessness to attend child care.

9. Compliance schedule:

These provisions must be effective on October 1, 2016.

10. Alternative approaches:

No alternative approaches were considered because federal statute requires that families experiencing homelessness be prioritized to receive child care assistance and provides a grace period for children experiencing homelessness to attend child care.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:

The change in regulations, waiving the family fee for families experiencing homelessness, the differential market rate for care provided to children experiencing homelessness, the differential market rate for care provided during nontraditional hours, the differential market rate for care provided by an accredited child care program, prioritizing child care assistance for children experiencing homelessness, and providing a grace period for children to attend child care while the parents work toward complying with the state immunization requirements, will affect the 58 social services districts. There is a potential effect on over 20,000 licensed and registered child care providers and an estimated 45,000 informal providers that may provide child care services to families receiving a child care subsidy.

2. Compliance requirements:

For families that do not fall under the child care guarantee, social services districts will be required to prioritize and provide child care subsidies to support homeless families to the extent that they have funding available. Child care services will be provided to homeless families while the families seek housing, and: seek employment, or engage in work, or attend educational or vocational activities. Child care services will be provided during a grace period for families to comply with state immunization requirements in accordance with NYS Public Health Law.

Social services districts will be required to establish differential payment rates for child care providers for child care services provided during nontraditional hours (evening, night or weekend hours). Social services districts will be required to establish a differential rate for child care providers that must be at least five percent (5%) higher than the actual cost of care, or the applicable market rate, whichever is less. Social services districts may not establish a differential rate that exceeds fifteen percent (15%) of the actual cost of care or the applicable market rate, whichever is less.

Social services districts will be required to establish differential payment rates for licensed/registered child care providers for child care services provided to a child experiencing homelessness. Social services district may establish differential payment rates for legally-exempt child care providers for a child experiencing homelessness. Social services districts will be required to establish a differential rate for licensed/registered child care providers that must be at least five percent (5%) higher than the actual cost of care or the applicable market rate, whichever is less. If a social services district chooses to provide a differential rate, they will not be required to establish a minimum differential rate for legally-exempt child care providers. Social services districts may not establish a differential rate that will exceed fifteen percent (15%) of the actual cost of care or the applicable market rate, whichever is less.

Social services districts may establish differential payment rates that may be different for each category: accredited child care programs, care provided during nontraditional hours, or care provided to a child experiencing homelessness. The social services district will be required to indicate in the district's consolidated services plan or integrated county plan the percentage that it will provide for each category. For child care providers that qualify for multiple differential payment rates, the total percentage must not exceed twenty-five percent (25%) of the applicable market rate or the actual cost of care. Social services district will be allowed to request a waiver to establish a payment rate that is in excess of twenty-five percent (25%) above the applicable market rate upon a showing that the twenty-five percent (25%) maximum is insufficient to provide access within the district to accredited programs and/or care provided during nontraditional hours and/or care provided to a child experiencing homelessness.

Social services districts will be required to waive the family fee for homeless families.

Social services districts will need to review cases to determine whether

the differential market rate applies to: accredited child care programs, care being provided during nontraditional hours, and/or the child care provider is caring for a child experiencing homelessness. Social services districts will need to review cases to determine whether or not the family fee should be waived. Payment adjustments will have to be made, as appropriate.

3. Professional services:

Neither social services districts, nor child care providers, should have to hire additional professional staff in order to implement these regulations.

4. Compliance costs:

Under the State Budget for SFY 2016-2017, social services districts will receive their allocations of $805,928,000 in federal and State funds under the New York State Child Care Block Grant. Social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their New York State Child Care Block Grant allocations.

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for seventy-five percent (75%) of the costs of providing subsidized child care services to public assistance recipients; social services districts are responsible for the other twenty-five percent (25%) of such costs. In addition, the State is responsible for reimbursing social services districts for one hundred percent (100%) of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant and is limited on an annual basis to each social services district's State Child Care Block Grant allocation for that year.

In addition, social services districts may use block grant funds to serve the optional categories of eligible individuals set forth in OCFS regulations. Social services districts may use block grant funds allocated to cover the costs of the differential market rate to be paid to providers, who have obtained an accreditation from a nationally-recognized child care organization, who are serving a child experiencing homelessness, and/or provide care during nontraditional hours.

5. Economic and technological feasibility:

The child care providers and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

6. Minimizing adverse impact:

OCFS believes that there will be minimal impact on social services districts because these families will be served to the extent that the district has funding available. These changes will provide needed support to prioritize homeless families and incentivize providers to serve children who are homeless.

The regulations recognize that there may be differences in the needs among social services districts. To the extent allowed by statute, the regulations provide social services districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities.

7. Small business and local government participation:

In the development of the 2016-2018 Child Care Development Fund Plan, OCFS held three (3) regional public hearings in which these changes were presented to child care providers and local social services districts. OCFS held a statewide webinar for child care providers that outlined these and other changes. Local social services participated in two statewide phone conferences where ideas were shared on how to support homeless families. The draft 2016-2018 Child Care Development Fund Plan was posted on the OCFS website. Child care providers, local governments and the public made comments on the proposed 2016-2018 Child Care Development Fund Plan.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect the 44 social services districts located in rural areas of the State and the child care providers and families located in those social services districts.

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

Social services districts will need to review cases to determine whether the differential market rate applies to: accredited child care programs, care being provided during nontraditional hours, and/or the child care provider is caring for a child experiencing homelessness. Social services districts will need to review cases to determine whether or not the family fee should be waived. Payment adjustments will have to be made, as appropriate.

For families that do not fall under the child care guarantee, social services districts will be required to prioritize and provide child care subsidies to support homeless families to the extent that they have funding available. Child care services will be provided to homeless families while families seek housing and: seek employment, or engage in work, or attend training or educational activities. Child care services will be provided during a grace period for families to comply with state immunization requirements in accordance with NYS Public Health Law.

Social services districts will be required to establish differential payment rates for child care providers for child care services provided during nontraditional hours (evening, night or weekend hours). Social services districts will be required to establish a differential rate for child care providers that must be at least five percent (5%) higher than the actual cost of care, or the applicable market rate, whichever is less. Social services districts may not establish a differential rate that exceeds fifteen percent (15%) of the actual cost of care or the applicable market rate, whichever is less.

Social services districts will be required to establish differential payment rates for licensed/registered child care providers for child care services provided to a child experiencing homelessness. Social services district may establish differential payment rates for legally-exempt child care providers for a child experiencing homelessness. Social services districts will be required to establish a differential rate for licensed/registered child care providers that must be at least five percent (5%) higher than the actual cost of care or the applicable market rate, whichever is less. If a social services district chooses to provide a differential rate, they will not be required to establish a minimum differential rate for legally-exempt child care providers. Social services districts may not establish a differential rate that will exceed fifteen percent (15%) of the actual cost of care or the applicable market rate, whichever is less.

Social services districts may establish differential payment rates that may be different for each of the following categories: accredited child care programs, care provided during nontraditional hours, or care provided to a child experiencing homelessness. The social services district will be required to indicate in the district's consolidated services plan or integrated county plan the percentage that it will provide for each category. For child care providers that qualify for multiple differential payment rates, the total percentage must not exceed twenty-five percent (25%) of the applicable market rate or the actual cost of care. Social services district will be allowed to request a waiver to establish a payment rate that is in excess of twenty-five percent (25%) above the applicable market rate upon a showing that the twenty-five percent (25%) maximum is insufficient to provide access within the district to accredited programs and/or care provided during nontraditional hours and/or care provided to a child experiencing homelessness.

Social services districts will be required to waive the family fee for homeless families.

Social services districts will need to review cases to determine whether the differential market rate applies to: accredited child care programs, care is being provided during nontraditional hours, and/or the child care provider is caring for a child experiencing homelessness. Social services districts will need to review cases to determine whether or not the family fee should be waived. Payment adjustments will have to be made, as appropriate.

3. Costs:

Under the State Budget for SFY 2016-2017, social services districts received their allocations of $805,928,000 in federal and State funds under the New York State Child Care Block Grant. Social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their New York State Child Care Block Grant allocations.

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for seventy-five percent (75%) of the costs of providing subsidized child care services to public assistance recipients; social services districts are responsible for the other twenty-five percent (25%) of such costs. In addition, the State is responsible for reimbursing social services districts for one hundred percent (100%) of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each social services district's State Child Care Block Grant allocation for that year.

In addition, social services districts may use block grant funds to serve the optional categories of eligible individuals set forth in OCFS regulations. Social services districts may use block grant funds allocated to cover the costs of the differential market rate to be paid to providers, who have obtained an accreditation from a nationally-recognized child care organization, who are serving a child experiencing homelessness, and/or provide care during nontraditional hours.

4. Minimizing adverse impact:

OCFS believes that there will be minimal impact on social services districts because these families will be served to the extent that the district has funding available. These changes will provide needed support to prioritize homeless families and incentivize providers to serve children who are homeless.

The regulations recognize that there may be differences in the needs among social services districts. To the extent allowed by statute, the

regulations provide social services districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities.

5. Rural area participation:

The Child Care Development Block Grant Act of 2014 (42 U.S.C. 9858 et seq) requires that states improve access to child care services for homeless children including procedures that allow a child to be enrolled while required documentation is obtained. These regulations improve access to child care by incentivizing child care providers to provide care to children experiencing homelessness and while families' seek employment or engage in work.

In the development of the 2016-2018 Child Care Development Fund Plan, OCFS held three (3) regional public hearings in which these changes were presented to child care providers and local social services districts. OCFS held a statewide webinar for child care providers that outlined these and other changes. Local social services participated in two statewide phone conferences where ideas were shared on how to support homeless families. The draft 2016-2018 Child Care Development Fund Plan was posted on the OCFS website. Child care providers, local governments and the public made comments on the proposed 2016-2018 Child Care Development Fund Plan.

Job Impact Statement

Section 201-a of the State Administrative Procedures Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State. OCFS believes that providing child care services to children experiencing homelessness will not result in a loss of jobs.

Department of Corrections and Community Supervision

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Department Records

I.D. No. CCS-24-16-00006-P

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

Proposed Action: This is a consensus rule making to amend sections 5.11 and 5.15 of Title 7 NYCRR.

Statutory authority: Correction Law, sections 5 and 71.1

Subject: Department Records.

Purpose: Update Department name and address, update who appoints records access officer, and adds Regional Directors as custodians.

Text of proposed rule: The Department of Corrections and Community Supervision proposes to amend 7NYCRR Part 5 as follows:

Amend Section 5.11 as follows:

The [deputy commissioner for administrative services is the]records access officer for the Department of [Correctional Services]*Corrections and Community Supervision is appointed by the Department's Deputy Commissioner and Counsel*. [The director of employee investigations serves as the assistant records access officer.] A request by any person wishing to inspect or obtain a copy of a departmental record shall be addressed in writing to: Records Access Officer, Department of [Correctional Services]*Corrections and Community Supervision*, [Building 2,] 1220 Washington Avenue, Albany, NY 12226-2050. The request shall describe, in reasonable detail, the record or records sought. The request may be mailed or delivered in person to the above address on any workday between the hours of 9:00 a.m. and 4:00 p.m.

Amend Section 5.15 as follows:

(a) The superintendent or director of a facility shall be the custodian of all departmental records located at the facility unless otherwise specified herein. As custodian, he *or she* is a designee of the commissioner for the purposes of this Part.

(b) The counsel is the custodian of all records maintained by staff members of the office of counsel.

(c) Other designees may be appointed by the commissioner, the records access officer and the superintendent or director of a facility.

(d) Regional Directors for Community Supervision are the custodian of all Department records maintained within their respective regions.

Text of proposed rule and any required statements and analyses may be obtained from: Kevin P. Bruen, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus, Albany, NY 12226-2050, (518) 457-4951, email: Rules@doccs.ny.gov

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

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

Consensus Rule Making Determination

The Department of Corrections and Community Supervision (DOCCS) has determined that no person is likely to object to the proposed action. The amendment of these sections updates the Department name and address, updates who appoints the records access officer, and adds Regional Directors as custodians. See SAPA Section 102(11)(a).

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal updates the Department name and address, updates who appoints the records access officer, and adds Regional Directors as custodians.

Department of Financial Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. DFS-24-16-00004-P

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

Proposed Action: This is a consensus rule making to amend Part 83 (Regulation 172) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 107(a)(2), 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-(c)(12) and 4408-a; L. 2002, ch. 599; L. 2008, ch. 311

Subject: Financial Statement Filings and Accounting Practices and Procedures.

Purpose: To update citations in Part 83 to the Accounting practices and Procedures Manual as of March 2014 (instead of 2013).

Text of proposed rule: Subdivision (c) of section 83.2 is amended to read as follows:

(c) To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy, procedures and instruction manuals. The latest of these manuals, the Accounting Practices and Procedures Manual as of March [2015] *2016* * (accounting manual) includes a body of accounting guide-lines referred to as statements of statutory accounting principles (SSAPs). The accounting manual shall be used in the preparation of quarterly statements and the annual statement for [2015] *2016*, which will be filed in [2016] *2017*.

* ACCOUNTING PRACTICES AND PROCEDURES MANUAL AS OF MARCH [2015] *2016*. © Copyright 1999 – [2015] *2016* by National Association of Insurance Commissioners, in Kansas City, Missouri.

Text of proposed rule and any required statements and analyses may be obtained from: Sally Geisel, New York State Department of Financial Services, 1 State Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

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

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

Consensus Rule Making Determination

No person is likely to object to amendment of the rule that adopts the most recent edition of the Accounting Practices and Procedures Manual As of March 2016 ("2016 Accounting Manual"), published by the National Association of Insurance Commissioners ("NAIC"), and replaces the rule's current reference to the Accounting Practices and Procedures Manual As of March 2015.

All states require insurers to comply with the 2016 Accounting Manual, which establishes uniform practices and procedures for U.S.-licensed insurers. Adoption of the rule is necessary for the Department to maintain its accreditation status with the NAIC. The NAIC-accreditation standards require that state insurance regulators have adequate statutory and

administrative authority to regulate insurers' corporate and financial affairs, and that they have the necessary resources to carry out that authority.

The Department determines this rule to be a consensus rule, as defined in State Administrative Procedure Act § 102(11) (SAPA), and is proposed pursuant to SAPA § 202(1)(b)(i). Accordingly, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments or a Rural Area Flexibility Analysis.

Job Impact Statement

The Department of Financial Services ("Department") does not believe that this rulemaking will have any impact on jobs and employment opportunities, including self-employment opportunities. The amendment adopts the most recent edition published by the National Association of Insurance Commissioners ("NAIC") of the Accounting Practices and Procedures Manual As of March 2016 ("2016 Accounting Manual"), replacing the rule's current reference to the Accounting Practices and Procedures Manual As of March 2015.

All states require insurers to comply with the 2016 Accounting Manual, which establishes uniform practices and procedures for U.S.-licensed insurers. Adoption of the rule is necessary for the Department to maintain its accreditation status with the NAIC. The NAIC accreditation standards require that state insurance regulators have adequate statutory and administrative authority to regulate insurers' corporate and financial affairs, and that they have the necessary resources to carry out that authority.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Repeal of Obsolete Thoroughbred Rule Giving Extra Weight Allowance for Apprentice Jockey Riding for "Original Contract Employer"

I.D. No. SGC-24-16-00007-P

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

Proposed Action: Repeal of section 4032.1(e) of Title 9 NYCRR.

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

Subject: Repeal of obsolete thoroughbred rule giving extra weight allowance for apprentice jockey riding for "original contract employer."

Purpose: To preserve the safety and integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

Text of proposed rule: Subdivision (e) of section 4032.1 of 9 NYCRR would be deleted as follows:

§ 4032.1. Apprentice weight allowances.

An apprentice jockey licensed in accordance with section 4002.26 of this Article may claim the following weight allowances in all overnight races except stakes and handicaps:

* * *

[(e) a contracted apprentice may claim an allowance of three pounds for an additional one year while riding horses owned or trained by the original contract employee.]

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1, 19). Under Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

2. Legislative objectives: To preserve the safety and integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: This rule making is needed to delete from the thoroughbred rules of racing an obsolete provision concerning apprentice jockeys.

The current rules provide an additional year with a three-year weight allowance when a contract apprentice rides for "the original contract employer." See 9 NYCRR § 4032.1(e). This is an obsolete provision. Jockeys no longer participate in an apprentice system, in which youngsters are housed, fed and schooled as a jockey, as a pre-requisite to obtaining a jockey license. Rather, new jockeys may simply apply for an apprentice license. No apprentice jockey has entered racing in New York through the obsolete stable-apprenticeship system since the 1970s. As a result, there is no longer any need for a special incentive encouraging stables to introduce new jockeys to racing this way.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules. There is no cost to the regulated parties by deleting an obsolete rule.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: N/A.

5. Local government mandates: None. The Commission is the only governmental entity authorized to regulate pari-mutuel thoroughbred racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

8. Alternatives: None.

9. Federal standards: There are no minimum standards of the Federal government for this or a similar subject area.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

The proposed amendment is a technical revision to the Commission's thoroughbred rules to omit weight allowances for jockeys racing for their "original contract employer." This is an obsolete provision. Jockeys no longer participate in an apprentice system as a pre-requisite to obtaining a jockey license.

This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Neurodegenerative Specialty Rate

I.D. No. HLT-24-16-00002-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 86-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2802-2(c)

Subject: Neurodegenerative Specialty Rate.

Purpose: To authorize Medicaid rate of payment for providing quality of care to the neurodegenerative population.

Text of proposed rule: New subdivision (x) of Subpart 86-2.10 is added to read as follows:

(x) Specialized programs for residents with neurodegenerative disease providing care to patients diagnosed with Huntington's disease and amyotrophic lateral sclerosis. Facilities which have been approved to operate discrete units specifically designated for the purpose of providing care to residents with Huntington's disease and amyotrophic lateral sclerosis, as established pursuant to section 415.41 of this Title, shall have separate and distinct payment rates calculated pursuant to this section. The noncomparable component of such facilities' rates shall be determined pursuant to this section utilizing the cost report filed pursuant to section 86-2.2(e) of this Subpart.

New subparagraph (iv) of Section 86-2.40(ad)(2) is added to read as follows:

(iv) Effective 4/1/2016 a neurodegenerative specialty rate shall be established for Huntington's disease and amyotrophic lateral sclerosis. The rate shall be based on budgeted cost as submitted by the facility and approved by the department and as issued by the department effective on the facility's first day of operation, provided, however, that such specialty facilities shall file certified cost reports reflecting such specialty facility's first twelve months of operation at an occupancy level of 90% or more. The department shall thereafter issue such facilities rates with non-capital components reflecting such cost reports and such rates shall be effective retroactive to the first day of such twelve month cost report. Nothing in this subparagraph shall be understood as exempting specialty facilities which have not yet achieved 90% occupancy from the generally applicable requirement to file annual calendar year cost reports.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House 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: 45 days after publication of this notice.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section 2808(2-c) of the Public Health Law (PHL) as enacted by Section 95 of Chapter 59 of the Laws of 2011, which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to Medicaid reimbursement rates for residential health care facilities. Such rate regulations are set forth in Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

The Legislature has empowered the Department, under PHL 2808 to set Nursing Home rates, including the establishment of rates for specialty units/services. A community need has arisen for these particular services and the Department is fulfilling its statutory obligation to reimburse those services that are Medicaid eligible.

Needs and Benefits:

Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, will be amended by adding a new subsection to 86-2.10 and 86-2.40 to provide information on the purpose of the specialty neurodegenerative disease rate and also information on how said rate shall be established.

The proposed regulation permits the Commissioner to establish Medicaid rates of payments for the neurodegenerative specialty rates which comprises of Huntington's disease and amyotrophic lateral sclerosis disease.

The neurodegenerative population will receive specialized care from trained, experienced physicians who specialize in the care of individuals with Huntington's disease and amyotrophic lateral sclerosis. The benefit of providing care for the neurodegenerative population will be the prevention of out of state placement and repatriation back to the state where support groups for families, residents and staff shall be established.

Costs:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The only additional data requested from providers are standard periodic reports which are already being completed by providers.

Costs to State Government:

There is a proposed increased cost to the State, which will allocate monies from the Medicaid global cap to pay for such increases. A new Medicaid rate for neurodegenerative specialty units will be established, based upon historic costs of similar services and extrapolated across additional providers and services. The total annual investment for neurodegenerative services is $6.3 million, which results in an anticipated rate of $115 per bed per day. The rate will be budget based according to budgets submitted by participating providers until adequate cost data is available, at which time, the Department will use actual costs for this rate.

Costs to Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The proposed regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

An eligible provider must submit a written proposal, including a proposed budget. If a temporary rate adjustment is approved for a provider, the provider must submit periodic reports, as determined by the Commissioner, concerning the achievement of benchmarks and goals that are established by the Commissioner and are in conformity with the provider's approved written proposal.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

No significant alternatives are available. Any potential projects that would otherwise qualify for funding pursuant to the revised regulation would, in the absence of this amendment, either not proceed or would require the use of existing provider resources.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the federal government for the same or similar subject area.

Compliance Schedule:

The proposed regulation provides the Commissioner of Health the authority to grant approval of temporary adjustments to rates calculated for residential health care facilities that are subject to or affected by the closure, merger, acquisition, consolidation, or restructuring of a health care facility, for a specified period of time, as determined by the Commissioner, of up to three years.

Regulatory Flexibility Analysis

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be residential health care facilities with 100 or fewer full-time equivalents. Based on recent financial and statistical data extracted from residential health care facility cost reports, approximately 40 residential health care facilities were identified as employing fewer than 100 employees. This rule will have no direct effect on local governments.

Compliance Requirements:

Once actual costs have been established and providers moved from the budget based approach, providers will be required to submit actual costs in their cost report. No additional compliance will be required.

Professional Services:

The services of trained experienced physicians who specialize in caring for the targeted population will be required.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule because there are no technological requirements other than the use of existing technology, and the overall economic aspect of complying with the requirements is expected to be minimal.

Minimizing Adverse Impact:

This regulation seeks to provide needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Small Business and Local Government Participation:

The State formed a Neurodegenerative workgroup to discuss proposed services, rates and community needs. The Neurodegenerative workgroup included members from rural areas, the hospital association and long-term care industry associations. Comments were received and taken into consideration while drafting the regulations. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

Further, the State filed a Federal Public Notice, published in the State Register, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public,

including small businesses and local governments, could locate copies of the corresponding proposed State Plan Amendment. The Notice further invited the public to review and comment on the related proposed State Plan Amendment. In addition, contact information for the department was provided for anyone interested in further information.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 persons or less per square mile. The following 43 counties have populations of less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

Once actual costs have been established and providers moved from the budget based approach, providers will be required to submit actual costs in their cost report. No additional compliance will be required.

Professional Services:

There may be the need for additional professional services in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

This regulation provides needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Rural Area Participation:

The State formed a Neurodegenerative workgroup to discuss proposed services, rates and community needs. The Neurodegenerative workgroup included members from rural areas, the hospital association and long-term care industry associations. Comments were received and taken into consideration while drafting the regulations. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

Job Impact Statement

It is apparent, from the nature and purpose of the proposed rule, that it will not have an adverse impact on jobs or employment opportunities. In fact there will be an increase in job opportunities. The proposed regulation provides a new rate to eligible residential health care facilities that have specialized programs for residents with neurodegenerative diseases. In addition, the proposed regulation sets forth the conditions that must be met in order to receive the neurodegenerative specialty rate. The proposed regulation does not have any negative implications for job opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Specialized Programs for Residents with Neurodegenerative Diseases

I.D. No. HLT-24-16-00003-P

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

Proposed Action: Addition of section 415.41 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)

Subject: Specialized Programs for Residents with Neurodegenerative Diseases.

Purpose: To establish nursing home specialty units for residents with Huntington's Disease (HD) & Amyotrophic Lateral Sclerosis (ALS).

Substance of proposed rule (Full text is posted at the following State website:www.health.ny.gov): A new section for Part 415 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is proposed, to be designated as section 415.41 and entitled "Specialized Programs for Residents with Neurodegenerative Diseases".

(a) General. For purposes of the proposed regulation, "Neurodegenerative Disease" shall mean Huntington's disease or Amyotrophic Lateral Sclerosis. "Specialized program" means a discrete unit within a nursing home that offers services and facilities for individuals with Neurodegenerative Diseases, with the goal of helping them attain or maintain the highest practicable level of physical, affective, behavioral and cognitive functioning. The program must be located in a nursing unit which is specifically designated for this purpose and physically separate from other facility units.

The proposed regulation also provides that the facility shall make information and data available to assist the Department of Health (department) in evaluating the effectiveness of specialty units and their impact on outcomes for individuals with Neurodegenerative Diseases.

(b) Admission. The proposed regulation requires nursing homes to develop written admission criteria for specialty units for individuals with Neurodegenerative Diseases. At a minimum, the resident's medical record must document that the resident has a Neurodegenerative Disease diagnosis, cannot appropriately be served and is not safe in a less restrictive setting, and can benefit from the care and services available in a specialty unit. The proposed regulation also provides that a facility shall evaluate the effects of its admission criteria on its success in achieving its goals and objectives for the specialty unit and requires the facility to report its findings to the department annually thereafter.

(c) Assessment and Care Planning. The proposed regulation requires a home evaluation with the future resident and his or her family, as appropriate, prior to admission to discuss care needs. The proposed regulation also requires development of a care plan for each resident, which shall include a discharge plan, by an interdisciplinary resident care team. The care plan must be reviewed and modified at least once a month for the first three months following admission and then quarterly or upon a significant change in the resident's condition thereafter.

(d) Discharge. The proposed regulation requires that a proposed discharge plan must be developed within 30 days of admission for each resident as part of the overall care plan and shall include input from all professionals caring for the resident, the resident and his or her family, as appropriate, and any outside agency or resource anticipated to be involved with the resident following discharge. The resident must be discharged to a less restrictive setting when he or she no longer meets one or more of the admission criteria for the unit. Additionally, the proposed regulation provides that a facility shall evaluate the effects of its discharge criteria on its success in achieving the goals and objectives for the specialty unit and requires the facility to report its findings to the department annually thereafter.

Nursing homes with specialty units shall have a written agreement with a general hospital or hospitals providing for the transfer of residents in need of emergency or acute inpatient care services. Such hospital(s) shall have expertise in caring for individuals with Neurodegenerative Diseases, except in cases where a general hospital with such expertise is not available within a distance and time considered reasonable by accepted emergency medical standards. In the event of a transfer to any general hospital, the facility must require a member of the specialty unit's staff to accompany the resident, if feasible, and must communicate with the hospital and provide any relevant information about the resident at the time of transfer. The resident shall be given priority readmission status to the unit as warranted by his or her condition.

(e) Program/Unit Staffing Requirements. The facility must maintain

consistent assignment of direct care staff to residents in the specialty unit. In addition, the proposed regulation requires that a specialty unit shall be managed by a program coordinator and that a physician must be responsible for medical direction of the unit. The proposed regulation also identifies other specific categories of personnel who must be assigned or available to the specialty unit, including a psychiatrist, a clinical psychologist or licensed clinical social worker, at least one registered professional nurse on each shift, a respiratory therapist, and a therapeutic recreation specialist.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House 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: 45 days after publication of this notice.

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) section 2803(2)(v) provides that the Public Health and Health Planning Council shall adopt rules and regulations, subject to the approval of the Commissioner of Health, governing the standards and procedures followed by nursing homes which, at a minimum, must meet federal standards.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State through the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. The proposed amendments are consistent with this objective through the development of specialty units designed to address the unique needs of individuals with Neurodegenerative Disease and help them maintain or attain the highest practicable level of physical, affective, behavioral and cognitive functioning.

Needs and Benefits:

The purpose of the proposed amendments to 10 NYCRR Part 415 is to provide regulatory standards for nursing home specialty care units for people with Neurodegenerative Diseases. The environmental and care needs for nursing home residents with Neurodegenerative Diseases, at least before the end stages of the disease, often vary from those of other populations in need of nursing home care today. The proposed standards do not codify clinical pathways and interventions as these may change over time. Rather, they describe the service and environmental needs of people with Neurodegenerative Diseases and the nursing home's responsibilities to meet the resident's needs as well as, to a certain extent, their families' needs.

Four nursing homes have taken steps to create specialty units for people with Neurodegenerative Diseases. Specifically, the following facilities either have already established specialized care units for people with Neurodegenerative Diseases or have submitted Certificate of Need (CON) applications to do so:

- Terence Cardinal Cooke Health Care Center – an established 48-bed unit in New York City;
- Ferncliff Nursing Home – an established 38-bed unit in Rhinebeck;
- Victoria Home – CON submitted for a 12-bed unit in Ossining; and
- Sitrin Health Care Center – CON submitted for a 32-bed unit in New Hartford.

These four facilities will serve as a statewide resource for individuals with Neurodegenerative Diseases, leading to better service for people living in New York and repatriation of out-of-state residents to nursing homes that are closer to their home communities and families. For example, there are currently about 50 Medicaid-eligible New Yorkers with Huntington's disease living in out-of-state nursing homes. Many of these New Yorkers would not have had to seek nursing home care outside of New York had there been a nursing home capable of caring for them closer to their home communities and families.

Costs to Regulated Parties:

Nursing homes are not required to implement the proposed regulation since the operation of specialty units is voluntary. A nursing home may incur costs associated with the construction of a specialty unit for individuals with Neurodegenerative Diseases. The department will establish Medicaid reimbursement rates for nursing home providers for delivering appropriate services through the specialty units. A facility is unlikely to apply for approval to operate a specialty unit if it does not expect that doing so will be cost effective.

Costs to Local Governments:

Nursing homes are not required to implement the proposed regulation, as the operation of specialty units is voluntary. To the extent a nursing home operated by a local government seeks approval to operate a specialty unit, the costs will be the same as for other regulated parties who operate such units.

Costs to State Government:

The proposed rule does not impose any new costs on state government, as regulation of specialty units will be managed as part of the department's overall nursing home surveillance activities.

Local Government Mandates:

The proposed amendments do not impose any program, mandate, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district. Implementation is voluntary.

Paperwork:

Nursing homes interested in operating a specialty unit for individuals with Neurodegenerative Diseases would need to submit and receive approval of a CON application. In addition, nursing homes are already required to maintain compliance with certain reporting, record-keeping obligations and staffing under federal and State requirements. For nursing homes interested in providing specialty care for Neurodegenerative Diseases, which is voluntary, the proposed regulations require additional reporting on admissions, discharges and outcomes and compliance with certain staffing requirements as necessary to meet the objectives of the specialty units. This additional reporting will allow the department to assess compliance and implementation.

Duplication:

The proposed regulation does not duplicate, overlap or conflict with any other State or federal rules and regulations, but sets forth additional standards for care in specialty units for individuals with Neurodegenerative Diseases.

Alternatives:

"Scatter beds" as opposed to specialty unit beds were considered but rejected. Specialty units are preferable from a clinical perspective, as they will enable residents to be cared for by an interdisciplinary care team in a customized environment, and likely will be more cost effective in providing residents with the enhanced level of service required.

Federal Standards:

The proposed amendments exceed federal standards by setting forth additional standards for care in specialty units for individuals with Neurodegenerative Diseases.

Compliance Schedule:

As implementation of the proposed amendments is voluntary, there is no compliance schedule. CON applicants will determine a compliance schedule in conformance with the scope of changes needed in their facilities to accommodate the specialty unit regulatory requirements.

Regulatory Flexibility Analysis

Effect of Rule:

Implementation of this rule is voluntary, subject to submission and approval of a Certificate of Need (CON) application. It is not known how many small nursing homes (those with less than 100 beds), or how many nursing homes owned and operated by counties and cities, will choose to implement the proposed regulation.

Compliance Requirements:

Nursing homes are already required to maintain compliance with record-keeping obligations and staffing under federal and State requirements. For nursing homes interested in providing specialty care for Neurodegenerative Diseases, which is voluntary, the proposed regulations require additional reporting on admissions, discharges and outcomes and compliance with certain staffing requirements as necessary to meet the objectives of the specialty units. This additional reporting will allow the department to assess compliance and implementation.

Professional Services:

Implementation is voluntary. The professional staff needed to comply with the proposed specialty unit regulations do not vary from the professional staff required to comply with current nursing home rules and regulations, except that the proposed regulation expresses a preference for professional staff with experience in meeting the unique needs of individuals with Neurodegenerative Diseases.

Compliance Costs:

Implementation of the proposed regulation is voluntary, subject to submission and approval of a CON application. A nursing home may incur costs associated with the construction of a specialty unit for individuals with Neurodegenerative Diseases. The department will establish Medicaid reimbursement rates for nursing home providers for delivering appropriate services through the specialty units. A facility is unlikely to apply for approval to operate a specialty unit if it does not expect that doing so will be cost effective.

Economic and Technological Feasibility:

The proposed regulation is economically and technically feasible. In particular, implementation is voluntary, and a nursing home is unlikely to propose construction and operation of a specialty unit unless it is cost-effective for the facility.

Minimizing Adverse Impact:

As implementation of the proposed rule is voluntary, a nursing home is unlikely to propose construction and operation of a specialty unit unless it is cost-effective for the facility.

Small Business and Local Government Participation:

The department created a stakeholder advisory group, which helped guide the development of the proposed regulation. The members of this group include representatives of small businesses, nursing homes specifically interested in serving individuals with Neurodegenerative Diseases, as well as family members and advocates for individuals with Neurodegenerative Diseases, and clinical experts with experience caring for such individuals. In addition, a copy of this notice of proposed rulemaking will be posted on the department's website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including small businesses and local governments.

The proposed regulation provides that the facility shall make information and data available to assist the department in evaluating the effectiveness of specialty units and their impact on outcomes for individuals with Neurodegenerative Diseases. Such evaluation will be conducted four years after the adoption of the proposed regulations and the department will consider whether changes are warranted to the programmatic requirements. This period of time is designed to ensure that there is sufficient experience to allow the department to assess implementation.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

While there are a number of nursing homes located in rural areas throughout the State, implementation of the proposed rule is voluntary. Nursing homes in rural areas will not be affected differently than those in non-rural areas.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Nursing homes are already required to maintain compliance with certain reporting, record-keeping obligations and staffing under federal and State requirements. For nursing homes interested in providing specialty care for Neurodegenerative Diseases, which is voluntary, the proposed regulations require additional reporting on admissions, discharges and outcomes and compliance with certain staffing requirements as necessary to meet the objectives of the specialty units. This additional reporting will allow the department to assess compliance and implementation.

Costs:

Implementation of the proposed rule is voluntary, subject to the submission and approval of a Certificate of Need application. A nursing home may incur costs associated with the construction of a specialty unit for individuals with Neurodegenerative Diseases. The department will establish Medicaid reimbursement rates for nursing home providers for delivering appropriate services through the specialty units. A facility is unlikely to apply for approval to operate a specialty unit if it does not expect that doing so will be cost effective.

Minimizing Adverse Impact:

As implementation of the proposed rule is voluntary, a nursing home is unlikely to propose construction and operation of a specialty unit unless it is cost-effective for the facility.

Rural Area Participation:

The department created a stakeholder advisory group, which helped guide the development of the proposed regulation. The group's members are located throughout the state and include family members and advocates for individuals with Neurodegenerative Diseases, clinical experts with experience caring for individuals with Neurodegenerative Diseases, and representatives of nursing homes interested in serving such individuals. In addition, a copy of this notice of proposed rulemaking will be posted on the department's website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including individuals and entities located in rural areas.

The proposed regulation provides that the facility shall make information and data available to assist the department in evaluating the effectiveness of specialty units and their impact on outcomes for individuals with Neurodegenerative Diseases. Such evaluation will be conducted four years after the adoption of the proposed regulations and the department will consider whether changes are warranted to the programmatic requirements. This period of time is designed to ensure that there is sufficient experience to allow the department to assess implementation.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.

Department of Labor

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Methods of Payment of Wages

I.D. No. LAB-21-15-00009-RP

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

Proposed Action: Addition of Part 192 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21 and 199

Subject: Methods of Payment of Wages.

Purpose: This regulation provides clarification and specification as to the permissible methods of payment, including payroll debit cards.

Text of revised rule: *Part 192 Methods of Payment of Wages*

Subpart-1 General Provisions

§ 192-1.1 Permissible Methods of Payment

Employees may be paid wages by employers using the following permissible methods:

(a) Cash;

(b) Check;

(c) Direct Deposit; or

(d) Payroll Debit Card.

§ 192-1.2 Definitions

For the purposes of this part:

(a) Payroll Debit Card shall mean a card that provides access to an account with a financial institution established directly or indirectly by the employer, and to which transfers of the employee's wages are made on an isolated or recurring basis.

(b) Consent shall mean an express, advance, written authorization given voluntarily by the employee and only given following receipt by the employee of written notice of all terms and conditions of the method of payment. Consent may be withdrawn at any time, provided however, that the employer shall be given a reasonable period of time, but no longer than two full pay periods, to finalize such change.

(c) No Cost shall mean that an employee can access his or her wages, in full, without encumbrances, costs, charges, or fees.

(d) Local Access shall mean that the employee is provided with access to his or her wages, at a facility or machine which is located within a reasonable travel distance to the employee's work location or home, and without unreasonable restraint by the employer or its agent.

(e) Employee shall be as it is defined in Section 190 of the Labor Law and shall not include any person employed in a bona fide executive, administrative, or professional capacity whose earnings are in excess of the dollar threshold contained in Section 192(2) of the Labor Law, or an employee working on a farm not connected with a factory.

(f) Direct Deposit shall mean the transfer of wages into an account, of the employee's choosing, of a financial institution.

(g) Reasonable Intervals shall mean not less frequently than annually.

(h) Negotiable instrument shall be as it is defined in Section 3-104 of the New York State Uniform Commercial Code.

§ 192-1.3 Written Notice and Consent

(a) Notice of methods of payment. An employer who uses methods of payments other than cash or check shall provide employees with a written notice that identifies the following:

(1) a plain language description of all of the employee's options for receiving wages;

(2) a statement that the employer may not require the employee to accept wages by payroll debit card or by direct deposit;

(3) a statement that the employee may not be charged any fees for services that are necessary for the employee to access his or her wages in full; and

(4) if offering employees the option of receiving payment via payroll debit card, a list of locations where employees can access and withdraw wages at no charge to the employees within reasonable proximity to their place of residence or place of work.

(b) Consent. An employer who offers one or more methods of payment of wages that require consent shall obtain such consent in writing and shall ensure that:

(1) It obtains the employee's informed consent without intimidation, coercion, or fear of adverse action by the employer for refusal to accept payment of wage by direct deposit or payroll debit card; and

(2) Does not make payment of wage by direct deposit or payroll debit card a condition of hire or of continued employment.

(c) Electronic. The written notice and written consent may be provided and obtained electronically so long as an employee is provided with the ability to view and print both the notice and the consent while the employee is at work and without cost to the employee, and the employee is notified of his or her right to print such materials by the employer through such electronic process.

(d) Language. The written notice and written consent shall be provided in English and in the primary language of the employee when a template notice and consent in such language is available from the commissioner.

§ 192-1.4 Prohibited Practices

An employer and its agent shall not engage in unfair, deceptive or abusive practices in relation to the method or methods of payment of wages. No employer or his agent, or the officer or agent of any corporation, shall discharge, penalize or in any other manner discriminate against any employee because such employee has not consented to receive his or her wages through direct deposit or payroll debit card.

Subpart-2 Methods of Payment

§ 192-2.1 Payment of Wages by Check

When paying wages by check, an employer shall ensure that:

(a) The check is a negotiable instrument; and

(b) The employer does not impose any fees in connection with the use of checks for the payment of wages, including a fee for replacement of a lost or stolen check.

§ 192-2.2 Payment of Wages by Direct Deposit

When paying wages by direct deposit, an employer shall ensure that:

(a) It has consent from the employee;

(b) A copy of the employee's consent must be maintained by the employer during the period of the employee's employment and for six years following the last payment of wages by direct deposit. A copy of the employee's written consent must be provided to the employee; and

(c) Such direct deposit is made to a financial institution selected by the employee.

§ 192-2.3 Payment of Wages by Payroll Debit Card

(a) When paying wages by payroll debit card, an employer shall ensure that:

(1) It has consent from the employee;

(2) It provides the following information and receives consent at least seven business days prior to taking action to issue the payment of wages by payroll debit card, during such seven business days the employee's consent shall not take effect.

(b) An employer shall not deliver payment of wages by payroll debit card unless each of the following is provided:

(1) Local Access to one or more automated teller machines that offers withdrawals at no cost to the employee;

(2) At least one method to withdraw up to the total amount of wages for each pay period or balance remaining on the payroll debit card without the employee incurring a fee;

(c) An employer or agent shall not charge, directly or indirectly, an employee a fee for any of the items listed in this subsection. Inclusion in this subsection does not impose any separate or independent obligation to provide services, nor does it relieve an employer or agent from compliance with this Part or any Federal or State law or regulations:

(1) Application, initiation, loading, participation or other action necessary to receive wages or to hold the payroll debit card;

(2) Point of sale transactions;

(3) Overdraft, shortage, or low balance status;

(4) Account inactivity;

(5) Maintenance;

(6) Telephone or online customer service;

(7) Accessing balance or other account information online, by Interactive Voice Response through any other automated system offered in conjunction with the payroll debit card, or at any ATM in network made available to the employee;

(8) Providing the employee with written statements, transaction histories or the issuer's policies;

(9) Replacing the payroll debit card at reasonable intervals;

(10) Closing an account or issuing payment of the remaining balance by check or other means; or

(11) Declined transactions at an Automated Teller Machine that does not provide free balance inquiries.

(12) Any fee not explicitly identified by type and by dollar amount in the contract between the employer and the issuer or in the terms and conditions of the payroll debit card provided to the employee.

(d) An employer or its agent shall not deliver payment of wages by payroll debit card account that is linked to any form of credit, including a loan against future pay or a cash advance on future pay. Nothing in this subsection shall prohibit an issuer from covering an occasional inadvertent overdraft transaction if there is no charge to the employee.

(e) An employer shall not pass on any of its own costs associated with a payroll debit card account to an employee, nor may an employer receive any kickback or other financial remuneration from the issuer, card sponsor, or any third party for delivering wages by payroll debit card.

(f) An employer or its agent shall not deliver payment of wages by payroll debit card unless the agreement between the employer and issuer requires that the funds on a payroll debit card shall not expire. Notwithstanding this requirement, the agreement may provide that the account may be closed for inactivity provided that the issuer gives reasonable notice to the employee and that the remaining funds are refunded within seven days.

(g) At least thirty days before any change in the terms and conditions of a payroll debit card takes effect, an employer must provide written notice in plain language, in the employee's primary language or in a language the employee understands, and in at least 12-point font of any change to the terms or conditions of the payroll debit card account including any changes in the itemized list of fees. If the issuer charges the employee any new or increased fee before thirty days after the date the employer has provided the employee with written notice of the change in accordance with the provisions of this subsection, the employer must reimburse the employee for the amount of that fee.

(h) Where an employee is covered by a valid collective bargaining agreement that expressly provides the method or methods by which wages may be paid to employees, an employer must also have the approval of the union before paying by payroll card.

Revised rule making(s) were previously published in the State Register on October 28, 2015.

Revised rule compared with proposed rule: Substantial revisions were made in sections 192-2.1(b) and 192-1.3(a)(4).

Text of revised proposed rule and any required statements and analyses may be obtained from Michael Paglialonga, Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY 12240, (518) 457-4380, email: regulations@labor.ny.gov

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

Public comment will be received until: 30 days after publication of this notice.

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

The revisions do not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The Department received numerous comments following publication of the revised rule in the October 28, 2015 edition of the NY Register. The following represents a summary and an analysis of such comments, and the reasons why any significant alternatives were not incorporated into the rule. Comments which were previously analyzed, for which no changes were made in the revised rule in the previously published Assessment of Comment, are not included here and reference is made to the previously published assessment for such analysis and response.

Comment 1:

The requirement that employees be provided unlimited withdrawals at least one local ATM machine is burdensome.

Response 1:

The Department disagrees. This requirement ensures that employees are able to access their wages in a free and effective way in line with the requirements of Article 6 of the Labor Law.

Comment 2:

The notification requirement for changes in terms and conditions of payroll debit cards is onerous and the rule should be amended to only require notification if changes are adverse to the employee.

Response 2:

The Department disagrees. This requirement ensures that employees are given the informational opportunity to change or withdraw their consent to be paid via payroll debit card should they believe a change is adverse to them and not merely where a change is believed by a third party to be adverse.

Comment 3:

The seven day waiting period for consent to be effective should be revised. It is onerous for employers, as being too restrictive, and employees, as not providing sufficient levels of protection.

Response 3:

The Department disagrees. This period ensures that employees have the opportunity to evaluate and assess the method of payment in a meaningful way without being limited in their ability to withdraw their consent immediately.

Comment 4:

The Department should provide notice to workers of their rights under Federal Regulation E in the template contemplated by the proposed rule.

Response 4:

The Department will consider, in the drafting of this template, a statement referencing and/or explaining relevant employee rights under Federal Regulation E.

Comment 5:

The Department should provide the templates in Spanish, Chinese, Haitian Creole, Korean, Polish, Russian, French, Arabic, Bengali, Tagalog, and Urdu.

Response 5:

The Department agrees and intends on making the templates available in these languages.

Comment 6:

The Department should maintain complaints under the proposed rule in a manner that is readily accessible under FOIL.

Response 6:

The Department agrees. The Department's recordkeeping system for complaints and investigation is electronically based and the Department will take efforts to do so consistent with operational and administrative needs of that system.

Comment 7:

The Department should provide an opportunity for the regulated community to review and comment the template contemplated by the rulemaking before it is finalized; this would be helpful since there is potential for employee and employer confusion regarding the contents of the notice.

Response 7:

The Department agrees and will make the template available to the regulated community to provide feedback and input on prior to the effective date of the rule.

Comment 8:

The language of the rule should be clarified to clarify that notice may be provided using the English template where the employee's primary language is not one that a template was created by the Department.

Response 8:

As stated in the previous assessment, the text of the rule provides, and this assessment provides confirmation that employers are provide notice and consent either in the employee's primary language, in a language that the employee understands, or through a template prepared by the Department of Labor in accordance with the instructions contained therein. Templates containing relevant and required information will be prepared by the Department. The Department anticipates offering templates in, at least, the following languages: Spanish, Chinese, Haitian Creole, Korean, Polish and Russian. If an employer elects to use a template prepared by the Department and none exist that the employee understands, the employer may provide the employee with the Department's English template.

Comment 9:

It should be clarified that the notice requirement identifying the list of locations where wages can be accessed is only applicable to payroll debit cards, and not direct deposit.

Response 9:

As employees who elect to receive payment through direct deposit established an independent relationship with a financial institution, no specific locations are required to be provided by employers in the required notice where employees are being paid via direct deposit, and the Department has amended the proposed rule to clarify the notice requirement.

Comment 10:

Existing payment authorizations should remain valid upon the effective date of this rule.

Response 10:

Consent provided by an employee prior to the effective date is only valid if it complies with the requirements of this rule. Prior consent that was provided without the requisite notices or in conflict with the terms of this rule is ineffective. Given this concern, the rule will not go into effect until 6 months after publication in the State Register so as to provide the regulated community the opportunity to take appropriate action.

Comment 11:

The requirement that employers provide free check cashing would be burdensome and costly for employers.

Response 11:

While the proposed language sought to codify the requirement in Article 6 of the Labor Law, as interpreted by the Department, that employers provide employees a no-cost local access location to cash their paycheck, the Department has amended the proposed rule to remove this requirement from this rulemaking. Notwithstanding this amendment, employers must ensure that employees are able to access their wages in order for payment to be effective in accordance with the requirements of Section 191 of the Labor Law.

Comment 12:

The notice requirements should not apply for isolated payments such as bonuses or incentive payments on payroll debit cards.

Response 12:

The notice requirements are applicable to isolated and recurring wage payments using a payroll debit cards. Non-wage payments, as many bonuses and holiday payments are under Article 6 of the Labor Law, are not subject to the requirements of this rule. However, wage payments, including many incentive payments, are subject to the requirements of both Article 6 of the Labor Law and to the provisions of this rule.

Comment 13:

Requiring a specific list of ATM locations for each employee is overly burdensome.

Response 13:

The proposed rule does not require that each employee be provided with a specific hard copy list of locations applicable to them. This requirement may be satisfied alternatively by providing access to the employee to an online or telephone based system so long as the employee is provided with information on the means by which he or she may access it.

Comment 14:

The six year recordkeeping requirement is onerous and exceeds federal law for debit cards.

Response 14:

The Department does not agree that this is onerous. The recordkeeping requirement in the rule is consistent with those contained in Article 6 and 19 of the Labor Law, and provides for a consistent framework under which employers are required to maintain wage records.

Comment 15:

A longer phase in period is needed in order to provide the regulated community time to implement the requirements of the rule.

Response 15:

The Department disagrees. The six month effective date of the rule provides a sufficient period for employers and their agents to take appropriate action to come into compliance with the applicable requirements, balancing the need for the protections for employees contained in the rule.

Comment 16:

The term "reasonable travel distance to the employee's work location or home" is unclear in that it does not recognize that many employees do not utilize cars.

Response 16:

This term takes into account the fact that a reasonable travel distance differs for employees situated around the State. For instance, a reasonable travel distance for an employee within Manhattan may be less than a mile, while a reasonable travel distance for an employee in the North Country may be as much as fifteen miles, given the two employee's customary means of travel. Determinations on this issue will be made on a case-by-case basis and, by this encompassing definition, the Department recognizes the different situations and circumstances of employees in different parts of the State.

Comment 17:

The rule should be revised to require that a network of ATMs be provided, not one or more local ATMs.

Response 17:

The Department disagrees. The rule imposes this requirement in order to ensure that employees have at least one means to access their wages locally without fees. While employers or their agents may satisfy this requirement through a network of ATMs, as no specific ATM is required to be identified as a single point of access for each employee, a single ATM is all that is required.

Comment 18:

The term consent includes duplicative definitional terms which require that consent be both voluntary and without intimidation, coercion, or fear of adverse action.

Response 18:

While these terms are not mutually exclusive, they are not duplicative and operate to provide clarity to the regulated community.

Comment 19:

The rule would require that payroll card issuers adopt unique processes to New York State.

Response 19:

The State of New York, through this rule, is working to ensure that employees are able to access their wages, in full, without unreasonable restriction or encumbrance. While the Department recognizes the difficulties that different institutions will face in implementing a new system of rules, the rule is effective six months after adoption providing employers and their agents sufficient time to implement any required changes to ensure the free and full access to wages for employees.

Comment 20:

The term "kickbacks" should be clarified to explain that employers may receive volume discounts and program collateral, such as marketing or educational material, based on the number of participants.

Response 20:

Indirect or incidental benefits that are provided to employers, as a direct or indirect result of the number of employees that participate in a payroll

debit card program are generally outside of the definition of the term kickback. However, direct monetary payments or incentives from an issuer to an employer as a result of fees or revenues collected by employees are prohibited by the rule.

State Liquor Authority

NOTICE OF ADOPTION

Alcohol Training and Awareness Program (ATAP) Application Processes and Program Requirements

I.D. No. LQR-06-16-00003-A
Filing No. 516
Filing Date: 2016-05-31
Effective Date: 2016-06-15

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

Action taken: Addition of Part 106 to Title 9 NYCRR.

Statutory authority: Alcoholic Beverage Control Law, section 18(10)

Subject: Alcohol Training and Awareness Program (ATAP) application processes and program requirements.

Purpose: To enact statutorily required Alcohol Training and Awareness Program (ATAP) application processes and program requirements.

Text or summary was published in the February 10, 2016 issue of the Register, I.D. No. LQR-06-16-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Paul Karamanol, Senior Attorney, State Liquor Authority, 80 South Swan Street, Suite 900, Albany, NY 12210, (518) 474-3114, email: paul.karamanol@sla.ny.gov

Assessment of Public Comment
The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-17-15-00006-A
Filing Date: 2016-05-25
Effective Date: 2016-05-25

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

Action taken: On 5/19/16, the PSC adopted an order approving 56th and Park (NY) LLC (56th and Park) to submeter electricity at 432 Park Avenue, New York, New York.

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

Subject: Submetering of electricity.

Purpose: To approve 56th and Park to submeter electricity at 432 Park Avenue, New York, New York.

Substance of final rule: The Commission, on May 19, 2016, adopted an order approving 56th and Park (NY) LLC to submeter electricity at 432 Park Avenue, New York, New York, subject to the terms and conditions set forth in the order.

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

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

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

(15-E-0198SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-47-15-00008-A
Filing Date: 2016-05-25
Effective Date: 2016-05-25

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

Action taken: On 5/19/16, the PSC adopted an order approving 150 Charles Street Holdings LLC (150 Charles Street) to submeter electricity at 150 Charles Street, New York, New York.

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

Subject: Submetering of electricity.

Purpose: To approve 150 Charles Street to submeter electricity at 150 Charles Street, New York, New York.

Substance of final rule: The Commission, on May 19, 2016, adopted an order approving 150 Charles Street Holdings LLC to submeter electricity at 150 Charles Street, New York, New York, subject to the terms and conditions set forth in the order.

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

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

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

(15-E-0499SA1)

NOTICE OF ADOPTION

Quarterly Electronic DPA Reporting Requirement

I.D. No. PSC-11-16-00007-A
Filing Date: 2016-05-25
Effective Date: 2016-05-25

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

Action taken: On 5/19/16, the PSC adopted an order approving National Fuel Gas Distribution Corporation's (NFG) petition to discontinue a quarterly electronic Deferred Payment Agreement (DPA) reporting requirement.

Statutory authority: Public Service Law, sections 37, 66, 80, 89-c and 111

Subject: Quarterly electronic DPA reporting requirement.

Purpose: To approve NFG's petition to discontinue a quarterly electronic DPA reporting requirement.

Substance of final rule: The Commission, on May 19, 2016, adopted an order approving National Fuel Gas Distribution Corporation's petition to discontinue a quarterly electronic Deferred Payment Agreement reporting requirement, subject to the terms and conditions set forth in the order.

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

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

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

(13-G-0016SA3)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-24-16-00008-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by VNO 225 West 58th Street, LLC, to submeter electricity at 220 Central Park South, 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 consider the Notice of Intent to submeter electricity at 220 Central Park South, New York, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by VNO 225 West 58th Street, LLC on May 12, 2016, to submeter electricity at 220 Central Park South, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission may adopt, reject or modify, in whole or in part, the relief 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: 45 days after publication of this notice.

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

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

(16-E-0308SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Submeter Gas Service

I.D. No. PSC-24-16-00009-P

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

Proposed Action: The Public Service Commission is considering the Petition, filed by New York City Economic Development Corp., to submeter gas at Pier 17, 89 South 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: Petition to submeter gas service.

Purpose: To consider the Petition of New York City Economic Development Corp. to submeter gas at Pier 17, 89 South Street, New York, NY.

Substance of proposed rule: The Commission is considering the Petition, filed by New York City Economic Development Corp. on May 16, 2016, to submeter gas at Pier 17, 89 South Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission may adopt, reject or modify, in whole or in part, the relief 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: 45 days after publication of this notice.

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

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

(16-G-0294SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Establishment of Reliability Contingency Plan(s) to Address the Potential Closure of Indian Point Energy Center

I.D. No. PSC-24-16-00010-P

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

Proposed Action: The Commission is considering a petition filed by Consolidated Edison Company of New York Inc., et al., on May 26, 2016, seeking certain modifications to its reliability contingency plans.

Statutory authority: Public Service Law, sections 4(1), 5(1)(b), (2), 65(1), 66(1), (2), (4), (5), (9) and (12)

Subject: Establishment of reliability contingency plan(s) to address the potential closure of Indian Point Energy Center.

Purpose: To address reliability needs associated with the potential closure of the Indian Point Energy Center.

Substance of proposed rule: The Public Service Commission (Commission) is considering a Petition filed in Case 12-E-0503 on May 26, 2016, by Consolidated Edison Company on New York, Inc. and the New York State Energy Research and Development Authority (collectively, Petitioners). The Petition seeks certain modifications to Petitioners' 125 MW Revised Energy Efficiency, Demand Reduction, and Combined Heat and Power Program, accepted under the Commission's Order Accepting Indian Point Energy Center Reliability Contingency Plans, Establishing Cost Allocation and Recovery, and Denying Requests for Rehearing, issued in Case 12-E-0503 on November 4, 2013. In particular, the Petition requests that the Commission order, to the extent necessary and appropriate, that: (1) Petitioners continue their best efforts to achieve, and where cost-effective within the existing budget exceed, the 125 MW target beyond the previously established June 1, 2016 target date and that the deadline for projects to become operational is eliminated; (2) Petitioners are authorized to accept Combined Heat and Power applications under this program through December 31, 2016; and (3) Petitioners are authorized to reduce incentives payable to project developers to reflect delayed completion of Demand Management projects. The Commission may adopt, reject or modify, in whole or in part, the petition 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: 45 days after publication of this notice.

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

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

(12-E-0503SP7)

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Child Support Federal Incentive Payments

I.D. No. TDA-27-15-00002-A
Filing No. 513
Filing Date: 2016-05-26
Effective Date: 2016-06-15

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

Action taken: Amendment of section 347.16 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 111-a; 42 U.S.C., section 658a; 45 CFR, sections 302.55, 303.52, 305.2, 305.31 and 305.33

Subject: Child support federal incentive payments.

Purpose: To update State procedures to distribute federal child support incentives and allocate portions thereof to local districts.

Text or summary was published in the July 8, 2015 issue of the Register, I.D. No. TDA-27-15-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Matthew L. Tulio, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243, (518) 486-9568, email: Matthew.Tulio@otda.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Monthly Shelter Supplements

I.D. No. TDA-37-15-00005-A
Filing No. 515
Filing Date: 2016-05-27
Effective Date: 2016-06-15

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

Action taken: Amendment of section 352.3(a)(3)(i) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 131(1); L. 2009, 2011-2015, ch. 53; L. 2010, chs. 58, 110

Subject: Monthly Shelter Supplements.

Purpose: To update State regulations to reflect current State law.

Text or summary was published in the September 16, 2015 issue of the Register, I.D. No. TDA-37-15-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Matthew L. Tulio, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243-0001, (518) 486-9568, email: Matthew.Tulio@otda.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Office of Temporary and Disability Assistance (OTDA) received one comment from a social services district relative to the regulatory proposal. The comment has been reviewed and duly considered in the Assessment of Public Comments.

The one comment received by OTDA suggested that OTDA should consider raising the shelter allowances for all recipients, as opposed to only providing shelter supplements to some individuals. OTDA maintains that the regulatory amendments are appropriate and needed. The amendments to 18 NYCRR § 352.3(a)(3)(i) reflect current statutory requirements by extending the regulatory authority to provide additional monthly shelter supplements to eligible public assistance applicants and recipients, including childless couples and single adults. The suggestion to raise shelter allowances for all recipients is outside the scope of the Notice of Proposed Rulemaking because it relates to the overall shelter allowance levels, rather than the shelter supplement program.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Supplemental Nutrition Assistance Program

I.D. No. TDA-22-15-00005-RP

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

Proposed Action: Amendment of section 387.1; and addition of section 387.25 to Title 18 NYCRR.

Statutory authority: 7 USC section 2020(s); Social Services Law, sections 20(3)(d) and 95

Subject: Supplemental Nutrition Assistance Program.

Purpose: Update regulations for the Transitional Benefits Alternative program.

Text of revised rule: Subdivisions (ll), (mm) and (nn) of section 387.1 of Title 18 NYCRR are amended to read as follows:

(ll) *Transitional Benefits Alternative (TBA) provides five months of transitional SNAP benefits to eligible households after they leave the family assistance and/or safety net assistance program pursuant to the requirements set forth in section 387.25 of this Part.*

(mm) Transitional SNAP benefits are SNAP benefits allotted to eligible TBA households pursuant to section 387.25 of this Part for five months immediately following the month in which the household's case for family assistance and/or safety net assistance was closed.

(nn) Verification is the process of obtaining information which establishes the accuracy of information provided by the applicant/recipient.

[(mm)] *(oo)* Veteran means a person who served in the active military, naval, or air service of the United States, and who was discharged or released therefrom under conditions other than dishonorable.

[(nn)] *(pp)* United States Department of Agriculture (USDA) is the Federal agency responsible for the administration of [the food stamp program] *SNAP*.

A new section 387.25 is added to Title 18 NYCRR to read as follows:

387.25 Transitional Supplemental Nutrition Assistance Program Benefits

Transitional Benefits Alternative (TBA) provides five months of transitional SNAP benefits to eligible households after they leave the family assistance and/or safety net assistance program pursuant to the requirements set forth in this section.

(a) Eligible Households. Transitional SNAP benefits must be provided to eligible SNAP households as set forth below:

(1) Family Assistance. Households leaving family assistance except for those excluded under subdivision (b) of this section.

(2) Safety Net Assistance. Households leaving safety net cash or safety net federally non-participating programs, except for those excluded under subdivision (b) of this section, who meet each of the following conditions:

(i) The household must include at least one child who is:

(a) Under 22 years of age and living with a parent; or

(b) Under 18 years of age and under the parental control of an adult member of the household; or

(c) Under 18 years of age and is a minor head of household at the time of the safety net case closing.

(ii) The child/children do not need to be participating in either the safety net case or the SNAP case at the time of the safety net case closing.

(iii) The child/children must be verified with the social services district as active, sanctioned or inactive household members at the time of the safety net case closing.

(iv) Eligibility for TBA cannot be established subsequent to the safety net case closing.

3) Eligible households as determined in paragraphs (1) and (2) of this subdivision who have a member(s) participating in an employment program that provides wages that are funded or reimbursed, at least in part, through a grant diversion program that diverts the household's entire family assistance or safety net assistance grant ($0 cash grant case) are

considered to have left family assistance and/or safety net assistance for the purpose of TBA eligibility.

(b) Ineligible Households. Transitional SNAP benefits must not be provided when one of the following conditions exists:

(1) The household is not in receipt of SNAP benefits at the time of the closing;

(2) A household member is not compliant with a family assistance or safety net assistance requirement, and the State agency or social services district is imposing a comparable SNAP sanction;

(3) A household member is currently in violation of a SNAP work requirement;

(4) A household member is currently disqualified from participation in the family assistance program, the safety net assistance program or SNAP for an intentional program violation;

(5) A household's SNAP case is closing for failure to comply with SNAP reporting requirements;

(6) No household member is eligible to participate in SNAP; or

(7) A safety net assistance household has not reported and verified the residence of a child, as required by subparagraph (iii) of paragraph (2) of subdivision (a) of this section, at the time of the safety net case closing.

(c) TBA Transition Period. The social services district provides five months of transitional SNAP benefits.

(1) The transitional SNAP benefits are issued to TBA eligible households for a period of five months following the closing of the public assistance case even if it results in the shortening or the extending of a household's currently assigned certification period, unless:

(i) A household has recertified for SNAP benefits as a result of voluntarily reporting a change that resulted in an increase in SNAP benefits; or

(ii) A household has a member or members who begin receiving family assistance or safety net assistance. This includes a household under a grant diversion program who begins receiving a cash grant.

(2) As provided in paragraph (1) of this subdivision, the TBA transition period will end after a household has been issued transitional SNAP benefits for a period of five months, except that:

(i) for a household that recertifies for SNAP benefits, as provided in subparagraph (i) of paragraph (1) of this subdivision, the household's TBA transition period will end the last day of the month immediately preceding the first month of the new certification period;

(ii) for a household that has a member who begins receiving either family assistance or safety net assistance, as provided in subparagraph (ii) of paragraph (1) of this subdivision, on or before the twentieth day of the month, the household's TBA transition period will end no later than the last day of the month in which the household member begins receiving such assistance; and

(iii) for a household that has a member who begins receiving either family assistance or safety net assistance, as provided in subparagraph (ii) of paragraph (1) of this subdivision, after the twentieth day of the month, the household's TBA transition period will end no later than the last day of the month following the month in which the household member begins receiving such assistance.

(d) Calculation of Transitional SNAP Benefits. All transitional SNAP benefits will be calculated by removing the public assistance income from the SNAP budget in effect immediately prior to the closing of the public assistance case; all other budget factors will remain the same. The SNAP budget then will be recalculated to establish the transitional SNAP benefit amount. Transitional SNAP benefits will remain at the established level for five months, unless the household's TBA benefits are discontinued pursuant to paragraph (1) of subdivision (c) of this section.

(e) Reporting Requirements and Reporting Changes.

(1) TBA households are not required to report changes during the five-month TBA transition period.

(2) TBA households may voluntarily report changes. Only changes that will result in an increase in benefits and that are authorized through a recertification of the household will be enacted, except that for a TBA household that has a member of the household leave and apply for and be found eligible for SNAP as a member of another household, then the TBA case and benefit must be adjusted to reflect the loss of the household member, without the TBA period being adjusted.

(f) Recertification.

(1) TBA households must recertify for SNAP benefits in order to continue to receive SNAP benefits after the five-month TBA transition period.

(2) TBA households must be allowed to file a recertification at any time during the five-month TBA transition period.

(i) Only a client-requested recertification that will result in an increase in SNAP benefits will be enacted to end the five-month TBA transition period.

(ii) The increased SNAP benefits will be issued for the new certification period that will begin the month after the month in which the household completes all recertification requirements.

(iii) Unless conducted on the same day as the recertification filing date, client-requested recertification interviews must be scheduled as soon as possible, but no later than ten days prior to the end of the month following the month in which the recertification is requested.

(iv) TBA households that fail to appear for a scheduled interview must have their transitional SNAP benefits continue until the end of the five-month TBA transition period.

(v) TBA households that request an early recertification, but fail to provide required verification or that report changes that would result in a decrease in SNAP benefits, will continue to receive transitional SNAP benefits unchanged until the end of the five-month TBA transition period.

(g) Notice Requirements. At the commencement of the TBA transition period, a notice must be issued advising the household of the following:

(1) The amount of the TBA benefits.

(2) The length of the TBA transition period.

(3) TBA households will receive the same TBA benefit amount until the end of the TBA transition period.

(4) TBA households are not required to report any changes until the recertification at the end of the TBA transition period.

(5) TBA households may report changes if income decreases or if expenses or household size increase.

(6) TBA households may request an early recertification.

(7) TBA households with a member or members who begin receiving family assistance or safety net assistance lose eligibility for TBA.

Revised rule compared with proposed rule: Substantial revisions were made in section 387.25(e)(2).

Text of revised proposed rule and any required statements and analyses may be obtained from Matthew L. Tulio, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243-0001, (518) 486-9568, email: Matthew.Tulio@otda.ny.gov

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

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

1. Statutory authority:

Section 2020 of Title 7 of the United States Code (7 USC § 2020) provides a transitional benefits option under the Supplemental Nutrition Assistance Program (SNAP).

7 USC § 2020(s)(1) provides the transitional SNAP benefits option to all States in order to assist households with children that are leaving federally-funded cash assistance programs or State-funded cash assistance programs.

7 USC § 2020(s)(2) provides that a household may receive transitional SNAP benefits for a period of not more than five months after the date on which the household's cash assistance is terminated.

7 USC § 2020(s)(3) provides that during the five-month transitional benefits period, a household will receive an amount of SNAP benefits equal to the allotment received in the month immediately preceding the date on which case assistance was terminated, adjusted for the change in household income as a result of the termination of cash assistance. This adjustment always results in a benefit equal to or greater than the allotment received immediately preceding the date on which cash assistance was terminated.

7 USC § 2020(s)(4) provides that in the final month of the transitional benefits period, the State agency may require the household to cooperate in a recertification of eligibility for SNAP benefits and initiate a new certification period for the household without regard to whether the preceding certification period has expired. The household must recertify and be found eligible to continue to receive SNAP benefits.

7 USC § 2020(s)(5) provides that a household shall not be eligible for transitional SNAP benefits under the following circumstances: if the household loses eligibility for SNAP benefits pursuant to the eligibility disqualifications set forth in 7 USC § 2015; if the household is sanctioned for failure to perform an action required by federal, State or local law relating to its cash assistance program; or if the household is a member of any other category of households designated by the State agency as ineligible for transitional benefits.

7 USC § 2020(s)(6)(A) provides that a household receiving transitional SNAP benefits may apply for recertification at any time during the five-month transitional benefits period. Recertifications are processed only when there is a client requested recertification that will result in an increase in SNAP benefits.

Social Services Law (SSL) § 20(3)(d) authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

SSL § 95 authorizes OTDA to administer SNAP in New York State and

to perform such functions as may be appropriate, permitted or required by or pursuant to federal law.

Executive Order No. 17, signed by Governor Paterson on April 27, 2009, required each State agency to review its existing regulations and report on proposed changes to the regulations that would reduce the impact of existing mandates on local governments. This regulatory proposal is being promulgated consistent with Executive Order No. 17.

2. Legislative objectives:

It has been the intent of Congress to ease the transition period from reliance on public assistance programs to financial independence by providing additional SNAP benefits to families who are attempting to improve their financial well-being.

3. Needs and benefits:

OTDA originally implemented the Transitional Benefits Alternative (TBA) program for SNAP in December 2001. Since that time, OTDA has found the TBA program to be very beneficial for both families and the social services districts. The TBA program provides additional federally-funded SNAP benefits to certain households with children that are leaving cash assistance programs. These additional benefits help families meet their nutritional needs while making the transition from cash assistance to employment. The TBA program also provides administrative ease to the social services districts by requiring fewer recipient recertifications, easier budget calculations and less paperwork. As a result of its favorable impact, the TBA program has received the support of recipients, advocates and the social services districts.

The TBA program is a federal option available to all States. Originally, the federal government permitted the States to provide three months of transitional SNAP benefits to certain families leaving federally-funded cash assistance programs. In December 2001, New York State became the first State to implement the TBA program for eligible families leaving federally-funded cash assistance programs. The implementation of the TBA program in New York State permitted many households with earnings to receive additional months of SNAP benefits that they otherwise would not have been eligible for, thereby easing the transition from public assistance to employment.

The federal government then simplified the TBA program by establishing a five-month transitional benefits period, providing a standard transitional benefit computation and eliminating reporting requirements during the five-month transitional benefits period. In October 2002, OTDA implemented these changes to its TBA program and thereby eased requirements on both recipients and social services districts by reducing the number of recertifications, simplifying budget calculations and limiting the amount of required paperwork.

The Food, Conservation and Energy Act of 2008 enabled States to expand the TBA program to include households with children leaving State-funded cash assistance programs. As a result of the TBA program's prior success and due to encouragement from the social services districts, OTDA implemented this expansion in December 2009 so that households with children could potentially be eligible for the TBA program whether they were leaving federally-funded cash assistance programs or State-funded cash assistance programs.

The proposed amendments would assist recipients leaving cash assistance by setting forth eligibility requirements that households must satisfy to be eligible for transitional SNAP benefits, as well as clarifying criteria that would render any household ineligible for such benefits. The proposed regulations would provide details regarding the five-month transitional benefits period and the standard calculation for transitional SNAP benefits. Guidance would be provided to recipients regarding the voluntary reporting of changes in circumstances during the five-month transitional benefits period and the potential outcomes of such reporting. Lastly, the proposed amendments would address recertification at the end of the five-month transitional benefits period and the notices that must be provided by OTDA to all TBA households.

A revision to the proposed text at 18 NYCRR § 387.25(e)(2) is needed to bring the rule into compliance with current federal policy regarding duplicate participation in SNAP. The revision addresses situations when TBA households voluntarily report that household members have left the TBA households and applied for and been found eligible for SNAP as members of other households. Under those circumstances, the TBA cases and benefits must be adjusted to account for the loss of household members, without adjusting the TBA periods.

4. Costs:

The proposed amendments would not impose initial costs or any annual costs upon New York State or the social services districts to comply with the regulatory enactment of the TBA program. Since the proposed amendments would simply clarify the existing requirements of the TBA program, there would be no costs associated with the proposed changes.

5. Local government mandates:

Experience has shown that the TBA program eases local mandates in three significant ways. First, the TBA authorization period is automatic for qualifying households and lasts for up to five months. This transitional benefits period controls costs by significantly limiting the number of interviews and recertification forms that need to be processed by social services districts. Second, the TBA program provides a simplified transitional benefit computation. Social services districts calculate the TBA amount for households by removing the public assistance income from the SNAP budget in effect immediately prior to the closing of the public assistance case. No other changes or budget comparisons are made when calculating transitional SNAP benefit amounts. Third, households in receipt of TBA are not required to report any changes during the transitional benefits period. This eases the social services districts' responsibility to handle paperwork and verify changes in household circumstances.

6. Paperwork:

The proposed amendments would not impose any new forms or new reporting requirements.

7. Duplication:

The proposed amendments would not conflict with any existing State or federal statutes or regulations.

8. Alternatives:

One alternative is not to update State regulations to reflect the requirements of the TBA program. However, this alternative is not a viable option. Social services districts and recipients would both benefit if the requirements of the TBA program were set forth in State regulations.

Another alternative is to eliminate the TBA program in New York State. However, this alternative is not a viable option. The TBA program has been a successful means of providing nutritional assistance to families who are transitioning from public assistance programs to employment and self-sufficiency. Prior to the implementation of the TBA program, many households, particularly those leaving public assistance due to earnings, would lose eligibility for SNAP benefits or would request to close their SNAP cases when their public assistance ended. The implementation of the TBA program permitted many of these households to receive five additional months of SNAP benefits that they otherwise would not have been eligible for, thereby easing the transition from public assistance to employment. Also the TBA program has reinforced public awareness that eligibility for SNAP benefits can continue after the end of eligibility for public assistance.

9. Federal standards:

The proposed amendments do not conflict with the federal standards set forth in 7 USC § 2020(s).

10. Compliance schedule:

Since the proposed amendments would simply clarify the existing requirements of the TBA program in New York State, all social services districts would be in compliance with the proposed amendments upon their effective date.

Revised Regulatory Flexibility Analysis

Changes made to the published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments. The proposed text at 18 NYCRR § 387.25(e)(2) has been revised to bring the rule into compliance with current federal policy regarding duplicate participation in the Supplemental Nutrition Assistance Program. The social services districts are already in compliance with this requirement.

Revised Rural Area Flexibility Analysis

Changes made to the published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis. The proposed text at 18 NYCRR § 387.25(e)(2) has been revised to bring the rule into compliance with current federal policy regarding duplicate participation in the Supplemental Nutrition Assistance Program. The social services districts are already in compliance with this requirement.

Revised Job Impact Statement

Changes made to the published rule do not necessitate revision to the previously published statement in lieu of a Job Impact Statement. The proposed text at 18 NYCRR § 387.25(e)(2) has been revised to bring the rule into compliance with current federal policy regarding duplicate participation in the Supplemental Nutrition Assistance Program. The social services districts are already in compliance with this requirement.

Assessment of Public Comment

The agency received no public comment.